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DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

OF THE

United States House of Representatives

By

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VOLUME 18

COVERING PRECEDENTS THROUGH THE 112TH CONGRESS AND EMPLOYING CITATIONS TO THE RULES AND TO THE HOUSE RULES AND MANUAL OF THAT PERIOD WHICH HAVE SUBSEQUENTLY BEEN RECODIFIED AS SHOWN IN H. DOC. 106–320 AT PAGES XIII–XV

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Foreword to Bound Volume 18

The publication of volume 18 of Deschler-Brown-Johnson-Sullivan Precedents marks the completion of the compilation of modern precedents of the House of Representatives commenced by then Parliamentarian Lewis Deschler in 1974. The volume contains the forty-first and final chapter in the series as well as an appendix authored by former Parliamentarian Charles W. Johnson, III. Chapter 41 is focused on the budget process in the House and contains precedents from the enactment of the Congressional Budget Act of 1974 through 2012. The appendix represents commentary from the perspective of Charles W. Johnson, III, whose service in the Office of the Parliamentarian with seven successive Speakers uniquely qualifies him to document the parliamentary evolution of the House since the publication of volume 1 in 1976. The contributions of former Parliamentarian John V. Sullivan, particularly his vision and leadership in preparing this volume and modernizing the Office of Compilation of Precedents, are gratefully acknowledged.

THOMAS J. WICKHAM, JR.
Parliamentarian

FEBRUARY 8, 2013.

TABLE OF ABBREVIATIONS AND TERMS

A. (or A.2d)	Atlantic Reporter
ad hoc	For a particular purpose or end
A.L.R.	American Law Reports Annotated
Am Jur	American Jurisprudence
amend.	Amendment to the Constitution
Annals of Cong.	Annals of Congress (1789–1824)
App. D.C.	Appeal Cases, District of Columbia
App. Div.	Appellate Division
art.	Article of the Constitution
C.A.	Court of Appeals
Cert.	Certiorari
cf.	Compare with
CFR	Code of Federal Regulations
Ch.	Chapter
Cir.	Circuit Court of Appeals (federal)
Cir. Ct. App.	Circuit Court of Appeals (state)
cl.	clause
Comm.	Committee
Cong.	Congress
Cong. Deb.	Congressional Debates (1824–1837)
Cong. Globe	Congressional Globe (1833–1873)
Cong. Rec.	Congressional Record
contra	Contradictory authority
Crim. App.	Court of Criminal Appeals
Ct. Cl.	Court of Claims
D.	District Court (federal)
daily ed.	Daily edition of Record
e.g.	For example
et al.	Omission of party in case name
et seq.	And the following
ex rel.	On the relation of . . .
Exec. Comm.	Executive Communication
F (or F2d)	Federal Reporter
FCA	Federal Code Annotated
Fed. Reg.	Federal Register
FRD	Federal Rules Decisions
F Supp	Federal Supplement
H. Con. Res.	House Concurrent Resolution
H. Doc.	House Document
H.J. Res.	House Joint Resolution
H. Jour.	House Journal
H.R.	House Bill
H. Rept.	House Report
H. Res.	House Resolution

TABLE OF ABBREVIATIONS AND TERMS

Id.	Citation to same authority as in immediately preceding citation
i.e.	That is
In re	In the matter of . . .
infra	Subsequent section or chapter
inter alia	Among others
L.Ed (or L.Ed2d)	Lawyers' Edition, U.S. Supreme Court Reports
L.J.	Law Journal
L. Rev.	Law Review
Mem.	Disposition of case without opinion
N.E. (or N.E.2d)	North Eastern Reporter
N.W. (or N.W.2d)	North Western Reporter
Op. Att'y Gen.	Attorney General's Opinions
P. (or P.2d)	Pacific Reporter
Per Curiam	Disposition of case with short opinion
Priv. L.	Private Law
Pub. L.	Uncodified Statute or Session Law
S.	Senate Bill
S. Con. Res.	Senate Concurrent Resolution
S. Ct.	Supreme Court Reporter
S. Doc.	Senate Document
S.E. (or S.E.2d)	South Eastern Reporter
Sess.	Session
Sic	Mistake in original of quoted material
S.J. Res.	Senate Joint Resolution
S. Jour.	Senate Journal
S. Rept.	Senate Report
S. Res.	Senate Resolution
So. (or So.2d)	Southern Reporter
Stat.	Statutes at large
Sup. Ct.	Supreme Court
supra	Prior section or chapter
S.W. (or S.W.2d)	South Western Reporter
U.S.	United States Supreme Court Reports
USC (or USCA)	United States Code (or United States Code Annotated)
U.S. Code Cong. & Ad. News	United States Code Congressional and Administrative News
U.S. Const.	United States Constitution
U.S.L.W.	United States Law Week

CHAPTER 41

Budget Process

A. Introduction to the Budget Process

§ 1. Introduction
§ 2. Timeline of the Budget Process
§ 3. Presidential Budget Submissions

B. The Concurrent Resolution on the Budget

§ 4. Content of the Concurrent Resolution on the Budget
§ 5. Consideration of Concurrent Resolutions on the Budget

C. The Appropriations Process and the Role of Committees

§ 6. Relationship to the Appropriations Process
§ 7. Role of Committees

D. Budget Act Points of Order

§ 8. Section 904
§ 9. Section 303
§ 10. Section 311
§ 11. Section 302
§ 12. Section 401(a)
§ 13. Section 401(b)
§ 14. Former Section 402(a)
§ 15. Section 315
§ 16. Section 306

Commentary and editing by Andrew S. Neal, J.D. and Max Spitzer, J.D. Manuscript editing by Deborah Woodard Khalili.

E. Budgetary Enforcement in the Absence of a Budget Resolution

§ 17. "Deeming" Resolutions
§ 18. Committee Allocations Pursuant to Section 302

F. Reconciliation

§ 19. Introduction
§ 20. Reconciliation Directives in Budget Resolutions
§ 21. House Consideration of Reconciliation Bills

G. Pay-As-You-Go Procedures

§ 22. Introduction
§ 23. Statutory Pay-As-You-Go Act
§ 24. House PAYGO Rule
§ 25. House CUTGO Rule

H. Canceling Budget Authority

§ 26. Introduction and Sequestration Generally
§ 27. Rescissions
§ 28. Deferrals

I. The Debt Limit

§ 29. The Debt Limit

J. Additional Budget Controls

§ 30. Unfunded Mandates
§ 31. Earmarks

Budget Process

A. Introduction to the Budget Process

§ 1. Introduction

Pursuant to article I, section 8 of the Constitution of the United States, Congress retains the "power of the purse," encompassing the authority to lay and collect taxes, pay debts, and borrow money on the credit of the United States. Furthermore, section 9 requires that all money drawn from the Treasury be in "consequence of appropriations made by law." Apart from these simple prescriptions, however, the Constitution does not provide specific mechanisms for managing the nation's finances. Instead, the congressional budgeting process has grown and evolved over time. What exists today is a complex system involving the interaction of a variety of laws (enacted over several decades), executive action, congressional rulemaking designed to guide budgetary policy, and additional congressional rules created to enforce budgetary decisions.(1)

In order to allocate Federal fiscal resources, Congress engages in an authorization process, an appropriations process, and a congressional budget process. Federal programs are created during the authorization process, which contemplates legislation establishing the programs and authorizing funds to be spent thereon. Congress then provides funding for these Federal programs during the appropriations process, by which money is formally drawn from the Treasury for authorized programs. These spending decisions are made in the context of a framework provided by the congressional budget process, which outlines fiscal policy with regard to overall levels of revenues and spending. These different processes do not necessarily occur in chronological order.

In addition to the discretionary spending process described above, Congress has enacted laws that mandate spending on certain programs. Such "mandatory" or "direct" spending (including most kinds of entitlement spending) occurs by law without regard to the annual spending decisions made by Congress during the appropriations process. The annual cost of such programs is determined by formulas contained in the legislation itself,

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1. For an earlier overview of the congressional budget process, see Deschler's Precedents Ch. 13 § 21, *supra*.

and can be altered by Congress only through revisions to the underlying law.

Congress establishes its fiscal policy with the development of an annual concurrent resolution on the budget.(2) The budget resolution is not a law signed by the President, but represents instead an internal congressional plan to guide the consideration of spending bills in the House and the Senate.(3) The concurrent resolution on the budget establishes the aggregate spending and revenue levels for the current fiscal year as well as targets for subsequent fiscal years.(4) The aggregate spending levels are then subdivided among "major functional categories" to set funding priorities among the different areas of government.(5)

The concurrent resolution on the budget's fiscal policies are enforced by both congressional and executive actions. The Congressional Budget and Impoundment Control Act of 1974 (Congressional Budget Act),(6) the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings),(7) the Budget Enforcement Act of 1990 (BEA of 1990),(8) the Budget Enforcement Act of 1997 (BEA of 1997),(9) the Statutory Pay-As-You-Go Act of 2010 (Stat-Paygo),(10) and the Budget Control Act of 2011 (BCA of

2. See §§ 4, 5, *infra*.

3. Because the adoption of a congressional budget resolution does not require executive action, a proposal to convert the entire budget process from a concurrent resolution to a joint resolution is not germane to a bill merely requiring the executive to submit balanced budgets to Congress but not otherwise altering the congressional budget process. See Deschler-Brown Precedents Ch. 28 §§ 5.6, 6.31, *supra*.

4. The number of additional fiscal years covered by budget resolutions has varied over time. In its original form, the Congressional Budget Act required no projections beyond the fiscal year covered by the budget resolution. Throughout the 1980s, however, budget resolutions would occasionally contain projections for future fiscal years. The Budget Enforcement Act of 1997 codified this practice by requiring appropriate budgetary levels for both the current fiscal year and at least the four ensuing fiscal years.

5. There are currently 20 major functional categories used by the Federal government, each represented by a specific three-digit code and further subdivided into subfunctional categories. For example, the functional category of "National Defense" (050) is divided among the subfunctional categories of "Department of Defense–Military" (051), "Atomic Energy Defense Activities" (053), and "Defense-related Activities" (054). This classification system is based on one first developed in the budget for fiscal year 1948 and has changed little over the subsequent half-century. See 31 USC § 1104.

6. Pub. L. No. 93–344 (2 USC §§ 601–688). Relevant provisions of the Congressional Budget Act (with accompanying annotations) are also carried at *House Rules and Manual* § 1127 (2011).

7. Pub. L. No. 99–177 (2 USC §§ 900, *et seq.*).

8. Pub. L. No. 101–508.

9. Pub. L. No. 105–33.

10. Pub. L. No. 111–139 (2 USC §§ 931–939).

2011),[11] comprise the major statutory sources that have shaped how Congress and the executive branch enforce budgetary decisions. In addition to these statutory sources, specific budget-enforcement provisions contained in the rules of the House and the Senate,[12] as well as in budget resolutions themselves,[13] provide further mechanisms to govern such decisions.

Budget and Accounting Act of 1921

Prior to the 20th century, funding for government programs was achieved through separate appropriation bills, but such legislation was not coordinated within any overall Federal budget system. The basic framework for such a system was created by the Budget and Accounting Act of 1921. This Act, for the first time, created a role for the executive branch in the budgeting process, requiring the President to submit to Congress a comprehensive annual budget outlining all major spending priorities. It further created the Bureau of the Budget (later renamed the Office of Management and Budget or OMB) and the General Accounting Office (later renamed the Government Accountability Office or GAO) to provide budgetary data and accurate audits of Federal programs.[1] In response to the Act, Congress consolidated its spending decisions within the respective Committees on Appropriations of the House and the Senate. But the Act provided no framework for how overall spending decisions in Congress were to be made.

Congressional Budget Act of 1974

In 1974, Congress enacted a comprehensive framework for establishing a uniform mechanism for developing budgetary goals and enforcement. The Congressional Budget Act of 1974[1] consisted of ten titles, including the Impoundment Control Act[2] found in title X.

The Congressional Budget Act created new budget committees in both the House and Senate, as well as the Congressional Budget Office (CBO). It established a timeline for development and consideration of budgetary policy, including, for the first time, a requirement that Congress adopt an annual spending plan.[3] This plan initially took the form of a non-binding "first"

11. Pub. L. No. 112–25.
12. See § 5, *infra*.
13. See § 4, *infra*.
1. 31 USC § 1101.
1. Pub. L. No. 93–344 (2 USC §§ 601–688).
2. *House Rules and Manual* § 1130(6A) (2011); 2 USC §§ 682–88. See §§ 26–28, *infra*.
3. 2 USC § 601. For examples of "legislative budgets" adopted by Congress prior to the advent of the Congressional Budget Act, see Deschler's Precedents Ch. 13 §§ 21.1, 21.2, and Ch. 24 § 5.25, *supra*.

concurrent resolution on the budget (to be passed in advance of appropriation bills) and a binding "second" concurrent resolution (to be passed by the beginning of the fiscal year). That plan has since been revised to eliminate the non-binding budget resolution in favor of a single, binding annual budget resolution for each fiscal year.

Section 300 of the Budget Act established a timetable for the development and adoption of a concurrent resolution on the budget and the completion of congressional action on annual appropriation bills(4) and any reconciliation legislation.(5)

Section 301 of the Budget Act(6) outlines the content of the concurrent resolution on the budget, which includes totals of new budget authority and outlays, total Federal revenues, and the public debt.

Section 303 of the Budget Act(7) provides a point of order against the consideration of budget-related legislation before the concurrent resolution on the budget is adopted. This ensures that all spending decisions are made as part of the overall budget plan set forth in the annual budget resolution.

Section 311 of the Budget Act(8) precludes Congress from considering legislation that would cause revenues to fall below, or total new budget authority or total outlays to exceed, the appropriate level set forth in the budget resolution. Thus, section 311 prevents legislation that would either cause a breach in the overall spending "ceiling" or reduce revenues below the revenue "floor" established in the budget resolution.

Section 302(a) of the Budget Act provides a framework for committee spending decisions.(9) The joint explanatory statement accompanying the conference report on the concurrent resolution on the budget must include "allocations" of total new budget authority and total outlays to each House (and Senate) committee with jurisdiction over legislation creating such amounts.(10) As described below, points of order can be raised to keep spending within the limits of these 302(a) allocations. Pursuant to section 302(b),

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4. 2 USC § 631 and see § 6, *infra*.

5. See §§ 19–21, *infra*.

6. 2 USC § 632 and see § 4, *infra*.

7. 2 USC § 634 and see § 9, *infra*.

8. 2 USC § 642 and see § 10, *infra*.

9. 2 USC § 633(a) and see § 11, *infra*.

10. Although both represent an effort to divide the overall Federal budget into logical subcategories, committee allocations and major functional categories (described above) are different methods to achieve this goal. Because the major functional categories do not correspond to the different committee jurisdictions of the House and the Senate, the functional category amounts must be reformulated ("crosswalked") in order to be distributed to congressional committees as section 302 allocations. Congressional enforcement of budgetary levels takes cognizance only of such committee allocations and not the functional categories.

the Committee on Appropriations is required to subdivide its section 302(a) allocation among its subcommittees, and points of order may be raised to keep each such subcommittee's spending within its section 302(b) suballocation.

Section 302(f)[11] (as added by the Balanced Budget and Emergency Deficit Control Act of 1985) enforces the 302(a) or 302(b) allocation amounts by providing a point of order against the adoption or enactment of any bill, resolution, amendment, or conference report that would cause the applicable allocation of new budget authority to be exceeded.

Section 310 of the Budget Act[12] outlines the procedures for the inclusion of reconciliation directives in the concurrent resolution on the budget. Reconciliation directives instruct committees to recommend changes in existing law to achieve the goals in spending or revenues contemplated by the budget resolution. Section 310 provides for expedited procedures for qualifying reconciliation measures.

As originally written, title IV of the Congressional Budget Act provided additional restrictions on legislation containing certain kinds of budget authority not subject to appropriations[13] and entitlement spending that becomes effective prior to the start of the fiscal year. While some of these features remain in place today, this title has been extensively revised over the years.[14]

Part B of title IV of the Congressional Budget Act was added by the Unfunded Mandates Reform Act of 1995,[15] and contains restrictions on legislation containing certain kinds of intergovernmental mandates.

Balanced Budget and Emergency Deficit Control Act of 1985

The Balanced Budget and Emergency Deficit Control Act of 1985 or Gramm-Rudman-Hollings added new deficit control measures to the budget process.[1] Gramm-Rudman-Hollings instituted a single binding budget resolution to replace the prior requirement of two annual budget resolutions. The Act also established binding committee allocations by creating a new point of order under section 302(f).[2] Additionally, the Act provided for sequestration of budget authority as a mechanism for enforcing discretionary spending limits and deficit targets.[3]

11. 2 USC § 633(f) and see § 11, *infra*.

12. 2 USC § 641 and see § 19, *infra*.

13. This describes so-called "backdoor" spending that makes funds available outside of the appropriations process.

14. See §§ 12–14, *infra*.

15. 2 USC §§ 658–658g. See § 30, *infra*.

1. 2 USC § 900.

2. 2 USC § 633(f) and see § 11, *infra*.

3. See § 26, *infra*. Gramm-Rudman-Hollings also provided for the suspension of certain budgetary controls in the case of a declaration of war or the issuance of a "low growth"

Budget Enforcement Act of 1990

The Budget Enforcement Act of 1990[1] was the result of a budget summit between the executive and legislative branches to revise the Gramm-Rudman-Hollings deficit targets and discretionary spending caps. The Act also created a pay-as-you-go (PAYGO) process that mandated the sequestration of funds should the net effect of spending and revenue legislation result in a deficit for the year. Additionally, the Act created a new title VI of the Congressional Budget Act that contained these temporary budget enforcement mechanisms.[2]

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)[1] added a new part B to title IV of the Congressional Budget Act. The Act created a new reporting requirement for estimating the cost of mandates and established parliamentary procedures for considering legislation creating unfunded intergovernmental mandates. The primary parliamentary mechanism used is the question of consideration, through which the House decides whether to consider legislation imposing certain kinds of unfunded mandates.[2]

Budget Enforcement Act of 1997

The Budget Enforcement Act of 1997[1] was included as title X of the Balanced Budget Act of 1997. This Act, the result of budget negotiations between the President and Congress, extended the discretionary spending limits and PAYGO process of the Budget Enforcement Act of 1990 through fiscal year 2002. It made significant revisions to title IV[2] of the Congressional Budget Act and created a new process for adjusting committee allocations.[3]

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economic report by the Congressional Budget Office. A joint resolution enacting such suspension procedures was entitled to expedited consideration in the House and Senate. The Budget Enforcement Act of 1990 removed most expedited procedures as they applied to the House (with the exception of committee consideration). The House has never considered such a joint resolution.

1. Pub. L. No. 101–508.

2. Title VI was originally enacted as a five-year budget enforcement plan, but it was extended through 1998 by the Omnibus Budget Reconciliation Act of 1993. Pub. L. No. 103–66.

1. 2 USC §§ 658–658g. See § 30, *infra*.

2. See Deschler-Brown Precedents Ch. 29 § 5, *supra*.

1. Pub. L. No. 105–33.

2. See §§ 12, 13, 14, *infra*.

3. This authority was contained in a new section 314 of the Congressional Budget Act. However, this section was extensively rewritten by the Budget Control Act of 2011. See §§ 4, 11, 26, *infra*.

Stat-Paygo of 2010; PAYGO/CUTGO Rules

In 2010, the Statutory Pay-As-You-Go Act of 2010 was enacted.[1] The Act created a procedure to measure the budgetary effects of direct spending and revenue legislation over the course of a congressional session. The legislation is carried on PAYGO scorecards that measure the budgetary effects over 5- and 10-year periods. If at the end of a congressional session, a scorecard shows a net debit, the President will issue a sequestration order of across-the-board cuts (with certain exceptions) equal to the amount of the debit.[2]

The Statutory Pay-As-You-Go Act should not be confused with the House PAYGO rule[3] (first established in 2007), which provided a point of order against the consideration of measures affecting direct spending and revenues that have the net effect of increasing the deficit or reducing the surplus on a five- and 10-year basis. In 2011, the House repealed the PAYGO rule and created a cut-as-you-go (CUTGO) rule that did not take into consideration the budgetary effects of revenue legislation.[4] Under both rules, the budgetary effect of the measure was determined by the estimates made by the Committee on the Budget.[5]

Budget Control Act of 2011

The Budget Control Act of 2011[1] was enacted, *inter alia*, in response to the need to increase the statutory limit on the public debt through 2012. The Act established discretionary spending caps over a 10-year period and a sequestration process to enforce such spending limits.[2] The Act allowed for staged increases in the limit of the public debt, subject to congressional resolutions of disapproval.[3] The Act also established a Joint Select Committee on Deficit Reduction tasked with recommending changes in law to achieve at least $1.5 trillion in budgetary savings over a 10-year period.[4]

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1. 2 USC §§ 931–939. See §§ 22, 23, *infra*.

2. See §§ 22, 23, 26, *infra*.

3. See Rule XXI clause 10 of the 111th Congress. *House Rules and Manual* § 1068f (2009). See § 24, *infra*.

4. See Rule XXI clause 10 of the 112th Congress. *House Rules and Manual* § 1068f (2011). See § 25, *infra*.

5. See §§ 7, 22, *infra*.

1. Pub. L. No. 112–25.

2. See § 26, *infra*.

3. See § 29, *infra*. This disapproval mechanism was modelled on that found in the Economic Stabilization Act of 2008 (Pub. L. No. 110–343).

4. Title IV of Pub. L. No. 112–25. The Joint Select Committee on Deficit Reduction was composed of six Senators and six Members of the House, equally divided by political

Such recommendations would then qualify for expedited procedures in both the House and the Senate.[5] The committee's inability to come to an agreement would trigger automatic sequestration in January 2013 if Congress did not further alter these procedures.[6]

Terminology

Several budgetary terms will be used throughout this work:

Section 3 of the Congressional Budget Act defines "budget authority" to be the legal authority for the Federal government to incur financial obligations.[1] This includes "borrowing authority" (authority to allow a Federal entity to borrow and obligate funds and to expend); and "contract authority" (the authority to make funds available for obligation but not to expend).[2]

Gramm-Rudman-Hollings further defined key budgetary terms. The term "direct spending" (also known as mandatory spending) refers to "budget authority provided by law other than appropriation Acts; entitlement authority; and the Supplemental Nutrition Assistance Program."[3] "Discretionary appropriations" means "budgetary resources (except to fund direct-spending programs) provided in appropriation acts."[4]

"Sequestration" refers to the "cancellation of budgetary resources provided by discretionary appropriations and direct spending law[s]."[5]

Outline of Work

This budget process chapter will mainly focus on the congressional side of the budget process.[1] The chapter will outline the timeline of the budget process; content, development, procedural history, and consideration of the

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party. For the committee's procedural rules, see 157 Cong. Rec. S6760–61 [Daily Ed.], 112th Cong. 1st Sess., Oct. 19, 2011.

5. Pub. L. No. 112–25, sec. 402. In the House, such expedited procedures included: deadlines for House committee consideration of the joint committee's bill (and special procedures to discharge House committees from consideration); a privileged motion to proceed to consider such bill; two hours of debate on the bill; and the previous question ordered to final passage without intervening motion. These procedures also restricted otherwise available motions, such as the motion to reconsider.

6. Pub. L. 112–240 postponed the automatic sequestration until March, 2013.

1. 2 USC § 622.

2. *Id.*

3. 2 USC § 900.

4. *Id.*

5. *Id.*

1. As a catalog of precedents of the House of Representatives, this chapter will contain only cursory treatment of Senate proceedings, primarily as they relate to House procedures.

concurrent resolution on the budget; various points of order to enforce budgetary decisions; the development of reconciliation directives within the concurrent resolution on the budget and reconciliation procedures in the House; and cancellation of budgetary authority. In addition, this chapter will touch upon procedures concerning the debt limit, unfunded mandates, and earmarks.

The reader is encouraged to consult other related chapters of *Deschler-Brown-Johnson Precedents* and *House Practice* for related topics not elucidated here.

§ 2. Timeline of Budget Process

Section 300 of the Congressional Budget Act[1] sets out a nonmandatory timetable for the congressional budget process.

Section 300 Requirements

On the first Monday in February the President submits a budget to the Congress. On or before February 15, the Congressional Budget Office submits its annual report to the Budget Committees. Not later than six weeks after the President submits a budget, committees submit views and estimates to the respective Budget Committees which include estimates of new budget authority and outlays within their respective jurisdictions.[1] On or before April 1, the Senate Budget Committee reports a concurrent resolution on the budget. Pursuant to section 300, congressional action on the concurrent resolution on the budget is to be completed by April 15.

Until a concurrent resolution on the budget is adopted by Congress, spending bills (including annual appropriation bills) may not be considered in the House.[2] However, section 303(b)(2) of the Budget Act[3] provides that general appropriation bills, and amendments thereto, may be considered in the House after May 15 even if a budget resolution for the ensuing fiscal year has yet to be agreed to. On or before June 10, the Committee on Appropriations reports its last annual appropriation bill.

On or before June 15, Congress completes action on reconciliation legislation contemplated in a concurrent resolution on the budget.[4] On or before

1. 2 USC § 631.

1. See § 7, *infra*.

2. 2 USC § 633(a).

3. 2 USC § 633(b)(2).

4. The mandatory June 15 deadline was repealed by the BEA of 1990 and replaced with a new House prohibition (section 310(f)) on adjourning for more than three calendar

June 30, the House completes action on annual appropriation bills.(5) On October 1, the fiscal year begins.

§ 3. Presidential Budget Submissions

No later than the first Monday in February of each year, the President shall submit a budget of the United States Government to the Congress. Federal law(1) outlines the content of such budget, including information on activities and functions of the government, and estimated expenditures and receipts of the government, and appropriations and proposed appropriations of the government for the current fiscal year. The President shall submit to Congress no later than July 16 of each year a supplemental summary of the budget for the fiscal year which shall include substantial changes in, or reappraisals of, estimates of expenditures and receipts and substantial obligations imposed on the budget after its submission.(2)

A presidential budget submission is normally received as a formal message from the President to Congress, delivered by messenger through the door under seal, and laid before the House.(3) When the budget submission is received when the House is not in session, it is delivered to the Clerk of the House, who transmits such submission to the House at the next meeting.(4) Despite this normal protocol, the President has submitted a budget to Congress as an executive communication addressed to the Speaker, rather than as a formal message to Congress.(5) The President has also submitted incomplete budget proposals (together with assurances regarding transmittal of the missing material).(6) Congress has passed a joint resolution waiving the statutory deadline for the submission of the President's budget.(7)

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days during the month of July if action on reconciliation legislation has not been completed. See §§ 19, 21.16–21.18, *infra*. See also Deschler-Brown-Johnson Precedents Ch. 40, *supra*.

5. Section 309 prohibits the House from adjourning for more than three calendar days in the month of July if it has not completed action on all annual appropriation bills. See §§ 5.19, 5.20, 21.17, 21.18, *infra*.

1. 31 USC § 1105.

2. 31 USC § 1106.

3. See Deschler-Brown-Johnson Precedents Ch. 35 § 1, *supra*. The reading of a presidential budget message has been interrupted by quorum calls. See Deschler's Precedents Ch. 20 § 12.3 and Deschler-Brown-Johnson Precedents Ch. 35 § 2.11, *supra*.

4. Rule II clause 2(h), *House Rules and Manual* § 652 (2011).

5. See § 3.3, *infra*.

6. See § 3.4, *infra*.

7. See § 3.5, *infra*.

Traditionally, the President's budget submission is referred to the Committee on Appropriations, and not to the Committee on the Budget.[8] While there is no requirement in the Congressional Budget Act for Congress to vote on the President's budget submission, budget resolutions reflecting the President's budget priorities have been considered in the House either individually or as an alternative to the budget reported by the Committee on the Budget.[9]

Budget Submission as Presidential Message

§ 3.1 Instance in which the President submitted his annual proposal for the Budget of the United States Government in the form of a presidential message that was received by the Clerk during adjournment and laid before the House.

On Feb. 14, 2012,[1] the following occurred:

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore[2] laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 13, 2011.

HON. JOHN A. BOEHNER,
The Speaker, The Capitol, House of Representatives,
Washington, DC.

Dear Mr. Speaker: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on February 13, 2012, at 2:14 p.m., and said to contain a message from the President whereby he submits his Budget of the United States Government for Fiscal Year 2013.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

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8. See, *e.g.*, 149 CONG. REC. 2301, 2302, 108th Cong. 1st Sess., Feb. 4, 2003. For an example of the House dividing a presidential message and referring the portion on the budget to the Committee on Appropriations, see Deschler's Precedents Ch. 17 § 27.4 and Deschler-Brown-Johnson Precedents Ch. 35 § 3.6, *supra*.

9. See § 5, *infra*.

1. 158 CONG. REC. H702–05 [Daily Ed.], 112th Cong. 2d Sess.

2. Andrew Harris (MD).

BUDGET OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2013--MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 112-78)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

America was built on the idea that anyone who is willing to work hard and play by the rules, can make it if they try--no matter where they started out. By giving every American a fair shot, asking everyone to do their fair share, and ensuring that everyone played by the same rules, we built the great American middle class and made our country a model for the world. . . .

§ 3.2 Instance in which the President submitted his annual proposal while the House was in session.

On May 7, 2009,[1] the following occurred:

MESSAGES FROM THE PRESIDENT

A message in writing from the President of the United Sates was communicated to the House by Ms. Wanda Evans, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting. . . .

BUDGET OF THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010--MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 111-3)

The SPEAKER pro tempore[2] laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

I have the honor to transmit to you the Budget of the United States Government for Fiscal Year 2010.

In my February 26th budget overview, A New Era of Responsibility: Renewing America's Promise, I provided a broad outline of how our Nation came to this moment of economic, financial, and fiscal crisis; and how my Administration plans to move this economy from recession to recovery and lay a new foundation for long-term economic growth and prosperity. This Budget fills out this picture by providing full programmatic details and proposing appropriations language and other required information for the Congress to put these plans fully into effect.

Budget Submission as Executive Communication

§ 3.3 Instance in which the President submitted his annual proposal for the Budget of the United States Government in the form of an

1. 155 CONG. REC. 11990, 12014, 111th Cong. 1st Sess.
2. Ellen Tauscher (CA).

executive communication addressed to the Speaker (instead of a message addressed directly to the House and transmitted during an adjournment to the Clerk).

On Feb. 2, 1999,(1) the following occurred:

COMMUNICATION FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore(2) laid before the House the following communication from the President of the United States:

THE WHITE HOUSE,
Washington, February 1, 1999.

Hon. J. DENNIS HASTERT,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to 31 U.S.C. 1105, attached is the Budget of the United States Government for Fiscal Year 2000.

Sincerely,

WILLIAM J. CLINTON.

BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2000—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 106–3)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

The 2000 Budget, which I am submitting to you with this message, promises the third balanced budget in my Administration. With this budget, our fiscal house is in order, our spirit strong, and our resources prepare us to meet the challenges of the next century. . . .

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

130. A communication from the President of the United States, transmitting the Budget of the United States Government for Fiscal Year 2000; (H. Doc. No. 106–3); to the Committee on Appropriations and ordered to be printed.

Incomplete Budget Submission

§ 3.4 Instance in which the President transmitted an incomplete budget for a fiscal year, with an announcement of his intention to

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1. 145 CONG. REC. 1518, 1519, 1594, 106th Cong. 1st Sess. See also 144 CONG. REC. 517, 518, 642, 643, 105th Cong. 2d Sess., Feb. 3, 1998.

2. Richard Burr (NC).

transmit the material not included by a date certain (Mar. 18, 1996).

On Feb. 6, 1996,(1) the following occurred:

BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL 1997—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore(2) laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

In accordance with 31 U.S.C. § 1105(a), I am transmitting my 1997 Budget to Congress.

This budget provides a thematic overview of my priorities as we continue to discuss how to balance the budget over the next seven years. It also includes the Administration's new economic assumptions.

Because of the uncertainty over 1996 appropriations as well as possible changes in mandatory programs and tax policy, the Office of Management and Budget was not able to provide, by today, all of the material normally contained in the President's budget submission. I anticipate transmitting that material to Congress the week of March 18, 1996.

WILLIAM J. CLINTON.
THE WHITE HOUSE, *February 5, 1996.*

Waiving the Statutory Deadline for the President's Budget Submission

§ 3.5 By unanimous consent, the House considered and passed a joint resolution waiving until a date certain the statutory deadline for the transmission by the President of the budget for fiscal year 1991.

On Nov. 21, 1989,(1) the following occurred:

PROVIDING FOR CONVENING OF SECOND SESSION OF 101ST CONGRESS AND FOR TRANSMISSION BY THE PRESIDENT OF THE UNITED STATES BUDGET FOR FISCAL YEAR 1991

Mr. [Richard] GEPHARDT [of Missouri]. Mr. Speaker, I offer a joint resolution (H.J. Res 449), providing for convening of the second session of the 101st Congress, and for transmission by the President of the United States of the budget for fiscal year 1991, and I ask unanimous consent for its immediate consideration.

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1. 142 CONG. REC. 2315, 2316, 104th Cong. 2d Sess.

2. Constance Morella (MD).

1. 135 CONG. REC. 31156, 31157, 101st Cong. 1st Sess. See also Deschler's Precedents Ch. 24 § 4.7, *supra*.

The SPEAKER pro tempore.[2] The Clerk will report the joint resolution.

The Clerk read the joint resolution, as follows:

H.J. RES. 449

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That the second regular session of the One Hundred First Congress shall begin at 12 o'clock meridian on Tuesday, January 23, 1990.

SEC. 2. Prior to the convening of the second regular session of the One Hundred First Congress on January 23, 1990, as provided in section 1 of this resolution, Congress shall reassemble at 12 o'clock meridian on the second day after its Members are notified in accordance with section 3 of this resolution.

SEC. 3. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SEC. 4. Notwithstanding the provisions of section 1105 of title 31, United States Code, the President shall transmit to the Congress not later than January 22, 1990,[3] the Budget for fiscal year 1991.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. WALKER. Mr. Speaker, reserving the right to object, just to clarify what we are doing, as I understand it, this is to allow the President to submit the budget on January 22, essentially?

Mr. GEPHARDT. Mr. Speaker, if the gentleman will yield, that is correct.

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

§ 3.6 By unanimous consent, the House considered and passed a joint resolution postponing the statutory deadline for the transmission of the President's Budget and Economic Report and for the report of the Joint Economic Committee.[1]

On Jan. 14, 1975,[2] the following occurred:

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2. Romano Mazzoli (KY).
3. At the time of this precedent, the statutory deadline for the submission of the President's budget was the "First Monday after January 3." As noted earlier, the current deadline is the first Monday in February.
1. The Joint Economic Committee is composed of ten Senators and ten Members of the House and is required, pursuant to 15 USC § 1024(b), to submit to Congress by March 1st a report analyzing the President's Economic Report.
2. 121 CONG. REC. 35, 36, 94th Cong. 1st Sess. For similar proceedings, see 115 CONG. REC. 40901, 91st Cong. 1st Sess., Dec. 22, 1969.

Mr. [George] MAHON [of Texas]. Mr. Speaker, I ask unanimous consent for the immediate consideration of the joint resolution (H.J. Res. 1) extending the time within which the President may transmit the Budget Message and the Economic Report to the Congress.

The Clerk read the title of the joint resolution.

The SPEAKER.(3) Is there objection to the request of the gentleman from Texas?

The Clerk read the joint resolution, as follows:

H.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That (a) notwithstanding the provisions of section 201 of the Act of June 10, 1922, as amended (31 U.S.C. 11), the President shall transmit to the Congress not later than February 3, 1975, the Budget for the Fiscal Year 1976, and (b) notwithstanding the provisions of section 3 of the Act of February 20, 1946, as amended (15 U.S.C. 1022), the President shall transmit to the Congress not later than February 4, 1975, the Economic Report; and (c) notwithstanding the provisions of clause (3) of section 5(b) of the Act of February 20, 1946 (15 U.S.C. 1024(b)), the Joint Economic Committee shall file its report on the President's Economic Report with the House of Representatives and the Senate not later than March 30, 1975.

The SPEAKER. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

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3. Carl Albert (OK).

B. The Concurrent Resolution on the Budget

§ 4. Content of Concurrent Resolutions on the Budget

Mandatory Components

Section 301(a) of the Congressional Budget Act[1] lays out the mandatory components that are to be included in any concurrent resolution on the budget, while section 301(b) describes certain optional components. Section 301(a) requires that each concurrent resolution on the budget include "appropriate levels" for the following categories: (1) totals of new budget authority and outlays; (2) total Federal revenues; (3) the surplus or deficit; (4) new budget authority and outlays for each major functional category; (5) the public debt;[2] and (6) outlays and revenues for certain social security programs (for purposes of enforcing Senate points of order). Section 301(a) also requires that the Old Age, Survivors, and Disability Insurance Program (OASDI) be considered as "off-budget" and therefore not included in any surplus or deficit totals.

Optional Components—In General

Section 301(b) contemplates certain optional matters that "may" be included in budget resolutions. These include: (1) the date for achieving certain unemployment reduction goals;[1] (2) reconciliation directives;[2] (3) procedures to delay the enrollment of certain bills providing new budget authority;[3] (4) projections for the level of public debt in each of the relevant fiscal years;[4] (5) Federal retirement trust fund balances; (6) loan obligation and loan guarantee levels;[5] (7) certain pay-as-you-go procedures;[6] and (8) any "appropriate" matters or procedures to carry out the purposes of the Congressional Budget Act.[7] This last item, which contains broad authority for Congress to create new procedural mechanisms for budgetary enforcement in budget resolutions themselves, is often referred to as the "elastic clause."

Other subsections within section 301 contain additional requirements related to the formulation of the concurrent resolution on the budget. Section

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1. 2 USC § 632(a).
2. See § 29, *infra*.
1. 2 USC § 632(b)(1).
2. 2 USC § 632(b)(2). See §§ 19–21, *infra*.
3. 2 USC § 632(b)(3). See *Optional Components—Historical Provisions and Precursors* and § 4.3, *infra*.
4. 2 USC § 632(b)(5). See § 29, *infra*.
5. 2 USC § 632(b)(9). See *Optional Components—Credit Budgets*, *infra*.
6. 2 USC § 632(b)(8).
7. 2 USC § 632(b)(4).

301(d), for example, requires the legislative committees of each House to submit "views and estimates" relating to any of the inclusions in sections 301(a) and 301(b) to their respective Budget Committees.[8] Section 301(e) requires certain hearings and reports of the Budget Committees as the concurrent resolution on the budget is developed. Section 301(g) provides for a point of order against budget resolutions that do not abide by a single set of economic assumptions when setting forth appropriate budgetary amounts and levels. All of these requirements serve to aid Congress in carefully crafting a budget resolution that is informed by pertinent testimony and accurate data.

Optional Components—Historical Provisions and Precursors

Over the course of the history of the Congressional Budget Act, concurrent resolutions on the budget have included many optional components that have been made obsolete due to subsequent revisions of that Act and therefore have no applicability today. In addition, several optional components contained in early budget resolutions have formed the basis of later revisions to the Congressional Budget Act and may be viewed as precursors to budget rules incorporated therein.

As noted in Section 1, the Congressional Budget Act of 1974 originally required two concurrent resolutions on the budget to be adopted each fiscal year. The first represented non-binding spending targets while the second contained binding budgetary levels. In the era of two annual budget resolutions, the first budget resolution sometimes contained a separate section declaring in advance that if Congress failed to adopt a second concurrent resolution on the budget, then the first budget resolution would be automatically "deemed" to be the second budget resolution for Congressional Budget Act purposes, and its budgetary levels converted from non-binding targets to enforceable limits.

In the first budget resolution for fiscal year 1983,[1] section 7 provided that such budget resolution would be deemed to be the second budget resolution for purposes of section 311 of the Congressional Budget Act,[2] as well as for purposes of certain procedural provisions contained in the budget resolution itself,[3] if Congress failed to adopt a second budget resolution by a

8. For more on the role of committees in the formulation of the concurrent resolution on the budget, see § 7, *infra*.

1. 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 7).

2. 2 USC § 642. See § 10, *infra*.

3. The procedural provision referred to here is section 4 of the first budget resolution. Section 4(a) contained an enrollment delay provision (described below) for certain bills. Section 4(b) exempted certain trust fund spending from various budgetary definitions

certain date. In the first budget resolution for fiscal year 1985, section 4(a) provided that such budget resolution would automatically become the second concurrent resolution on the budget for purposes of section 311 points of order, effective at the beginning of the fiscal year.(4) Section 3(a) of the first budget resolution for fiscal year 1986(5) contained a similar provision, "deeming" such resolution to be the second budget resolution for section 311 enforcement if Congress failed to adopt a second budget resolution by a certain date.

On one occasion, the second budget resolution did not contain new budgetary levels but merely "reaffirmed" the first budget resolution, thus converting its non-binding targets into binding figures.(6)

As noted, the Gramm-Rudman-Hollings reforms of 1985 eliminated the requirement for a second budget resolution and thus it was unnecessary for any budget resolution after this time to contain provisions such as those described above.

In other instances, Congress has adopted budget resolutions containing provisions that would later be incorporated into the Congressional Budget Act itself, most notably through the budgetary reforms of Gramm-Rudman-Hollings. Three of these types of provisions are worth noting.

The first is a provision in a concurrent resolution on the budget that delays the enrollment of measures that exceed the relevant committee's section 302 allocation.(7) All budget resolutions for fiscal years 1981 through 1984 contained such a provision. For fiscal years 1981(8) and 1982,(9) the enrollment of such bills was delayed until Congress adopted a second concurrent resolution on the budget and had completed action on any required reconciliation legislation. The House has agreed to a unanimous-consent request to enroll a bill notwithstanding a provision in a budget resolution delaying such enrollment.(10) The same provision was contained in the resolution for fiscal year 1983,(11) although the requirement to complete action on

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for purposes of this provision. 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 4).

4. 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984 (H. Con. Res. 280, sec. 4(a)).

5. 131 CONG. REC. 22637, 99th Cong. 1st Sess., Aug. 1, 1985 (S. Con. Res. 32, sec. 3(a)).

6. 127 CONG. REC. 30592, 97th Cong. 1st Sess., Dec. 10, 1981 (S. Con. Res. 50). Section 304 of the Congressional Budget Act (2 USC § 635), containing the authority to revise concurrent resolutions on the budget, was amended by Gramm-Rudman-Hollings to specifically authorize Congress to "reaffirm" existing budget resolutions as well.

7. See § 11, *infra*.

8. 126 CONG. REC. 14508, 96th Cong. 2d Sess., June 12, 1980 (H. Con. Res. 307, sec. 8).

9. 127 CONG. REC. 9964, 97th Cong. 1st Sess., May 18, 1981 (H. Con. Res. 115, sec. 305).

10. See § 4.3, *infra*.

11. 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 4(a)).

reconciliation legislation was dropped. In the budget resolution for fiscal year 1984,[12] the trigger for enrolling such delayed bills was either completion of the second concurrent resolution or the beginning of the fiscal year, whichever occurred first.

The rationale for these provisions was to encourage committees to stay within their section 302 allocations and not report bills that exceeded such allocations (and to encourage the House not to exceed such allocations via floor amendments). The enrollment delay provided the House with a choice to either accept the excess spending (and revise the budgetary levels in the second budget resolution accordingly) or take other actions (such as rescinding or altering the enrollment) to keep spending within the limits set forth in the first budget resolution. The Gramm-Rudman-Hollings reforms added a new section 302(f) point of order that had similar goals. As noted in Section 11, a point of order raised on section 302(f) grounds will be sustained against any bill, joint resolution, or amendment that causes the relevant committee's section 302 allocation to be exceeded. With the advent of binding budgetary levels in the first (and only) budget resolution after Gramm-Rudman-Hollings, section 302(f) points of order presented the House with the same choice: to accept the excess spending (by waiving or failing to raise the point of order) or stay within the limits of the section 302 allocations.[13]

The second provision may be viewed as a precursor to what is now the point of order provided by section 302(c) of the Congressional Budget Act (as added by Gramm-Rudman-Hollings). The budget resolutions for both fiscal year 1983[14] and 1985[15] contained a procedural provision that prevented the consideration of any bill, resolution, or amendment containing new budget or spending authority if the committee reporting such a measure had not yet filed a report dividing its section 302(a) allocation into section 302(b) suballocations among its subcommittees. As noted in Section 11, a point of order under section 302(c) operates in the same manner, although it is applicable to a broader range of measures.[16]

The third provision can be described as the precursor to the so-called "Fazio exception" discussed in Sections 10 and 11. The budget resolutions

12. 129 CONG. REC. 16585, 98th Cong. 1st Sess., June 21, 1983 (H. Con. Res. 91, sec. 4).

13. Further flexibility with regard to section 302 enforcement was created by the so-called "Fazio exception." See §§ 10, 11, *infra*.

14. 128 CONG. REC. 1454, 97th Cong. 2d Sess., June 22, 1982 (S. Con. Res. 92, sec. 8).

15. 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984 (H. Con. Res. 280, sec. 5).

16. Section 302(c) applies to bills, joint resolutions, amendments, motions, and conference reports. However, it should be noted that the requirement for committees to subdivide their section 302(a) allocations was eliminated for all committees except the Committee on Appropriations by the Budget Enforcement Act of 1997. Thus, section 302(c) is currently only applicable to legislation arising from that committee.

for fiscal years 1984,[17] 1985,[18] and 1986[19] all contained an exception to the normal operation of section 311(a) of the Congressional Budget Act by making such section inapplicable to measures that do not cause the relevant committee allocation under section 302 to be exceeded. The rationale for such an exception was a desire not to penalize a committee whose spending did not exceed its own allocation but, due to overspending by other committees, did exceed the overall level of budget authority contained in a concurrent resolution on the budget. This exception has now been codified at section 311(c)[20] of the Congressional Budget Act.

Optional Components—Reconciliation Directives

One of the most common optional components that has been included in budget resolutions has been reconciliation directives to the committees of the House and the Senate. As discussed in sections 19 and 20, reconciliation directives are instructions to House and Senate committees to report legislation having certain budgetary effects, most often reductions in spending or increases in revenues, in order to achieve the budgetary targets in the concurrent resolution on the budget. In this way, existing law is *reconciled* with the budget priorities laid out in the budget resolution.

The first budget resolution to contain reconciliation directives was the budget for fiscal year 1981.[1] Since the enactment of the Congressional Budget Act, Congress has adopted over 20 budget resolutions containing reconciliation directives. In addition, House-adopted budget resolutions that have been "deemed" effective for Congressional Budget Act purposes have occasionally contained reconciliation directives to House committees.[2]

For more on the reconciliation process, including expedited procedures related thereto, see Sections 19–21.

Optional Components—Credit Budgets

Concurrent resolutions on the budget have provided different methods for the treatment of direct loans, loan guarantees, and other related government credit programs. The budget resolution for fiscal year 1981, for the first time, contained a separate section establishing a Federal credit budget,

17. 129 CONG. REC. 16585, 98th Cong. 1st Sess., June 21, 1983 (H. Con. Res. 91, sec. 5(b)).
18. 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984 (H. Con. Res. 280, sec. 4(b)).
19. 131 CONG. REC. 22637, 99th Cong. 1st Sess., Aug. 1, 1985 (S. Con. Res. 32, sec. 3(b)).
20. 2 USC § 642(c). See §§ 10, 11, *infra*.
1. 126 CONG. REC. 14505, 14506, 96th Cong. 2d Sess., June 12, 1980 (H. Con. Res. 307, sec. 3).
2. See §§ 17, 18, 21.6, *infra*.

with total Federal credit levels for new direct loan obligations and primary loan guarantees.[1] The following year, a more detailed Federal credit budget, dividing the aggregate totals by functional category levels, was included as a separate section in the concurrent resolution on the budget for that fiscal year.[2]

The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings in 1985 included an amendment to section 301 which mandated the inclusion of direct loan obligations and primary loan guarantee commitments in concurrent resolutions on the budget.[3] Pursuant to this requirement, subsequent budget resolutions included credit totals along with the totals for new budget authority and outlays, rather than segregate credit totals in a separate section. The Budget Enforcement Act of 1997 eliminated this element from the list of required components and moved it to the list of optional components in section 301(b).[4] As a result, no budget resolution since that time has included credit totals.

The Federal Credit Reform Act, enacted by Congress as part of the Omnibus Reconciliation Act of 1990,[5] added a new title V to the Congressional Budget Act. This Act made several changes in how Congress measures the cost of credit programs. The most important change was to move from a cash accounting basis for the evaluation of the budgetary effects of credit programs to an accrual accounting method that more accurately reflected the true cost of such programs to the government.

Optional Components—Reserve Funds and "Adjustment" Authorities

Reserve funds in a concurrent resolution on the budget are special authorities to revise budget resolution aggregates, functional allocations, and committee allocations, which are triggered when certain legislative actions are taken. In this way, Congress can plan for the contingent enactment of legislation, establish certain legislative priorities, and create flexibility in the budget resolution itself to adjust budgetary levels in response to such legislation. A reserve fund was first included in the budget resolution for fiscal year 1984,[1] and reserve funds have been included in every budget resolution adopted since fiscal year 1987. The reserve fund contained in the

1. 126 CONG. REC. 14508, 96th Cong. 2d Sess., June 12, 1980 (H. Con. Res. 307, sec. 10).
2. 127 CONG. REC. 9960, 9961, 97th Cong. 1st Sess., May 18, 1981 (H. Con. Res. 115, sec. 203).
3. Pub. L. No. 99–177.
4. Pub. L. No. 105–33.
5. Pub. L. No. 101–508.
1. 129 CONG. REC. 16584, 98th Cong. 1st Sess., June 21, 1983 (H. Con. Res. 91, sec. 2).

budget resolution for fiscal year 1984 operated in a slightly different manner than subsequent reserve funds. Unlike later reserve funds, this reserve fund set aside a specific amount of new budget authority and outlays that could only be used on the legislative initiatives described in that section of the budget resolution. The reporting by committees of qualifying legislation authorized the Committee on the Budget to revise any necessary allocations— essentially tapping the reserve fund to allow spending on such programs. Absent such qualifying legislation, the reserve fund amounts would simply not be used.

Reserve funds have been created for a variety of legislative purposes, including specific programs and funds designated as "emergencies." The number of reserve funds in budget resolutions has varied over time but has generally been increasing. Recent budget resolutions have included over 30 reserve funds.(2) Concerns over budget deficits have also prompted Congress in recent years to require that legislation be deficit-neutral in order to qualify for a reserve fund adjustment.(3)

Modern reserve funds do not actually set aside amounts of new budget authority and outlays. Instead, they represent broad authority to revise any necessary budgetary levels (up to the amount of the reserve fund) in response to qualifying legislation. Such revisions do not take money out of separate reserve fund accounts, but simply re-allocate resources between accounts as necessary to cover the cost of the legislation described in the reserve fund. Budget resolutions have occasionally contained optional provisions that operate in a similar manner to reserve funds, but which are styled as "adjustment" authorities rather than reserve funds, and typically do not contain a specific amount of adjustment authority. For example, the budget resolution for fiscal year 1995 contained special authority to adjust budgetary levels in the event that health care reform legislation was reported in the House.(4) This provision contained no set amount of adjustment authority, but did require deficit-neutrality for the qualifying legislation. A similar provision can be found in the budget resolution for fiscal year 2004, which provided adjustment authorities if a supplemental appropriation bill was enacted by a certain date.(5)

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2. See 154 Cong. Rec. 10000–05, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, secs. 201–37); and 155 Cong. Rec. 10735–39, 111th Cong. 1st Sess., Apr. 27, 2009 (S. Con. Res. 13, secs. 301–34).

3. See, *e.g.*, 153 Cong. Rec. 12661–65, 110th Cong. 1st Sess., May 16, 2007 (S. Con. Res. 21, secs. 301–23).

4. 140 Cong. Rec. 9260, 103d Cong. 2d Sess., May 4, 1994 (H. Con. Res. 218, sec. 26).

5. 149 Cong. Rec. 9302, 108th Cong. 1st Sess., Apr. 10, 2003 (H. Con. Res. 95, sec. 421).

It is important to note that the adjustment authorities found in reserve funds or similar provisions are usually discretionary and need not be exercised, even in the event that qualifying legislation is reported.[6] The lack of an adjustment may subject the legislation to points of order. A similar discretionary authority can be found in section 314(a) of the Congressional Budget Act, as revised by the Budget Control Act of 2011.[7] That section provides the chairman of the Committee on the Budget with discretionary authority to adjust the appropriate allocations for certain categories of spending in response to qualifying legislation. As with reserve funds, the chairman need not exercise such adjustment authority.[8]

The authority to make adjustments contemplated by a reserve fund has been most often contingent on the reporting of qualifying legislation, rather than, for example, the enactment of such legislation into law or the offering of an amendment that achieves the same legislative goal.[9] However, this is not always the case and reserve fund authority may be conditioned on any number of legislative actions. For example, a reserve fund for agriculture in the budget resolution for fiscal year 2000 allowed an amendment in the nature of a substitute (made in order by a special order of business) to qualify.[10]

The House has also adopted a special order of business resolution that provided a specific procedural mechanism designed to trigger an adjustment authority contained in the most recent budget resolution.[11]

Optional Components—Treatment of Amounts Designated as "Emergencies"

Throughout the history of the congressional budget process, Congress has utilized numerous methods to achieve flexibility in funding unanticipated needs such as natural disasters, military operations, and other unforeseen emergencies. One method is to establish a reserve fund, as described above,

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6. One notable exception was the budget resolution for fiscal year 1998, which contained several reserve funds with mandatory (rather than discretionary) adjustment authorities. 143 CONG. REC. 9985, 105th Cong. 1st Sess., June 4, 1997 (H. Con. Res. 84, sec. 210).

7. Prior to the enactment of the Budget Control Act of 2011, section 314(a) provided for an *automatic* adjustment of the appropriate allocations in response to certain legislative actions, requiring no further action by Congress. The chairman of the Committee on the Budget was merely under a ministerial duty to publish such adjustments in the *Congressional Record*.

8. See § 11, *infra*.

9. See § 11.15, *infra*.

10. See 145 CONG. REC. 23106, 23107, 106th Cong. 1st Sess., Sept. 29, 1999.

11. See § 4.2, *infra*.

allowing certain adjustments to be made in budgetary levels and allocations. Such a method was used, for example, in the budget resolution for fiscal year 1987, via a special contingency fund for "unmet critical needs."[1]

The Budget Enforcement Act of 1990[2] established a new mechanism to address amounts specifically designated as emergencies. Section 606(d) provided that certain categories of spending, including emergency amounts, would be exempt from the operation of sections 302, 303, and 311 of the Congressional Budget Act. This provision had the effect of rendering such amounts "invisible" for purposes of Congressional Budget Act enforcement. Rather than authorizing any adjustments to budgetary levels or allocations, the provision merely stated that determinations made under the specified points of order "shall not take into account" any new budget authority contained in the applicable legislation.

The Budget Enforcement Act of 1997[3] made significant changes to the Congressional Budget Act, including a complete repeal of title VI, as added by the Budget Enforcement Act of 1990. The section 606(d) "invisibility" mechanism was replaced by new adjustment authorities contained in section 314 of the Congressional Budget Act.[4] As described in Section 11, section 314 of the Budget Act authorized adjustments to be made in budget aggregates, allocations, and discretionary spending limits in response to certain legislative actions, including the consideration of measures containing amounts designated as emergencies. Rather than rendering such emergency amounts "invisible" for Congressional Budget Act enforcement purposes, section 314 authorized automatic "adjustments" (*i.e.*, increases) to the necessary accounts to cover the cost of the emergency provisions.

The adjustment mechanism of section 314 for emergency amounts was textually linked to a section of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) that expired in 2002.[5] Thus, from the period between 2002 and the enactment of the Budget Control Act of 2011,[6] there was no statutory mechanism for addressing amounts designated as emergencies. Instead, Congress proceeded on an *ad hoc* basis, providing different kinds of mechanisms as optional components in each annual budget resolution.

In many cases, Congress chose an "invisibility" mechanism similar to the one created by the Budget Enforcement Act of 1990. The budget resolution

1. 132 Cong. Rec. 15744, 99th Cong. 2d Sess., June 26, 1986 (S. Con. Res. 120, sec. 3).

2. Pub. L. No. 101–508.

3. Pub. L. No. 105–33.

4. 2 USC § 645.

5. Pub. L. No. 99–177.

6. The Budget Control Act of 2011 repealed the expiration of several Gramm-Rudman-Hollings provisions and extensively revised section 314 of the Congressional Budget Act. For more on the Budget Control Act of 2011, see § 1, *supra*.

for fiscal year 2004, for example, contained a provision exempting amounts designated as emergencies from the operation of certain Congressional Budget Act points of order.[7] Similar provisions were included in the budget resolutions for fiscal years 2005,[8] 2006,[9] 2008,[10] 2009,[11] and 2012.[12] Additional requirements, such as an explanation of how funding meets the criteria for an emergency designation, have also been included.[13]

Funding for the "global war on terrorism" has also been the subject of provisions in budget resolutions that effectively exempt such spending from the reach of Congressional Budget Act enforcement. For example, the budget resolution for fiscal year 2005 contained an exemption for "overseas contingency operations related to the global war on terrorism."[14] A similar provision was included in the House-adopted budget for fiscal year 2007 ("deemed" adopted by Congress)[15] that exempted such funding from all points of order under titles III and IV of the Congressional Budget Act. In the budget resolution for fiscal year 2010, Congress employed both "invisibility" and "adjustment" mechanisms for overseas deployment funding, authorizing allocation adjustments up to a certain amount, and exempting any funding above this amount from the operation of the Congressional Budget Act.[16] The adjustment mechanism was retained in the House-adopted budget resolution for fiscal year 2012,[17] while a separate allocation under section 302 of the Congressional Budget Act was used for overseas contingency operations in the House-adopted budget resolution for fiscal year 2013.[18]

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7. 149 CONG. REC. 9302, 108th Cong. 1st Sess., Apr. 10, 2003 (H. Con. Res. 95, sec. 502).

8. 150 CONG. REC. 10040, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, sec. 402).

9. 151 CONG. REC. 8280, 109th Cong. 1st Sess., Apr. 28, 2005 (H. Con. Res. 95, sec. 402).

10. 153 CONG. REC. 12658–59, 110th Cong. 1st Sess., May 16, 2007 (S. Con. Res. 21, sec. 204).

11. 154 CONG. REC. 10000–05, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, sec. 301(b)).

12. 157 CONG. REC. H2889 [Daily Ed.], 112th Cong. 1st Sess., Apr. 15, 2011 (H. Con. Res. 34, sec. 302).

13. See § 4.1, *infra*.

14. 150 CONG. REC. 10041, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, sec. 403) (House-adopted budget resolution "deemed" adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

15. 152 CONG. REC. 8484, 109th Cong. 2d Sess., May 17, 2006 (H. Con. Res. 376, sec. 402) (House-adopted budget resolution "deemed" adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

16. 155 CONG. REC. 10743, 111th Cong. 1st Sess., Apr. 27, 2009 (S. Con. Res. 13, sec. 423).

17. 157 CONG. REC. H2888–9 [Daily Ed.], 112th Cong. 1st Sess., Apr. 15, 2011 (H. Con. Res. 34, sec. 301) (House-adopted budget resolution "deemed" adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

18. 158 CONG. REC. H1703 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Con. Res. 112, sec. 509) (House-adopted budget resolution "deemed" adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

The House-adopted budget resolution for fiscal year 2007 set up a special reserve fund for amounts designated as emergencies, with authorization for the chairman of the Committee on the Budget to revise the necessary aggregates and allocations in response to qualifying legislation.[(19)] Additional provisions allowed further revisions to those amounts (above the total of the reserve fund) in special circumstances.

This *ad hoc* treatment of emergency funding in budget resolutions was replaced by a new statutory mechanism contained in the Budget Control Act of 2011.[(20)] That Act, as noted above, made significant changes to section 314 of the Congressional Budget Act, including a return to the "invisibility" approach that prevailed during the 1990–1998 period. Section 314(d) now provides that, in the House, amounts designated as emergencies shall be exempt from titles III and IV of the Congressional Budget Act.[(21)]

Optional Components — Creation of New Points of Order

Concurrent resolutions on the budget have also created *ad hoc* points of order typically applicable only to spending in the fiscal years covered by such resolutions. Such "extra" budgetary controls (beyond those provided in statute) contained in budget resolutions have been fairly common for Senate procedures, but less so for the House of Representatives. This is primarily due to the fact that the Committee on Rules in the House has broad authority to report special orders of business or other orders of the House that can alter or waive budget rules. Lacking this kind of flexibility, the Senate has had a greater need to insert into budget resolutions additional procedures to govern consideration of spending bills in that body.

Beginning with the budget resolution for fiscal year 2001,[(1)] all budget resolutions have included a prohibition against consideration in the House of advance appropriations. Advance appropriations are typically defined as appropriations made available for any fiscal year after the fiscal year covered by the budget resolution. Such a prohibition has also been included in House-adopted budget resolutions "deemed" adopted by Congress.[(2)]

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19. 152 CONG. REC. 8484, 8485, 109th Cong. 2d Sess., May 17, 2006 (H. Con. Res. 376, secs. 501–05) (House-adopted budget resolution "deemed" adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

20. Pub. L. No. 112–25, sec. 105.

21. *Id.*

1. 146 CONG. REC. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 203(b)).

2. 152 CONG. REC. 8484, 109th Cong. 2d Sess., May 17, 2006 (H. Con. Res. 376, sec. 401) (House-adopted budget resolution "deemed" adopted by Congress for Congressional Budget Act purposes). See § 17, *infra*.

In the budget resolution for fiscal year 2001, Congress included a prohibition (applicable in the House only) against consideration of any measure containing a directed scorekeeping provision.[3] A directed scorekeeping provision is defined as one that instructs either the Congressional Budget Office or the Office of Management and Budget how to estimate new discretionary budget authority provided in a measure.

Some points of order created in budget resolutions have been established under the term "lock-box" to indicate a prohibition against spending that would reduce a budget surplus in a given account. The budget resolutions for fiscal years 2000[4] and 2001[5] both contained a provision creating a Social Security "lock-box" or "safe deposit box." The point of order, applicable in both the House and the Senate, prohibited the consideration of any budget resolution (or revision thereto) that set forth a deficit for any given year. The purpose was to prevent surpluses in the Social Security trust funds from being used to finance the general operations of the Federal government, and the budget resolution for fiscal year 2001 included a provision that would deduct from discretionary spending any amounts taken from the Social Security fund.

In the budget resolution for fiscal year 2001,[6] Congress created a debt reduction "lock-box" to ensure that budget surpluses would be used solely to pay down the debt and not to fund new spending. This point of order, applicable only in the House, prohibited the consideration of certain measures that would cause the surplus to be less than a set amount.

Optional Components—Altering Existing Budget Act Points of Order

The House retains the constitutional authority to vary rulemaking contained in statute.[1] Concurrent resolutions on the budget have sometimes made changes to the operation of existing Congressional Budget Act points of order. For example, the House-adopted budget resolution for fiscal year 2003,[2] included a provision establishing a highway reserve fund and making section 302(f) points of order applicable to outlays as well as budget authority. This is in contrast to the normal operation of section 302(f) of the

3. 146 Cong. Rec. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 203(a)).

4. 145 Cong. Rec. 6340, 6341, 106th Cong. 1st Sess., Apr. 13, 1999 (H. Con. Res. 68, sec. 201).

5. 146 Cong. Rec. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 201).

6. 146 Cong. Rec. 5505, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 202).

1. See Deschler-Brown Precedents Ch. 31 § 10.1, *supra*. See § 8, *infra*.

2. 148 Cong. Rec. 3691, 107th Cong. 2d Sess., Mar. 20, 2002, (H. Con. Res. 353, sec. 204(b)) (House-adopted budget resolution "deemed" adopted by Congress for Budget Act purposes). See § 17, *infra*.

Congressional Budget Act, which does not take cognizance of outlays.(3) Similarly, provisions requiring committee allocations to include administrative expenses for certain off-budget accounts have also altered the application of section 302(f) to address outlays as well as budget authority for such accounts.(4)

Optional Components — Treatment of "Off-Budget" Amounts

Beginning with the budget resolution for fiscal year 2001,(1) all budget resolutions have included a provision regarding the treatment of certain off-budget amounts. These have included both the discretionary administrative expenses of the Social Security Administration and (beginning with the budget resolution for fiscal year 2009)(2) of the postal service as well. Spending on these items is technically "off-budget" pursuant to section 13301 of the Budget Enforcement Act of 1990.(3) However, the provision described here requires that the discretionary administrative expenses (but not other spending) for such programs be included in the section 302(a) allocation to the Committee on Appropriations, and thus subject to the same rules for other discretionary spending. As noted above, such provisions have also typically included an additional section explicitly including such amounts in any evaluation of a point of order under section 302(f).(4)

Optional Components — Authority to Establish Committee Allocations

Concurrent resolutions on the budget have sometimes contained provisions authorizing the chairman of the Committee on the Budget to publish committee allocations in the *Congressional Record* and to have such allocations be considered as those required under section 302(a) of the Congressional Budget Act.(1)

Optional Components — Requiring Analysis of Budgetary Data

Congress has used budget resolutions to call for the production of reports or analysis of budgetary data. These provisions have directed committees of

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3. See § 11.5, *infra*.

4. See *Optional Components—Treatment of "Off-Budget" Amounts*, *infra*.

1. 146 CONG. REC. 5507, 106th Cong. 2d Sess., Apr. 12, 2000 (H. Con. Res. 290, sec. 231).

2. 154 CONG. REC. 10007, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, sec. 322).

3. Pub. L. No. 101–508.

4. See § 11, *infra*.

1. See 132 CONG. REC. 15745, 99th Cong. 2d Sess., June 26, 1986 (S. Con. Res. 120, sec. 13); and 133 CONG. REC. 16885, 100th Cong. 1st Sess., June 22, 1987 (H. Con. Res. 93, sec. 13).

the House or the Senate, the Congressional Budget Office, the Office of Management and Budget, or other governmental entities, to produce such reports, often with deadlines for submission. Budget resolutions have frequently called on House committees to report potential legislative savings in certain areas,[1] or to report on waste, fraud, and abuse in programs within the jurisdiction of such committees.[2] In the budget resolution for fiscal year 1996, the Congressional Budget Office was directed to certify whether certain legislative recommendations of congressional committees would result in a balanced budget by fiscal year 2002.[3]

Optional Components — Senses of Congress

From the earliest days of the Congressional Budget Act, Congress has taken the opportunity to include within concurrent resolutions on the budget certain non-binding statements of policy. Such a statement may be termed a "sense of Congress,"[1] (or of the House or Senate alone), a "policy" statement,[2] or similar formulations. As merely hortatory or advisory in nature, such statements have no parliamentary effect and do not create enforceable points of order. The first such statement was included in the budget resolution for fiscal year 1978, and declared that Congress "recognize[d] . . . unusual uncertainties" in the economic outlook that might require legislative responses with budgetary impacts.[3] Every budget resolution since fiscal year 1981 has included at least one such non-binding provision (and often 10 or more), with the exception of the budget resolution for fiscal year 1991.[4] Although non-binding, the House has nonetheless chosen at times to comply with the recommendations contained in such provisions.[5]

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1. See, *e.g.*, 125 CONG. REC. 12562, 96th Cong. 1st Sess., May 24, 1979 (H. Con. Res. 107, sec. 4(b)); and 150 CONG. REC. 10042, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, secs. 411–12).
2. 149 CONG. REC. 9300, 9301, 108th Cong. 1st Sess., Apr. 10, 2003 (H. Con. Res. 95, sec. 301); and 154 CONG. REC. 10007, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, sec. 321).
3. 141 CONG. REC. 17185, 104th Cong. 1st Sess., June 26, 1995 (H. Con. Res. 67, sec. 205).

1. See, *e.g.*, 154 CONG. REC. 10008–10, 110th Cong. 2d Sess., May 20, 2008 (S. Con. Res. 70, secs. 501–22).
2. See, *e.g.*, 153 CONG. REC. 12665, 110th Cong. 1st Sess., May 16, 2007 (S. Con. Res. 21, sec. 401); and 158 CONG. REC. H1704 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Con. Res. 112, sec. 601).
3. 123 CONG. REC. 14412, 95th Cong. 1st Sess., May 11, 1977 (S. Con. Res. 19, sec. 3).
4. 136 CONG. REC. 27958–63, 101st Cong. 2d Sess., Oct. 7, 1990 (H. Con. Res. 310).
5. For example, the budget enforcement resolution ("deemer") for fiscal year 2010 contained a sense of the House that committee chairs should submit for printing in the *Congressional Record* findings on waste, fraud, and abuse in government programs

Optional Components — Revisions to Prior Budget Resolutions

Budget resolutions have also contained provisions revising earlier budget resolutions,(1) or containing authorization to revise prior budget resolutions in response to executive-legislative budget agreements.(2) Section 304 of the Congressional Budget Act provides specific authority for Congress to revise concurrent resolutions on the budget any time after the completion of action on a budget resolution.(3)

Optional Components — Senate Procedures

Concurrent resolutions on the budget have contained many procedural provisions applicable to the Senate only. Such provisions have created new points of order applicable to Senate procedures and other provisions varying the normal application of Senate rules. Such Senate-only provisions, however, are too numerous to be documented here.

§ 4.1 Pursuant to the concurrent resolution on the budget, the chairman of the Committee on Appropriations explained how provisions in a supplemental appropriation bill that were designated as "emergency requirements" under such concurrent resolution met the criteria for such designation.

On Sept. 7, 2005,(1) the following statement was submitted for inclusion in the *Congressional Record*:

STATEMENT REQUIRED BY SECTION 402(a)(3) OF H. CON. RES. 95, THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2006

The SPEAKER pro tempore.(2) Under a previous order of the House, the gentleman from California (Mr. LEWIS) is recognized for 5 minutes.

Mr. [Jerry] LEWIS of California. Mr. Speaker, the funds provided in H.R. 3673 to meet the urgent needs arising from the consequences of Hurricane Katrina are designated as emergency

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within the jurisdiction of their respective committees. A nominal deadline of Sept. 15, 2010, was included and many committee chairmen complied with this recommendation by making such submissions, despite the lack of any parliamentary enforcement mechanism. See 156 CONG. REC. E1611–1617 [Daily Ed.], 111th Cong. 2d Sess., Sept. 15, 2010.

1. See, *e.g.*, 123 CONG. REC. 14412, 95th Cong. 1st Sess., May 11, 1977 (S. Con. Res. 19, sec. 4).

2. 137 CONG. REC. 11610, 102d Cong. 1st Sess., May 21, 1991 (H. Con. Res. 121, sec. 12).

3. 2 USC § 635.

1. 151 CONG. REC. 19673, 109th Cong. 1st Sess.

2. Charles Dent (PA).

requirements for the purposes of section 402 of H. Con. Res. 95, 109th Congress. The requirements funded in the bill meet criteria outlined in section 402(c) since they are in response to a situation which poses a direct threat to life and property, is sudden, is urgent and compelling, is unpredictable, and is not permanent in nature. The funds are also essential to the continuing recovery effort.

The devastation that has occurred in New Orleans and around the Gulf Coast as the result of Hurricane Katrina is of monumental proportions. It already is the most costly natural disaster in the Nation's history, and most government natural disaster assistance experts anticipate recovery needs far beyond the $62.3 billion to be provided by Congress in the first two Hurricane Katrina supplemental measures. The funds in H.R. 3673 will provide urgently needed food, shelter, security, and reconstruction. The funds will help to save lives. Clearly, the funds meet emergency needs and are consistent with the criteria outlined in the budget resolution.

§ 4.2 The House has adopted a special order of business resolution reported by the Committee on Rules containing a separate section "deeming" a particular amendment to have been formally "offered" within the meaning of a section of the most recent concurrent resolution on the budget, in order to trigger the application of that section[1] and thus allow the chairman of the Committee on the Budget to increase the relevant committee's section 302 allocation to cover the budget authority contained in that amendment.

On Apr. 1, 2004,[2] the House adopted the following resolution:

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 3550, TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

Mr. [David] DREIER [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 593 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 593

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved in the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 3550)

1. *Parliamentarian's Note*: Section 411 of the concurrent resolution on the budget for fiscal year 2004 (H. Con. Res. 95) provided authority for the chairman of the Committee on the Budget to adjust the section 302(a) allocation to the Committee on Transportation and Infrastructure if: (1) a bill providing funding for certain transportation projects were reported; (2) a conference report containing such funding were submitted; or (3) an amendment containing such funding were offered. Because the special order of business above "self-executed" an amendment containing such funding, that amendment was not formally "offered" within the meaning of section 411 of H. Con. Res. 95. Thus, it was necessary for section 2 of the special order to "deem" the amendment to have been offered in order to trigger the authority to adjust the section 302(a) allocation.
2. 150 CONG. REC. 6059, 108th Cong. 2d Sess.

to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes. No further general debate (except for the final period contemplated in the order of the House of March 30, 2004) shall be in order. The amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill, modified by the amendments printed in part A of the report of the Committee on Rules accompanying this resolution, shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived. No further amendment shall be in order except those printed in part B of the report of the Committee on Rules. Each further amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment or demand for division of the question. All points of order against such further amendments are waived. At the conclusion of consideration of the bill, as amended, the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. The amendment considered as adopted under the first section of this resolution shall be considered an amendment offered under section 411 of House Concurrent Resolution 95.

§ 4.3 The House has, by unanimous consent, ordered the enrollment of a particular House bill (exceeding the relevant committee's section 302 allocation), notwithstanding the provision in the most recent concurrent resolution on the budget delaying the enrollment of such legislation until after the completion of the second annual budget resolution[1] and required reconciliation legislation.

On Nov. 22, 1981,[2] the following occurred:

AUTHORIZING SPEAKER TO SIGN ENROLLMENT OF HOUSE JOINT RESOLUTION 357, NOTWITHSTANDING PROVISIONS OF HOUSE CONCURRENT RESOLUTION 115

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Speaker, I ask unanimous consent that notwithstanding the provisions of House Concurrent Resolution 115, the Speaker be authorized to sign the enrollment of House Joint Resolution 357.

The SPEAKER.[3] Is there objection to the request of the gentleman from Massachusetts that the Clerk be permitted to enroll House Joint Resolution 357 if finally passed by both Houses?

Mr. [Leon] PANETTA [of California]. Mr. Speaker, reserving the right to object, does the gentleman refer to section 315 or 305?

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1. As noted, the Gramm-Rudman-Hollings reforms eliminated the requirement for a second annual budget resolution.

2. 127 CONG. REC. 28768, 97th Cong. 1st Sess.

3. Thomas O'Neill (MA).

Mr. CONTE. Really all the provisions of the House concurrent resolution.

Mr. PANETTA. The gentleman is moving notwithstanding all the provisions of House Concurrent Resolution 115?

Mr. CONTE. Yes, in particular House Joint Resolution 357.

Mr. PANETTA. Mr. Speaker, further reserving the right to object, as I understand it, this provision would then allow for the continuing resolution to be enrolled.

Mr. CONTE. That is right, and go to the President.

Mr. PANETTA. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

§ 5. Consideration of Concurrent Resolutions on the Budget

Procedures in the Congressional Budget Act

The annual adoption of a concurrent resolution on the budget is an important part of the Federal budget process. Consequently, the Congressional Budget Act accords the concurrent resolution on the budget high privilege for consideration in the House and Senate and special procedures to expedite such consideration. Provisions relating to the consideration of concurrent resolutions on the budget are found in section 305 of the Congressional Budget Act.[1] In addition to the special procedures contained in that section, the House has frequently adopted standing rules that pertain specifically to the budget process and may affect how budget resolutions are considered.[2] For many years, the House has also considered budget resolutions pursuant to a special order of business resolution reported by the Committee on Rules.[3]

Section 305 of the Congressional Budget Act prescribes procedures relating to various aspects of considering budget resolutions in the House, including privileged status, layover requirements, debate, the amendment process, consideration of conference reports, and appeals. Pursuant to section 305(a)(1), a concurrent resolution on the budget reported by the Committee on the Budget and referred to the appropriate calendar may be considered "any day thereafter" and the motion to proceed to consideration is "highly privileged" and not debatable.[4] To further expedite consideration, such motion is neither amendable nor subject to the motion to reconsider.[5]

1. 2 USC § 636.
2. See *Procedures Contained in the Rules of the House*, *infra*.
3. See *Consideration by Special Order, et seq., infra*.
4. 2 USC § 636(a)(1).
5. *Id.* For a clarifying statement by the Chair regarding the applicability of motions to reconsider, see 123 CONG. REC. 12549, 95th Cong. 1st Sess., Apr. 27, 1977.

In its original form, the Congressional Budget Act provided for a ten-day layover period for budget resolutions. This requirement prevented consideration of budget resolutions that had not been available to Members for the full ten-day period. After the Gramm-Rudman-Hollings reforms of 1985,(7) however, this period was reduced to five days, and a corresponding change to the House rules was made at the beginning of the 102d Congress.(8) The Budget Enforcement Act of 1997 removed the special five-day requirement and applied the normal House rule (former Rule XI clause 2(l)(6))(9) regarding layover periods (three days for bills) to budget resolutions as well.(10)

Debate on a qualifying concurrent resolution on the budget is limited to ten hours, equally divided between the majority and minority parties.(11) A motion to further limit debate is available, and such motion is itself not debatable.(12) The Humphrey-Hawkins Full Employment Act of 1978 revised section 305 to add additional debate time (up to four hours) on "economic goals and policies."(13)

The amendment process for budget resolutions is likewise governed by special procedures under section 305 of the Congressional Budget Act. Section 305(a)(5) provides that the concurrent resolution on the budget be considered in the Committee of the Whole and under the five-minute rule "in accordance with the applicable provisions of rule XXIII."(14) Section 305(a)(4) permits germane amendments (subject to certain limitations) relating to economic goals, should the budget resolution carry such types of provisions. Section 305(a)(5) also provides broad authority to offer amendments any time prior to final passage changing numerical figures within the budget resolution in order to achieve "mathematical consistency."(15) Budget resolutions are not subject to the motion to recommit.(16)

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7. See § 1, *infra*.

8. 137 CONG. REC. 39, 102d Cong. 1st Sess., Jan. 3, 1991 (H. Res. 5, sec. 7(B)).

9. At the beginning of the 106th Congress, the House rules were recodified, resulting in extensive changes to rule and section numbering. However, no corresponding changes were made to section 305 of the Congressional Budget Act, the text of which still references the old rule precodification. The current House rule regarding layover requirements is found in Rule XIII clause 4. *House Rules and Manual* § 850 (2011).

10. 2 USC § 636(a)(1); Pub. L. No. 105–33, sec. 10109.

11. 2 USC § 636(a)(2). For yielding blocks of time under the statute, see Deschler-Brown Precedents Ch. 29 § 68.70, *supra*.

12. *Id.*

13. Pub. L. No. 95–523; 2 USC § 636(a)(3). See § 5.4, *infra*.

14. As noted earlier, the Congressional Budget Act was not updated to reflect extensive changes in House rule and section numbering that occurred at the beginning of the 106th Congress. The current rule for applicable procedures in the Committee of the Whole is Rule XVIII. *House Rules and Manual* §§ 970–993 (2011).

15. 2 USC § 636(a)(5). See §§ 5.8–5.10, *infra*.

16. 2 USC § 636(a)(2).

Section 305(a)(6) of the Congressional Budget Act provides for special consideration of conference reports on budget resolutions. Debate on such conference reports is limited to five hours, divided equally between the majority and minority parties.(17) As with budget resolutions themselves, conference reports on budget resolutions may be subject to a non-debatable motion to further limit debate, and such conference reports are likewise not subject to the motion to recommit.(18) Formerly, section 305(d) also addressed conference reports on budget resolutions, but this provision was repealed by the Budget Enforcement Act of 1990.(19) Although the House may use these expedited procedures contained in the Congressional Budget Act to consider conference reports on budget resolutions, more often the House has chosen to structure consideration of such conference reports through a special order of business resolution reported by the Committee on Rules.(20)

The Congressional Budget Act also provides mechanisms to move the budget resolution toward a vote on final adoption without the possibility of intervening motions or other procedural delays. Section 305(a)(5) provides that, after the Committee of the Whole rises and reports the resolution back to the House, the motion for the previous question (terminating debate) shall be considered as ordered on the resolution itself and any amendments thereto, to final passage without intervening motion.(21) The only exception is the possibility of amendments to achieve mathematical consistency (described above), which may be offered even after the previous question is ordered.(22) The vote on final adoption of a concurrent resolution on the budget (or a conference report thereon) is not subject to the motion to reconsider.(23)

Finally, appeals from decisions of the Chair on any issue related to these procedures for the consideration of budget resolutions shall be "decided without debate."(24)

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17. 2 USC § 636(a)(6). In cases where conferees report in disagreement, debate on motions to dispose of amendments in disagreement is not covered by the statute and proceeds under the general "hour" rule. See Deschler-Brown Precedents Ch. 29 § 17.14, and Ch. 33 § 28.14, *supra*. For additional discussion of conference reports on budget resolutions filed in disagreement (including recognition for motions to dispose of Senate amendments and debate thereon), see Deschler-Brown Precedents Ch. 29 §§ 17.25, 17.36, 17.59, 68.67, 68.68, and Ch. 33 §§ 29.9, 29.17, *supra*.

18. *Id.*

19. Pub. L. No. 101–508, title XIII. The former section 305(d) of the Budget Act provided for a non-binding instruction to conferees on the budget resolution to report back to their respective Houses if an agreement on the budget was not reached within seven days. See § 5.16, *infra*.

20. See, *e.g.*, Deschler-Brown Precedents Ch. 33 § 26.24, *supra*.

21. 2 USC § 636(a)(5).

22. See § 5.9, *infra*.

23. 2 USC § 636(a)(2), (a)(6).

24. 2 USC § 636(a)(7).

Procedures Contained in the Rules of the House

The standing rules of the House provide for special procedures relating to the consideration of concurrent resolutions on the budget.[1] Most of these provisions are found in Rule XVIII clause 10, which describes procedures in the Committee of the Whole.[2] Clause 10(a) provides that, following general debate, the concurrent resolution on the budget shall be considered as read and open for amendment at any point. Clause 10(b) places certain restrictions on types of amendments that may be offered to budget resolutions, in order to maintain mathematical consistency and include content required by the Congressional Budget Act.[3] Finally, clause 10(c) provides restrictions on amendments that attempt to change the amount of the appropriate level of the public debt as set forth in the budget resolution.[4]

Additional rules of the House affecting the consideration of budget resolutions include Rule XX clause 10 and Rule XXI clause 7. Rule XX clause 10 provides for an automatic vote by the yeas and nays on the vote on final adoption of a concurrent resolution on the budget (including conference reports thereon).[5] Rule XXI clause 7 provides for a point of order against consideration of a budget resolution (or an amendment thereto, or a conference report thereon) that contains certain kinds of reconciliation directives.[6] Specifically, such directives may not instruct committees to report reconciliation legislation that would cause a net increase in direct spending over a specified period.[7]

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1. The Committee on Rules has broad authority to recommend that the House vary or waive the operation of rules of the House, including rulemaking contained in statute (such as the expedited procedures found in the Congressional Budget Act). For more on the House's ability to alter statutory rulemaking, see § 8, *infra*. In addition to the specific budget-related provisions described here, budget resolutions are also subject to the regular rules of the House, such as the germaneness rule. For germaneness rulings involving concurrent resolutions on the budget, see Deschler-Brown Precedents Ch. 28, §§ 9.37, 9.38, 21.14, 21.21, 42.55, 46.3, *supra*.

2. *House Rules and Manual* § 990 (2011).

3. *Id.*

4. *Id.* See § 29, *infra*.

5. *House Rules and Manual* § 1033 (2011). This requirement is obviated in cases where the House adopts a concurrent resolution on the budget by unanimous consent. See 155 CONG. REC. 10354, 10368, 10374, 111th Cong. 1st Sess., Apr. 22, 2009 (note: the *Congressional Record* does not carry the Chair-initiated unanimous-consent request); and 150 CONG. REC. 5506, 5515, 108th Cong. 2d Sess., Mar. 29, 2004.

6. See § 20, *infra*. This clause was made part of the rules of the House in the 110th Congress (2007). In its original form, it prohibited reconciliation directives in a budget resolution that called for either a reduction in a surplus or an increase in the deficit. It was changed to its present form at the beginning of the 112th Congress (2011).

7. *House Rules and Manual* § 1068b (2011).

The expedited procedures for consideration of budget resolutions in the House found in section 305 of the Congressional Budget Act were explicitly enacted into law as an exercise of the joint rulemaking authority of both Houses.[8] As such, they can be superseded by subsequent rulemaking in the House, either in the standing rules or by other order of the House. From the earliest days after enactment of the Congressional Budget Act, the House has almost always chosen to structure the consideration of budget resolutions by way of a special order of business resolution reported by the Committee on Rules. These "special orders" or "special rules" may determine virtually every aspect of consideration—from the length of debate to the amendments permitted to be offered—and may also waive rules of the House or rulemaking contained in statute.

In addition to consideration by special order, a concurrent resolution on the budget may also be considered pursuant to a unanimous-consent order.[9]

Finally, it should be noted that unless otherwise superseded by statutory rulemaking or another order of the House, the normal rules of House procedure, including the availability of certain motions, apply to concurrent resolutions on the budget as well. So, for example, a motion to instruct conferees is available when a budget resolution goes to conference.[10]

Consideration By Special Order—Initiating Consideration

As noted above, the Congressional Budget Act of 1974 established expedited procedures in the House (and the Senate) for the consideration of annual concurrent resolutions on the budget. Under the Act, a motion to proceed to consider such a concurrent resolution is accorded high privilege in the House and is in order any time after such resolution is reported.[1] The budget resolutions for fiscal years 1976 through 1980 were all considered pursuant to the expedited procedures of the Budget Act, a privileged motion being made to initiate consideration and the amendment process restricted only by the terms of section 305 of the Budget Act.

The (first) concurrent resolution on the budget for fiscal year 1981 was the first instance of the House adopting a special order of business resolution (a "rule") reported by the Committee on Rules to structure the consideration of a budget resolution. The rule, H. Res. 642,[2] did not make in order

8. Section 904 of the Congressional Budget Act (2 USC § 621 note). See § 8, *infra*.

9. See, *e.g.*, 155 CONG. REC. 10354, 10368, 10374, 111th Cong. 1st Sess., Apr. 22, 2009 (note: the *Congressional Record* does not carry the Chair-initiated unanimous-consent request); and 150 CONG. REC. 5506, 5515, 108th Cong. 2d Sess., Mar. 23, 2004.

10. Deschler-Brown Precedents Ch. 33 § 9.20, *supra*.

1. 2 USC § 636(a)(1).

2. 126 CONG. REC. 8789, 96th Cong. 2d Sess., Apr. 23, 1980.

consideration of the resolution, the House instead adopting a privileged motion to initiate consideration pursuant to the Budget Act. Rather, the rule merely structured the amendment process in derogation of the expedited procedures contained in section 305.(3) Specifically, the rule made in order two amendments to the budget resolution (and certain substitutes therefor), five amendments in the nature of a substitute (and certain substitutes therefor),(4) and one motion to strike a section of the budget resolution relating to reconciliation.(5) The rule further permitted amendments to achieve "mathematical consistency," as provided by section 305(a)(5) of the Budget Act. With respect to the amendments in the nature of a substitute, the rule provided for so-called "king of the hill" procedures, which specified that if multiple amendments in the nature of a substitute were adopted in the Committee of the Whole, only the last such amendment adopted would be reported back to the House.

The (second) budget resolution for fiscal year 1981 was the first instance of the House adopting a special order (H. Res. 810) that authorized a motion to resolve into the Committee of the Whole for consideration of a budget resolution, rather than allowing the House to initiate consideration by privileged motion under the Budget Act.(6) The special order of business further structured the amendment process by restricting authorized amendments to those specifically recommended by the Committee on the Budget, certain minority-party amendments, and amendments to achieve mathematical consistency. From this point onward, the consideration of all concurrent resolutions on the budget would be initiated by special order (or unanimous-consent agreement); the privileged motion to proceed to consider budget resolutions pursuant to the Budget Act has not been used since 1980.

To begin consideration of a budget resolution in the Committee of the Whole, a special order may authorize (as we have seen above) a motion, available to any Member, to resolve into the Committee of the Whole for such consideration. Alternatively, the special order may provide authority to the Speaker unilaterally to declare (at any time, or at specified times) the House resolved into the Committee of the Whole for consideration of the resolution. In the early 1980s, the former method was used frequently but the

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3. For more on the House's constitutional authority to supersede prior rulemaking (including rulemaking contained in statutes) via special orders of business, see § 8, *infra*, and Deschler-Brown Precedents Ch. 31 § 10.1, *supra*.

4. On Apr. 30, 1980, the House adopted a second special order of business (H. Res. 649) permitting the offering of alternative substitutes (containing modified text) in lieu of substitutes made in order by the original special order. This second special order did not otherwise alter the amendment process. 126 CONG. REC. 9467, 96th Cong. 2d Sess.

5. See § 19, *infra*.

6. 126 CONG. REC. 30005, 30006, 96th Cong. 2d Sess., Nov. 18, 1980.

House switched to the latter method beginning with the budget resolution for fiscal year 1984.[7] The advantage of vesting this authority with the Speaker lies primarily in the greater flexibility it offers House leadership in scheduling measures for floor consideration.

On occasion, the House has chosen to begin consideration of a budget resolution by one method and complete consideration by another. For example, the House has on several occasions agreed to a unanimous-consent request to begin consideration of the budget resolution in the Committee of the Whole, solely to conduct general debate.[8] Consideration of amendments would then be conducted under a special order that structured the amendment process (as described below). The House has also used two special orders for the consideration of a single budget resolution—one to cover general debate only and a second to cover the amendment process through to final adoption.[9]

Consideration by Special Order—Waivers

An important use of special orders of business has been to waive or render inapplicable any rules or orders of the House that might inhibit consideration of the underlying measure, and this has been true for special orders providing for consideration of budget resolutions as well.[1] In the early 1980s, as the House first began using special orders for the consideration of budget resolutions, waivers (if included at all) were typically limited to layover requirements contained in the Budget Act or House rules.[2] These provisions mandated the expiration of a certain number of days following the reporting of the resolution before it could be considered on the floor of the House, and thus the waiver provided protection from a point of order for earlier consideration than would otherwise be permitted under the rules.

The first "blanket" waiver—waiving all points of order, including those contained in the Budget Act—was provided by H. Res. 177 in the 99th Congress,[3] providing for consideration of the (first) budget resolution for fiscal

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7. 129 CONG. REC. 6460, 98th Cong. 1st Sess., Mar. 22, 1983 (H. Res. 144).

8. See 150 CONG. REC. 4926, 108th Cong. 2d Sess., Mar. 23, 2004; 147 CONG. REC. 4271, 107th Cong. 1st Sess., Mar. 22, 2001; 142 CONG. REC. 11196, 104th Cong. 2d Sess., May 14, 1996; 136 CONG. REC. 7912, 101st Cong. 2d Sess., Apr. 24, 1990.

9. See 155 CONG. REC. 9686, 111th Cong. 1st Sess., Apr. 2, 2009 (H. Res. 316); 155 CONG. REC. 9515, 111th Cong. 1st Sess., Apr. 1, 2009 (H. Res. 305); 152 CONG. REC. 8464, 109th Cong. 2d Sess., May 17, 2006 (H. Res. 817); 152 CONG. REC. 5386, 109th Cong. 2d Sess., Apr. 6, 2006 (H. Res. 766); 139 CONG. REC. 5593, 103d Cong. 1st Sess., Mar. 18, 1993 (H. Res. 133); 139 CONG. REC. 5320, 103d Cong. 1st Sess., Mar. 17, 1993 (H. Res. 131).

1. See Deschler's Precedents Ch. 21 § 23, *supra*.

2. The rule for consideration of the (second) budget resolution for fiscal year 1981 contained the first ever waiver of the layover requirement contained in section 305 of the Budget Act. 126 CONG. REC. 30005, 30006, 96th Cong. 2d Sess., Nov. 18, 1980 (H. Res. 810). For the consequences of failing to waive applicable layover requirements contained in House rules, see § 5.3, *infra*.

3. 131 CONG. REC. 13001, 99th Cong. 1st Sess., May 22, 1985.

year 1986. But it was not until the mid-1990s that blanket waivers of this sort became the norm for budget resolutions. Since 2000, every special order for consideration of a budget resolution has contained language waiving all points of order against consideration of the resolution.[4]

For waivers with respect to amendments, see below.

Consideration by Special Order—Structuring Debate Time

The Congressional Budget Act provides for up to ten hours of general debate on any qualifying concurrent resolution on the budget.[1] In addition, the Humphrey-Hawkins Full Employment Act of 1978[2] provides additional debate time (up to four hours) on the subject of "economic goals and policies."[3] While the earliest special orders for consideration of budget resolutions maintained these same parameters for general debate (often with explicit reference to section 305 of the Congressional Budget Act),[4] by the mid-1980s, the House had begun to adopt special orders that provided for much shorter periods of general debate. Recent special orders have, for example, provided for four hours of general debate, with an additional hour of debate on economic goals and policies.[5]

The special order for consideration of the budget resolution for fiscal year 1993 (H. Res. 386)[6] provided, for the first time, additional general debate time *after* the amendment process was completed. This "wrap-up" debate offered proponents and opponents of the resolution (as amended to that point) an opportunity to make final closing remarks. Typically, the period of wrap-up debate has been short, often just ten or 20 minutes divided equally between the chair and ranking minority member of the Committee on the Budget.[7]

Consideration by Special Order—The Amendment Process

The Congressional Budget Act provides that concurrent resolutions on the budget be considered for amendment in the Committee of the Whole under the five-minute rule "in accordance with the applicable provisions of rule

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4. See, *e.g.*, 146 CONG. REC. 3442, 106th Cong. 2d Sess., Mar. 23, 2000 (H. Res. 446).

1. 2 USC § 636(a)(2).

2. Pub. L. No. 95–523.

3. 2 USC § 636(a)(3).

4. See, *e.g.*, 127 CONG. REC. 7993, 97th Cong. 2d Sess., Apr. 30, 1981 (H. Res. 134).

5. See, *e.g.*, 158 CONG. REC. H1654 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Res. 597).

6. 138 CONG. REC. 4389, 4390, 102d Cong. 2d Sess., Mar. 4, 1992.

7. See, *e.g.*, 158 CONG. REC. H1654 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Res. 597).

XXIII."[1] There are no further restrictions in the Budget Act on the number of amendments that may be offered, the form of such amendments, or who may offer them. Even mathematically inconsistent amendments (for instance, adjusting subtotals without a corresponding change to the total figure) are not out of order, the corrective being broad authority to offer additional amendments at the end of the amendment process to achieve mathematical consistency across the entire resolution.[2] However, the basic prohibition against amending figures already amended (unless waived or altered by order of the House) remains applicable to concurrent resolutions on the budget.[3]

As the House moved away from consideration of budget resolutions by the terms of the Congressional Budget Act and toward reliance on special orders reported by the Committee on Rules, the amendment process for budget resolutions has become highly structured. Even in the earliest special orders, amendments were often limited to those authorized by the resolution. This pre-defined set of permissible amendments was typically described in the special order by reference to the author of the amendment and the date on which the amendment was printed in the *Congressional Record*.[4] These amendments could be either perfecting amendments to the text of the resolution, or wholesale alternate budgets taking the form of amendments in the nature of a substitute. Debate parameters for such amendments varied from fully "open" and virtually unlimited (*i.e.* debate proceeds pursuant to the five-minute rule with no other limitations)[5] to highly restrictive (*i.e.* a fixed block of time equally divided by a proponent and an opponent).[6] To expedite consideration of these amendments, special orders would often provide, for example, that such amendments be considered as read,[7] or that such amendments shall not themselves be subject to further amendment.[8] In the case of multiple amendments in the nature of a substitute being made in

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1. 2 USC § 636(a)(5). It should be noted that following the recodification of the House rules at the beginning of the 106th Congress (1999), the provisions of Rule XXIII (relating to procedures in the Committee of the Whole) were moved to what is now Rule XVIII. See *House Rules and Manual* §§ 970, *et seq.* (2011). The Congressional Budget Act has not been updated to reflect this change of placement.

2. 2 USC § 636(a)(5).

3. See Deschler's Precedents Ch. 27 § 33.3, *supra*.

4. See, *e.g.*, 126 CONG. REC. 8789, 96th Cong. 2d Sess., Apr. 23, 1980 (H. Res. 642).

5. See, *e.g.*, 127 CONG. REC. 7993, 97th Cong. 2d Sess., Apr. 30, 1981 (H. Res. 134).

6. See, *e.g.*, 131 CONG. REC. 13001, 99th Cong. 1st Sess., May 22, 1985 (H. Res. 177). See also Deschler's Precedents Ch. 27 § 3.76 and Deschler-Brown Precedents Ch. 29 § 28.20, *supra*.

7. See, *e.g.*, 134 CONG. REC. 4988, 100th Cong. 2d Sess., Mar. 23, 1988 (H. Res. 410).

8. *Id.*

order, the special order would typically waive the prohibition against amending sections of the resolution already amended, to allow further substitutes to be offered even if one were adopted.[9]

By the early 1990s, a norm had developed in how the amendment process for budget resolutions would be structured by the special order. Specifically, the special order would make in order only a small set of complete substitutes for the resolution as reported from the Committee on the Budget. These amendments in the nature of a substitute would be considered as read, considered in a specified order, not subject to further amendment, and debatable for a specified amount of time equally divided between the proponent of the amendment and an opponent. Each amendment in the nature of a substitute would typically be submitted by a particular bloc or constituency within the House, such as the Congressional Black Caucus or the Republican Study Committee.[10] The special order often provides additional procedural safeguards, such as waiving all points of order against the substitutes.[11] Only on rare occasions has the House proceeded to consider a budget resolution under a "closed" rule that allowed no amendments to be considered.[12]

With respect to the text being amended, the House has on many occasions used special orders to alter the text of the budget resolution as reported from the Committee on the Budget prior to the consideration of alternative substitutes. To make such changes, special orders have either "self-executed" the adoption of an amendment prior to consideration of the budget resolution[13] or made in order an amendment in the nature of a substitute to be considered as original text for purposes of amendment.[14] These methods are procedurally very similar and both have the effect of replacing the original budget resolution with modified text before the consideration of

9. See, *e.g.*, 126 CONG. REC. 8789, 96th Cong. 2d Sess., Apr. 23, 1980 (H. Res. 642).

10. While such an amendment process theoretically allows for the adoption of any of the permitted amendments in the nature of a substitute, in practice no alternative has ever received a majority vote.

11. See, *e.g.*, 158 CONG. REC. H1654 [Daily Ed.], 112th Cong. 2d Sess., Mar. 28, 2012 (H. Res. 597).

12. See 127 CONG. REC. 30585, 97th Cong. 1st Sess., Dec. 10, 1981 (H. Res. 295) and 148 CONG. REC. 3671, 107th Cong. 2d Sess., Mar. 20, 2002 (H. Res. 372). See "*The President's Budget*," *infra*, for a discussion of the "President's budget," often considered under a closed rule (if at all).

13. By adopting the special order, the House is considered to have adopted the amendment.

14. The amendment in the nature of a substitute thus supplants the original text of the resolution, and further substitutes are drafted as amendments to it. When the amendment process is complete, the House must take the additional step of formally adopting the original amendment in the nature of a substitute.

other amendments. The purpose is often to accommodate last-minute agreements on the form of the budget resolution to be taken up for floor consideration.

There have been two primary mechanisms for determining which amendment in the nature of a substitute will be reported back to the House when multiple such amendments are considered in the Committee of the Whole. The first is the so-called "king of the hill" procedure, which provides that if multiple amendments in the nature of a substitute are adopted in the Committee of the Whole, only the last such amendment adopted will be reported back to the House for further disposition. The second is the "first amendment adopted" approach, which provides that the amendment process ends upon the adoption of an amendment in the nature of a substitute, whereupon that amendment is reported back to the House.[15] Throughout the 1980s, "king of the hill" procedures were most often used. The special order to consider the budget resolution for fiscal year 1996 marks the switch to "first amendment adopted" procedures, which have been used in virtually every special order since.[16]

The House has employed additional procedural mechanisms (contained in special orders) to further structure how amendments to budget resolutions are voted on. Since the early 1990s, special orders have generally restricted the ability for Members to demand a division of the question for voting with respect to the different amendments in the nature of a substitute made in order by the special order.[17] On rare occasions, the House has permitted Members to demand a separate vote in the House on any amendments adopted in the Committee of the Whole.[18] More commonly, the special order will provide that the previous question be considered as ordered on the budget resolution and on any amendments adopted in the Committee of the Whole to final adoption without intervening motion (thus denying any opportunity to demand a separate vote on any of the amendments).

With respect to waivers of points of order, it has been common for special orders providing for consideration of budget resolutions to waive points of

15. Another procedure in this vein is known as the "queen of the hill" or "top vote getter," which provides for the substitute receiving the most votes to be reported to the House. However, this procedure has not been used for budget resolutions.

16. The only exception has been the budget resolution for fiscal year 2003, considered under a closed rule with no amendments. 148 CONG. REC. 3671, 107th Cong. 2d Sess., Mar. 20, 2002 (H. Res. 372). An alternative budget resolution, representing the "President's budget" was also considered under a closed rule. 141 CONG. REC. 37595, 104th Cong. 1st Sess., Dec. 19, 1995 (H. Res. 309).

17. See, *e.g.*, 139 CONG. REC. 5593, 103d Cong. 1st Sess., Mar. 18, 1993 (H. Res. 133). For more on division of the question for voting, see Deschler-Brown Precedents Ch. 30 §§ 42, *et seq.*, *supra*.

18. See, *e.g.*, 131 CONG. REC. 13001, 99th Cong. 1st Sess., May 22, 1985 (H. Res. 177); and 144 CONG. REC. 11098, 105th Cong. 2d Sess., June 4, 1998 (H. Res. 455).

order against any amendments in the nature of a substitute made in order by the special order. Although more limited waivers have been granted,[19] it is more often the case that a blanket waiver of all points of order will be provided by the special order.[20]

Consideration by Special Order—Additional Procedural Provisions

On occasion, the House has adopted special orders for the consideration of budget resolutions that provide further restrictions on the availability of procedural motions in the Committee of the Whole during such consideration. The most notable instance of such additional procedural restrictions can be found in the special order for consideration of the fiscal year 2009 budget resolution.[1] There, a separate section limited rank-and-file Members to a single motion to rise from the Committee — once one such motion had been rejected on any given legislative day, only the chairman of the Committee on the Budget or the Majority Leader was authorized to make the motion. That section also provided that once one motion to strike the resolving clause[2] has been rejected during consideration of the budget resolution, no further such motions may be entertained.

The Chair has also been given additional authority to unilaterally postpone consideration of the budget resolution to a later time to be designated by the Speaker. This additional flexibility in scheduling the consideration of the budget resolution was included in the special orders for consideration of the fiscal year 2008 and 2009 budget resolutions.[3]

The former so-called "Gephardt rule" (repealed at the beginning of the 112th Congress) provided for the automatic generation and passage of a joint resolution increasing the statutory limit on the public debt to correspond to the figures contained in that year's budget resolution.[4] Special orders for the consideration of budget resolutions have occasionally contained separate provisions disabling the operation of this rule of the House, such that the automatic engrossment of the debt-limit measure does not occur. The "Gephardt rule" was disabled by special order in every year from

19. See, *e.g.*, 133 CONG. REC. 8307, 100th Cong. 1st Sess., Apr. 8, 1987 (H. Res. 139).

20. See, *e.g.*, 135 CONG. REC. 8016, 101st Cong. 1st Sess., May 3, 1989 (H. Res. 145).

1. 154 CONG. REC. 3865, 3866, 110th Cong. 2d Sess., Mar. 12, 2008 (H. Res. 1036).

2. For more on this motion, see Deschler's Precedents Ch. 19 §§ 10, *et seq.*, *supra*.

3. See 153 CONG. REC. 8129, 8130, 110th Cong. 1st Sess., Mar. 28, 2007 (H. Res. 275); and 154 CONG. REC. 3865, 3866, 110th Cong. 2d Sess., Mar. 12, 2008 (H. Res. 1036). This authority was made part of the standing rules in the 111th Congress (Rule XIX clause 1(c)). *House Rules and Manual* § 1000a (2011).

4. For more on the former so-called "Gephardt rule," see § 29, *infra*.

fiscal year 1996 through 2001.[5] In the 1980s, the "Gephardt rule" was adjusted to vary its applicability, though it was never fully disabled.[6] The "Gephardt rule" has also been disabled by other resolutions adopted by the House, such a special orders for the consideration of conference reports on budget resolutions.[7]

Consideration by Special Order—Authority to go to Conference

Special orders for the consideration of budget resolutions have occasionally authorized (or executed) certain procedural steps to bring the House-adopted budget resolution into conference with its Senate counterpart. The special order providing for consideration of the (first) budget resolution for fiscal year 1983 contained additional language declaring that, upon adoption of the budget resolution in the House, the House was considered to have: (1) taken up the Senate budget resolution; (2) amended the text of such resolution by substituting the text of the House-adopted budget; (3) adopted such amended text; and (4) requested a conference with the Senate.[1] This was the first special order for the consideration of a budget resolution to effectuate these additional procedural steps towards establishing a conference committee.[2]

Such additional language to "hook up" the House-adopted budget with the Senate-adopted version has not been common, but such language was included in several recent special orders beginning with the special order for

5. The former so-called "Gephardt rule" was repealed for the 107th Congress (though reinstated in the 108th), so there was no need to disable the rule during consideration of the fiscal year 2002 budget.

6. When initially passed, the "Gephardt rule" was applicable to fiscal years following fiscal year 1981. Pub. L. No. 96–78. Reflecting a desire to apply the "Gephardt rule" during the fiscal year 1981 budget process, the special order for consideration of the (first) budget resolution for fiscal year 1981 included a separate section extending the applicability of the "Gephardt rule" to that budget resolution, any subsequent budget resolutions for that fiscal year, and the revised budget for fiscal year 1980. 126 CONG. REC. 8789, 8790, 96th Cong. 2d Sess., Apr. 23, 1980. The "Gephardt rule" was modified (Pub. L. No. 98–34) to provide a single debt-limit bill covering all fiscal years contemplated by the corresponding budget resolution (rather than a separate bill for each fiscal year). This change had been foreshadowed some months earlier by the special order for consideration of the fiscal year 1984 budget resolution, which provided for a single debt-limit bill to cover all fiscal years contemplated by the budget resolution. 129 CONG. REC. 6460, 98th Cong. 1st Sess., Mar. 22, 1983 (H. Res. 144).

7. See § 29, *infra*.

1. 128 CONG. REC. 13352, 97th Cong. 2d Sess., June 10, 1982 (H. Res. 496).

2. The language used in this instance was arguably the most aggressive method for "hooking up" the House and Senate versions by "self-executing" those additional procedural steps rather than merely authorizing motions to achieve the same goals.

consideration of the fiscal year 2006 budget.[3] That special order, in addition to structuring the consideration of the House budget resolution, also contained a separate section that: (1) made in order consideration of the Senate budget resolution; (2) waived all points of order against such resolution and its consideration; (3) authorized a motion to substitute the House-adopted text in lieu of the Senate-adopted text; and (4) waived all points of order against such motion. Identical language was contained in the special order for consideration of the budget resolution for fiscal year 2009.[4] Similar language was used in the special orders for consideration of the fiscal year 2007 and 2010 budget resolutions.[5] These two special orders also took the additional step of authorizing a motion to insist on the House's amendment to the Senate budget resolution and to request a conference with the Senate.

"The President's Budget"

In two instances since the advent of the Congressional Budget Act, the House has considered a budget resolution styled the "President's budget." Both of these occurred when the House and the presidency were controlled by different political parties and in both cases, these budgets were introduced by the majority party "by request."[1]

In 1986, the House adopted a special order making in order consideration of the "President's budget" in the Committee of the Whole. The special order provided for four hours of general debate, but no amendments (a "closed" rule).[2] In 1995, the House adopted a "closed" special order, making in order consideration of the "President's budget" in the House (rather than the Committee of the Whole). General debate was confined to two hours.[3]

On occasion, a special order has made in order an amendment in the nature of a substitute ostensibly reflecting the President's budget priorities and permitted such amendment to be offered by a designated Member.[4] In one instance, this amendment in the nature of a substitute was, pursuant to the terms of the special order, made the pending question even if no Member offered it, in order to guarantee a vote on the President's budget priorities.[5]

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3. 151 CONG. REC. 4865, 4866, 109th Cong. 1st Sess., Mar. 16, 2005 (H. Res. 154).

4. 154 CONG. REC. 3865, 3866, 110th Cong. 2d Sess., Mar. 12, 2008 (H. Res. 1036).

5. See 152 CONG. REC. 8464, 109th Cong. 2d Sess., May 17, 2006 (H. Res. 817); and 155 CONG. REC. 9686, 111th Cong. 1st Sess., Apr. 2, 2009 (H. Res. 316).

1. Neither budget garnered a majority vote: 12–312 for fiscal year 1987; and 0–412 (5 present) for fiscal year 1996.

2. 132 CONG. REC. 4628, 4629, 99th Cong. 2d Sess., Mar. 13, 1986 (H. Res. 397).

3. 141 CONG. REC. 37595, 104th Cong. 1st Sess., Dec. 19, 1995 (H. Res. 309).

4. See, *e.g.*, 136 CONG. REC. 8343, 101st Cong. 2d Sess., Apr. 26, 1990 (H. Res. 382).

5. See, *e.g.*, 137 CONG. REC. 8154, 102d Cong. 1st Sess., Apr. 16, 1991 (H. Res. 123).

In 2004 the House, having adopted its budget resolution three months earlier, took up an alternative budget propounded by the minority party as part of a negotiation over the annual appropriations bills. This minority budget was considered pursuant to a unanimous-consent request providing for consideration in the House (rather than the Committee of the Whole), 90 minutes of debate, and no amendments.(6) As with the alternative budgets described above, it was also defeated.

Privilege

§ 5.1 Where the inclusion of reconciliation directives covering multiple years (beyond the current fiscal year) destroyed the privilege of a concurrent resolution on the budget, the House has adopted a special order of business resolution making in order consideration of said concurrent resolution, structuring the amendment process, and separately engaging other procedures contained in section 305(a) of the Congressional Budget Act.(1)

On Apr. 30, 1981,(2) the House adopted the following resolution:

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 134 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 134

Resolved, That at any time after the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 115) revising the congressional budget for the United States Government for the fiscal year 1981 and setting forth the congressional budget for the United States Government for the fiscal years 1982, 1983, and 1984, and the first reading of the resolution shall be dispensed with. The provisions of subsection 305(a) of the Congressional Budget Act of 1974 and rule XXIII, clause 8, of the Rules of the House of Representatives shall apply during the consideration of the concurrent resolution in the House and in the Committee of the Whole: *Provided, however,* That no amendment to the resolution shall be in order except the following amendments, which shall be considered only in the following order if offered, which shall all be in order even if previous amendments to the same portion of the concurrent resolution have been adopted, and which shall not be subject to amendment except pro forma amendments for the purpose of debate: (1) an amendment printed in the *Congressional Record* of April 29, 1981, by, and if offered by, Representative Hefner of North Carolina; (2) the amendment in the nature of a substitute printed in the *Congressional Record* of April 29, 1981, by, and if offered

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6. 150 CONG. REC. 13288, 108th Cong. 2d Sess., June 22, 2004.

1. 2 USC § 636(a). See Deschler-Brown Precedents Ch. 29 § 2.35, *supra*.

2. 127 CONG. REC. 7993, 97th Cong. 1st Sess.

by, Delegate Fauntroy of the District of Columbia; (3) the amendment in the nature of a substitute printed in the *Congressional Record* of April 29, 1981, by, and if offered by, Representative Obey of Wisconsin; and (4) the amendment in the nature of a substitute printed in the *Congressional Record* of April 29, 1981, by, and if offered by, Representative Latta of Ohio. It shall also be in order to consider the amendment or amendments provided for in section 305(a)(6) of the Congressional Budget Act of 1974 necessary to achieve mathematical consistency. If more than one of the amendments in the nature of a substitute made in order by this resolution have been adopted, only the last such amendment which has been adopted shall be considered as having been finally adopted and reported back to the House.

The SPEAKER.(3) The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

§ 5.2 The House has adopted a special order of business resolution reported from the Committee on Rules that merely structured the amendment process for the concurrent resolution on the budget, but did not make in order consideration of the resolution itself (the resolution being brought up under its own privilege) or otherwise modify the debate parameters contained in the Congressional Budget Act.

On Apr. 23, 1980,(1) the House adopted the following resolution:

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 642 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 642

Resolved, That during the consideration of the concurrent resolution (H. Con. Res. 307) setting forth the congressional budget for the United States Government for the fiscal years 1981, and 1982, and 1983 and revising the congressional budget for the United States Government for the fiscal 1980, in the Committee of the Whole House on the State of the Union, no amendments to the concurrent resolution shall be in order except the following amendments, which shall be considered only in the following order, and shall all be in order even if previous amendments to the same portion of the concurrent resolution have been adopted, and which shall not be subject to amendment except pro forma amendments for the purpose of debate and except as provided in this resolution: (1) an amendment printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Giaimo of Connecticut, which shall not be subject to a demand for a division of the question in the House or in Committee of the Whole; (2) an amendment printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Conable of New York, which shall be subject to amendment by a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Quillen of Tennessee, and said substitute shall not be subject to amendment except pro forma amendments for the purpose of debate; (3) an amendment in the nature of a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Obey of Wisconsin, which shall

3. Thomas O'Neill (MA).

1. 126 CONG. REC. 8789, 96th Cong. 2d Sess.

be subject to amendment by the following substitutes which shall be considered only in the following order and shall not be subject to amendment except pro forma amendments for the purpose of debate; (a) a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Mitchell of Maryland, and (b) a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Solarz of New York; (4) an amendment in the nature of a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Ottinger of New York; (5) an amendment in the nature of a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by Representative Holt of Maryland; (6) an amendment in the nature of a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Latta of Ohio; (7) an amendment in the nature of a substitute printed in the *Congressional Record* of April 21, 1980, by, and if offered by, Representative Rousselot of California; and (8) a motion to strike section 3 of the concurrent resolution, or the corresponding section of the concurrent resolution as amended, relating to reconciliation. It shall also be in order to consider the amendment or amendments provided for in section 305(a)(6) of the Congressional Budget Act of 1974 (Public Law 93–344) necessary to achieve mathematical consistency. If more than one of the amendments in the nature of a substitute made in order by this resolution has been adopted, only the last such amendment which has been adopted shall be considered as having been finally adopted and reported back to the House.

SEC. 2. Notwithstanding the provisions of section 203 of Public Law 96–78, the provisions of section 201 of said public law, amending the Rules of the House of Representatives to establish the public debt limit as part of the congressional budget process, shall apply with respect to section 6 of H. Con. Res. 307 or the corresponding section of any concurrent resolution as finally adopted revising the second concurrent resolution on the budget for fiscal year 1980, as well as to section 1 of H. Con. Res. 307 or the corresponding section of any concurrent resolution as finally adopted, setting forth the congressional budget for the fiscal year 1981.

Layover Requirements

§ 5.3 A special order of business that waives only the application of a ten-day layover requirement[1] contained in the Congressional Budget Act for a concurrent resolution on the budget does not, in so doing, waive other applicable layover requirements contained in the House rules.

On Mar. 22, 1983,[2] at the outset of consideration of the first concurrent resolution on the budget for fiscal year 1984 (H. Con. Res. 91), the following point of order was raised:

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1. The ten-day requirement has been changed on several occasions. The current layover requirement for budget resolutions is the same as that for bills in the House (three days). 2 USC § 636(a)(1).
2. 129 CONG. REC. 6501, 6503, 98th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 29 § 9.66, *supra*.

POINT OF ORDER AGAINST CONSIDERATION OF HOUSE CONCURRENT RESOLUTION 91, FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1984

Mr. [Thomas] LOEFFLER [of Texas]. Mr. Speaker, I have a point of order against consideration of this budget resolution.

The SPEAKER pro tempore.[3] The gentleman will state his point of order.

Mr. LOEFFLER. Mr. Speaker, I make a point of order against the consideration of House Concurrent Resolution 91, which is the House concurrent budget resolution for fiscal year 1984, on the grounds that its consideration would violate the provisions of clause 2(1)(6) of rule XI of the rules of the House.

I refer specifically to the language of the rule which reads, and I quote: "Nor shall it be in order to consider any measure or matter reported by any committee (except the Committee on Rules in the case of a resolution making in order the consideration of a bill——

Mr. [Thomas] O'NEILL [of Massachusetts]. Mr. Speaker, would the gentleman yield?

The SPEAKER pro tempore. The gentleman reserves his point of order and is recognized for 1 minute.

Mr. LOEFFLER. I will be happy to yield to my distinguished Speaker.

Mr. [Thomas] O'NEILL [of Massachusetts]. May I say that we are aware of the fact that a point of order does lie. . . .

Mr. LOEFFLER. Mr. Speaker, I insist on my point of order.

The SPEAKER pro tempore. The gentleman insists upon it?

Mr. LOEFFLER. Yes, Mr. Speaker.

The SPEAKER pro tempore. Are there any further Members who want to speak on the point of order? Apparently not. . . .

The SPEAKER pro tempore. The Chair believes that while House Resolution 144 was intended to permit immediate consideration of House Concurrent Resolution 91, the provisions of clause 2(L)(6), rule XI do technically–under the second sentence of that clause–separately require a 3-day availability of the Budget Committee's report. That part of the rule was not separately waived, and although the 10-day rule was waived effectively, the Chair will sustain the point of order and advise that under that rule the Rules Committee may immediately report out and call up a special order waiving a 3-day rule.

Humphrey-Hawkins Debate

§ 5.4 During the four hours of general debate on economic goals and policies provided for in a concurrent resolution on the budget by section 305(a)(3) of the Congressional Budget Act,[1] the debate must be relevant to the subject of such goals and policies.[2]

On Apr. 23, 1980,[3] during consideration of the concurrent resolution on the budget for fiscal years 1981, 1982, and 1983 (H. Con. Res. 307) in the

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3. Charles Bennett (FL).

1. 2 USC § 636(a)(3).

2. See also Deschler-Brown Precedents Ch. 29 §§ 31.24, 31.38, 39.4, 67.16, 68.69, *supra*.

3. 126 CONG. REC. 8809, 8815, 96th Cong. 2d Sess.

Committee of the Whole, the Chairman responded to parliamentary inquiries relating to the scope of debate on the matter:

Mr. [Robert] GIAIMO [of Connecticut]. Mr. Speaker, pursuant to section 305(a) of Public Law 93–344, the Congressional Budget Act of 1974, and House Resolution 642, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 307) setting forth the congressional budget for the U.S. Government for the fiscal years 1981, 1982, and 1983 and revising the congressional budget for the U.S. Government for the fiscal year 1980.

GENERAL LEAVE

Mr. Speaker, pending that motion, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter during consideration of House Concurrent Resolution 307.

The SPEAKER.(4) Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from Connecticut (Mr. GIAIMO).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution (H. Con. Res. 307) with Mr. BOLLING in the chair.

The Clerk read the title of the concurrent resolution.

The CHAIRMAN.(5) Without objection, the first reading of the concurrent resolution will be dispensed with.

There was no objection.

□ 1350

The CHAIRMAN. Pursuant to section 305(a), title 3, of Public Law 93–344, as amended, of the Congressional Budget Act of 1974, the gentleman from Connecticut (Mr. GIAIMO) will be recognized for 5 hours, and the gentleman from Ohio (Mr. LATTA) will be recognized for 5 hours.

After opening statements by the chairman and ranking minority member of the Committee on the Budget, the Chair will recognize the gentleman from Connecticut (Mr. GIAIMO) and the gentleman from Ohio (Mr. LATTA) for 2 hours each to control debate on economic goals and policies. After these 4 hours of debate have been consumed or yielded back, the Chair will recognize the chairman and ranking minority member of the Committee on the Budget to control the remainder of their 10 hours of debate.

The Chair recognizes the gentleman from Connecticut (Mr. GIAIMO). . . .

The CHAIRMAN pro tempore. The gentleman has consumed 45 minutes. The Chair will now recognize the gentleman from Connecticut (Mr. GIAIMO) and the gentleman from Ohio (Mr. LATTA) for 2 hours each to control debate on economic goals and policies.

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4. Thomas O'Neill (MA).

5. Richard Bolling (MO).

PARLIAMENTARY INQUIRY

Mr. [Robert] BAUMAN [of Maryland]. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BAUMAN. Mr. Chairman, as I understand the statutory requirements, the debate now will be confined to economic policy and goals; is that correct?

The CHAIRMAN pro tempore. That is correct.

Mr. BAUMAN. What if a Member strays from that and starts talking about other things, should other Members make points of order and point out that they are out of order? I mean, I do want to do this under the rule.

The CHAIRMAN pro tempore. The Chair would have to interpret at that time whether they were within the bounds of the rule or not, and the rules relating to relevancy in debate would apply.

The Amendment Process

§ 5.5 A member of the Committee on Rules rose to address the House for one minute regarding certain guidelines that Members should abide by for submitting amendments for the concurrent resolution on the budget.

On Apr. 1, 1987,(1) the following took place:

Mr. [Claude] PEPPER [of Florida]. Mr. Speaker, I rise to explain the Rules Committee position on proposed amendments to the budget resolution.

It is my understanding that the Budget Committee has adopted a budget resolution today. The Committee on Rules expects to consider the budget resolution next Tuesday, April 7. I am informed that the Budget Committee may seek a restrictive rule.

With that possibility in mind, Mr. Speaker, I would like to remind my colleagues of the Rules Committee position on amendments to a budget resolution. In the last few years, the Rules Committee has requested that certain guidelines be followed in order to insure that all amendments receive fair and orderly consideration by the committee and on the floor.

Today, I ask Members wishing to offer amendments to adhere to the following guidelines.

First, the Rules Committee will make in order only broad substitutes, not simple cut-and-bite amendments making small changes in one or two functions. The Rules Committee has followed this practice in the past few years. And it is our intention once again to do so. The debate on a budget resolution should be focused on questions of national priorities and fiscal policy. Only major substitutes allow the House to debate those questions.

Second, submit 35 copies of each substitute to the Rules Committee before 5 p.m. Monday, April 6. I call your attention to the Monday deadline. It is the intention of the committee not to consider any amendment that has been submitted after the Monday deadline. With the press of time and the need to consider the budget resolution before the Easter recess, the committee must expedite consideration. Members may want to keep that deadline in mind when they make their weekend plans.

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1. 133 CONG. REC. 7702, 7703, 100th Cong. 1st Sess.

Finally, please attach an explanatory statement with each substitute. The statement should briefly state the purpose of the substitute and explain any provisions, including reconciliation instructions. Please indicate if any provisions would change House rules, procedures or enforcement of the Budget Act.

Mr. Speaker, I remind Members that the purpose of these guidelines to to provide fair and orderly consideration of the budget resolution in the Rules Committee and on the floor. I have sent out a "Dear Colleague" letter to all Members explaining these guidelines. I appreciate my colleagues' cooperation in this matter.

□ 1720

Mr. [Trent] LOTT [of Mississippi]. Mr. Speaker, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from Mississippi.

Mr. LOTT. Mr. Speaker, the chairman of the Committee on Rules, as I understand it, is not asking for unanimous consent that any binding request or rule be made in order here; is that right?

Mr. PEPPER. The gentleman is correct; this is only advisory.

Mr. LOTT. Mr. Speaker, the gentleman indicated that he thought perhaps the budget resolution would be available tomorrow. Is that correct? Can we count on that?

Mr. PEPPER. My understanding is that it will be available by tomorrow afternoon from the Committee on the Budget.

Mr. LOTT. I think that the Members understand what the distinguished chairman is trying to do. The Committee on Rules likes to be able to see amendments before they make them in order. But I would like to remind the chairman that in order for the members to have amendments, they need to see what it is that they are trying to amend. So I would hope that the Committee on Rules would give us at least that much latitude. If the resolution is not ready until Friday afternoon, it is very hard for Members to have their amendments ready.

With that in mind, we certainly understand what the gentleman is trying to do, but I would like to urge the committee to give us a resolution, so we can properly prepare our amendments.

Mr. PEPPER. I thank my colleague for his additional explanation. We are not trying to foreclose anybody or be overly rigid. We are simply trying to be helpful to the Members in allowing them a fair opportunity to offer major amendments in the nature of substitutes.

Mr. WALKER. Mr. Speaker, will the distinguished chairman yield?

Mr. PEPPER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, do I understand that essentially the Committee on Rules is announcing that we are going to have a closed rule on this bill and that Members will not be able to offer individualized amendments with regard to particular functions of the bill?

Mr. PEPPER. Well, I am not speaking for the Committee on Rules now, because we have not acted on the matter. I am simply giving advice as best I can in the light of our practices of the past for the guidance of the Members in helping us to give fair consideration to the budget resolution.

Mr. WALKER. If the gentleman would yield further, my understanding of the guidelines was that Members were not to bring to the Committee on Rules any individualized amendments. Is that true?

Mr. PEPPER. This budget resolution is probably the major matter that the Congress shall endorse during this session of the Congress, and we wanted to discourage if we could sort of picayunish amendments that did not really go to the policy involved and the essential questions related to this budget process. I do not say that any specific amendment might not be considered by the Committee on Rules, but I am trying to be helpful to the Members in offering general guidelines as to what in general has been our practice in the past in relation to this matter.

§ 5.6 The House has, pursuant to unanimous-consent requests, permitted Members to submit amendments to a concurrent resolution on the budget until a time certain and for such amendments to be printed in the portion of the *Congressional Record* reserved for amendments to reported measures.

On Apr. 3, 1984,(1) during consideration of a concurrent resolution on the budget for fiscal year 1985 and revising the budget resolution for fiscal year 1984 (H. Con. Res. 280), the House agreed to the following unanimous-consent request:

Mr. [Joe] MOAKLEY [of Massachusetts]. Mr. Speaker, I ask unanimous consent that all Members may have until 6 p.m. today to submit amendments to the budget resolution for printing in the RECORD.(2)

The SPEAKER.(3) Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Later that same day,(4) a further unanimous-consent request was agreed to:

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent that amendments to House Concurrent Resolution 280 may be printed in that portion of the RECORD entitled "Amendments submitted under clause 6 of rule XXIII," pursuant to the previous order of the House allowing Members until 6 p.m. today, April 3, 1984, to submit such amendments.

The SPEAKER pro tempore.(5) Is there objection to the request of the gentleman from Massachusetts?

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1. 130 CONG. REC. 7518, 98th Cong. 2d Sess.

2. *Parliamentarian's Note:* Under former Rule XXIII clause 6 (now Rule XVIII clause 8(a)), a Member submitting an amendment to the *Congressional Record* at least one day prior to floor consideration is guaranteed time to debate such amendment, notwithstanding the adoption of motions to close debate on particular portions of the measure under consideration. Thus, the effect of these unanimous-consent requests was to extend the deadline for submitting such amendments and to ensure that such amendments were printed in the portion of the *Congressional Record* necessary to trigger the rule. See *House Rules and Manual* § 987 (2011).

3. Thomas O'Neill (MA).

4. 130 CONG. REC. 7541, 98th Cong. 2d Sess.

5. Daniel Rostenkowski (IL).

There was no objection.

§ 5.7 Prior to consideration of a budget resolution, the chairman of the Committee on the Budget objected to a unanimous-consent request to waive certain House rules and alter the procedures for offering amendments to the resolution.

On May 2, 1978,[1] pending consideration of the concurrent resolution on the budget for fiscal year 1979 (H. Con. Res. 559), the manager objected to a unanimous-consent request to waive certain House rules (as well as Congressional Budget Act procedures), to have the resolution read by section, and to restrict the offering of amendments in the nature of a substitute. Debate under a reservation of the right to object proceeded as follows:

Mr. [Clair] BURGENER [of California]. Mr. Speaker, I ask unanimous consent that notwithstanding any rule of the House of Representatives or provision of title III of the Congressional Budget Act of 1974 to the contrary, when the House in the Committee of the Whole reads House Concurrent Resolution 559 for amendment under the 5-minute rule that said concurrent resolution shall be read by sections.

Mr. Speaker, I ask unanimous consent further that no amendment in the nature of a substitute shall be in order for House Concurrent Resolution 559 in the Committee of the Whole and all amendments to section 1 of said resolution shall be considered and disposed of prior to the consideration of any amendment to section 2 of said resolution.

Section 301(a)(2) of the law requires that the first concurrent resolution on the budget shall set forth—

(2) an estimate of budget outlays and an appropriate level of new budget authority for each major functional category, for contingencies, and for undistributed intragovernmental transactions, *based on allocations of the appropriate level of total budget outlays and of total new budget authority;"* (emphasis added).

I, therefore, submit that our present law was intended to require the House to consider its priorities of spending among the major functional categories based on those determinations of the appropriate level of total budget outlays and new budget authority which the House would have previously determined to be appropriate to suit the immediate fiscal situation. In this manner we would first consider our fiscal policy, then determine the allocation of expenditures among the major functional categories. This is absolutely necessary since the appropriate Federal fiscal policy at a given point in time is completely independent of, and indeed, often completely opposite of, what we as politicians would like to spend on each of several thousand Federal programs.

The SPEAKER pro tempore.[2] Is there objection to the request of the gentleman from California? . . .

Mr. BURGENER. If the gentleman will yield, Mr. Speaker, I appreciate the gentleman's reservation, and I would be very pleased to explain briefly what I am proposing. The gentleman can then decide whether or not to object, based on my explanation. . . .

Mr. [Robert] GIAIMO [of Connecticut]. Mr. Speaker, reserving the right to object, while I understand and sympathize with the concerns of the gentleman, I believe that it would

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1. 124 CONG. REC. 12074, 12075, 95th Cong. 2d Sess.

2. John McFall (CA).

be improper and impractical to consider the budget aggregates before we have had an opportunity to look at the components that make up the budget.

As many of the Members of this body know, budgets are developed by looking at both overall fiscal policy considerations and specific budgetary considerations. When the Budget Committee or OMB prepares budgets, we have in our minds relatively clear ideas of what the size of the budget should be given fiscal policy demands. At the same time we proceed from the bottom up looking at what programs and activities will need to be funded. We always meet somewhere in the middle, tailoring, program demands to conform to fiscal policy needs while maintaining a certain degree of flexibility with respect to the functions of the budget when legitimate program needs justify it.

But if we attempt to set overall budget limits without going into the specific functional categories and taking into account programs and activities which may be funded, we will be proceeding in a factual vacuum. Suppose the gentleman from California proposes to reduce outlays by some figure, say$10 billion. A number of Members might like to support such an aggregate figure. But how are we to know where the cuts are to come? Will they be in defense? Will they be in human resources, urban programs? Or will they be in public works? In short, there is no way for us to know what the implications of such a procedure would be for various programs.

Secondly, setting budget aggregate figures which are different from those proposed by the Budget Committee and without corresponding changes in functional categories would necessitate rewriting the entire budget resolution. For if we do not know the impact of changes in budget aggregates on the functional categories, then we must go through each function and rewrite it in order to reach the desired aggregate result. This means that the House sitting as the Committee of the Whole will also sit as the Budget Committee rewriting from the very beginning the entire Federal budget.

Mr. Speaker, I believe that this procedure is unworkable and unwise. Therefore, I am constrained to object.

Mr. BURGENER. Mr. Speaker, will the gentleman yield so that I may respond briefly?

Mr. GIAIMO. I yield, briefly.

Mr. BURGENER. I am merely asking that we obey the present law, because a careful reading of it says that we will adopt all these categories after the spending outlays have been adopted.

Mr. GIAIMO. Let me say that I think we are obeying present law. It well may be in the future that we will have to refine it in some way, but at present I think the gentleman's proposal would be unworkable.

Therefore, I must object.

The SPEAKER pro tempore. Objection is heard.

"Mathematical Consistency"

§ 5.8 The adoption of a perfecting amendment changing figures in a concurrent resolution on the budget precludes further perfecting amendments changing only those figures, but does not preclude more comprehensive amendments changing not only those figures but also other portions of the resolution that had not been amended, nor does it preclude amendments offered pursuant to section

305(a)(5) of the Congressional Budget Act[1] to achieve "mathematical consistency."

On Apr. 28, 1976,[2] during consideration of the concurrent resolution on the budget for fiscal year 1977 (H. Con. Res. 611) in the Committee of the Whole, the Chairman responded to parliamentary inquiries relating to the effect of the adoption of an amendment on the ability of Members to offer certain further amendments:

Mr. [Omar] BURLESON of Texas. . . .

My inquiry, Mr. Chairman, is this: If the Wright amendment is adopted, does this preclude other changes in the macro figures with respect to other amendments which may affect those figures?

The CHAIRMAN.[3] Will the gentleman from Texas (Mr. BURLESON) advise the Chair as to whether he is saying "macro" or "micro" figures?

Mr. BURLESON of Texas. The macro figures, whatever they are. They are the figures in the resolution, both as to budget authority and outlays.

The Wright amendment, if adopted, would change those figures. If other amendments are subsequently adopted which would likewise change those figures, would it be necessary in the presentation of the amendment to make adjustments in the macro figures?

The CHAIRMAN. If the Chair understands the gentleman from Texas (Mr. BURLESON), the Wright amendment, if adopted, would not prevent further amendments being offered to section I.

Let the Chair be precise. It would prevent some amendment, but the amendments that could still be offered to section I would be amendments that would be more comprehensive, because the Wright amendment only changes some of the figures in section I.

Mr. BURLESON of Texas. Then subsequent amendments which would alter the same figures that are altered by the Wright amendment, if adopted, could also be altered by subsequent amendments; is that correct?

The CHAIRMAN. If they were more comprehensive than the amendment already adopted and amend a portion of the resolution not yet amended; that is correct.[4]

Mr. BURLESON of Texas. Mr. Chairman, I do not understand the Chair's explanation. However, it is rather simple to me.

I wonder whether I might ask the chairman, if, at the end of the consideration of this resolution, whatever amendments may be adopted, including the Wright amendment or any others, which alter the figures that are in the resolution, would it then be in order for the chairman to offer committee amendments adjusting the figures affected by the amendments already adopted?

Mr. [Brock] ADAMS [of Washington]. Mr. Chairman, will the gentleman yield?

Mr. BURLESON of Texas. I yield to the gentleman from Washington.

Mr. ADAMS. Mr. Chairman, if it is necessary, the statute provides that we can go back into the full House and offer a reconciling amendment that makes the resolution mathematically consistent in the first and second sections.

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1. 2 USC § 636(a)(5).

2. 122 CONG. REC. 11599, 94th Cong. 2d Sess.

3. Richard Bolling (MO).

4. For more on the so-called "bigger bite" rule regarding amendments generally, see Deschler's Precedents Ch. 27 §§ 29.9, 31.18, *supra*.

Mr. BURLESON of Texas. And there would not be a point of order against amendments which would make those alterations; is that correct?

Mr. ADAMS. There would not be a point of order against that because they are provided for under the statute.

I should be addressing this to the Chair, but that is my interpretation.

The CHAIRMAN. The colloquy in the nature of parliamentary inquiry is accurate.

§ 5.9 Amendments to budget resolutions to achieve "mathematical consistency," pursuant to section 305(a)(5) of the Congressional Budget Act,[1] have been offered in the House (after rising from the Committee of the Whole) after the previous question has been ordered.

On May 23, 1985,[2] during consideration of the concurrent resolution on the budget for fiscal year 1986 (H. Con. Res. 152) in the Committee of the Whole, proceedings ensued as indicated below:

The CHAIRMAN.[3] Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MOAKLEY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the concurrent resolution (H. Con. Res. 152) revising the congressional budget for the U.S. Government for the fiscal year 1986 and setting forth the congressional budget for the U.S. Government for the fiscal years 1986, 1987, and 1988, pursuant to House Resolution 177, he reported the concurrent resolution back to the House.

The SPEAKER.[4] Under the rule, the previous question is ordered.

The Chair recognizes the gentleman from Pennsylvania [Mr. GRAY].

AMENDMENT OFFERED BY MR. GRAY OF PENNSYLVANIA

Mr. [William] GRAY of Pennsylvania. Mr. Speaker, pursuant to section 305(a)(6) of the Congressional Budget Act of 1974, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. GRAY of Pennsylvania: On page 3, line 17 is amended to read as follows:
>
> "Fiscal Year 1985: $941,650,000,000."

The SPEAKER. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. GRAY].

The amendment was agreed to.

The SPEAKER. The question is on the concurrent resolution, as amended.

§ 5.10 Amendments to budget resolutions to achieve "mathematical consistency," pursuant to section 305(a)(5) of the Congressional

1. 2 USC § 636(a)(5).
2. 131 CONG. REC. 13407, 99th Cong. 1st Sess.
3. Joe Moakley (MA).
4. Thomas O'Neill (MA).

Budget Act, have been offered in the Committee of the Whole prior to the Committee rising and reporting the resolution to the House.[1]

On Apr. 29, 1976,[2] during consideration of the concurrent resolution on the budget for fiscal year 1977 (H. Con. Res. 611) in the Committee of the Whole, proceedings ensued as indicated below:

Mr. [Brock] ADAMS [of Washington]. Mr. Chairman, I offer a perfecting amendment.

The Clerk read as follows:

> Perfecting amendment offered by Mr. ADAMS: Page 2, line 5, strike out the dollar figure and insert in lieu thereof "$52,435,000,000".
>
> Page 2, line 7, strike out the dollar figure and insert in lieu thereof "$713,710,000,000".
>
> Page 2, line 10, strike out the dollar figure and insert in lieu thereof "$67,510,000,000".

The CHAIRMAN[3]. The question is on the perfecting amendment offered by the gentleman from Washington (Mr. ADAMS).

The perfecting amendment was agreed to.

Mr. ADAMS. Mr. Chairman, I move that the Committee do now rise and report the concurrent resolution back to the House with sundry amendments, with the recommendation that the amendments be agreed to and that the concurrent resolution, as amended, be agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. BOLLING, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the concurrent resolution (H. Con. Res. 611) setting forth the congressional budget for the U.S. Government for the fiscal year 1977, and revising the congressional budget for the transition quarter beginning July 1, 1976, had directed him to report the concurrent resolution back to the House with sundry amendments, with the recommendation that the amendments be agreed to, and that the concurrent resolution, as amended, be agreed to.

The SPEAKER.[4] Pursuant to section 305(a) of Public Law 93–344, the previous question is ordered.

The question is on the amendments.

The amendments were agreed to.

The SPEAKER. The question is on the concurrent resolution.

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

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1. *Parliamentarian's Note:* Section 305(a)(5) of the Congressional Budget Act (2 USC § 636(a)(5)) conveys broad authority to offer "at any time prior to final passage" amendments to achieve "mathematical consistency." See also § 5.9, *supra*.
2. 122 CONG. REC. 11916–18, 94th Cong. 2d Sess.
3. Richard Bolling (MO).
4. Carl Albert (OK).

Mr. [Delbert] LATTA [of Ohio]. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 221, nays 155, not voting 56, as follows:

[Roll No. 215] . . .

So the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

Motion to Strike the Resolving Clause

§ 5.11 A concurrent resolution on the budget, being considered in the Committee of the Whole, has been subject to a motion that the Committee rise and report the resolution back to the House with a recommendation that the resolving clause be stricken.(1)

On Mar. 18, 1993,(2) during consideration of the concurrent resolution on the budget for fiscal years 1994–1997 (H. Con. Res. 64) in the Committee of the Whole, a Member made the following preferential motion:(3)

PREFERENTIAL MOTION OFFERED BY MR. BURTON OF INDIANA

The clerk read as follows:

> Mr. BURTON of Indiana moves that the committee do now rise and report the resolution back to the House with the recommendation that resolving clause be stricken.

The CHAIRMAN.(4) The gentleman from Indiana [Mr. BURTON] will be recognized for 5 minutes.

Mr. [Dan] BURTON of Indiana. Mr. Chairman, as I understand it, it is 5 minutes on each side, is that correct?

The CHAIRMAN. The gentleman is correct. . . .

So the preferential motion was rejected.

The result of the vote was announced as above recorded.

Consideration of Conference Reports

§ 5.12 A special order of business resolution reported by the Committee on Rules has "hereby" recommitted a conference report on a concurrent resolution on the budget to an existing conference committee upon adoption of the special order.(1)

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1. See Deschler's Precedents Ch. 19 § 10, *supra*.

2. 139 CONG. REC. 5658, 5660, 103d Cong. 1st Sess.

3. For another example of this motion being made with respect to a concurrent resolution on the budget, see 125 CONG. REC. 10490, 96th Cong. 1st Sess., May 9, 1979.

4. Jose Serrano (NY).

1. *Parliamentarian's Note:* The conference report had been filed in the House with two critical pages inadvertently missing. The Senate had not at this time acted upon the

On May 8, 2001,[2] a member of the Committee on Rules called up the following resolution, which was agreed to by the House:

Mr. [Porter] GOSS [of Florida]. Mr. Speaker, by the direction of the Committee on Rules, I call up House Resolution 134 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 134

Resolved, That upon adoption of this resolution the conference report to accompany the concurrent resolution (H. Con. Res. 83) establishing the congressional budget for the United States Government for fiscal year 2002, revising the congressional budget for the United States Government for fiscal year 2001, and setting forth appropriate budgetary levels for each of fiscal years 2003 through 2011 is hereby recommitted to the committee of conference.

The SPEAKER pro tempore.[3] The gentleman from Florida (Mr. GOSS) is recognized for 1 hour.

Mr. GOSS. . . .

Mr. Speaker, the legislation before us grants us a rule that provides that upon adoption of the rule the conference report to accompany H. Con. Res. 83 shall be recommitted to the conference committee.

Simply put, and in plain English for Members, what we are doing is we are taking care of the necessary procedure to get the budget debate on the floor tomorrow. What is going to happen is we are going to pass this rule, then the matter is going to go to the other body. The Committee on Rules is going to meet a little later in the evening, put out a rule to get the new conference report on the floor tomorrow with an appropriate rule, and the House will go about the business of deliberating and voting on the budget, which we are all anxious to get to after the long opportunity we have had to review it in the past several days.

§ 5.13 A special order of business resolution reported by the Committee on Rules has "deemed" a conference report on the concurrent resolution on the budget to have been recommitted (to the existing conference) upon adoption of the special order, further waived all points of order against consideration and content of any subsequent conference report filed on that measure and precluded other motions as to the disposition of the report unless by further order of the House.

On Oct. 6, 1990,[1] a member of the Committee on Rules called up the following resolution, which was agreed to by the House:

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conference report and thus the conference committee had not yet been disbanded, allowing the House to recommit the conference report.

2. 147 CONG. REC. 7358, 107th Cong. 1st Sess.
3. Mac Thornberry (TX).
1. 136 CONG. REC. 27919, 101st Cong. 2d Sess. See § 20.3, *infra*. See also Deschler-Brown Precedents Ch. 33 §§ 28.3, 31.4, 31.5, *supra*, for additional related proceedings. For

Mr. [Joe] MOAKLEY [of Massachusetts]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 496 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 496

Resolved, That upon adoption of this resolution the conference report on the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, shall be considered as recommitted to conference, notwithstanding the prior action of the House on the conference report.

SEC. 2. All points of order against any subsequent conference report on House Concurrent Resolution 310 and against its consideration are hereby waived. Any such conference report shall be considered as read when called up for consideration. Debate on any conference report shall be limited to not more than 2 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

SEC. 3. No motion with respect to disposition of House Concurrent Resolution 310 shall be in order except pursuant to this resolution or a subsequent order of the House.

SEC. 4. The allocations of spending and credit responsibility to the committees of the House, to be printed in the *Congressional Record* by the chairman of the Committee on the Budget as soon as practicable, shall be considered to be the allocations required to be printed in the joint statement of the managers on House Concurrent Resolution 310 pursuant to section 302(a) of the Congressional Budget Act of 1974.

SEC. 5. Rule XLIX shall not apply with respect to the adoption by the Congress of any conference report on the concurrent resolution (H. Con. Res. 310).

The SPEAKER pro tempore (Mr. MFUME).(2) The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour. . . .

§ 5.14 By unanimous consent, the House agreed to waive the requirement of a two-thirds vote to consider a special order of business resolution from the Committee on Rules (providing for consideration of a conference report on the budget) on the same day it was reported.

On Aug. 1, 1985,(1) the following unanimous-consent request was agreed to by the House:

Mr. [Thomas] FOLEY [of Washington]. Mr. Speaker, I ask unanimous consent that if the Committee on Rules reports a special order providing for the consideration of the conference report and any amendment in disagreement on Senate Concurrent Resolution 32, it shall be in order to consider the same on this legislative day notwithstanding the provisions of clause 4(b) of rule XI.(2)

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recommital of a conference report on reconciliation legislation (achieved by motion rather than special order of business), see Deschler-Brown Precedents Ch. 33 § 32.2, *supra*.

2. Kweisi Mfume (MD).

1. 131 CONG. REC. 22591, 99th Cong. 1st Sess.

2. These provisions are now found in Rule XIII clause 6(a). *House Rules and Manual* § 857 (2011).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

§ 5.15 Where conferees on a concurrent resolution on the budget report in total disagreement, the conference report is not acted upon, and debate on motions to dispose of Senate amendments proceeds under the "hour" rule rather than the special procedures under section 305(a)(6) of the Congressional Budget Act.[1]

On Sept. 16, 1976,[2] the following proceedings occurred in the House:

CONFERENCE REPORT ON SENATE CONCURRENT RESOLUTION 139, SECOND CONCURRENT RESOLUTION ON THE BUDGET, FISCAL YEAR 1977

Mr. [Brock] ADAMS [of Washington]. Mr. Speaker, I call up the conference report on the Senate concurrent resolution (S. Con. Res. 139) revising the congressional budget for the U.S. Government for the fiscal year 1977, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER.[3] The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report and statement, see proceedings of the House of September 11, 1976.)

Mr. ADAMS (during the reading). Mr. Speaker, I ask unanimous consent that the conference report be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER. The Chair lays before the House the Senate amendment to the House amendment, which the Clerk will read.

The Clerk read the Senate amendment to the House amendment, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment, insert:

That the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1976—

(1) the recommended level of Federal revenues is $362,500,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is $15,300,000,000;

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1. *Parliamentarian's Note:* Section 305(a)(6) of the Congressional Budget Act (2 USC § 636(a)(6)) provides for up to five hours of debate on conference reports on budget resolutions. However, when conferees report in total disagreement, the conference report is merely laid before the House and not acted upon. Thus, the procedures of section 305(a)(6) are not applicable to subsequent motions (such as a motion to concur in Senate amendments) and debate proceeds under the normal operation of the "hour" rule. See Deschler-Brown Precedents Ch. 32 § 5, *supra*.
2. 122 CONG. REC. 30890, 94th Cong. 2d Sess.
3. Carl Albert (OK).

(2) the appropriate level of total new budget authority is $451,550,000,000;
(3) the appropriate level of total budget outlays is $413,100,000,000;
(4) the amount of the deficit in the budget which is appropriate in light of economic conditions and all other relevant factors is $50,600,000,000; and
(5) the appropriate level of the public debt is $700,000,000,000. . . .

Mr. ADAMS (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the Senate amendment to the House amendment.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

MOTION OFFERED BY MR. ADAMS

Mr. ADAMS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ADAMS moves to concur in the Senate amendment to the House amendment.

The SPEAKER. The gentleman from Washington (Mr. ADAMS) is recognized for 1 hour in support of his motion.

On May 13, 1976,(4) the following proceedings occurred in the House:

FIRST CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1977

Mr. [Brock] ADAMS [of Washington]. Mr. Speaker, I call up the conference report on the Senate concurrent resolution (S. Con. Res. 109) setting forth the congressional budget for the U.S. Government for the fiscal year 1977—and revising the congressional budget for the transition quarter beginning July 1, 1976—and ask for its immediate consideration.

The SPEAKER.(5) The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report, see proceedings of the House of May 7, 1976.)

The SPEAKER. The Chair lays before the House the Senate amendment to the House amendment, which the Clerk will read.

The Clerk read the Senate amendment to the House amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House insert:

That the Congress hereby determines and declares, pursuant to section 301(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1976— . . .

Mr. ADAMS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ADAMS moves that the House concur in the Senate amendment to the House amendment.

The SPEAKER. The gentleman from Washington (Mr. ADAMS) is recognized for 1 hour.

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4. 122 CONG. REC. 13756, 94th Cong. 2d Sess.

5. Carl Albert (OK).

§ 5.16 A Member raised and later withdrew a point of order under former section 305(d)[1] of the Congressional Budget Act regarding the 7-day deadline for conferees on a concurrent resolution on the budget to report back to their respective Houses.

On Oct. 19, 1979,[2] the following proceedings occurred in the House:

Mr. [John] ASHBROOK [of Ohio]. Mr. Speaker, I rise to make a point of order.

The SPEAKER pro tempore (Mr. WATKINS).[3] The gentleman from Ohio (Mr. ASHBROOK) will state his point of order.

Mr. ASHBROOK. Mr. Speaker, section 305(d) of Public Law 93–344 states as follows, as far as the Committee on the Budget is concerned, it indicates:

> If, at the end of 7 days, excluding Saturdays, Sundays, and legal holidays, after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session—
>
> (1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or
>
> (2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution. * * *.

I would raise the point of order that, according to the calendar of the House of Representatives, on October 5, the second concurrent budget was sent to conference, and even under the most liberal interpretation of the days we have been in session since that point, section 305(d) of Public Law 93–344 has not been followed.

The SPEAKER pro tempore. Under the Budget Act, this is a matter that is under the control of the conferees.

Mr. ASHBROOK. Mr. Speaker, I would make a further point of order that the rule says, "shall submit to their respective Houses * * *."

I would indicate that is not discretionary. That is a requirement which has not been met inasmuch as a conference report has not been brought back to the House either in disagreement or agreement. I would raise that point of order at this point.

Mr. [Leon] PANETTA [of California]. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. Mr. Speaker, I yield to the gentleman from California.

The SPEAKER pro tempore (Mr. WATKINS). The Chair will hear the gentleman from California on the point of order.

Mr. PANETTA. Mr. Speaker, I am a member of that conference. This issue was raised yesterday evening in discussions in the conference. The interpretation of that provision

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1. *Parliamentarian's Note:* Former section 305(d) of the Congressional Budget Act was repealed by the Budget Enforcement Act of 1990 and replaced with a different provision. While ostensibly a requirement on conferees to report within seven days if an agreement had not been reached, former section 305(d) contained no parliamentary enforcement mechanism and consequently there would be no procedural effect were a point of order sustained under that section.
2. 125 CONG. REC. 28914, 28915, 96th Cong. 1st Sess.
3. Wesley Watkins (OK).

was that we felt if in fact the members of the conference were in disagreement that, therefore, a report should be made to the respective Houses indicating that that was the case.

The fact is that that is not the case, that both sides are moving toward an agreement; and it was the feeling that the intent of that section was to insure that if in fact the parties were moving toward an agreement, that this ought to proceed, and we ought not to be cut off with a report back to the House if in fact we are moving toward agreement.

Today, we have extended it. We are going to be back in conference at 11 o'clock. Should it appear that there is no agreement as to the terms, that, indeed, we would come back to our respective Houses; but that was the feeling and the interpretation of that particular section.

Mr. ASHBROOK. Mr. Speaker, I withdraw my point of order until at least Tuesday then.

Voting

§ 5.17 Former Rule XXI clause 5(c),[1] requiring a three-fifths vote to pass certain kinds of tax rate increases, does not apply to resolutions (simple or concurrent), and thus does not apply to concurrent resolutions on the budget.

On May 18, 1995,[2] at the conclusion of debate on the concurrent resolution on the budget for fiscal years 1996 through 2002 (H. Con. Res. 67), the Speaker affirmed, in response to parliamentary inquiries, that Rule XXI clause 5(c) XXI does not apply to concurrent resolutions:

The CHAIRMAN.[3] No further debate is in order. Accordingly, pursuant to House Resolution 149, the Committee rises.

Accordingly, the Committee rose; and the Speaker having assumed the chair, Mr. SENSENBRENNER, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the concurrent resolution (H. Con. Res. 67) setting forth the congressional budget for the U.S. Government for the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002, as amended, he reported the concurrent resolution, as amended, back to the House.

The SPEAKER.[4] Under the rule, the amendment printed in H. Rept. 104–125 is adopted.

Under the rule, the previous question is ordered.

PARLIAMENTARY INQUIRIES

Mr. [Ronald] WYDEN [of Oregon]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. WYDEN. Mr. Speaker, does House rule XXI(c) requiring a three-fifths vote to increase Federal taxes apply to the $17.4 billion tax increase contained in the Republican budget resolution due to the consumer price index cut?

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1. Now Rule XXI clause 5(b). *House Rules and Manual* § 1067 (2011).

2. 141 CONG. REC. 13499, 104th Cong. 1st Sess.

3. Jim Sensenbrenner, Jr. (WI).

4. Newt Gingrich (GA).

The SPEAKER. The Chair appreciates the gentleman's parliamentary inquiry, and the Chair interprets clause 5(c) of rule XXI to apply only to the passage or adoption of a bill, a joint resolution, an amendment thereto, or a conference report thereon. The rule does not apply to the adoption of a concurrent resolution.

Mr. [Michael] WARD [of Kentucky]. Mr. Speaker, I have a further parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. WARD. Mr. Speaker, I am a freshman. On my first day here I voted that a three-fifth vote of this body be required to pass a tax increase.

The SPEAKER. The gentleman is not in order.

Mr. WARD. Is this not a bill, Mr. Speaker?

The SPEAKER. This is not a bill. The gentleman is a freshman. He should study this. It is not a bill.

Mr. WARD. It is not a question of studying, Mr. Speaker. What is the voter to think if we do not call a bill a bill?

The SPEAKER. The question is on the concurrent resolution, as amended.

§ 5.18 A concurrent resolution on the budget has been subject to a demand for a division of the question on adoption, the resolution being composed of grammatically and substantively separable portions.(1)

On Mar. 5, 1992,(2) at the end of consideration of the concurrent resolution on the budget for fiscal years 1993 through 1997 (H. Con. Res. 287), a Member demanded a division of the question in order to obtain a separate vote on section 3 of the resolution:

Mr. [Leon] PANETTA [of California]. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I am surprised to hear—although perhaps I should not be surprised—that the minority may move to divide the question. The gentleman from Ohio [Mr. GRADISON] has not even indicated that to me, but I think it is only in fairness to the Members that we get some indication as to whether or not that would be the case because Members are anxious to get home.

Mr. Chairman, I yield to the gentleman from Ohio for that purpose. Would he advise us as to his intention?

Mr. [Willis David] GRADISON [Jr., of Ohio]. Mr. Chairman, at the appropriate time we will follow the rules. It is our intention to do that on the floor, as we attempted to do it unsuccessfully in the committee.

Mr. PANETTA. Mr. Chairman, reclaiming my time, let me just say to the Members that I think the members of the Committee on the Budget deserve the respect of having a vote on the resolution as we brought it to the floor. If the move is to divide it, then I would ask Members to support both votes.

I will tell the Members I regret that there may be two votes, but that is the minority's decision. I would just ask the Members on our side to please stick with the committee and vote aye on both proposals.

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1. See Deschler-Brown Precedents Ch. 30 § 42.5, *supra*.

2. 138 CONG. REC. 4657, 4658, 102d Cong. 2d Sess.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. MFUME).(3) Under the rule, the Committee rises.

Accordingly the Committee rose, and the Speaker having resumed the chair, Mr. MFUME, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the concurrent resolution (H. Con. Res. 287) setting forth the congressional budget for the U.S. Government for the fiscal years 1993, 1994, 1995, 1996, and 1997, pursuant to House Resolution 386, he reported the concurrent resolution back to the House.

The SPEAKER.(4) Under the rule, the previous question is ordered.

Mr. GRADISON. Mr. Speaker, I demand a division of the question on the resolution and specifically ask for a separate vote on section 3. Pending the determination of the Chair as to the resolution's divisibility, I would like to be heard on that question.

The SPEAKER. The gentleman may not debate a demand which has not been subject to a point of order.

Section 3 is subject to a division of the question, and a separate vote will be held on that portion of the concurrent resolution.

PARLIAMENTARY INQUIRIES

Mr. [Richard] GEPHARDT [of Missouri]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. GEPHARDT. Mr. Speaker, I would simply ask the Chair to clarify this decision and the fact that there will be a separate vote on both parts of this budget.

□ 1850

The SPEAKER. The demand has been made that there be a division of the question and a separate vote on section 3. The Chair has ruled and is prepared to put the question in a divided form, the two parts of the vote to occur immediately without further intervening debate, so that what would normally have been accomplished in a single vote on the adoption of the resolution will now require two votes.

Mr. GEPHARDT. I thank the Chair.

The SPEAKER. This vote will be on sections 1, 2, and 4. The second vote will be on section 3.

Mr. [Gerald] SOLOMON [of New York]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. SOLOMON. With respect to the Chair's statement, we just could not hear on this side of the aisle. Let me just state it as I understood it.

My parliamentary inquiry is that the Chair has held that the question is divisible and, therefore, the first vote would occur on sections 1, 2, and 4, the so-called plan A no firewalls budget, and Members then would have a separate vote on which to express themselves as to whether or not they want a budget without firewalls. I am just asking for clarification because I thought that is what the Chair said.

The SPEAKER. The gentleman is going beyond a parliamentary inquiry. The Chair has ruled that the demand for a division of the question is in order, and the Chair will put the question separately.

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3. Kweisi Mfume (MD).

4. Thomas Foley (WA).

Mr. PANETTA. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. PANETTA. Mr. Speaker, is it not true that if both passed, the resolution would unify both so that the decision ultimately as to what path would be taken will be voted on next week?

The SPEAKER. The gentleman is correct.

The question is on sections 1, 2, and 4 of House Concurrent Resolution 287.

Without objection the yeas and nays are ordered.[5]

There was no objection.

The vote was taken by electronic device, and there were—yeas 215, nays 201, not voting 19, as follows:

[Roll No. 41] . . .

Mr. HUCKABY changed his vote from "yea" to "nay."

So sections 1, 2, and 4 of House Concurrent Resolution 287 were agreed to.

The SPEAKER. The question is on section 3 of House Concurrent Resolution 287.

Without objection, the yeas and nays are ordered.

There was no objection.

The vote was taken by electronic device, and there were—yeas 224, nays 191, not voting 20, as follows:

[Roll No. 42] . . .

So section 3 of House Concurrent Resolution 287 was agreed to.

The result of the vote was announced as above recorded.

Similarly, on May 7, 1980,[6] at the end of consideration of the concurrent resolution on the budget for fiscal years 1981, 1982, and 1983 and revising the budget resolution for fiscal year 1980 (H. Con. Res. 307), a Member demanded a division of the question in order to obtain a separate vote on the revision to the budget resolution for fiscal year 1980:

Mr. [Robert] GIAIMO [of Connecticut]. I would remind my colleagues that our first vote here last week was on the Giaimo amendment, which revised the 1980 budget, We voted for it overwhelmingly. I would urge my colleagues to vote the way they voted on the Giaimo amendment last week.

Mr. Chairman, I move that the Committee do now rise and report the concurrent resolution back to the House with an amendment, with the recommendation that the amendment be agreed to and that the concurrent resolution, as amended, be agreed to.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker having resumed the Chair, Mr. BOLLING, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the concurrent resolution (H. Con. Res. 307) setting forth the congressional budget for the U.S. Government for

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5. For a discussion of the Chair's failure in this instance to put the question to a voice vote, see Deschler-Brown Precedents Ch. 30 § 7.1, *supra*.

6. 126 CONG. REC. 10185–87, 96th Cong. 2d Sess.

the fiscal years 1981, 1982, and 1983 and revising the congressional budget for the U.S. Government for the fiscal year 1980, had directed him to report the concurrent resolution back to the House with an amendment, with the recommendation that the amendment be agreed to and that the concurrent resolution, as amended, be agreed to.

The SPEAKER.(7) Under the statute, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

PARLIAMENTARY INQUIRY

Mr. [Robert] MICHEL [of Illinois]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. MICHEL. Mr. Speaker, has the Speaker put the question on final passage?

The SPEAKER. Not yet.

The question is on the concurrent resolution.

Mr. MICHEL. Mr. Speaker, I demand a division of the question. Specifically I ask that a separate vote be taken on section 6, the so-called third budget resolution for fiscal year 1980.

The SPEAKER. The first question is on agreeing to sections 1 through 5 and section 7 of House Concurrent Resolution 307.

PARLIAMENTARY INQUIRY

Mr. MICHEL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. MICHEL. Mr. Speaker, in dividing the question, is it not correct that the first vote is on the 1981 budget resolution and the second vote is on the 1980 budget resolution?

The SPEAKER. The gentleman is correct. We are voting on the 1981 resolution.

The question is on agreeing to sections 1 through 5 and section 7 of the concurrent resolution.

Mr. [Delbert] LATTA [of Ohio]. 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 225, nays 193, not voting 14, as follows:

[Roll No. 219] . . .

So sections 1 through 5 and section 7 of the concurrent resolution were agreed to.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on agreeing to section 6 of the concurrent resolution.

Mr. LATTA. 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 241, nays 174, answered present 1, not voting 16, as follows:

[Roll No. 220] . . .

So section 6 of the concurrent resolution was agreed to.

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7. Thomas O'Neill (MA).

The result of the vote was announced as above recorded.

Section 309

§ 5.19 The House has, pursuant to a special order of business resolution reported by the Committee on Rules, waived the application of section 309 of the Congressional Budget Act[1] to any adjournment resolution providing for the "July 4th" recess.[2]

On June 27, 1996,[3] the House adopted the following special order of business resolution:

Mr. [Lincoln] DIAZ-BALART [of Florida]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 465 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 465

Resolved, That upon the adoption of this resolution it shall be in order, any rule of the House to the contrary notwithstanding, to consider in the House a concurrent resolution providing for adjournment of the House and Senate for the Independence Day district work period.

The SPEAKER pro tempore (Mr. LAHOOD).[4] The gentleman from Florida [Mr. DIAZ-BALART] is recognized for 1 hour.

Mr. DIAZ-BALART. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, House Resolution 465 provides for the consideration in the House of a concurrent resolution providing for the adjournment of the House and Senate for the Independence Day district work period. All points of order are waived against the resolution and its consideration.

Because of the many open rules that have been granted by this Congress' Rules Committee—60 percent have been open or modified open—which have led to many vigorous but lengthy debates and amending processes on the floor, the House has not yet been able to complete action on all of the appropriation bills and reconciliation legislation. Therefore, while adjournment resolutions are usually privileged, a rule is needed to waive the point of order that could be raised against the Fourth of July district work period resolution on the grounds that it violates sections 309 and 310(f) of the Budget Act. These sections prohibit the House of Representatives from adjourning for more than 3 days in July unless the House has completed action on all appropriation bills and any required reconciliation legislation.

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1. 2 USC § 640.
2. For similar special orders, see, *e.g.*, 152 CONG. REC. 16013, 110th Cong. 2d Sess., July 26, 2006 (H. Con. Res. 454); and 148 CONG. REC. 15138, 15319, 107th Cong. 2d Sess., July 26, 2002 (S. Con. Res. 132).
3. 142 CONG. REC. 15906, 104th Cong. 2d Sess.
4. Ray LaHood (IL).

§ 5.20 The House has, by unanimous-consent, made in order consideration of a resolution providing for an adjournment of more than three days during the month of July, notwithstanding the prohibition contained in section 309 of the Congressional Budget Act.[1]

On June 19, 1986,[2] during debate on a special order of business (H. Res. 479), the Majority Leader, James C. Wright, Jr., of Texas, was yielded to for the purposes of offering the following unanimous-consent request to waive portions of the Congressional Budget Act that would have prevented consideration of certain adjournment resolutions:

Mr. [Butler] DERRICK [Jr., of South Carolina]. Mr. Speaker, for the purpose of a unanimous-consent request, I yield such time as he may consume to the distinguished majority leader, the gentleman from Texas [Mr. WRIGHT].

MAKING IN ORDER CONSIDERATION OF ANY RESOLUTION PROVIDING FOR A CERTAIN ADJOURNMENT

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that it be in order to consider any resolution providing for an adjournment period of more than 3 calendar days during the month of July, notwithstanding any provision of Public Law 99–177.

The SPEAKER pro tempore.[3] Is there objection to the request of the gentleman from Texas?

There was no objection.

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1. 2 USC § 640. See, *e.g.*, 147 CONG. REC. 12150, 107th Cong. 1st Sess., June 27, 2001 (H. Con. Res. 176); and Deschler-Brown-Johnson Precedents Ch. 40 § 11.1, *supra*. For additional examples of unanimous-consent requests to consider similar adjournment resolutions notwithstanding the requirements of section 309 of the Congressional Budget Act, see, *e.g.*, 146 CONG. REC. 16620, 16621, 106th Cong. 2d Sess., July 27, 2000; and Deschler-Brown-Johnson Precedents Ch. 40 §§ 11.2, 16.1, *supra*.
2. 132 CONG. REC. 14644, 99th Cong. 2d Sess.
3. Thomas Carper (DE).

C. The Appropriations Process and the Role of Committees

§ 6. Relationship to the Appropriations Process

As discussed earlier,[1] the annual budget resolution is not a spending measure but represents instead a plan to guide the consideration of spending bills through Congress. The funding of government operations is still accomplished by the regular, annual appropriations process (as discussed in chapters 22–26), as well as funding that is accomplished via "direct" or "mandatory" spending.[2] The budget resolution puts restrictions on the appropriations process by setting pre-determined boundaries (committee allocations, spending ceilings, etc.)[3] and by providing enforcement mechanisms to limit the ability of Congress to exceed those boundaries.

Even before the advent of the Congressional Budget Act in 1974, the Committee on Appropriations[4] was given special responsibilities related to the budget submission by the President. Pursuant to Rule X clause 4(a),[5] originally adopted in 1971, the Committee on Appropriations is charged with holding hearings on "the Budget as a whole," including the President's budgetary policies and the economic assumptions that underlie the estimates reflecting those policies. Clause 4(a)(1)(B) mandates that certain testimony be taken by the committee, specifically from the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Chair of the Council of Economic Advisers.

Additional duties on the Committee on Appropriations have been included in the rules of the House to correspond with requirements contained in the Congressional Budget Act. For example, Rule X clause 4(a)(3)[6] requires the Committee on Appropriations to study "on a continuing basis" provisions of law that provide spending authority or permanent budget authority, and to recommend changes to those authorities from time to time. That clause mirrors the original language of section 402(f) of the Congressional Budget Act, which has since been repealed.[7]

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1. See §§ 1, 4, 5, *supra*.

2. See § 1, *supra*.

3. See §§ 10, 11, *infra*.

4. For an earlier overview of the history, composition, jurisdiction, and specific responsibilities of the Committee on Appropriations, see Deschler's Precedents Ch. 17 § 31, *supra*.

5. *House Rules and Manual* § 745 (2011).

6. *Id.* at § 747.

7. See § 1, *supra*, and § 14, *infra*.

Likewise, two other subsections of Rule X clause 4(a) duplicate specific procedural requirements of the Congressional Budget Act. Clause 4(a)(2)[8] contains the same authority found in section 401(b)(2) of the Congressional Budget Act, which permits a referral to the Committee on Appropriations of bills or joint resolutions the enactment of which would cause a committee's section 302(a) allocation to be exceeded.[9] Similarly, clause 4(a)(4)[10] contains the same requirement that is found in section 302(b) of the Congressional Budget Act for the Committee on Appropriations to subdivide its section 302(a) allocation among the subcommittees of that committee.

Other parts of the Congressional Budget Act place additional requirements on the Committee on Appropriations that are not reflected by corresponding language in the House rules. One such section is section 307 of the Congressional Budget Act.[11] In its original form, section 307 required (to the extent practicable) the Committee on Appropriations to complete action on all annual appropriation bills before reporting any of them to the House, and to provide a summary report comparing the amounts in such bills with the appropriate levels in the most recent concurrent resolution on the budget.[12] In one instance, the Committee filed all annual appropriation bills on the same day to comply with this requirement.[13] After the Gramm-Rudman-Hollings reforms of 1985, however, this requirement was replaced with an overall target of June 10 of each year for the Committee on Appropriations to report all of the annual appropriation bills to the House.[14]

Finally, section 309 of the Congressional Budget Act[15] provides another incentive for the House to complete action on appropriation bills. Pursuant to section 309, it is not in order to consider any resolution providing for an adjournment of more than three days during the month of July if any of the annual appropriation bills have not yet passed the House. This effectively sets a June 30 deadline for the House to complete its consideration of the annual appropriation bills reported from the Committee on Appropriations. However, in practice, the House has frequently not been able to meet this deadline, and has therefore waived this requirement either by unanimous consent or by adopting a special order of business resolution from the Committee on Rules.[16]

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8. *House Rules and Manual* § 747 (2011).
9. 2 USC § 633.
10. *House Rules and Manual* § 747 (2011).
11. 2 USC § 638.
12. *Id.*
13. 122 Cong. Rec. 16861, 94th Cong. 2d Sess., June 8, 1976.
14. 2 USC § 638.
15. 2 USC § 640.
16. See §§ 5.19, 5.20, *supra*.

§ 7. Role of Committees

The Committees on the Budget for both the House and the Senate were created by section 101 of the Congressional Budget Act of 1974.[1] In the House prior to this time, the Committee on Government Operations had jurisdiction over "budget and accounting measures," but no single committee had jurisdiction over the budget process generally.[2]

Membership on the Committee on the Budget was initially set at 23 members, but was increased to 25 in the 94th Congress.[3] Membership was increased again to 30 in the 97th Congress,[4] and to 31 in the 98th Congress.[5] In the 99th Congress, the numerical limitation on membership was eliminated.[6]

Rule X clause 5(a)(2)[7] lays out the composition and term-limit requirements for the Committee on the Budget. Originally,[8] the House required that all members of the Committee on the Budget be members of other standing committees, with five required to come from the Committee on Appropriations, five required to come from the Committee on Ways and Means, and two others chosen by their respective party leaderships. As noted above, membership of the committee has gradually increased over the years, but the requirements of other standing committee affiliation have not changed. The one exception is a change made at the beginning of the 108th Congress, which required that one member of the Committee on the Budget also be a member of the Committee on Rules.[9]

Membership on the Committee on the Budget is subject to term limits, both for the chairman and ranking minority member, as well as rank-and-file members. Originally, no Member could serve on the Committee on the Budget for more than two Congresses out of any five successive Congresses,[10] but this restriction was changed to three Congresses (out of five)

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1. Pub. L. No 93–344, title I. For an earlier overview of the history, composition, jurisdiction, and specific responsibilities of the Committee on the Budget, see Deschler's Precedents Ch. 17 § 34, *supra*. However, some of that material has been overtaken by subsequent changes to the budget laws and House rules.

2. *House Rules and Manual* § 691 (1973).

3. 121 CONG. REC. 20, 94th Cong. 1st Sess., Jan. 14, 1975 (H. Res. 5).

4. 127 CONG. REC. 98–113, 97th Cong. 1st Sess., Jan. 5, 1981 (H. Res. 5).

5. 129 CONG. REC. 1791, 1792, 98th Cong. 1st Sess., Feb. 7, 1983 (unanimous-consent request).

6. 131 CONG. REC. 353, 99th Cong. 1st Sess., Jan. 3, 1985 (H. Res. 7).

7. *House Rules and Manual* § 758 (2011).

8. Former Rule X clause 1(e), *House Rules and Manual* § 674(a) (1975).

9. 149 CONG. REC. 7, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5).

10. *House Rules and Manual* § 674(b) (1975).

in the 96th Congress.[11] In the 104th Congress, the rule was changed to its present form, which prohibits a Member from serving on the committee for more than four Congresses in any period of six successive Congresses (with an exception allowing a Member to exceed such limitation by being elected to a second consecutive term as chairman or ranking minority member of such committee).[12] However, these restrictions do not apply to the Members designated by their respective party leaderships.[13] The Committee on the Budget is now subject to the same tenure limitations of its chair as other committees—a member may serve as chairman for no more than three successive Congresses—pursuant to Rule X clause 5(c)(2).[14]

The Congressional Budget Act, which created the House Committee on the Budget, also specified certain duties of that committee, which were subsequently incorporated into the standing rules of the House. Rule X clause 3(c),[15] laying out the special oversight functions of various committees, requires the Committee on the Budget to study on a continuing basis the effect of budget outlays on existing and proposed legislation and to report its findings to the House on a recurring basis. Rule X clause 4(b),[16] requires the committee to: (1) review the conduct of the Congressional Budget Office; (2) hold hearings to develop the concurrent resolution on the budget; (3) make all reports required by the Congressional Budget Act; (4) study provisions of law that exclude certain Federal agencies or outlays from inclusion in the budget; (5) study proposals to improve the congressional budget process; and (6) evaluate studies of tax expenditures.

Pursuant to Rule X clause 4(f),[17] all House committees are given certain responsibilities with respect to the concurrent resolution on the budget. As noted in Section 2, each standing committee must submit to the Committee on the Budget its views and estimates with respect to all matters set forth in the congressional budget resolution, as well as estimates of new budget authority and outlays authorized in legislation within the jurisdiction of each committee intended to become effective in that fiscal year. Such views and estimates must be submitted no later than six weeks after the submission of the President's budget.[18] The Committee on Ways and Means is further required to include views and estimates regarding the appropriate level

11. 125 CONG. REC. 8, 96th Cong. 1st Sess., Jan. 15, 1979 (H. Res. 5).

12. See 141 CONG. REC. 464, 104th Cong. 1st Sess., Jan. 4, 1995 (H. Res. 6).

13. Rule X clause 5(a)(2)(B), *House Rules and Manual* § 758 (2011).

14. *Id.* at § 761 (2011).

15. *Id.* at § 744 (2011).

16. *Id.* at § 748 (2011).

17. *Id.* at § 756 (2011).

18. For an exchange of letters between a Member and the Parliamentarian regarding proper committee procedure in submitting views and estimates to the Committee on the Budget, see 137 CONG. REC. 7778, 7779, 102d Cong. 1st Sess., Apr. 10, 1991.

of the public debt. The Committee on the Budget accepts these submissions from the other standing committees of the House and uses them in formulating the concurrent resolution on the budget. An additional requirement for the Committee on the Budget to consult with the legislative committees in preparing the concurrent resolution on the budget is found in section 301(h) of the Congressional Budget Act.[19]

The Congressional Budget Act requires the Committee on the Budget to provide estimates as to the budgetary effect of legislation in various contexts. Section 312(a) is the primary source for this authority, mandating that levels of new budget authority, outlays, direct spending, new entitlement authority and revenues are to be determined on the basis of estimates provided by the Committee on the Budget for purposes of titles III and IV of the Budget Act.[20] Pursuant to section 310(d)(4), budgetary levels for reconciliation enforcement are also to be provided by the Committee on the Budget.[21] Finally, section 308(b)(2) mandates that the Committee on the Budget provide Members of the House with periodic "status reports" as to the current state of congressional actions providing new budget authority and comparisons with levels set forth in the most recent concurrent resolution on the budget.[22] The Committee on the Budget is required to use Congressional Budget Office estimates in formulating such reports.[23]

Pursuant to Rule XXIX clause 4,[24] authoritative guidance from the Committee on the Budget regarding the budgetary impact of a legislative proposition may be provided by the chairman of that committee. This rule, adopted at the beginning of the 112th Congress, codified existing practice for obtaining timely guidance as to budgetary matters from the Committee on the Budget.

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19. 2 USC § 632(h).

20. 2 USC § 643(a). A similar authority, applicable only to section 311 points of order, was initially found in former section 311(b), prior to the reforms of Gramm-Rudman-Hollings in 1985. It was then moved to section 311(c) before being subsumed into current section 312(a) by the Budget Enforcement Act of 1997. Likewise, the Committee on the Budget was required under former section 302(g) to provide estimates of budgetary levels for purposes of section 302 enforcement, but this specific requirement was collapsed into the broader authority currently found in section 312(a) by the Budget Enforcement Act of 1997.

21. 2 USC § 641(d)(4).

22. 2 USC § 639(b)(2). For an example of such a status report, see 146 CONG. REC. 12634, 12635, 106th Cong. 2d Sess., June 27, 2000. Such status reports have been "revised" by supplemental submission, see, *e.g.,* 152 CONG. REC. 3522, 109th Cong. 2d Sess., Mar. 14, 2006.

23. *House Rules and Manual* § 1127 (2011).

24. *House Rules and Manual* § 1105d (2011).

Additional duties required of the Committee on the Budget are found in section 301 of the Congressional Budget Act, which describes how the concurrent resolution on the budget is to be prepared.[25] Section 301(e)(1)[26] requires the Committee on the Budget to hold hearings and receive testimony from various entities in developing the budget. Section 301(e)(2) lays out the requirements for the report to accompany the concurrent resolution on the budget, while section 301(e)(3) describes the optional components of such report.[27]

As originally conceived, the jurisdiction of the Committee on the Budget was quite limited, encompassing only concurrent resolutions on the budget and other matters requiring referral to that committee under the Congressional Budget Act.[28] Over time, that jurisdiction has been expanded to include additional matters. In the 99th Congress, the committee was given jurisdiction over Senate joint or concurrent resolutions constituting responses to Presidential sequestration orders.[29] In the 104th Congress, the committee was given jurisdiction over: (1) other measures setting forth budgetary levels for the United States Government; (2) the congressional budget process generally; and (3) special controls over the Federal budget (including the budgetary treatment of off-budget entities).[30] In the 105th Congress, the committee's jurisdiction over the congressional budget process was expanded to include the Federal budget process generally.[31] With regard to the special treatment of off-budget entities and the executive branch budget process, jurisdiction over these matters was transferred from the Committee on Oversight and Government Reform (and its predecessor committees) to the Committee on the Budget.[32] The Committee on Oversight and Government Reform has retained jurisdiction over "overall economy, efficiency, and management of government operations and activities," and "government management and accounting measures generally," but it no longer has the same role with respect to budgetary matters specifically.

As noted throughout this chapter, budget processes have been incorporated into the standing rules of the House and certain sections of the Congressional Budget Act constitute rulemaking in the House. The Committee

25. 2 USC § 632.

26. *Id.* at (e)(1).

27. *Id.* at (e)(2), (e)(3).

28. *House Rules and Manual* § 674(c) (1975).

29. *House Rules and Manual* § 674(b) (1987). See Pub. L. No. 99–177, sec. 232(h). See § 26, *infra*.

30. *Id.* at § 673b (1995).

31. *Id.* at § 673b (1997).

32. For a list of rereferrals reflecting the migration of these jurisdictional matters to the Committee on the Budget, see *House Rules and Manual* § 719 (2011).

on Rules has jurisdiction over the rules and the order of business in the House, pursuant to Rule X clause 1(o).[33] Thus, there are many areas in which the Committee on the Budget's jurisdiction over budget-related matters overlap with the Committee on Rules' jurisdiction over the rules of the House.[34] As a result, budget resolutions have been sequentially referred to the Committee on Rules.[35] Additionally, section 301(c) of the Congressional Budget Act specifies that any concurrent resolution on the budget that would have the effect of changing any rule of the House shall be referred to the Committee on Rules with instructions to report such resolution back to the House within five calendar days.[36]

The Congressional Budget Act also provides for a point of order against consideration of any bill, resolution, amendment, motion or conference report that contains subject matter within the jurisdiction of the Committee on the Budget, but which has not been reported (or discharged) from that committee.[37]

While many points of order under the Congressional Budget Act apply to measures only as reported from committee (leaving unreported measures uncovered), Rule XXI clause 8 of the standing rules of the House (first adopted in the 110th Congress),[38] separately applies all points of order under title III of the Budget Act to unreported as well as reported measures.

Traditionally, the President's budget submission is referred to the Committee on Appropriations, and not to the Committee on the Budget.[39]

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33. *House Rules and Manual* § 733 (2011). See Deschler's Precedents Ch. 17 §§ 52, 53, *supra*. The Committee on the Budget's jurisdictional statement can be found in Rule X, clause 1(d), *House Rules and Manual* § 719 (2011).

34. The chairman of the Committee on the Budget inserted into the *Congressional Record* a memorandum of understanding between this committee and the Committee on Rules to clarify each committee's jurisdiction over the congressional budget process. See 141 CONG. REC. 617, 618, 104th Cong. 1st Sess., Jan. 4, 1995.

35. See, *e.g.*, 130 CONG. REC. 7315, 98th Cong. 2d Sess., Apr. 2, 1984; and 129 CONG. REC. 6321, 98th Cong. 1st Sess., Mar. 21, 1983.

36. 2 USC § 632(c). Former section 402(b) of the Congressional Budget Act, repealed by Gramm-Rudman-Hollings, provided specific authority to the Committee on Rules to recommend emergency waivers of former section 402(a). For more on former section 402(a), see § 14, *infra*.

37. Section 306 of the Congressional Budget Act, 2 USC § 637. For additional information on section 306 points of order, see § 16, *infra*.

38. *House Rules and Manual* § 1068c (2011).

39. See, *e.g.*, 149 CONG. REC. 2301, 2302, 108th Cong. 1st Sess., Feb. 4, 2003. For an example of the House dividing a presidential message and referring the portion on the budget to the Committee on Appropriations, see Deschler's Precedents Ch. 17 § 27.4 and Deschler-Brown-Johnson Precedents Ch. 35 § 3.6, *supra*. For more on presidential budget submissions, see § 3, *supra*.

Section 308

Section 308 of the Congressional Budget Act[(1)] requires that certain budgetary information be included in House (and Senate) committee reports. Whenever a committee reports a bill or joint resolution[(2)] providing new budget authority (other than continuing appropriations) or providing an increase or decrease in revenues or tax expenditures, the report accompanying such bill or joint resolution must include a statement (prepared after consultation with the Congressional Budget Office)[(3)] that includes the following items: (1) a comparison of the budgetary levels in such measure with the appropriate allocation under section 302; (2) a projection by the Congressional Budget Office of how such measure will affect the relevant budgetary levels for the current fiscal year and the four ensuing fiscal years; and (3) an estimate by the Congressional Budget Office of the new level of budget authority for assistance to state and local governments provided by such measure. Section 308(a)(2) applies these requirements to conference reports as well.

These requirements have been incorporated into the standing rules of the House, and are currently found in Rule XIII clause 3(c)(2).[(4)] Clause 3(c)(2) provides that all committee reports include the required elements of section 308(a) of the Congressional Budget Act, "except that an estimate of new budget authority shall include, when practicable, a comparison of the total estimated funding level of the relevant programs to the appropriate levels under current law."[(5)] Committees have been given leave to file supplemental reports to correct substantive omissions such as the requirements of section 308(a).[(6)]

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1. 2 USC § 639.

2. *Parliamentarian's Note:* Prior to the revisions occasioned by the Budget Enforcement Act of 1997, section 308 was applicable to any "bill or resolution," ostensibly covering simple resolutions of the House (such as special orders of business). For an example of proceedings involving a "self-executed" amendment via a special order of business prior to this revision, see § 7.2, *infra*. A similar issue has arisen with regard to section 306, which also uses the term "resolution." Beginning with the 107th Congress (and continuing in each subsequent Congress), the House has adopted as a separate order, contained in the opening-day resolution adopting the rules of the House, a provision interpreting the term "resolution" in section 306 to refer to a "joint resolution" only. See, *e.g.*, 147 CONG. REC. 26, 107th Cong., 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)(1)).

3. Section 402 (formerly section 403) of the Congressional Budget Act (2 USC § 653) requires the Congressional Budget Office to provide budgetary analysis of certain reported measures and further requires the inclusion of such analysis in the report accompanying such measure if timely submitted to the committee.

4. *House Rules and Manual* § 840 (2011).

5. *Id.*

6. See, *e.g.*, 154 CONG. REC. 14596, 110th Cong. 2d Sess., July 10, 2008; and 156 CONG. REC. H3840 [Daily Ed.], 111th Cong. 2d Sess., May 26, 2010.

§ 7.1 A committee cost estimate identifying new spending authority in the form of annual salaries for new United States Senators complies with the requirements of section 308 of the Congressional Budget Act[(1)] for a committee reporting new spending authority where such cost estimate states the levels of new spending authority provided by the bill for that fiscal year and the next four fiscal years by incorporating by reference a complete Congressional Budget Office estimate in a previous committee report on a similar bill.

On Nov. 20, 1993,[(2)] the following proceedings took place:

NEW COLUMBIA ADMISSION ACT

The SPEAKER pro tempore.[(3)] Pursuant to House Resolution 316 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 51.

For what purpose does the gentleman from New York [Mr. SOLOMON] rise?

POINT OF ORDER

Mr. [Gerald] SOLOMON [of New York]. Mr. Speaker, at this point I would make a point of order against the consideration of H.R. 51 on the grounds that it is in violation of House rule XIII, clause 7, as well as section 308(a) of the Budget Act, and I ask to be heard on my point of order.

The SPEAKER pro tempore. The gentleman may state his point of order.

Mr. SOLOMON. Mr. Speaker, House Rule XIII, clause 7(a) requires that the committee report to accompany any bill and I quote—

> Shall contain an estimate made by such committee of the costs which would be incurred in carrying out such bill or joint resolution in the fiscal year in which it is reported and in each of the 5 fiscal years following such fiscal year

And clause 7(b) of that rule says, and I quote,

> It shall not be in order to consider any such bill or joint resolution in the House if the report of the committee which reported that bill or joint resolution does not comply with paragraph (a) of this clause.

Mr. Speaker, the report to accompany H.R. 51, House Report 103–371, at page 22, notes that a CBO cost estimate, and I quote, "was not received by the Committee from the Director of the Congressional Office prior to the filing of this report."

The report goes on to state that, "pursuant to clause 7 of rule XIII, the Committee notes that the provisions of H.R. 51 impacting on revenues and expenditures do not differ markedly from those of H.R. 4718 in the 102nd Congress."

And the report goes on to incorporate that 1992 cost estimate as the committee cost estimate at pages 22 through page 26.

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1. 2 USC § 639.

2. 139 CONG. REC. 31354, 31355, 103d Cong. 1st Sess.

3. Cleo Fields (LA).

However, Mr. Speaker, this does not satisfy the requirements of clause 7(a) of rule XIII since the CBO cost estimate does not contain the required cost of the bill for the fiscal year in which it has been reported—fiscal year 1994—and in each of the 5 fiscal years following such fiscal year . . . .

For the report to be in compliance with the requirements of clause 7(a) of rule XIII, there must be a clearly delineated breakdown of the estimated costs for each of the fiscal years 1994 through 1999.

Nowhere in this report is there such a breakdown.

Mr. Speaker, since the rule providing for the consideration of the bill does not waive points of order anywhere in this rule, in its consideration, this point of order is in order pursuant to clause 7(b) of rule XIII; and, Mr. Speaker, I also make a point of order that the report violates section 308(a), as I mentioned earlier, of the Budget Act, which requires certain cost estimates, including section 402 to be direct spending costs. The CBO report, at page 26, only contains the PAYGO estimates through fiscal year 1995. But this year we extended the requirements of PAYGO through fiscal year 2002.

I therefore urge that my point of order be sustained, Mr. Speaker.

□ 1710

The SPEAKER pro tempore. Does the gentleman from California wish to be heard on the point of order?

Mr. [Pete] STARK [of California]. Mr. Speaker, I rise in opposition to the point of order.

A review of the full text of the CBO estimate on page 22 to 26 of House Report 103–371 clearly indicates that it covers the five years required by the rule, and much beyond.

For example, on page 22, the cost to the Federal Government of administering the federal enclave is $40 million annually; that is an indefinite period extending beyond the five years of the rule.

Similarly, Mr. Speaker, other estimates are recurring, as follows:

Congressional representation is $3 million a year, page 23.

Justice services, $45 million a year.

Finally, Mr. Speaker, if you look at the chart on page 26 of the report, you will note that the net cost to the government for every year is zero—costs are offset by savings.

Thus, the committee report complies fully with the rule.

Mr. SOLOMON. Mr. Speaker, the gentleman clearly has not disputed the fact that the cost estimates are not accurate; but nevertheless, I would stand by the ruling of the Chair.

The SPEAKER pro tempore (Mr. FIELDS of Louisiana). The Chair is prepared to rule.

Clause 7 of rule XIII requires that the report of the Committee on the District of Columbia on H.R. 51 contain the committee's estimate of the costs which would be incurred in carrying out the bill in the fiscal year in which it is reported and in each of the 5 ensuing fiscal years.

On page 22 of House Report 103–371, the Committee on the District of Columbia notes, pursuant to clause 7 of rule XIII, that the provisions of the bill affecting revenues and expenditures are similar to those in an earlier bill, and includes the full text of the Congressional Budget Office cost estimated, dated April 30, 1992, on that earlier form of the bill.

The CBO cost estimate estimates costs and savings as recurring annually and indefinitely.

For example, it estimates the costs of providing services, within and administering the National Capital Service Area as being at least $40 million annually.

It estimates the costs of additional congressional representation as being "$3 million a year", it estimates the cost for the Statehood Transition Commission at less then $ million, and it estimates the savings from the discontinuation of Federal support for local administration of justice and resulting court services as $45 million a year.

In addition, clause 7(d) of rule XIII expressly acknowledges the fundamental accuracy of the CBO cost estimates.

The Chair also notes in response to the point of order under section 308 of the Budget Act that the cost of the new Senators salary as stated in the CBO report would result in a direct Federal spending of $0.3 million annually. Thus the CBO report identifiers [sic] new spending authority provided in the bill.

The Chair holds that the committee cost estimate on the bill is not deficient for its being based on the CBO cost estimate where the latter estimate has examined the same subject on an indefinite basis.

The Chair overrules the point of order.

Mr. SOLOMON. Mr. Speaker, I respectfully disagree with the findings of the Chair, but I would not object.

The SPEAKER pro tempore. The Chair overrules the point of order.

§ 7.2 Section 308(a)(1) of the Congressional Budget Act[1] does not apply either pending the consideration or the question of the adoption of a special order reported from the Committee on Rules that "self-executes" the adoption in the House, to a bill to be subsequently considered, of an amendment providing new budget authority, because the amendment is not separately before the House during consideration of the special order and because it is the bill as so amended, and not the special order resolution, that provides the new budget authority.

On Feb. 24, 1993,[2] the following proceedings took place:

EMERGENCY UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1993

Mr. BONIOR. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 103 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 103

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 920) to extend the emergency unemployment compensation program, and for other purposes. The amendment recommended by the Committee on

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1. 2 USC § 639(a)(1).

2. 139 CONG. REC. 3542, 3543, 3554, 3555, 103d Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 31 §§ 10.21, 10.22; and the *Parliamentarian's Note* accompanying Deschler-Brown Precedents Ch. 32 § 5.35, *supra*.

Ways and Means printed in the bill and the amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. All points of order against the bill, as amended, and against its consideration are waived. Debate on the bill shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except one motion to recommit.

POINTS OF ORDER

Mr. WALKER. Mr. Speaker, I have a point of order against the resolution.

The SPEAKER pro tempore (Mr. MAZZOLI). The gentleman will state his point of order.

Mr. WALKER. Mr. Speaker, I make a point of order against House Resolution 103 on the ground that two amendments self-executed by the resolution are in violation of two different House rules, and I ask to be heard on my point of order.

The SPEAKER pro tempore. The gentleman from Pennsylvania wishes to be heard, and the gentleman may proceed.

Mr. WALKER. Mr. Speaker, first, House Resolution 103 is in violation of clause 5(a) of rule XXI because it proposes to adopt the Ways and Means Committee amendment printed as section 4 in H.R. 920 as reported. That section deals with financing provisions and in effect reappropriates advance account funds to make payments to the States to provide these additional benefits. Clause 5(a) of rule XXI prohibits appropriations provisions in a bill not reported by the appropriations committee.

Second, Mr. Speaker, House Resolution 103 attempts to adopt an amendment contained in the report to accompany the resolution extending coverage of the bill to railroad employees. That amendment is in violation of clause 7 of rule XVI which prohibits the consideration of germane amendments. The amendment contained in the Rules Committee report is under the jurisdiction of the Energy and Commerce Committee and is therefore not germane to this bill from the Ways and Means Committee.

Mr. Speaker, since both of those amendments will be considered to be adopted when this rule is adopted, they are currently before us and must be subject to points of order. It is clear from the rule that once the rule is adopted, the bill as amended by them is not subject to points of order. But, prior to the adoption of this resolution, those two amendments are obviously a part of this resolution and subject to the two points of order I have raised.

The SPEAKER pro tempore (Mr. MAZZOLI). Does any Member wish to be heard on the point of order?

If not, the Chair is prepared to rule.

The fact that amendments which if offered separately would be violative of the rules does not prevent the Rules Committee from self-executing the adoption of those amendments together in the rule itself, by providing for their adoption upon the adoption of the rule. The amendments are thus not separately before the House at this time.

Mr. WALKER. Mr. Speaker, I make another point of order.

The SPEAKER pro tempore. The point of order that the gentleman raises is overruled.

Does the gentleman from Pennsylvania have another point of order?

Mr. WALKER. Mr. Speaker, I make another point of order against House Resolution 103 on the ground that it is in violation of section 308(a) of the Congressional Budget Act of 1974, and I ask to be heard on my point of order.

The SPEAKER pro tempore. The gentleman may proceed.

Mr. WALKER. Mr. Speaker, section 308(a) of the Congressional Budget Act provides that, and I quote, ''Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto providing new budget authority * * * new spending authority described in section 401(c)(2), or new credit authority * * * the report accompanying that bill or resolution shall contain a statement, the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement * * * prepared after consultation with the Director of the Congressional Budget Office'' detailing the costs of that provision.

Mr. Speaker, the amendment contained in the Rules Committee report, which would be adopted upon the adoption of this resolution, extends coverage of this bill to railroad workers. It is my understanding that this may entail a cost of $20 million, but the Rules Committee has not provided a cost estimate from CBO in its report on this amendment as required by section 308 of the Budget Act. This is an amendment reported by the Rules Committee and therefore is subject to the CBO cost estimate requirements. I therefore urge that my point of order be sustained.

The SPEAKER pro tempore (Mr. MAZZOLI). Does any Member wish to be heard on the point of order?

If not, the Chair is prepared to rule.

The gentleman from Pennsylvania raises an objection based on section 308(a) of the Budget Act on the basis that the report accompanying this resolution coming from the Rules Committee would have to have a CBO estimate of the potential cost involved by virtue of adoption of the amendment. However, the Chair, after consulting precedents and the rules of the House, rules that the cost estimate does not have to be made a part of the report accompanying the rule being brought from the Rules Committee, but rather the point of order might lie against the underlying bill. The resolution itself does not enact budget authority and, therefore, the resolution coming from the Rules Committee does not itself have to have the cost estimate in the accompanying report.

Therefore, the Chair now would overrule the gentleman's point of order.

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WALKER. Is this not a self-enacting amendment proposed by the Rules Committee and contained within the rule?

The SPEAKER pro tempore. Would the gentleman state that again, please?

Mr. WALKER. Is this not a self-enacting amendment contained within the rule and proposed by the Rules Committee?

The SPEAKER pro tempore. Upon adoption of the resolution, the amendments to which the gentleman is——

Mr. WALKER. So it is before the House at the present time as an amendment proposed by the Rules Committee, a self-enacting amendment, and the Chair has ruled, as I understand it, that the Rules Committee is not subject to the Congressional Budget Act under its authority to propose amendments?

The SPEAKER pro tempore. The Chair did not suggest that the Rules Committee is not subject here, but the Chair suggested that the report on the resolution itself does not have to set forth the budget estimates which the gentleman has requested.

Mr. WALKER. But that is the——

The SPEAKER pro tempore. The budget authority is the underlying amendments which the Chair is advised occur and are considered adopted only upon adoption of the resolution.

Mr. WALKER. I have a parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WALKER. Is the Rules Committee not enacting and including in its resolution a provision which will in fact increase spending and, therefore, is subject to the Congressional Budget Act?

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The SPEAKER pro tempore (Mr. MAZZOLI). The Chair would state that the Budget Act, section 308(a) of the Budget Act, does not require budget estimates to be included in the report since the amendments are not adopted until such time as the rule is adopted. At that time, then, the amendments which are contained and which would be self-actuated under the rule would then be subject to section 308(a) of the Budget Act.

Prior to the adoption by the House of Representatives of this resolution, that underlying budget estimate is not required to be a part of the report on the resolution itself.

Mr. WALKER. So the Chair is now ruling, or as a further parliamentary inquiry, the Chair has ruled that once we adopt this resolution with the amendment in it, that the Committee on the Budget will be required to file a new report before we can take up the underlying legislation that includes this particular budget estimate? Is that what the Chair is saying?

The SPEAKER pro tempore. The Chair did not make that ruling that there would be a need for the Committee on the Budget to file a budget estimate. The Chair is advised that there is data developing the potential cost in the section to which the gentleman refers in the material which once the rule is adopted, will then be before the House.

Mr. WALKER. Could the Chair tell me what precedents the Chair referred to for this particular ruling that the Committee on Rules is not subject to the provisions of the Budget Act, does not have to include these items in its report, and now does not even have to report on the items before the House takes up the bill?

The SPEAKER pro tempore. The Chair inadvertently may have used the term "precedent." The Chair was misspeaking itself when it referred to the "precedents." There are no precedents for this particular ruling of the Chair.

Mr. WALKER. A further parliamentary inquiry, Mr. Speaker: so we are setting a new precedent here right now that the Committee on Rules is not subject to the Congressional Budget Act, that they do not have to, in their amendments, prepare the budget material, that they can, in fact, add spending without a requirement under the Budget Act, and that they never have to justify the spending that they are doing to the House before the underlying bill is taken up? Is that the precedent that the Chair has now provided to this House?

The SPEAKER pro tempore. The Chair would suggest that it is not the Chair's understanding that the extent ascribed by the gentleman from Pennsylvania is the extent of the Chair's ruling. The Chair's ruling is more narrow than that, suggesting only that until and unless this resolution is agreed to and adopted, there is no need within that rule, within the report on the resolution offered, to have in it the various cost estimates from the Congressional Budget Office and from the Committee on the Budget which the gentleman wishes. That material would be available at some point later in the discussion once the rule is adopted.

Mr. WALKER. A further parliamentary inquiry, Mr. Speaker; since the Chair has taken us into unprecedented grounds here, when is the House going to be provided with this information?

The SPEAKER pro tempore. Until such time as the resolution is agreed to and adopted, the Chair is really in no position to make that declaration or to give that advice.

The gentleman from Michigan [Mr. BONIOR] is recognized for 1 hour. . . .

So the previous question was ordered.

The result of the vote was announced as above recorded.

POINT OF ORDER

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Speaker, I make a point of order against the amendment printed in the Rules Committee report, which I understand is now before us, based upon the Chair's previous ruling.

I make my point of order on the ground that the report in this resolution violates section 308(a) of the Budget Act requiring a cost estimate.

Section 308(a) of the Budget Act, which requires the CBO cost estimate in the report on any committee bill, resolution or amendment, contains no exemption for the report of the Committee on Rules.

I quote from the section 308(a) of the Congressional Budget Act:

> Whenever a committee of either house reports to its house a bill or resolution or committee amendment thereto providing new budget authority, new spending authority described in section 402(c)(2) or new credit authority, the report accompanying that bill or resolution shall contain a statement or the committee shall make available such a statement prepared after consultation with the director of the Congressional Budget Office.

Mr. Speaker, earlier in the debate on this particular resolution, the gentleman who purports to be the author of the railroad worker amendment admitted costs are involved in his amendment. The quote that I have just read means that the committee then has an obligation to provide to the House a congressional budget statement.

Section 308(a) clearly applies to the committee amendment, and the amendment contained in the Rules Committee or report is a Rules Committee amendment. It was not reported by the Ways and Means Committee, it was not reported by the Energy and Commerce Committee and so therefore is exclusively in the jurisdiction of the Rules Committee.

□ 1500

The amendment contained in the Rules Committee report on this resolution will be considered to have been adopted when this resolution is adopted. So there is no question who should provide the CBO cost estimate. It is the Rules Committee. They are not above the rules.

Mr. Speaker, I ask that my point of order be sustained.

The SPEAKER pro tempore (Mr. MAZZOLI).[4] Does the gentleman from Michigan wish to be heard on the point of order?

Mr. [David] BONIOR [of Michigan]. I do, Mr. Speaker.

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4. Romano Mazzoli (KY).

We had this argument a little over an hour ago and it is again timely, as the gentleman from Pennsylvania has indicated.

He refers to section 308. Section 308 applies to measures providing new budget authority. The resolution before us does not provide for new budget authority.

The rule makes in order a bill as amended. The bill as amended provides for the new spending.

House Resolution 103 waives all points of order against the bill as amended and against its consideration. It waives all points of order against the bill and against its consideration.

Mr. Speaker, I ask the Chair to rule that the point of order is not in order.

The SPEAKER pro tempore. Does the gentleman from Pennsylvania seek to be heard further on the point of order?

Mr. WALKER. Yes, Mr. Speaker, I wish to be heard further on the point of order.

It is true the Rules Committee has waived all points of order against the bill that would be considered pursuant to this rule. That is the reason why this point of order is timely now.

When it comes to a question in the bill itself, the point of order with regard to the Budget Act will not be in order because that point of order has been waived. The only time we can get at this particular item is in the self-enacting amendment which is a part of the rule.

The gentleman has not referred to the self-enacting amendment. That is the question to which this particular point of order pertains and it is up to the Chair, I think, to sustain the point of order based upon the fact that the self-enacting amendment within this rule does in fact add costs. It is new budget authority and is therefore in violation of the Congressional Budget Act.

The SPEAKER pro tempore. Do any Members wish to be heard further on the point of order?

Mr. [John] WILLIAMS [of Montana]. Yes, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Montana.

Mr. WILLIAMS. Mr. Speaker, it does seem to me that my colleagues are correct in wanting to be informed with regard to the cost effect of that provision which is executed by this rule. That provision has been handled this way three times by previous Congresses. The provision includes, this is what we are executing here, it includes coverage, extended unemployment coverage for America's railroad workers who have their own unemployment fund and therefore would not be covered unless there was a separate amendment or unless we do it this way. Previous Congresses have chosen to do it this way.

The cost, Mr. Speaker, is estimated by both the Congressional Budget Office as well as the Railroad Retirement Trust Fund System, to be $2½ million for the coming year, and the coverage would be extended to 1,200 railroad workers.

I do think my colleagues are correct in asking for that information, and they now have it.

Mr. WALKER. Mr. Speaker, I wish to be heard further on the point of order.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. WALKER] is recognized.

Mr. WALKER. Mr. Speaker, the gentleman from Montana has just made the case. While he has informed the House of his estimate of what this costs, the fact is that the rules of the House require that the statement be a Congressional Budget Office statement contained within the report. That is what the House does not have. That is what the House requires.

The gentleman from Montana has also made the point that his amendment is included in this rule, that it is new budget authority, that it does extend to new people and it does cost at least $2½ million. That is information that should be contained in the committee report. It is not. It is therefore a violation of the rules of the House. It is a violation of the Budget Act, and my point of order should be sustained.

The SPEAKER pro tempore (Mr. MAZZOLI). The Chair is prepared to rule.

The amendment printed in the bill and the amendment printed in House Report 103–18 will be considered as adopted by the operation of House Resolution 103, which is the special order now pending before the House.

After adoption of this special order, House Resolution 103, the bill is called up for consideration as so amended.

A point of order under section 308 of the Budget Act against consideration of the bill in that form could properly come at that point when the bill is called up for consideration.

As the Chair indicated previously, the new budget authority at issue would be provided not by the resolution reported by the Committee on Rules, but rather by the bill as amended.

At this point, the point of order does not lie. That all points of order against the bill as amended will be waived by House Resolution 103, if adopted, does not cause such points of order to lie at some earlier stage.

The rules of the House authorize the Committee on Rules to report a resolution providing a special order of business, and a point of order under Section 308 of the Budget Act does not lie against such a resolution on the ground that its adoption would have the effect of abrogating clause 2(l)(3) of rule XI, which incorporates the requirement of section 308 in the standing rules.

Accordingly, the point of order is overruled.

PARLIAMENTARY INQUIRIES

Mr. WALKER. A parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WALKER. It was difficult to hear, Mr. Speaker, but I believe I heard the Chair rule that a point of order would lie against the amendment after the amendment had been adopted. Now, that will be a brand new precedent for the House and I am a little confused by it.

Is that what the Chair has ruled in this case, that the point of order would lie on the amendment after the amendment was adopted?

The SPEAKER pro tempore. The point of order could lie against consideration of the bill once the amendment has been adopted.

Mr. WALKER. Well, a further parliamentary inquiry, Mr. Speaker: Is it not true that after the rule has been adopted, a point of order would lie against the bill, but because the bill waives all points of order, the fact is that no point of order lies against this additional spending, is that correct?

The SPEAKER pro tempore. The gentleman is correct. Once the bill is called up, the point of order could lie against an amendment under section 308 of the Budget Act, but because the rule which has by that time been adopted has in its waivers of points of order, that point of order is not to be sustained.

Mr. WALKER. A further parliamentary inquiry, Mr. Speaker: Just so I understand, the Chair has now ruled that a point of order lies against the amendment after the

amendment has been adopted as a part of the rule, but it cannot really be, there cannot be a point of order because all points of order were waived in the rules, so the Rules Committee has protected its violation of the rules with another provision in the rule; is that correct?

The SPEAKER pro tempore. The Chair would state that the point of order would not necessarily lie against the amendment at the point when the resolution is agreed to, but that would be the time to raise a point of order; however, because the waiver has been included in the resolution which by that time is adopted, the gentleman's point of order would not be successfully lodged.

Mr. WALKER. Well, a further parliamentary inquiry, Mr. Speaker: So I am correct in stating that the Chair says that the point of order lies against the amendment, however, the Rules Committee has protected itself in a way that allows it to violate the rules.

The SPEAKER pro tempore. The Chair would just state that there are oftentimes when points of order are waived for various reasons on various resolutions and on various pieces of legislation. That is nothing unique and novel and it is not today.

But again, the Chair has ruled.

D. Budget Act Points of Order

§ 8. Section 904

As described above, the Congressional Budget Act of 1974 is the primary statutory source for the congressional budget process and contains numerous points or order, expedited procedures, and other parliamentary mechanisms to enforce budget-related decisions. Section 904 of the Budget Act[(1)] explicitly declares that such procedural mechanisms are enacted into law "as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith." Section 904 additionally declares that such statutory rulemaking is done "with full recognition of the constitutional right[(2)] of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rules of such House."

Because Congressional Budget Act procedures were enacted as an exercise in congressional rulemaking, the House may vary those procedures through subsequent rulemaking. Such rulemaking may be accomplished by a change to the standing rules of the House,[(3)] the adoption of a special order of business resolution reported by the Committee on Rules,[(4)] or the agreeing to a unanimous-consent request.[(5)] Additionally, a motion to suspend the rules has the effect of suspending all rules in conflict with the motion, including rules contained in statute.[(6)]

In several instances, Congressional Budget Act points of order have been raised in the House against measures whose consideration proceeded under a waiver of all points of order (including those contained in statute) or by

1. 2 USC § 621 note; *House Rules and Manual* § 1127 (2011).

2. U.S. Const. art I, § 5, clause 2; *House Rules and Manual* §§ 58, 59 (2011).

3. See, *e.g.*, Rule XXI clause 8, *House Rules and Manual* § 1068c (2011)

4. See Deschler's Precedents Ch. 24 § 6.3, Deschler-Brown Precedents Ch. 29 § 2.38, and Ch. 31 §§ 10.1, 10.2, 10.6, *supra*. See also § 8.1, *infra*. For a statement by the chairman of the Committee on the Budget regarding the policies to be followed by the Committee on the Budget with respect to recommendations of waivers to the Committee on Rules, see Deschler-Brown Precedents Ch. 31 § 10.4, *supra*.

5. Unanimous-consent requests merely making in order consideration of a particular measure do not, in so doing, waive any points of order against such measure. See Deschler-Brown Precedents Ch. 31 § 9.4, *supra*.

6. See Deschler's Precedents Ch. 21 § 9, *supra*. See also § 8.2, *infra*.

a motion to suspend the rules. For the reasons described above, these points of order were not available and were overruled.

Waiver by Special Order of Business

§ 8.1 A point of order under section 311 of the Congressional Budget Act,[1] enacted pursuant to the rulemaking authority of the House under article I, section 5 of the U.S. Constitution,[2] will not lie against an amendment where the House has adopted a resolution waiving all points of order against amendments made in order by that resolution.[3]

On July 9, 1992,[4] the House was considering an appropriation bill pursuant to a special order of business that waived all points of order against consideration of specified amendments. As shown by the following proceedings, such a waiver applies not just to points of order established in the standing rules of the House, but also to points of order in a statute that was enacted as an exercise in rulemaking.

AMENDMENTS EN BLOC OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Chairman, I offer amendments en bloc made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. OBEY:

On page 7, line 14, strike "$2,515,739,000" and insert "$2,553,739,000".

On page 14, line 15, strike "$1,800,000,000" and insert "$1,850,000,000".

On page 18, line 6, strike "$14,440,000,000" and insert "$16,690,000,000".

On page 36, strike out line 15 through line 24, and insert the following:

"For necessary expenses for discretionary grants as authorized by section 21(b) of the Federal Transit Act, to remain available until expended, $132,000,000: *Provided,* That no more than $1,857,000,000 of budget authority shall be available for these purposes: *Provided further,* That, notwithstanding any provision of law there shall be available for fixed guideway modernization $640,000,000, there shall be available for the replacement, rehabilitation, and purchase of buses and related equipment and the

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1. 2 USC § 642.

2. *House Rules and Manual* § 58 (2011).

3. See Deschler-Brown Precedents Ch. 31 § 10.1, *supra*. For an example of a point of order raised against a bill that was alleged to violate section 401 of the Congressional Budget Act (2 USC § 651), but which was considered pursuant to a special order of business that explicitly waived that section of the Budget Act, see 121 CONG. REC. 7676–8, 94th Cong. 1st Sess., Mar. 20, 1975. Deschler's Precedents Ch. 24 § 6.3, *supra*.

4. 138 CONG. REC. 18401, 18402, 102d Cong. 2d Sess.

construction of bus-related facilities $320,000,000, and there shall be available for new fixed guideway systems $897,000,000 of which—".

On page 67, after line 16, insert:

"SEC. 339. ADDITIONAL INVESTMENT IN AMERICA.—(a) Effective upon the date of enactment of this Act, the fiscal year 1993 discretionary spending limits set forth in section 601(a)(2) of the Congressional Budget Act of 1974 are amended for all purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 and the Congressional Budget and Impoundment Act of 1974, as follows:

(1) the outlay limit for the domestic category shall be increased by $400,000,000; and

(2) the outlay limit for the international category shall be reduced by $400,000,000.

(b) Notwithstanding any other provision of law, the Office of Management and Budget and the Congressional Budget Office shall recalculate all adjustments to fiscal year 1993 discretionary spending limits required under section 251(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 based on the amendments required in subsection (a) and shall report the revised limits to the Congress in the report to Congress for this Act that is required under section 251(a)(7) of the Balanced Budget and Emergency Deficit Control Act of 1985, and such revised limits shall be valid as if made pursuant to section 251(b) of the Act.

(c) The Congress reaffirms that the deficit reduction assigned to the Committees on Appropriations in the 1993 Concurrent Budget Resolution (H. Con. Res. 287) shall be achieved. The total of the first four domestic discretionary appropriation bills passed by the House is $154,000,000 below their outlay targets. Additional savings are expected to be made from the six remaining non-defense bills. The Congress intends and commits that the final appropriation bills for fiscal year 1993 sent to the President will fully comply with their existing deficit reduction target.

POINT OF ORDER

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Chairman, I rise to a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. WALKER. Mr. Chairman, the gentleman from Wisconsin [Mr. OBEY] raises his amendment under the provisions of the rule adopted by the House, House Resolution 513.

House Resolution 513 under the provisions of rule XXII of the House is a resolution which speaks to the procedures of the House of Representatives, and therefore related directly to the House.

If in fact the gentleman was raising his amendment under the provisions of rule XXI, my point of order would not stand because under rule XXI, where it says, "No provision changing existing law shall be reported in any general appropriation bill except germane provisions which retrench expenditures by the reduction of amounts of moneys covered by the bill," and so on, a House resolution can speak to that.

The amendment of the gentleman from Wisconsin [Mr. OBEY] also speaks to a change in public law. Public Law 93–344, section 311, states that an amendment that would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, that public law also prevents such an amendment from coming to the floor.

A House resolution such as House Resolution 513 has no basis on which to waive provisions of public law. It can only waive those things which are within the jurisdiction of the House to waive.

Section 311 of Public Law 93–344 makes it very clear, quoting from the public law, that this is either in the House of Representatives or in the Senate. So therefore the public law makes it impossible for such amendments to come to the floor.

The gentleman from Wisconsin [Mr. OBEY] would have us work on an amendment which is in fact a violation not only of the House rules, but also of public law, and my point of order relates to the provisions of Public Law 93–344 that the amendment is ineligible for consideration in the House of Representatives.

The CHAIRMAN. Does the gentleman from Wisconsin [Mr. OBEY] seek recognition?

Mr. OBEY. Mr. Chairman, I would simply note that the House has the right to try to amend public law at any time it chooses. I would simply read from House Resolution 513, which reads as follows:

> Each amendment printed in the report may be offered only by the named proponent or a designee, shall be considered as read when offered, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against amendments printed in the report are waived.

Mr. Chairman, I think that is self-explanatory.

Mr. WALKER. Mr. Chairman, I wish to be heard further. The gentleman from Wisconsin [Mr. OBEY] quotes only from House Resolution 513. House Resolution 513 under the rules of the House, under the provisions of rule XXII, can relate only to procedures of the House of Representatives. What the gentleman is attempting to do here is not just change the procedures of the House of Representatives, but also change provisions of public law.

Therefore, I insist that my point of order be upheld as a violation of public law, not only a violation of the House rules.

The CHAIRMAN (Mr. BOUCHER).[5] The Chair is prepared to rule on the point of order offered by the gentleman from Pennsylvania [Mr. WALKER].

Under the Constitution, article 1, section 5, each House has the authority to change its rules at any time, even rules enacted into law and specifically contained in the Budget Act. In fact, section 904 of the Budget Act acknowledges that title III of the Budget Act is enacted as an exercise in rulemaking, subject to the constitutional authority of either House to change those rules at any time.

The House has adopted House Resolution 513. On page 2, lines 21 to 23 of the rule, all points of order against all amendments granted in the report accompanying H.R. 513 are waived.

The pending amendment is printed in the report, and, accordingly, the point of order is not sustained.

Waiver by Suspension of the Rules

§ 8.2 A point of order against consideration of a bill under suspension of the rules (on the ground that section 306 of the Congressional Budget Act[1] precludes consideration in the House of a bill

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5. Frederick Boucher (VA).

1. 2 USC § 637.

dealing with subject matter within the jurisdiction of the Committee on the Budget unless reported by such committee), was overruled on the basis that the suspension procedure waives any procedural impediments to consideration, including rulemaking contained in statute.(2)

On Nov. 1, 1977,(3) the following occurred:

CONGRESSIONAL SALARY DEFERRAL

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

The Clerk read as follows:

H.R. 9282

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

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

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

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

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

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

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

The SPEAKER pro tempore.(4) Is a second demanded?(5)

POINT OF ORDER

Mr. [Robert] BAUMAN [of Maryland]. Mr. Speaker, I have a point of order.

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2. In the 96th Congress, the Speaker announced a policy of refraining from recognizing Members for motions to suspend the rules when it was determined that the underlying legislation contained Congressional Budget Act violations. 125 CONG. REC. 13331, 96th Cong. 1st Sess., June 5, 1979.

3. 123 CONG. REC. 36309–11, 95th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 31 § 9.2, *supra*.

4. George Brown (CA).

5. *Parliamentarian's Note:* Until the 102d Congress, certain motions to suspend the rules were subject to a demand for a second. Such requirement was eliminated at the beginning of the 102d Congress. *House Rules and Manual* § 889 (2011).

The SPEAKER pro tempore. The gentleman will state his point of order.

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

Section 306 of the Budget Act says as follows:

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

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

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

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

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

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

The SPEAKER pro tempore. Does the gentleman from New York desire to be heard on the point of order?

Mr. SOLARZ. I do, Mr. Speaker.

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

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

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

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

Mr. [Robert] GIAIMO [of Connecticut]. Mr. Speaker, may I be heard on the point of order?

The SPEAKER pro tempore. The Chair recognizes the gentleman from Connecticut.

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

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

The SPEAKER pro tempore (Mr. BROWN of California). Are there any other Members who desire to be heard on the point of order? If not, the Chair is prepared to rule.

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

The Chair need not rule on the jurisdictional issue raised by the gentleman and points out to the gentleman from Maryland that under the specific provisions of section 904 of the Budget Act, the provisions of title III including section 306, which he cites, are stipulated as being an exercise of the rulemaking power of the House of Representatives with full recognition of the constitutional right of either House to change such rules so far as relating to such House at any time in the same manner and to the same extent as in the case of any other rule of such House. It is the opinion of the Chair therefore that it is within the discretion of the Chair under rule XXVII to entertain a motion to suspend the rules and to consider the bill at this time. Of course, the precedent cited by the gentleman from Maryland applies only to a provision which is no longer in rule XXVII[6]

6. Now Rule XV clause 1, *House Rules and Manual* § 885 (2011).

relating to motions to suspend the rules made by committees.[7] Accordingly the point of order is overruled.

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

The SPEAKER pro tempore. The Chair will hear the gentleman.

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

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

The SPEAKER pro tempore. The specific provision which the gentleman states has the status of a rule of the House of Representatives under the statute and under the Constitution.

§ 9. Section 303

Background

Section 303(a) of the Congressional Budget Act[1] provides that it shall not be in order in the House to consider a measure that first provides new budget authority in that fiscal year or first provides an increase or decrease in revenues[2] or the public debt limit for that fiscal year, before the adoption of the concurrent resolution on the budget.

Section 303(a) is fundamentally a timing point of order: it is no longer applicable to a given fiscal year *after* the adoption of a pertinent concurrent resolution on the budget. Its purpose is to prevent the consideration of certain fiscal measures prior to congressional adoption of a comprehensive budget framework, as represented by the concurrent resolution on the budget.

Unlike sections 302[3] and 311[4] of the Congressional Budget Act, section 303 does not contain language of causation and does not require the Chair to consider arguments on points of order focusing on levels of revenue or budget authority. Estimates as to such levels provided by the Committee on the Budget or the Congressional Budget Office, while potentially useful in maintaining scorekeeping consistency, are not conclusive as to points of

7. *Parliamentarian's Note:* Rep. Bauman's earlier reference to 5 Hinds' Precedents 6848 was inapplicable to the instant proceeding, as the division of suspension days between "individual" and "committee" days had been eliminated in the 93d Congress. See *House Rules and Manual* § 888 (2011).

1. 2 USC § 634(a).

2. See § 9.5, *infra*.

3. See § 11, *infra*.

4. See § 10, *infra*.

order under section 303.[5] The Chair may take into account certain economic assumptions in evaluating the likely budgetary effects resulting from a change to existing law.[6] The Chair evaluates amendments on the basis of the marginal effect of the amendment on the underlying measure.[7]

The point of order applies to bills, joint resolutions, motions, amendments[8] and conference reports.[9] The point of order is applicable to new entitlement authority.[10] In the Senate, the point of order also applies to measures increasing or decreasing outlays. The point of order in the Senate is also applicable to any fiscal years covered by the concurrent resolution on the budget, while in the House (as noted above), the point of order is only applicable to the first fiscal year covered by the resolution.

A special order may waive points of order under section 303 with respect to a bill, but leave amendments thereto unprotected by such waiver.[11]

In the 106th through the 112th Congresses, the House adopted a separate order on opening day[12] to evaluate section 303(a) points of order against reported bills or joint resolutions considered under a special order of business on the basis of either the text made in order as original text for purposes of amendment or the text on which the previous question is ordered directly to passage.

303(b) Exceptions

Section 303(b) of the Budget Act provides exceptions to this point of order in the House. The point of order does not apply to bills or joint resolutions

5. See §§ 9.11, 9.12, *infra*.

6. See § 9.13, *infra*.

7. See § 9.10, *infra*.

8. See § 9.1, *infra*.

9. 2 USC § 634(a).

10. Section 303 originally applied to entitlement authority via a broad definition of "spending authority" (including both contract authority and entitlement authority) and later by an explicit textual reference in former section 303(a)(4) following the Gramm-Rudman-Hollings reforms of 1985. The Budget Enforcement Act of 1997 removed the explicit reference to entitlement authority in section 303, but the legislative history of that Act explains that entitlement authority would thereafter be scored as "budget authority" and thus would continue to be covered by that section. See H. Rept. 105–217, pp. 988, 989. The explicit reference to entitlement authority as applied to the Senate remains in current section 303(a)(4) of the Congressional Budget Act (2 USC § 634(a)(4)).

11. See § 9.4, *infra*.

12. 157 Cong. Rec. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(2)); 155 Cong. Rec. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(2)); 153 Cong. Rec. 19, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 6, sec. 511(a)(2)); 151 Cong. Rec. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3(a)(2)); 149 Cong. Rec. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(2)); 147 Cong. Rec. 24, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)(2)); 145 Cong. Rec. 47, 106th Cong. 1st Sess., Jan. 6, 1999 (H. Res. 5, sec. 2(a)(3)).

providing discretionary new budget authority that first becomes available in the first or second year after the budget year (so-called "out-year" spending). It also does not apply to bills or joint resolutions increasing or decreasing revenues in any fiscal year after the fiscal year to which the budget resolution applies.(1)

Furthermore, after May 15, it is not applicable to any general appropriation bill or amendment. This exception allows the House to begin work on the annual general appropriation bills after May 15 even if Congress has, at that time, failed to agree to a concurrent resolution on the budget.

Finally, under the terms of section 303, the point of order does not apply to any bills or joint resolutions not reported by committee. However, Rule XXI clause 8(2) provides that all points of order under title III of the Congressional Budget Act (including section 303(a)) apply to unreported measures, effectively negating this exception in section 303(b). Previously, the point of order under section 303(a) of the Budget Act did not lie against consideration of an unreported measure,(3) although a point of order did lie against an amendment to an unreported measure.(4)

Unlike appropriations, mere authorizations do not obligate funds to be drawn from the United States Treasury, and as such they do not engage section 303(a).(5)

Applicability to Amendments

§ 9.1 Section 303(a)(1) of the Congressional Budget Act(1) prohibits consideration of an amendment granting new budget authority for a fiscal year for which the first budget resolution(2) has not been adopted by both Houses.

On Aug. 1, 1984,(3) the following took place:

1. See § 9.8, *infra*.
2. *House Rules and Manual* § 1068c (2011). This clause was first adopted at the beginning of the 110th Congress.
3. See 141 Cong. Rec. 8491, 104th Cong. 1st Sess., Mar. 21, 1995.
4. See § 9.6, *infra*.
5. See §§ 9.2, 9.3, *infra*.

1. 2 USC § 634(a)(1).
2. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.
3. 130 Cong. Rec. 21870, 21871, 98th Cong. 2d Sess.

AMENDMENT OFFERED BY MR. DAVIS

Mr. [Robert] DAVIS [of Michigan]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.[4] Was the amendment printed in the RECORD?

Mr. DAVIS. Yes, Mr. Chairman; it was.

The Clerk read as follows:

> Amendment offered by Mr. DAVIS: Page 3, after line 16, insert the following:
>
> For establishing and operating an Indian and Rural Youth Emphasis training center at Newberry, Michigan, as authorized by section 427 of the Job Training Partnership Act, $4,750,000, in addition to amounts otherwise provided herein.

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Chairman, I reserve a point of order on the amendment offered by the gentleman from Michigan. . . .

POINT OF ORDER

Mr. CONTE. Mr. Chairman, I rise to pursue my point of order.

The CHAIRMAN. The gentleman will state it.

Mr. CONTE. Mr. Chairman, let me say at the outset that I regret that I have to raise this point of order against my good friend from Michigan, but there are only a couple of berries left in the basket, and JOHN ERLENBORN took those berries out.

Mr. Chairman, I make the point that the amendment violates section 303A of the Congressional Budget Act of 1974, which sets forth in section 1007 of the House Manual, which provides that it shall not be in order in the House of Representatives to consider any bill or resolution or amendment thereto which provides new budget authority for the fiscal year until the first concurrent resolution on the budget for such a year has been agreed to.

The amendment provides new budget authority for the 1985 fiscal year. A concurrent resolution on the budget for the 1985 fiscal year has not been agreed to. Therefore, the amendment is not in order.

The CHAIRMAN [Mr. FUQUA]. Does the gentleman from Michigan desire to be heard?

The Chair is prepared to rule that the amendment is out of order under section 303 of the Budget Act. It does grant new budget authority for a fiscal year for which the first concurrent budget resolution, [sic] has not been adopted, and therefore the amendment is out of order.

Mere Authorizations

§ 9.2 The chairman of the Committee of the Whole overruled points of order under sections 402(a), 303(a)(1), 303(a)(2), 303(a)(4), and 401(c)(2) of the Congressional Budget Act[1] against an amendment, offered to an omnibus social services and education authorization bill reported from the Committee on Education and Labor, providing authorization for payments to the states for immigrant children's education but ratably reducing the allocation to each state

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4. Don Fuqua (FL).

1. 2 USC §§ 652, 634(a)(1), 634(a)(2), 634(a)(4), 651(c)(2). Sections 402 and 401 of the Congressional Budget Act have undergone substantial revisions since this precedent. See § 1, *supra*, and §§ 12–14, *infra*.

if sums actually appropriated are insufficient to fully pay for the entitlement.

On Sept. 13, 1983,[2] a point of order having several bases within the Congressional Budget Act was raised against an amendment and overruled on the basis that the amendment in question merely authorized, but did not actually appropriate, certain amounts of budget authority.

AMENDMENT OFFERED BY MR. WRIGHT

Mr. [James] WRIGHT [of Texas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WRIGHT: Add at the end of the bill the following new title:

TITLE V—SPECIAL IMPACT AID FOR IMMIGRANT CHILDREN EDUCATION

SEC. 501. This title may be cited as the "Emergency Immigrant Education Act of 1983".

DEFINITIONS

SEC. 502. As used in this title—

(1) The term "immigrant children" means children who were not born in a State and who have been attending schools in any one or more States for less than three complete academic years.

(2) The terms "elementary school", "local educational agency", "secondary school", "State", and "State educational agency" have the meanings given such terms under section 198(a) of the Elementary and Secondary Education Act of 1965.

(3) The term "elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(4) The term "Secretary" means the Secretary of Education.

AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS

SEC. 503. (a) There are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986, such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

(b)(1) If the sums appropriated for any fiscal year to make payments to States under this title are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under this title for such year, the allocations to State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the vent [sic] that funds become available for making payments under this title for any period after allocations have been made under paragaph [sic] (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.

2. 129 CONG. REC. 23881–84, 98th Cong. 1st Sess.

STATE ADMINISTRATIVE COSTS

SEC. 504. The Secretary is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this title, except that the total of such payments for any period shall not exceed 1.5 per centum of the amounts which that State educational agency is entitled to receive for that period under this title.

WITHHOLDING

SEC. 505. Whenever the Secretary, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of any provision of this title, the Secretary shall notify that agency that further payments will not be made to the agency under such title, or in the discretion of the Secretary, that the State educational agency shall not make further payments under such title to specified local educational agencies whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under such title, or payment by the State educational agency under such title shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

STATE ENTITLEMENTS

SEC. 506. (a) The Secretary shall, in accordance with the provisions of this section, make payments to State educational agencies for each of the fiscal years 1984, 1985, and 1986 for the purpose set forth in section 507.

(b)(1) Except as provided in paragraph (3) and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this title shall be equal to the product of (A) the number of immigrant children enrolled during such fiscal year in elementary and secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, and in any elementary or secondary nonpublic school within the district served by each such local educational agency, multiplied by (B) $500.

(2) The local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of immigrant children who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, and in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this title, is equal to—

(A) at least 500; or

(B) at least 5 per centum of the total number of students enrolled in such public or nonpublic schools during such fiscal year; whichever number is less. . . .

PAYMENTS

SEC. 509. (a) Except as provided in section 503(b), the Secretary shall pay to each State educational agency having an application approved under section 508 the amount which that State is entitled to receive under this title. . . .

POINT OF ORDER

Mr. [John] ERLENBORN [of Illinois]. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN.[3] The gentleman from Illinois (Mr. ERLENBORN) will state his point of order.

□ 1640

Mr. ERLENBORN. Mr. Chairman, I make the point of order against the pending amendment on the grounds that section 503 of the pending amendment violates section 402(a) and 303(a)(1) and (2).

In addition, Mr. Chairman, I make a point of order against the amendment in that section 503(b)(1) violates sections 303(a)(4) and 401(c)(2) of the Budget Control Act.

Now, Mr. Chairman, section 303(a) of the Budget Control Act states that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution or amendment thereto which provides: First, new budget authority for a fiscal year; or second, an increase or decrease in revenues to become effective during a fiscal year.

Mr. Chairman, 503(a) of the pending amendment creates new budget authority in that it states that there are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986 such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

Mr. Chairman, the effect of section 503(b)(1) and later provisions of this amendment, the amendment providing for $500 per pupil entitlement under this bill for this new impact act program to be funded jointly from 503(a), which is the direct budget authority, and 503(b)(1) which authorizes transfers from other existing budget authority, violates 401(c)(2) in that it creates new entitlement authority.

For these reasons I believe that the pending amendment violates these provisions of the Budget Act and is subject to this point of order.

The CHAIRMAN. Does the gentleman from Texas (Mr. WRIGHT) wish to be heard on the point of order?

Mr. WRIGHT. Yes, Mr. Chairman, I would like to be heard.

As I understand the gentleman's point of order, he argues that this amendment would not be in order because it would create a new entitlement and because it would be contrary to and excessive of the budget resolution.

With respect to the latter, I should simply point out that this does not create any entitlement which would be triggered absent an appropriation. There would have to be an appropriation in order for these moneys to be made available to the school districts which the amendment would make eligible for said moneys.

503(a), Subsection b, provides that to the extent the Congress should fail to appropriate adequate funds, there would be a rateable reduction to each of the States otherwise made eligible.

In other words, by its own provisions it contains a means of restraining the entitlement that otherwise would be created within the amounts that are appropriated by Congress.

Nothing thus far has been appropriated. This is simply an authorizing proposal. It is no more violative of the provisions cited by the distinguished gentleman from Illinois than are other provisions already adopted in this legislation in title IV in that they also create, just as this new title would create, an additional eligibility for Federal assistance.

3. David Bonior (MI).

Inasmuch as the Supreme Court has ruled that it is the responsibility, under the Constitution, of every school district to provide educational opportunity for all of the children residing within that district, whether legally or not, then quite clearly, it falls within the responsibility of the Federal Government to be able, if the Congress in its wisdom so determines, to provide assistance to those school districts upon whom this burden has been imposed by decree of the Supreme Court.

The CHAIRMAN. Does the gentleman from Kentucky (Mr. PERKINS) desire to be heard on the point of order?

Mr. [Carl] PERKINS [of Kentucky]. I do, Mr. Chairman.

Mr. Chairman, I concur in the argument made by the gentleman from Texas that the amendment is germane. It is not an entitlement. This amendment creates no entitlements. The program is purely an authorization of appropriations. All grants are subject to reduction if appropriations are not sufficient.

There is nothing here that is nongermane about this amendment. The amendment is germane.

Mr. ERLENBORN. Mr. Chairman, I would submit, respectfully, that the arguments of the gentleman from Texas and the gentleman from Kentucky neither of them addressed the issue of violation of section 303(a) of the Budget Control Act which prohibits the consideration of bills or amendments creating new budget authority until the first concurrent resolution on the budget(4) for such year has been agreed to, pursuant to section 301.

And the provisions of this amendment create new budget authority for fiscal years 1984, 1985, and 1986.

I might also state in support of my point of order, Mr. Chairman, that the amendment may well also—depending upon the interpretation of the Parliamentarian—violate section 402(a) of the Budget Control Act, which prohibits the consideration of bills or resolutions creating new budget authority unless they are reported before May 15.

Now, I submit that this bill was not reported before May 15.

There is a waiver for the bill, but there is no waiver in the rule for amendments to the bill.

Now it could be argued, Mr. Chairman, that because the rule does not prohibit the consideration of an amendment, but only bills and resolutions, that therefore this does not apply.

I would submit, however, that if this amendment is adopted, we will then, in further consideration of the bill, be considering a bill which at that time after the adoption of this amendment would contain new budget authority that had not been reported in the bill before May 15. So that is one additional reason for the sustaining of my point of order.

Mr. WRIGHT. Mr. Chairman, very briefly I would like to be heard. In the first place, it is my distinct impression, and I believe would be confirmed by a reading of the act, that section 402(a) of the Budget Act does not apply to amendments, but only to bills.

Second, that a waiver of that section has been obtained with respect to this bill.

□ 1650

Third, that the language proposed in this amendment provides nothing by way of educational spending authorization beyond that which already has been done in the bill itself

4. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

and that inasmuch as this bill is permitted to come before the House and is being considered by the House under a waiver of section 402(a), and since section 402(a) has no application whatsoever, by its own terms, to an amendment per se, then the amendment is germane and the amendment would be in order.

The CHAIRMAN. The Chair is prepared to rule.

On the first question that the gentleman from Illinois raised with respect to the amendment, an amendment is not covered by the May 15 reporting deadline in section 402(a) of the Budget Act and, therefore, that point of order is not sustained.

With regard to the issue of budget authority, the Chair would rule that the amendment contemplates that budget authority would rest in an appropriations bill. This is an authorization proposal that is being put forth by the gentleman from Texas.

Now, with respect to the third question that was raised by the gentleman from Illinois on the question of an entitlement, the Chair will read the Congressional Budget Act definition of "entitlement," in section 401(c)(2)(C) of that act, and I quote:

> . . . to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments. . . .

Now, the Chair would point out that in section 503(b)(1) of the amendment by the gentleman from Texas, language pertaining to ratable reduction is being offered by the gentleman from Texas, which negates the entitlement features which the gentleman from Illinois alludes to by giving discretion to the Appropriation Committee and, therefore, the Chair would rule that indeed it does not constitute an advance entitlement that the gentleman referred to. The point of order is overruled.

§ 9.3 An amendment establishing a new executive position to be compensated at a statutorily specified level but also making such salary subject to the availability of appropriations does not provide new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year in violation of section 303(a) of the Congressional Budget Act(1) and a point of order raised on that basis was overruled.

On Mar. 26, 1992,(2) a section 303(a) point of order was raised against an amendment and was overruled:

AMENDMENT OFFERED BY MR. GRADISON

Mr. [Willis] GRADISON [of Ohio]. Mr. Chairman, I offer an amendment, which was printed in the RECORD beginning on page H1698.

The Clerk read as follows:

> Amendment offered by Mr. GRADISON:
>
> —Page 233, beginning on line 6, strike out all of Section 439 through page 251, line 15 and insert the following new section.
>
> **SEC. 439. STUDENT LOAN MARKETING ASSOCIATION FINANCIAL SAFETY AND SOUNDNESS.**
>
> (a) SHORT TITLE.—This section may be cited as the "Government-Sponsored Education Association Financial Safety and Soundness Act of 1992". . . .

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1. 2 USC § 634(a).
2. 138 CONG. REC. 7195, 7197, 7202, 7203, 102d Cong. 2d Sess.

(c) DEFINITIONS.—For purposes of this Act:

(1) COMPENSATION.—The term ''compensation'' means any payment of money or the provision of any other thing of current or potential value in connection with employment. . . .

(d) ESTABLISHMENT OF OFFICE OF SLMA MARKET EXAMINATION AND OVERSIGHT.—Effective January 1, 1993, there shall be established in the Department of Treasury the Office of SLM Market Examination and Oversight, which shall be an office within the Department.

(e) DIRECTOR.—The Office shall be under the management of a full-time Director, who shall be selected by and report to the Secretary. An individual may not be selected as Director if the individual has served as an executive officer of the Association at any time during the 5-year period ending upon the selection of such individual. . . .

(h) FUNDING.—

(1) ASSESSMENTS AND FEES.—The Director may establish and collect from the Association such assessments, fees, and other charges that the Director considers necessary so that the amount collected is an amount sufficient to provide for reasonable costs and expenses of the Office of SLMA Market Examination and Oversight, including the expenses of any examinations under subsection (z).

(2) FUND.—There is established in the Treasury of the United States a fund to be known as the SLMA Market Examination and Oversight Fund. Any assessments, fees, and charges collected pursuant to paragraph (1) shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriations Acts—

(A) to carry out the responsibilities of the Director relating to the Association; and

(B) for necessary administrative and nonadministrative expenses of the Office to carry out the purposes of this Act. . . .

(n) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—

(1) DIRECTOR AT LEVEL II OF EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by inserting at the end the following new item: ''Director of the Office of SIMA Market Examination and oversight, Department of Treasury.''.

(2) DEFINITION OF AGENCY.—Section 3132(a)(1)(D) of title 5, United States Code, is amended by inserting ''the Office of SIMA Market Examination and Oversight of the Department of Treasury,'' after ''Farm Credit Administration,''. . . .

POINT OF ORDER

Mr. [Jack] REED [of Rhode Island]. Mr. Chairman, I rise to a point of order.

The CHAIRMAN.(3) The gentleman will state his point of order.

Mr. REED. Mr. Chairman, under section 303(a) of the Congressional Budget Act, it is not in order to consider any amendment which creates new entitlement authority or direct spending authority first effective in a fiscal year prior to the adoption of the budget resolution for that fiscal year.

The instant amendment creates new spending authority first effective in fiscal year 1993 by establishing a new executive level salaried position for the Director of the Office of SLMA Market Examination and Oversight, Department of the Treasury. This position would not be specifically subject to the availability of appropriations.

The fact that the amendment establishes a fund to finance costs under the amendment does not defeat the fact that the Director's salary is not specifically subject to the availability of appropriated funds.

Deschler's Procedure, chapter 13, section 14.5 states that "a provision amending title 5 of the United States Code to provide that certain federal employees 'shall be paid' " specific compensation constitutes new entitlement authority within the definition of section 401(c)(2)(C) of the Budget Act.

Subchapter II of chapter 53, title 5, United States Code, sets forth executive schedule pay rates as minimum fixed rates of pay for designated officers listed in the subchapter which are not specifically subject to appropriations.

As such, the amendment creates new entitlement authority first effective in fiscal year 1993.

3. Donald Pease (OH).

Since Congress has yet to agree to the budget resolution for fiscal year 1993, the amendment violates section 303(a) of the Budget Act.

Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman from Ohio [Mr. GRADISON] wish to be heard on the point of order?

Mr. GRADISON. Mr. Chairman, the definition of "new spending authority" contained in the Budget Act refers to budget authority not provided for in advance by appropriation acts. This amendment before us, the one we are debating specifically states the following:

Sallie Mae is required to pay assessments to cover all reasonable costs of the Office created by this amendment. These expenses include administrative costs. Thus no additional Government spending will be occasioned by this amendment.

All expenses of the Office created by this amendment, Mr. Chairman, are explicitly subject to prior appropriations. Thus the definition of new spending authority clearly does not apply.

In addition, Mr. Chairman, identical language was included in H.R. 2900, which was passed by the House last year. That bill did not result in a point of order and both CBO and OMB have indicated that in their opinion, the bill does not result in direct spending.

Mr. Chairman, CBO has reviewed this amendment and determined that it does not contain any new entitlement authority or direct spending.

In conclusion, Mr. Chairman, the entity which will pay the cost of this position and of all other costs under this amendment is a private entity. Thus it cannot be said that Federal funds will be used to pay for this amendment, which in any event is subject to appropriations.

The CHAIRMAN. Does the gentleman from Texas [Mr. PICKLE] wish to be heard on the point of order?

Mr. [James] PICKLE [of Texas]. Mr. Chairman, I simply want to support the remarks of the gentleman from Ohio [Mr. GRADISON] in his contention that it is not a new entitlement. These funds clearly go into specific funds subject to appropriations, and I support the position that the gentleman from Ohio has advocated.

To me, this is clearly not an entitlement and, therefore, we should proceed and rule that the point of order is not well taken.

The CHAIRMAN. Does the gentleman from Rhode Island [Mr. REED] wish to be heard further on the point of order?

Mr. REED. Mr. Chairman, I have just two points: First, the point turns upon the issue of whether there is specific authorization in the trust fund to pay the director's salary. I do not believe that is the case. We would be obligated, the Federal Government, to pay his salary regardless of how much money is in that trust fund.

The second issue is one in which the CBO's role is not really pertinent. The question is whether or not we have passed a budget resolution. Clearly we have not. And this would constitute new authorization prior to passing that resolution.

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The CHAIRMAN. Is there further debate on the point of order?

Mr. GRADISON. Very briefly, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Ohio.

Mr. GRADISON. Mr. Chairman, my basic argument is, if there is no appropriation, there is no spending. All this amendment does on the point that we are discussing is to indicate what the salary level would be if an appropriation is later provided.

The CHAIRMAN (Mr. PEASE). If there is no further debate, the Chair is prepared to rule on the point of order.

The offeror of the amendment has made it clear to the Chair that the language of the amendment in creation of this position or at least the payment of the salary of the person holding the position would be subject to appropriation as an administrative or non-administrative expense, and no payment would occur absent an appropriation. That being the case, the Chair is of the opinion that there would not be a violation of the Budget Act. The point of order is overruled.

Waivers

§ 9.4 Where points of order against consideration of a bill have been waived under section 303 of the Congressional Budget Act[1] to permit consideration prior to the first concurrent resolution on the budget,[2] that waiver does not permit consideration of amendments increasing the budget authority in the bill, because section 303 separately precludes consideration of amendments providing new budget authority in advance of the budget resolution.[3]

On July 17, 1985,[4] an amendment contained in a motion to recommit was ruled out of order.

POINTS OF ORDER

The CHAIRMAN.[5] Does the gentleman from California [Mr. EDWARDS] insist on his point of order?

Mr. [Don] EDWARDS of California. Mr. Chairman, did the gentleman from Florida [Mr. YOUNG] withdraw his amendment?

Mr. [Bill] YOUNG of Florida. Mr. Chairman, I did not withdraw the amendment, no.

Mr. EDWARDS of California. Mr. Chairman, it was my understanding there was a commitment made to withdraw the amendment. If that is not true, I insist on my point of order, Mr. Chairman.

The CHAIRMAN. The gentleman from California [Mr. EDWARDS] will state his point of order.

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1. 2 USC § 634.

2. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

3. As the proceedings here indicate, a waiver of section 303 for consideration of the bill operates differently from a waiver of Rule XXI clause 2 for unauthorized appropriations. In the latter case, the waiver permits amendments to increase the unauthorized amount that has been permitted to remain. Section 303, however, separately prohibits amendments increasing budget authority in the bill. For more on Rule XXI clause 2, see *House Rules and Manual* §§ 1036–1063b (2011).

4. 131 CONG. REC. 19435, 99th Cong. 1st Sess.

5. George Brown (CA).

Mr. EDWARDS of California. Mr. Chairman, the amendment violates clause 2 of House rule XXI, which provides no appropriation shall be reported in any general appropriation bill for any expenditure not previously authorized by law.

The CHAIRMAN. Does the gentleman from Iowa [Mr. SMITH] desire to press his point of order?

Mr. [Neal] SMITH of Iowa. I do, Mr. Chairman. I have a different point of order.

The CHAIRMAN. The gentleman will state it.

Mr. SMITH of Iowa. I am very reluctant to make a point of order, but I feel I have to in this case.

It would add budget authority for fiscal year 1986. The waiver of the points of order against the provisions in the bill did not waive points of order against amendments. Therefore, an amendment to add money to the bill would not be in order.

I am very constrained to do that, but if I do not do that in this case, I know there will be a lot of amendments all over the place.

The CHAIRMAN. Does the gentleman from Florida [Mr. YOUNG] wish to be heard on the point of order?

Mr. YOUNG of Florida. Mr. Chairman, I do.

Regarding the point made by our colleague, the gentleman from California [Mr. EDWARDS], that it is an unauthorized item, this paragraph in question is not authorized but it is protected by the rule. It is well established under the precedents of the House that where an unauthorized appropriation is permitted to remain in the bill by waiver of points of order, that appropriation may be amended to increase the sum, provided the amendment does not add unauthorized items.

My amendment does exactly that, and I believe that that point of order should be overruled.

On the point of my friend and colleague from Iowa [Mr. SMITH], dealing with the Budget Act, again, Mr. Chairman, I suggest that the point of order is not well taken. The purpose of House Resolution 221, the rule covering points of order against the Budget Act, is to allow an appropriations bill to be considered on the House floor before the first concurrent budget resolution has been approved by Congress. And since consideration of an appropriations bill on the House floor generally does not require a rule and does not limit amendments, interpretation of this language should follow usual House procedures and allow amendments to appropriation bills whether the amendment would increase or decrease an uncertain budget ceiling.

Therefore, the point of order I think should be overruled. I make the point again that the first budget resolution is still pending, it has still not been finalized by the Congress.

Second, on the same point, Mr. Chairman, House Resolution 221, the rule covering points of order against the Budget Act, provides that all points of order for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974, Public Law 93–344, are hereby waived. Section 303(a) of the Budget Act states that "it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) * * *." Since House Resolution 221 does not specifically limit amendments and since it is to be read in conjunction with section 303(a), my amendment offered during consideration of a general appropriations bill that was reported by the Appropriations Committee prior to July 12, 1985, should be allowed and the point of order overruled.

The CHAIRMAN (Mr. BROWN of California). If no one else wishes to be heard on the point of order, the Chair is prepared to rule.

With regard to the point of order raised by the gentleman from California [Mr. EDWARDS], as to appropriation without authorization, the Chair is constrained to overrule that point of order on the grounds that a waiver has been provided in the rule against the amount in the bill, and the amendment merely increases that amount without an earmarking for an unauthorized purpose.

With regard to the point of order made by the gentleman from Iowa [Mr. SMITH] as to whether it has not been waived by the rule, the Chair is constrained to uphold that point of order on the grounds that, while consideration of the bill itself has in House Resolution 221 received a waiver from section 303(a) of the Budget Act, that does not apply to amendments adding new budget authority to the bill and the Chair, therefore, sustains the point of order.

Amendments Increasing or Decreasing Revenues

§ 9.5 An amendment imposing a fee on electric utilities for each kilowatt hour of electric energy generated was held to constitute a "revenue" provision under section 303(a)(3) of the Congressional Budget Act[1] which prohibits consideration of measures increasing or decreasing revenues that become effective prior to adoption of the budget resolution for that year.

On July 23, 1985,[2] an amendment was ruled out of order on a section 303(a) point of order on the basis that the amendment increased revenue:

AMENDMENT OFFERED BY MR. CONTE

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CONTE: Page 113, after line 13, insert the following new title:

TITLE II—ACID DEPOSITION CONTROL

SECTION 1. SHORT TITLE.

This title may be cited as the ''Water Quality Improvement and Acid Deposition Reduction Act of 1985''.

SEC. 2. PURPOSE.

The purpose of this Act is to improve water quality, protect human health and preserve aquatic resources in the United States by reducing the threat of acid deposition.

Subtitle I—Acid Deposition Control and Assistance Program

SEC. 101. AMENDMENT OF CLEAN AIR ACT.

Title I of the Clean Air Act is amended by adding the following new part at the end thereof:

"PART E—ACID DEPOSITION CONTROL

"Subpart 1—General Provisions

"SEC. 181. PURPOSE OF PART.

''The purpose of this part is to decrease sulfur dioxide emissions in the 48 contiguous States by requiring certain electric utility plants and other sources to reduce their rates

1. 2 USC § 634(a)(3).

2. 131 CONG. REC. 20041, 20044, 20045, 20050–52, 99th Cong. 1st Sess.

of sulfur dioxide emissions. The reduced rates shall be rates which (if achieved by those sources in the emissions baseline year) would have resulted in total emissions from such sources 12,000,000 tons below the actual total of sulfur dioxide which those sources emitted in the emissions baseline year. The reduction is to be achieved within 10 years after the date of the enactment of this part. Such reduction shall be achieved through—

''(1) a program under subpart 2 consisting of direct federally mandated emission limitations for 50 of the largest emitters of sulfur dioxide; and

''(2) a program under subpart 3 consisting of State plans to provide for such reductions in the emission rates of other existing sources as may be necessary to achieve the remaining portion of such 12,000,000 ton reduction.

90 percent of the capital costs of continuous emission control technology used for the purpose of the program under subpart 1 shall be funded through a fee on the generation of electric energy as provided in subpart 4. Such fee shall also be used to provide revenue to the States to carry out the program under subpart 2.

"SEC. 182. CERTAIN ACTIVITIES NOT AFFECTED. . . .

"Subpart 4—Acid Deposition Control Fund

"SEC. 196. ESTABLISHMENT OF FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Acid Deposition Control Fund' (hereinafter in this subpart referred to as the 'Fund'), consisting of such amounts as may be transferred to such Fund as provided in this section.

''(b) CREDITS.—There are hereby credited, out of any money in the Treasury not otherwise appropriated, to the Fund amounts determined by the Secretary of the Treasury (hereinafter in this title referred to as the 'Secretary') to be equivalent to the amount received in the Treasury under section 196. . . .

"SEC. 197. FEES.

''(a) IMPOSITION OF FEE.—Under regulations promulgated by the Administrator, there shall be imposed a fee for each kilowatt hour of electric energy generated in the contiguous 48 States by an electric utility and for each kilowatt hour of electric energy imported into the contiguous 48 States.

''(b) AMOUNT OF FEE.—The fee shall be applied during each calendar quarter at a rate per kilowatt hour which is equal to 1.5 mill multiplied by the inflation adjustment for the calendar quarter in which the electric energy is generated or imported. The inflation adjustment for a calendar quarter is the percentage by which—

''(1) the implicit price deflator for the gross national product for the second preceding calendar quarter, exceeds

''(2) such deflator for the calendar quarter ending on December 31 of the year in which this part is enacted.

For the purposes of this subsection, the first revision of the price deflator shall be used.

''(c) NUCLEAR AND HYDROELECTRIC POWER.—

''(1) EXEMPTION.—The fee imposed under this section shall not apply to any electric energy (including imported electric energy) which is generated by nuclear or hydroelectric power. . . .

''(h) EFFECTIVE DATE; TERMINATION.—The fees imposed under this section shall take effect with respect to electric energy generated or imported after December 31 of the year in which this part is enacted. The fee shall cease to apply on December 31 of the first year which ends more than 10 years after such enactment.

"Subpart 4—Accelerated Research on Cleaner Burning Industrial Processes . . .

The CHAIRMAN.[2] Does the gentleman from Kentucky [Mr. SNYDER] insist on his point of order?

Mr. [Marion] SNYDER [of Kentucky]. Mr. Chairman, I do insist on the point of order and I would like to be heard on it.

The CHAIRMAN. The gentleman will state his point of order.

POINT OF ORDER

Mr. SNYDER. Mr. Chairman, the amendment is subject to a point of order on two grounds. First it is in violation of House rule XVI which states that "No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

2. Harry Reid (NV).

The amendment which the gentleman offers is not germane. It is, with minor changes, substantially that embodied in H.R. 1030, which the gentleman introduced on February 7, 1985. The purpose of that bill was to decrease sulphur dioxide emissions by requiring certain electric utilities plants and other sources to reduce their rates of emissions. Since the bill made extensive amendments to the Clean Air Act, it was referred solely to the Committee on Energy and Commerce, who have jurisdiction of this matter.

Today we have almost identical provisions before us embodied in Mr. CONTE'S amendment which are far beyond the scope of the bill we are now considering, H.R. 8, and deal with the subject properly within the jurisdiction of another committee, that is, the Committee on Energy and Commerce.

The scope of H.R. 8 is limited to the Clean Water Act and does not include extensive amendments to the Clean Air Act as the gentleman has proposed.

The gentleman's amendment would set air emission standards for certain electric utilities and other sources and would set up a financing mechanism to fund the program. According to subpart 4 of the amendment, a fund would be established to pay for the owner operators' capital costs to install appropriate air emission equipment required under the amendment.

Mr. Chairman, therein lies the other problem making this subject to a point of order. It is in violation of section 303 of the Budget Act since it increases revenues before the first Budget Act[3] has been enacted. As we know, we do not have the first Budget Act enacted at this time.

So for those two reasons, Mr. Chairman, I strongly suggest that it is subject to a point of order.

I might say, too, Mr. Chairman, as an aside that having looked at the New York Times, when the gentleman from Massachusetts says that the Public Works Committee—on last Sunday—never says "no" to anything, our leadership; today we are saying no to this.

The CHAIRMAN. Does the gentleman from Massachusetts [Mr. CONTE] want to be heard on the point of order?

Mr. CONTE. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Massachusetts is recognized.

Mr. CONTE. Mr. Chairman, it is very difficult to refute that scholarly legal opinion offered by the jurist from Kentucky. But I will do my humble best.

Mr. Chairman, the amendment I feel is germane to the committee amendment. It deals with the same subject matter as contained in the bill.

For example, the committee amendment includes a program to address the acidification of this Nation's lakes. If implemented, this amendment would accomplish the same goal by controlling the source of this acidity. Also, the bill, as a whole, is concerned with the protection and improvement of water quality in this country. And this amendment directly addresses the protection of water quality by controlling acid rain.

For these reasons, the amendment is in order and germane to the bill. . . .

The CHAIRMAN (Mr. REID). It is the ruling of the Chair that the amendment changes a law not amended in the pending bill and outside the jurisdiction of the reporting committee, and deals with the regulation of emissions not within the scope of the bill.

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3. As the context here indicates, Rep. Snyder was most probably referring to the fact that the first *budget resolution* had not been adopted at this time (not the first "Budget Act," as was stated).

For that reason, the amendment is not germane.

As to the point of order under section 303(a) of the Budget Act, the amendment does raise revenues through fees on electrical energy for fiscal year 1986, to be deposited in the Treasury, and since Congress has not adopted a first budget resolution[4] for fiscal year 1986, the Chair also sustains the point of order on that basis.

Unreported Bills and Amendments Thereto

§ 9.6 A motion to recommit proposing an amendment to replace one revenue provision in the pending unreported bill[1] with another such provision, thereby providing an "increase or decrease in revenues" in the upcoming fiscal year before adoption of a concurrent resolution on the budget for that year, was ruled out of order under section 303(a) of the Congressional Budget Act (sustained by tabling of the appeal).[2]

On July 24, 1998,[3] the following occurred:

The SPEAKER pro tempore (Mr. [James] KOLBE [of Arizona]). Pursuant to House Resolution 509, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BERRY

Mr. [Marion] BERRY [of Arkansas]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman from Arkansas opposed to the bill?

Mr. BERRY. Yes, Mr. Speaker, in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BERRY moves to recommit the bill H.R. 4250 to the Committee on Ways and Means and to the Committee on Education and the Workforce with instructions to report back the same to the House forthwith with the following amendments to the portions of the same within their respective jurisdiction:

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4. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

1. Although section 303(b)(3) provides an exception to section 303(a) points of order for unreported bills and joint resolutions, this exception has been superseded by Rule XXI clause 8 (first adopted in the 110th Congress), which applies all points of order under title III of the Congressional Budget Act to unreported measures. The precedent described here occurred before this rules change, and while section 303(a) did not at that time apply to unreported measures, it did apply to amendments thereto (such as those contained in a motion to recommit).

2. 2 USC § 634(a).

3. 144 CONG. REC. 17276–79, 105th Cong. 2d Sess.

Page 38, beginning on line 9, strike “does not meet the plan’s requirements for medical appropriateness or necessity” and insert “is not medically necessary and appropriate”.

Page 39, beginning on line 16, strike “does not meet the plan’s requirements for medical appropriateness or necessity” and insert “is not medically necessary and appropriate”.

Page 48, beginning on line 17, strike “does not meet the plan’s requirements for medical appropriateness or necessity” and insert “is not medically necessary and appropriate”.

Page 53, beginning on line 17, strike “meets, under the facts and circumstances at the time of the determination, the plan’s requirement for medical appropriateness or necessity” and insert “is, under the facts and circumstances at the time of the determination, medically necessary and appropriate”.

Page 60, line 17, strike all that follows the first period.

Page 60, after line 17, insert the following new subparagraph:

“(V) MEDICAL NECESSITY AND APPROPRIATENESS.—The term ‘medically necessary and appropriate’ means, with respect to an item or service, an item or service determined by the treating physician (who furnishes items and services under a contract or other arrangement with the group health plan or with a health insurance issuer providing health insurance coverage in connection with such a plan), after consultation with a participant or beneficiary, to be required, according to generally accepted principles of good medical practice, for the diagnosis or direct care and treatment of an illness or injury of the participant or beneficiary.”.

Page 227, strike line 1 and all that follows through page 233, line 3, and insert the following (and conform the table of contents accordingly):

Subtitle C—Deduction for Health Insurance Costs of Self-Employed Individuals

SEC. 3201. DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—The table contained in subparagraph (B) of section 162(l)(1) of the Internal Revenue Code of 1986 is amended to read as follows:

In the case of taxable years beginning in calendar year:	The applicable percentage is:
1999, 2000, and 2001	60 percent
2002	70 percent
2003 or thereafter	100 percent.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1998.

Mr. BERRY (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arkansas?

Mr. [Dennis] HASTERT [of Illinois]. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk will continue to read.

The Clerk continued reading the motion to recommit. . . .

POINT OF ORDER

The SPEAKER pro tempore (Mr. KOLBE). Does the gentleman from Illinois insist on a point of order?

Mr. HASTERT. Mr. Speaker, I insist on a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. HASTERT. I yield to the gentleman from California (Mr. THOMAS).

The SPEAKER pro tempore. The Chair will recognize the gentleman from California (Mr. THOMAS) on the point of order.

Mr. [William] THOMAS [of California]. Mr. Speaker, contained among the numerous provisions in the motion to recommit is striking the medical savings accounts. Notwithstanding the gentleman's representation that this will save billions of dollars a year, the Congressional Budget Office says that simply is not so. In fact, it will save less than $1 billion a year. That is the point on which the point of order turns, because the gentleman's addition of the acceleration of the self-employed deduction in fact scores more than $1 billion and therefore is subject to a 303 Congressional Budget Act point of order. It in fact increases the budget before the final budget is adopted in a given fiscal year. It applies clearly in this particular instance. A point of order, therefore, lies against the gentleman and I would urge the Chair to sustain the 303(a) Congressional Budget Act point of order.

The SPEAKER pro tempore. The gentleman from California has made a point of order.

Does the gentleman from Arkansas (Mr. BERRY) wish to be heard on the point of order?

Does the gentleman from Maryland (Mr. CARDIN) wish to be heard on the point of order?

Mr. [Benjamin] CARDIN. Yes, I do, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Maryland is recognized on the point of order.

Mr. CARDIN. If I understand the gentleman from California's point is that the striking of the medical savings account provision would not save as much money as accelerating the self-employed insurance deduction by 4 years.

Mr. Speaker, I would like to include in the RECORD a document that has been received from the Joint Committee on Taxation that shows that striking the medical savings account provision will save $4.1 billion, the self-employed health insurance deduction would cost $3.4 billion, for a net revenue savings to the treasury of $687 million.

The SPEAKER pro tempore. The gentleman from Maryland may insert the documents after the point of order but not during debate on the point of order.

Is there any other Member who wishes to be heard on the point of order?

Mr. CARDIN. Mr. Speaker, on that point, if I am correct, the point of order is being raised as it relates to having—

The SPEAKER pro tempore. That is correct. The Chair must rely on what is being said to the Chair and so insertion into the RECORD during the debate on the point of order is not in order at this time.

Mr. CARDIN. I would just quote into the RECORD the document from the Joint Committee on Taxation dated July 23, 1998, and would be glad to make it available to the Parliamentarian.

The SPEAKER pro tempore. Does any other Member wish to be heard?

Mr. THOMAS. Mr. Speaker, on the point just registered, this is the House and not the Senate. The Senate just read 10-year numbers, the House operates on 5-year numbers, and the point of order still stands.

Mr. CARDIN. Mr. Speaker, let me put into the RECORD the 5-year numbers. The 5-year numbers on striking the medical savings account provision would save $1.3 billion, the self-employed would cost $1.2 billion, for a net savings to the treasury of $56 million.

The SPEAKER pro tempore. Is there any other Member who wishes to be heard on the point of order? If not, the Chair is prepared to rule.

Mr. THOMAS. Mr. Speaker, the gentleman is reading from a document that I do not believe is current. Would he cite the number and the date?

Mr. CARDIN. If the gentleman would yield, it is dated July 23, 1998.

Mr. THOMAS. I tell the gentleman the numbers I just read come from a Joint Tax Committee publication July 24, 1998. But the gentleman is not bad being only one day behind.

Mr. CARDIN. Mr. Speaker, I have the July 25 numbers.

The SPEAKER pro tempore. Does the gentleman from Illinois insist upon his point of order?

Mr. HASTERT. Mr. Speaker, I insist on my point of order.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order? Is there anybody else who wishes to be heard on the point of order? If not, the Chair is prepared to rule.

The amendment proposed in the motion to recommit would strike one of the revenue provisions from the bill. The amendment also would insert an alternate revenue change. In this latter respect, the amendment "provides an increase or decrease in revenues" within the meaning of section 303 of the Budget Act.

Because this revenue change would occur during fiscal year 1999, a year for which a budget resolution has yet to be finalized, the amendment violates section 303(a)(2) of the Act.

The point of order is sustained.

Mr. CARDIN. Mr. Speaker, this is not the point raised in the objection by the Member. I do not know how the Chair can on its own use as a basis for an appeal that was not raised and we did not have a chance to argue the point on.[4] That is blatantly against the rules of the House, and I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. ARMEY

Mr. [Richard] ARMEY [of Missouri]. Mr. Speaker, I move to table the appeal.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Texas (Mr. ARMEY).

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

RECORDED VOTE

Mr. [Gary] ACKERMAN [of New York]. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 222, noes 204, not voting 9, as follows:

[Roll No. 337] . . .

So the motion to table was agreed to.

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4. For a discussion of points of order generally, see Deschler-Brown Precedents Ch. 31, *supra*.

The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

Expanding Entitlement Eligibility

§ 9.7 Against an amendment expanding the class of beneficiaries under a credit entitlement program beyond the class already covered by the bill as amended, the Chair sustained a point of order raised under section 303(a) of the Congressional Budget Act.(1)

On Mar. 26, 1992,(2) an amendment was ruled out on a section 303(a) point of order:

AMENDMENT OFFERED BY MR. PETRI

Mr. [Thomas] PETRI [of Wisconsin]. Mr. Chairman, I offer an amendment which was printed in the RECORD and which amends the bill at page 63.

The Clerk read as follows:

Amendment offered by Mr. PETRI:

Page 63, strike lines 12 through 14 and insert the following:

amended—

(A) by inserting after "full-time basis" in the first sentence the following: "(including a student who attends an institution of higher education on less than a half-time basis)"; and

(B) by inserting before the period at the end of such sentence the following: ", computed in accordance with this subpart".

Page 86, beginning on line 16, strike "and inserting the" and all that follows through line 20 and insert a period.

Page 165, after line 3 insert the following new section (and conform the table of contents accordingly):

LESS THAN HALF-TIME ATTENDANCE

SEC. 426A. (a) FISL PROGRAM.—Section 427 of the Act is amended—

(I) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) made to a student who (A) is an eligible student under section 484, and (B) has agreed to notify promptly the holder of the loan concerning any change of address; and"; and

(B) in paragraph (2)(B)(i), by striking out the semicolon at the end thereof and inserting in lieu thereof "and subsection (d)"; and

(2) by adding at the end thereof the following new subsection:

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1. 2 USC § 634(a).

2. 138 CONG. REC. 7228–31, 102d Cong. 2d Sess. For similar amendments to this bill also ruled out of order on section 303(a) grounds, see 138 CONG. REC. 7226, 7227, 102d Cong. 2d Sess., Mar. 26, 1992; and 138 CONG. REC. 7235, 7236, 102d Cong. 2d Sess., Mar. 26, 1992.

"(d) SPECIAL RULE FOR LESS THAN HALF-TIME STUDENTS.—A borrower who is attending an eligible institution on a less than half-time basis (as determined by the institution)—

"(1) shall be required—

"(A) without regard to the borrower's less than half-time attendance, to repay any loans received while attending an eligible institution on at least a half-time basis; and

"(B) to commence repayment of any loans received under this part while attending on a less than half-time basis immediately upon ceasing such attendance; and

"(2) may receive deferments under subsection (a)(2)(C)(ii) for loans received while attending on a less than half-time basis.".

(b) GSL PROGRAM.—Section 428(b) of the Act is amended—

(1) in the matter preceding clause (i) of paragraph (1)(A), by striking "who is carrying at an eligible institution at least one-half the normal full-time academic workload (as determined by the institution)" and inserting "who is enrolled at an eligible institution";

(2) by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULE FOR LESS THAN HALF-TIME STUDENTS.—A borrower who is attending an eligible institution on a less than half-time basis (as determined by the institution) shall be required—

"(A) without regard to the borrower's less than half-time attendance, to repay any loans received while attending an eligible institution on at least a half-time basis; and

"(B) to commence repayment of any loans received under this part while attending on a less than half-time basis immediately upon ceasing such attendance; and".

Page 233, after line 7 insert the following new subsection (and redesignate the succeeding subsections accordingly):

(a) LIFETIME LINE OF CREDIT; INCOME CONTINGENT LOAN REPAYMENT PROGRAMS.—Section 439 of the Act is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively; and

(B) by inserting immediately after paragraph (1) the following: "(2) through such corporation, to enable working men and women desiring to upgrade their job skills, and unemployed individuals, or those not in the labor force, who are seeking new skills, to borrow funds for less than half-time study as described in subsection (r); (3) to provide for agreements between such corporation and a limited number of institutions for the replacement of such institutions' current participation in the loan program under section 428A with loans originated by such corporation that shall be repaid on an income contingent basis in accordance with subsection (s);';

(2) in subsection (d)(1)—

(A) in subparagraph (D), by striking out "and" at the end thereof;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting immediately after subparagraph (D) the following:

"(E) to issue obligations to carry out the purposes of subsections (r) and (s), in the amounts specified therein; and"; and

(3) by adding at the end thereof the following new subsections:

"'(r) LIFETIME LINE OF CREDIT.—(1) PURPOSE.—In order to enhance the lifetime education and training opportunities available to working men and women desiring to upgrade their job skills, or unemployed individuals, or those not in the labor force who are seeking new skills, it is the purpose of this subsection to require the Association to originate loans for such individuals who are enrolled at an eligible institution on

a less than half-time basis, under the terms and conditions described in this subsection. The Association shall issue obligations in an amount sufficient to carry out the purposes of this subsection and subsection (s), but in no case to exceed $100,000,000 for fiscal year 1993 and each of the four succeeding fiscal years.

"(2) APPLICABILITY OF GSL LOAN LIMITS.—A student who is enrolled at an eligible institution on a less than half-time basis may borrow up to $25,000 in the aggregate under this section, which shall be counted toward his or her aggregate loan limits under sections 427, 428, and 428A. In no case may a loan made under this subsection for a period of enrollment exceed the student's cost of attendance for such period of enrollment. . . .

The CHAIRMAN.[3] Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. [William] FORD of Michigan. Mr. Chairman, briefly I rise to a point of order against the gentleman's amendment.

The CHAIRMAN. The gentleman from Michigan [Mr. FORD] raises a point of order against the amendment. Does the gentleman wish to proceed with his point of order?

Mr. FORD of Michigan. I will not, Mr. Chairman, at the same time repeat all the reasons I gave against the amendment offered by the gentlewoman from New Jersey [Mrs. ROUKEMA]. They all apply with equal force to the Petri amendment.

Mr. PETRI. Mr. Chairman, will the gentleman reserve his point of order so I can make a statement on the bill and then proceed with the point of order?

Mr. FORD of Michigan. Certainly. The gentleman is a valuable member of my committee. I reserve my point of order so the gentleman may speak for a few minutes.

The CHAIRMAN. The gentleman from Michigan [Mr. FORD] reserves a point of order, and the gentleman from Wisconsin [Mr. PETRI] is recognized for 5 minutes in support of his amendment. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Michigan [Mr. FORD] insist on his point of order?

Mr. FORD of Michigan. Yes, Mr. Chairman, I do.

The CHAIRMAN. The Chair will hear the gentleman.

Mr. FORD of Michigan. Mr. Chairman, I raise a point of order.

Under section 303(a) of the Congressional Budget Act, it is not in order to consider any measure which creates entitlement authority or direct spending authority first effective in a fiscal year prior to the adoption of the budget resolution for that fiscal year.

The instant amendment offered by Mr. PETRI creates new spending authority first effective in fiscal year 1993 by making eligible for student loan programs under the act students attending institutions of higher education on less than a half-time basis. This expansion of an entitlement program would be first effective in fiscal year 1993.

Since Congress has yet to agree to the conference report on the concurrent resolution on the budget for fiscal year 1993, the amendment is not in order.

Further, under section 402(a) of the Congressional Budget Act, it is not in order to consider any measure which creates credit authority which is not subject to prior appropriation.

3. Donald Pease (OH).

The instant amendment expands the size of the guaranteed student loan program, and consequently creates additional authority to incur primary loan guarantee commitments.

Since the amendment does not make this credit authority specifically subject to appropriations, it violates section 402(a) of the Budget Act.

Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman from Wisconsin [Mr. PETRI] wish to be heard on the point of order?

□ 1800

Mr. PETRI. Mr. Chairman, earlier in the consideration of this bill an amendment offered by the gentleman from Wisconsin [Mr. GUNDERSON] was adopted to which this point of order at least in part would have pertained but was not made extending the provisions of the act to less than full-time students. Therefore, this amendment does not affect that since the bill has already been amended in that respect.

The CHAIRMAN (Mr. PEASE). The Chair is prepared to rule.

The Chair rules that, in the first place, this amendment goes beyond the Gunderson amendment which was adopted and against which no point of order was made.

Under the terms of the bill even as amended by the Gunderson amendment, a class of borrowers addressed by the amendment would not be eligible for guaranteed student loan interest rate subsidies. Under the amendment, that class of borrowers would be made so eligible. Because the amendment enlarges the class of borrowers eligible, it thus provides new entitlement authority within the meaning of section 303 of the Budget Act. For all the reasons stated by the gentleman from Michigan, the point of order is sustained.

Spending in "Out-Years"

§ 9.8 Section 303(a) of the Congressional Budget Act[1] prohibits the consideration in either House of any bill or amendment thereto (including a conference report) containing "new spending (entitlement) authority" which becomes effective during a fiscal year prior to the adoption of the first concurrent resolution on the budget for that fiscal year.[2]

On Sept. 30, 1976,[3] a conference report containing new spending "entitlement" authorities to become effective in fiscal years 1978–1980 in amounts increased over fiscal year 1977 was ruled out on a point of order under section 303(a) of the Congressional Budget Act, because the first concurrent resolution on the budget for those future fiscal years had not yet been

1. 2 USC § 634(a). See also Deschler-Brown Precedents Ch. 29 § 2.37, *supra*.
2. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.
3. 122 CONG. REC. 34074, 34075, 94th Cong. 2d Sess.

adopted and the increased entitlements could not be considered merely continuations of entitlement authority which became effective in the fiscal year (1977) for which a concurrent resolution had been adopted.

CONFERENCE REPORT ON H.R. 13367, STATE AND LOCAL FISCAL ASSISTANCE AMENDMENTS OF 1976

Mr. [Jack] BROOKS [of Texas]. Mr. Speaker, I call up the conference report on the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill. . . .

POINT OF ORDER

Mr. [Brock] ADAMS [of Washington]. Mr. Speaker, I raise a point of order against the conference agreement.

The SPEAKER.[4] The gentleman will state the point of order.

Mr. ADAMS. Mr. Speaker, I raise a point of order against the conference agreement on H.R. 13367, to extend the State and Local Fiscal Assistance Act of 1972. The conference agreement contains a provision, not included in the House bill, which provides new spending authority for fiscal years 1978 and 1979 over the amounts provided for fiscal year 1977. This new entitlement increment for succeeding fiscal years violates section 303(a) of the Congressional Budget Act which provides in part:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides— . . . new spending authority described in section 401(c)(2)(C) to become effective during a fiscal year . . . until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

By increasing the fiscal year 1978 entitlement by $200 million over the amounts for fiscal year 1977, H.R. 13367 does provide new spending authority to become effective for a fiscal year for which a budget resolution has not been adopted. It would thereby allow that new spending increment to escape the scrutiny of the fical [sic] year 1978 budget process. While section 303 provides an exception for new budget authority and revenue changes for a succeeding fiscal year, entitlement programs were expressly omitted from the exception by the House-Senate conference on the Congressional Budget Act.

Mr. [Frank] HORTON [of New York]. Mr. Speaker, I rise in opposition to the point of order.

The applicable provision of the Budget Act in this matter concerns section 303(d)(1). This provision provides an exception for any bills on the full fiscal year for which the current resolution applies. The $200 million increase contained in the conference report begins in fiscal year 1978, the next fiscal year beyond 1977, the year for which our present budget resolution applies.

The $200 million increase, since it begins in fiscal year 1978, technically conforms with the Budget Act and deserves to be retained in the conference report. I might say to the membership that in making this point of order, this was brought up in the conference

4. Carl Albert (OK).

and we purposely did not provide for any increase in fiscal year 1977. We purposely skipped the first three-quarters. We agreed upon a term of 3¾ years for the Revenue Sharing Act to be in effect, but we skipped the first three-quarter year and applied a $200 million increment for the first fiscal year thereafter, namely, 1978, and for each of the 3 years subsequent thereto; or a total of $600 million. So, we purposely skipped this fiscal year 1977 so that we would not violate the budget resolution.

Accordingly, I believe that the point of order should be overruled.

Mr. [Clarence] BROWN of Ohio. Mr. Speaker, I also would like to be heard on the point of order.

The SPEAKER. The gentleman is recognized.

Mr. BROWN of Ohio. Mr. Speaker, if I understand the parliamentary situation, it is that the point of order has been made against the revenue sharing bill by the chairman of the Budget Committee on the theory that the revenue sharing bill contains, in the entitlement, language that would provide for the budget resolution to be broken in the future.

As I understand, the budget resolution applies to the 1977 fiscal year. In the 1977 fiscal year, the budget resolution contains $6.65 billion for the revenue sharing entitlement for that year. The fact of the matter is that for that year, the fiscal year 1977, the revenue sharing conference reported includes only $6.65 billion. So, in point of fact, it does not bust the budget resolution in that regard.

Now, in out years, the revenue sharing conference did report an additional $200 million. There are, if the point of order should be sustained, if I understand them, several ways in which this conflict in the conference—if, in fact, there is one—and the budget resolution could be resolved.

One is to have the Rules Committee convene and make an exception. The other is, if the gentleman from Texas, the chairman of the Government Operations Committee, who was chairman of the conference (Mr. BROOKS), offers an amendment which would take out the $200 million after the conference report is rejected on the parliamentary point; just take out the parliamentary issue, then we could vote down that amendment and we could offer at that point, if I understand, an indexing provision which would be in accordance with the budget resolution. That indexing provision could be capped at $200 million in such a way that the $200 million annual increase for the out years after 1977 would be both germane to the budget resolution and conform to the agreement made with the Senate in the conference.

We could save both the conference agreement and the virginity of the budget resolution if in fact there is a problem at this point. But it would be my contention, Mr. Speaker, that there is not a problem because for the fiscal year 1977 we had in that conference exactly what the budget resolution calls for.

The SPEAKER. The Chair recognizes the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS. Mr. Speaker, in response to the comments made by the gentleman from New York (Mr. HORTON), the provision that he refers to regards new budget authority, not entitlement programs where there is a reference over to the Committee on Appropriations and it is controlled in that fashion. This committee in its wisdom and the vote of the House was that this should be an entitlement program, and the violation is to the budget statute and process. We have applied this to all other committees of the House, that entitlement programs for the fiscal year, where we are changing the entitlement—and we have had this come up before—must be considered in the budget resolution for the fiscal year involved. This committee wishes for fiscal year 1978 to bring forth

something for fiscal year 1978 that can be done in the budget cycle of that year. But it is out of order to bring it up and try to put it into the process at this point.

The argument of the gentleman from Ohio (Mr. BROWN) is irrelevant to the discussion that we are having at this point because the discussion we are having at this point is on the violation of the budget statute, not the amounts of money in the budget resolution for fiscal year 1977.

I would say to the Members that the same amount of money will go in fiscal year 1977 to the cities, regardless of what happens, so long as the bill is passed this year. There is no dispute about the amount for this year. It is the violation of the budget process for fiscal year 1978, fiscal year 1979, and fiscal year 1980.

Mr. Speaker, I ask that my point of order be sustained.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I yield to the gentleman from New York (Mr. HORTON).

Mr. HORTON. I thank the gentleman for yielding.

Mr. Speaker, the gentleman understands, does he not, there is no additional amount in fiscal year 1977?

Mr. ADAMS. That is correct.

Mr. HORTON. The amount involved, $200 million, would not be applicable until fiscal year 1978. And in the next Congress, the next session, the Budget Committee would at that time have an opportunity to act on that budget.

Mr. ADAMS. No, the gentleman is not correct, because this represents one of the worst kinds of problems in budgeting.

If the entitlement goes in place, as the gentleman stated, that money would automatically be spent and would be required to be in the budget resolution. Neither the House nor the Budget Committee could consider the matter in the fiscal year 1978 budget cycle.

That is why those in the House on the conference and later the House and the Senate in their wisdom put this provision in, to control entitlement programs. That is the purpose of the provision, and it is vitally important to act.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I yield to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. I thank the gentleman for yielding.

Mr. Speaker, I refer to the Public Law 93–344, the language that exists on page 22(d)(2).

Mr. ADAMS. Would the gentleman refer to the motion, please? I am using both the conference report and the statute.

Mr. BROWN of Ohio. Section 401.

Mr. ADAMS. Is the gentleman referring to the statute or the conference report?

Mr. BROWN of Ohio. Section 401 of the statute.

The SPEAKER. The Chair has been liberal in enforcing the rules on arguing on a point of order. The Chair controls the time and each individual Member desiring to be heard should address the Chair and not yield to other Members.

Does the gentleman from Ohio (Mr. BROWN) desire to be heard?

Mr. BROWN of Ohio. Yes, Mr. Speaker, I do desire to be heard.

Mr. Speaker, I refer to Public Law 93–344 of the 93d Congress which was enacted July 12, 1974, and I refer to page 22 of that legislation, section 401(d)(2). Section 401(d) is entitled "Exceptions." Subsection (d)(2), under "Exceptions," says as follows:

> Subsections (a) and (b) shall not apply to new spending authority which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972, or

a continuation of the program of fiscal assistance to State and local governments provided by that Act,—

meaning the Local Fiscal Assistance Act of 1972—

to the extent so provided in the bill or resolution providing such authority.

Mr. Speaker, it seems to me clearly designed in that legislation that the Local Fiscal Assistance Act of 1972 was meant to contain an exception from the entitlement procedure, a procedure which was in fact used in that legislation of 1972, the first Revenue Sharing Act, and I see no other way to read it except that we would provide an exception to sections 401(a) and (b) in accordance with the legislation that the Congress previously passed.

The act provides—and this is what the conference provided for—an entitlement, and the entitlement is in fact both an authorization and an appropriation. It provided for the funds for that purpose into the future. For the first year it did not result in any breaking of the Budget Resolution passed by this House in accordance with the Committee on the Budget.

So, Mr. Speaker, I see no way by which the extension of the Revenue Sharing Act could be prohibited, because this exemption which was provided is in the law.

It may be argued that the language in our extension does not specifically say, "in accordance with section (d)(2)," et cetera, so we can go ahead and pass an entitlement, but I am sure that that reference would not be necessary for any reasonable person to interpret both what we did in the conference and what was down in this basic Public Law 93–344, which is the Congressional Budget and Accounting Act of 1974.

The SPEAKER. Does the gentleman from Washington (Mr. ADAMS) desire to be heard further on the point of order?

Mr. ADAMS. Yes, I do, Mr. Speaker.

In reply to the argument of the gentleman from Ohio (Mr. BROWN), I refer the gentleman to the statement of the managers which defines and comments on the section that he mentioned. At page 66 of the report of the managers it states very clearly that the managers note that these exemptions that the gentleman has referred to relate only to the procedures in section 401, and that the programs are fully subject to the congressional budget process.

That exemption, therefore, has no applicability to section 303 which provides, as I have explained before in my argument, a very careful system for the handling of entitlement programs.

Mr. Speaker, I ask that the point of order be sustained.

The SPEAKER. The Chair is prepared to rule. The Chair thinks he has heard about all the arguments he needs to hear.

Mr. BROWN of Ohio. Mr. Speaker, may I make one final comment in response to the statement of the gentleman from Washington (Mr. ADAMS)?

The SPEAKER. The Chair will hear the gentleman briefly.

Mr. BROWN of Ohio. Mr. Speaker, the gentleman from Washington (Mr. ADAMS) just quoted a reference to section 401. Section 401 clearly embraces section 401(d), which is the exemption section, and I do not see how it can be read any other way, even by the gentleman from Washington, for whom I have the greatest respect and affection, but who, I know, is generally opposed to the revenue sharing legislation.

The SPEAKER. The Chair is ready to rule.

The gentleman from Washington (Mr. ADAMS) makes a point of order against the conference report on the bill H.R. 13367 on the ground that section 5(a) of the conference report provides new spending authority and entitlement increment for fiscal years 1978 and 1979 over the amounts provided for in fiscal year 1977, in violation of section 303(a) of the Congressional Budget Act of 1974.

The gentleman from New York (Mr. HORTON) and the gentleman from Ohio (Mr. BROWN) rebut this argument by contending that a mere incremental increase in an entitlement for subsequent fiscal years is not new spending authority as prescribed in section 401(c)(2)(c) to become effective during the subsequent fiscal years, but rather, a continuation of the spending authority for fiscal year 1977, which is permitted under section 303(a).

The Chair has examined the conference report, and section 5(a) is structured so as to provide separate authorization for entitlement payments for each of the fiscal years 1977, 1978, and 1979, with a higher authorization for 1978 and 1979 than for 1977.

In the opinion of the Chair, such a separate increase in entitlement authorizations is new spending authority to become effective during those subsequent fiscal years, which may not be included in a bill or an amendment prior to the adoption of the first concurrent resolution for fiscal years 1978 and 1979, which does not come within the exception contained in section 303(b) for new budget authority, and which does not come within the section 401(d) revenue-sharing exception—applicable only to contract or borrowing spending authority as defined in subsections (a) and (b) of section 401(c)—cited by the gentleman from Ohio.

The Chair therefore sustains the point of order against the conference report.

Restoring Provisions Proposed To Be Cut

§ 9.9 Against an amendment constraining the size of a new discretionary student loan program and restoring for students thereby displaced from the new program benefits under an existing mandatory student loan program, the chairman of the Committee of the Whole sustained a point of order under section 303(a) of the Congressional Budget Act[1] on the basis that the amendment provided new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year.

On Mar. 26, 1992,[2] the following occurred:

"CHAPTER 6—NATIONAL STUDENT SAVINGS DEMONSTRATION PROGRAM

"SEC. 407A. NATIONAL STUDENT SAVINGS DEMONSTRATION PROGRAM.

"(a) STATEMENT OF PURPOSE.—It is the purpose of this section to—

"(1) create a demonstration program to test the feasibility of establishing a national student savings program to encourage families to save for their children's college education and thereby reduce the loan indebtedness of college students; and

"(2) help determine the most effective means of achieving the activities described in paragraph (1).

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1. 2 USC § 634(a).

2. 138 CONG. REC. 7139, 7152, 7171–73, 102d Cong. 2d Sess.

''(b) DEMONSTRATION PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary is authorized to award a demonstration grant to not more than 5 States to enable each such State to conduct a student savings program in accordance with this section.

''(2) AMOUNT OF GRANT.—The amount of each grant awarded pursuant to paragraph (1) shall be computed on the basis of—

''(A) a Federal match in an amount equal to the initial State deposit into each account established pursuant to subsection (c)(2)(B), except that such Federal match shall not exceed $50 per child; multiplied by

''(B) the number of children participating in the program assisted under this part.

''(3) PRIORITY.—In awarding grants under this section the Secretary shall give priority to States proposing programs that establish accounts for a child prior to the age of compulsory school attendance in the State in which such child resides. . . .

PART D—FEDERAL DIRECT LOANS

SEC. 451. ESTABLISHMENT OF FEDERAL DIRECT LOAN PROGRAM.

Part D of title IV of the Act is amended to read as follows:

"PART D—FEDERAL DIRECT LOAN DEMONSTRATION PROGRAM

"SEC. 451. PROGRAM AND PAYMENT AUTHORITY.

''(a) PROGRAM AUTHORITY.—The Secretary shall, in accordance with the provisions of this part, carry out a loan demonstration program for qualified students and parents at selected institutions of higher education to enable the students to pursue their courses of study at such institutions during the period beginning on July 1, 1994 and ending on June 30, 1998.

''(b) PAYMENT AUTHORITY.—

''(1) GENERAL AUTHORITY.—The Secretary shall, from funds made available under section 459, make payments under this part for any fiscal year to institutions of higher education having an agreement under section 454, on the basis of the estimated needs of students at each institution and parents for student or parent loans taking into consideration the demand and eligibility of such students and parents for loans under this part.

''(2) ENTITLEMENT PROVISION.—An institution of higher education which has an agreement with the Secretary under section 454 shall be deemed to have a contractual right against the United States to receive payments according to that agreement.

"SEC. 452. PAYMENT RULES. . . .

''(5) provide that students at the institution of higher education and their parents will not be eligible to participate in the Federal Stafford Loan program, the Federal Supplemental Loans to Students program, or the Federal Plus loan program for the period during which such institution participates in the loan demonstration program[.] . . .

The CHAIRMAN.[3] Are there any amendments to title IV?

AMENDMENT OFFERED BY MR. COLEMAN OF MISSOURI

Mr. [Tom] COLEMAN of Missouri. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. COLEMAN of Missouri:

Page 273, line 24, after the quotation marks insert "(b) ADMINISTRATIVE EXPENSES.—", and before such line insert the following:

"(a) LOAN FUNDS AUTHORIZED.—There are authorized to be appropriated for the purpose of making direct loan payments under section 451(b)(1), not to exceed $500,000,000 for fiscal year 1994 and each of the 4 succeeding fiscal years.

Page 262, after line 15, after "shall" insert ", subject to subsection (c)".

Page 262, after line 17, insert the following new subsection:

"(c) ACCESS TO LOANS WHEN DEMAND EXCEEDS SUPPLY.—If the demand for loans under this part for any academic year at institutions with which the Secretary has an agreement under section 454 exceeds, in the aggregate, the amount available (pursuant to section 459A(a)) for such loans for such academic year, the Secretary shall

3. Donald Pease (OH).

notify each such institution of that fact and establish for each such institution an allocation (from such available amount) that such institution will be permitted to lend under this part. Each such institution shall make that allocation available or loans to its students on a first-come, first-served basis, in accordance with regulations prescribed by the Secretary. Any additional demand for loans from such students shall be met by providing such students with the certifications required to permit such students to obtain loans under part B of this title.

Page 263, beginning on line 14, strike "was $500,000,000 in the most recent year for which data is available" and insert "can reasonably be expected to be $500,000,000 in each year of the demonstration program".

Page 267, line 6, after "will not" insert ", except as necessary because of the application of section 451(c)." . . .

Mr. [Leon] PANETTA [of California]. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The gentleman from California [Mr. PANETTA] reserves a point of order on the amendment. . . .

Mr. COLEMAN of Missouri. . . .

My amendment tries to rein in, about $1.25 billion, we estimate, in additional borrowing that the Federal Government would have to make to put into this demonstration project. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from California [Mr. PANETTA] wish to insist on his point of order?

Mr. PANETTA. Mr. Chairman, we have a large number of amendments that are involved with this bill. We have made very clear to those Members with the amendments that we have to proceed with the points of order under the Budget Act. We get criticized if we do not make these points of order.

I regret to the gentleman in the well, Mr. COLEMAN of Missouri, I think the amendment does have some merit to it, but I also have a responsibility to enforce the Budget Act with points of order. We are going to do that on many amendments here today. I am not going to pick and choose. I apologize, but that is the case.

I wish to proceed with my point of order.

The CHAIRMAN. The gentleman from California [Mr. PANETTA] will state his point of order.

Mr. PANETTA. Mr. Chairman, under section 303(a) of the Congressional Budget Act, it is not in order to consider any measure which creates entitlement authority or direct spending authority first effective in a fiscal year prior to the adoption of the budget resolution for that fiscal year.

The instant amendment offered by COLEMAN of Missouri creates new entitlement authority first effective in fiscal year 1994. Since Congress has yet to agree to the budget resolution for fiscal year 1994, section 303(a) prohibits its consideration.

The bill under consideration, in establishing a Federal Direct Loan Demonstration Program, proposes an either/or proposition. For students at particular institutions, and their parents, eligibility to participate in the entitlement loan programs under part B of title IV of the Higher Education Act is extinguished by the terms of the bill.

The Coleman amendment, in capping the aggregate loan volume available for the demonstration program, specifically reestablishes the right to participation in the entitlement loan programs under part B as the means for satisfying additional demand beyond the

cap. The amendment goes so far as to mandate student eligibility, which would not otherwise exist, by directing the Secretary to provide students with the certifications required to permit such students to obtain loans under part B of this title.

By renewing this eligibility, the amendment creates new entitlement authority first effective in fiscal year 1994—the year in which the demonstration program begins and the year in which eligibility for participation in other student loan entitlement programs under the act would otherwise be extinguished.

Since Congress has yet to agree to the conference report on the concurrent resolution on the budget for fiscal year 1994, the amendment is not in order.

Further, section 402(a) of the Congressional Budget Act prohibits the consideration of any measure which creates credit authority which is not subject to prior appropriation.

The instant amendment, in creating additional eligibility for participation in entitlement loan programs not otherwise provided by the bill creates additional authority to incur primary loan guarantee commitments.

Since the amendment does not make this credit authority specifically subject to appropriations, it also violates section 402(a) of the Budget Act.

Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman from Missouri [Mr. COLEMAN] wish to be heard on the point of order?

Mr. COLEMAN of Missouri. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Missouri is recognized on the point of order.

Mr. COLEMAN of Missouri. Mr. Chairman, this truly is a time when we look at the Budget Act. The gentleman has just cited two sections of it, both of which the intent, and my point of order and my response to it is that the intent of section 402(a) and section 303(a) of the Budget Act does not intend that the Congress spend more money as a result of these budget provisions, and in fact my amendment saves money under these budget acts, and that the entitlements set up are in fact entitlements already in the bill being proposed to this body this afternoon. That is where the entitlements come from.

I am trying to limit those entitlements. I am trying to restrict the growth of borrowing. I do not care what citations the gentleman from California [Mr. PANETTA] wants to make of the Budget Act, I will cite the entire Budget Act. The entire Budget Act is supposed to get spending under control. I am trying to reduce borrowing and spending and the deficit by $1.25 billion.

Now, the gentleman can go into all the technicalities he wants to and he can present all of this. It does not make sense. It does not make to the American people for the chairman of the Committee on the Budget to stand up and make a point of order against the budget saving proposal amendment because it violates the Budget Act.

This truly is a bizarre world we live in here in Washington, in the House of Representatives, where we are going to stop money-saving, budget-saving, borrowing-saving amendments from themselves because they in fact would save money because they violate the Budget Act.

If that is what the Budget Act has, then it is not serving the American people very well. I am truly sorry, even though the gentleman from California says that my amendment has merits, that he is proposing a technicality, if he can find one, and we will find out if the Parliamentarian has found one, to avoid talking about this issue that ought to be debated in public and ought to be put out there for everybody to talk about.

That is my point of order. I do not know if it is nicely confined. I did not have somebody draw it up for me to cite all the citations. But the true point of order is that the

public thinks this whole place is out of order. Let us get back in order. Let us go ahead and sustain my position and not the position of the gentleman from California [Mr. PANETTA].

The CHAIRMAN (Mr. PEASE). Does any other Member wish to be heard on the point of order? If not, the Chair is prepared to rule.

Under the terms of the bill, paragraph 5 on page 267, Stafford loans are not available in institutions that participate in the pilot program. Under the amendment, Stafford loans are required to be to any overflow demands for the pilot program as constrained by the amendment. Because Stafford loans are entitlements, the amendment thus provides new entitlement authority within the meaning of section 303, which prohibits an increased use of existing entitlements or creation of new entitlements in future fiscal years prior to the final adoption of the budget resolution.

For that reason, the Chair sustains the point of order.

Proper Baseline for Evaluation

§ 9.10 Against an amendment enlarging (as compared to the pending bill)[1] the class of borrowers entitled to extension of the period during which the United States would subsidize (without recompense) their interest payments on student loans, the chairman of the Committee of the Whole sustained a point of order under section 303(a) of the Congressional Budget Act[2] on the basis that the amendment provided new entitlement authority for the ensuing fiscal year prior to the adoption of a concurrent resolution on the budget for that fiscal year.

On Mar. 26, 1992,[3] the following occurred:

The CHAIRMAN.[4] The gentleman from Missouri reserves a point of order on the amendment.

The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mrs. MINK: Page 169, line 23, strike "and"; on page 170, line 5, insert "and" after the semicolon; and after line 5, insert the following.
>
> "(iii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service, or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training;". . . .

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1. As noted in the Chair's ruling, section 303(a) points of order raised against amendments are evaluated on the basis of the amendment's marginal effect on the pending legislation, and not its effect on existing law. Although the class of borrowers were eligible under existing law for the subsidies at issue, the pending bill eliminated such eligibility.
2. 2 USC § 634(a).
3. 138 CONG. REC. 7181–4, 102d Cong. 2d Sess.
4. Donald Pease (OH).

Page 170, line 16, strike "and"; on line 23, insert "and" after the semicolon; and after line 23, insert the following.

"(iii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service, or serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training;".

POINT OF ORDER

The CHAIRMAN. The time of the gentlewoman from Hawaii has again expired.

Does the gentleman from Missouri [Mr. COLEMAN] wish to pursue his point of order?

Mr. [Tom] COLEMAN of Missouri. Mr. Chairman, I do.

Mr. Chairman, I am sympathetic to the concerns that are expressed here for this amendment. The bill already has extended hardship deferments for 3 years in the bill, and we are trying to make some rationality under all of these deferments.

My point of order, Mr. Chairman, is that I cite section 303(a) of the Budget Act, which prohibits any new spending authority first effective for fiscal year 1993 or beyond until the concurrent resolution on the budget for the fiscal year has been agreed to. Since the budget resolution has not been agreed to, all amendments that require spending for fiscal year 1993 or beyond violate the Budget Act.

Furthermore, I cite section 401(b)(1), which precludes any new entitlement authority first effective before October 1992.

The amendment in question would require the Government to pay an interest subsidy for an extended period of time for individuals not otherwise subsidized by the bill. The amendment expands the class of individuals entitled to an interest subsidy in repayment of their student loans. Consequently, the amendment establishes a benefit, a beneficiary, and a right to the benefit, in this case interest subsidy, satisfying the definition of new entitlement authority under the Budget Act.

While the Congressional Budget Office did not credit the committee bill with savings for changes in the deferment terms of student loan programs in the act, the present amendment expands the class of individuals entitled to the economic benefit of loan principal and repayment deferments and interest subsidies.

The CHAIRMAN. Does the gentlewoman from Hawaii [Mrs. MINK] wish to be heard on the point of order?

Mrs. [Patsy] MINK [of Hawaii]. Yes, Mr. Chairman, I wish to be heard on the point of order.

Mr. Chairman, the points that have been raised in opposition to my amendment come to me with a great deal of shock and surprise, because we had submitted this amendment to the Congressional Budget Office as we are required to do, and the process by which we make that inquiry is to send in our amendment, and noted thereon are three marks from the CBO on my amendment saying that it does not involve any direct spending or any new entitlement authority.

Under three of those lines, it says, "None, none, none," and it seemed to me that we were fully in our right to bring this amendment to the floor with the CBO having told us and assured us that there was no additional money or no additional entitlement authority.

Furthermore, in debating this matter in committee, time and time again we were assured that these students for which we are now seeking a special designation for their

deferments were already going to be covered under the amendment, that all we were doing by that general amendment in the bill was to clarify the process in order to avoid having all of these separate categories, but that medical interns and residents would be treated just as they were in the past.

It was with that assurance that I supported the refinement of the language and agreed to the passage of the bill. However, since that time we find that not to be necessarily true, because, as I have pointed out earlier, the interns and residents probably do not pay tuition and, therefore, would not be included in the category of being in school.

It seems to me, Mr. Chairman, this point of order comes very late. It comes at a time when we have no opportunity to refute it.

What can a Member of the House do in the face of an approved slip from the CBO which is the very process which we are expected to follow, when they tell us that our amendment is in order, does not cost additional money, does not direct additional spending, has no new entitlement authority, only to find that at the last minute that decision has been reversed and we find that we do not have an opportunity to offer this amendment which so many Members, I believe, support and would like to have included in the higher education bill?

The CHAIRMAN (Mr. [Donald] PEASE [of Ohio]). Are there other Members who wish to be heard on the point of order?

If not, the Chair is prepared to rule.

It is the understanding of the Chair that CBO may have advised various Members based on the assumption that medical interns and residents were already covered by the bill, which the Chair is advised is not the case.

It is the obligation of the Chair to measure the point of order against the pending bill before the Committee and to make a judgment as to the nature of the new spending authority. Under the terms of the bill, the class of borrowers addressed by the amendment would not be eligible for deferment of student loan repayments.

Under the amendment, that class of borrowers would be made so eligible. Because a deferment extends the period during which the United States subsidizes a borrower's interest payments, deferments are, in effect, entitlements.

Because the amendment enlarges the class of borrowers eligible for deferment, it does provide new entitlement authority within the meaning of section 303.

Accordingly, the Chair sustains the point of order.

Congressional Budget Office or Committee on the Budget Estimates

§ 9.11 Although under section 303 of the Congressional Budget Act[1] estimates provided by the Committee on the Budget may be treated as persuasive—whether for their analytical merit or simply to maintain consistency in determinations under title III of the Act—such estimates are not controlling, and the assumptions underlying such estimates are not dispositive of any matters to which they relate.[2]

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1. 2 USC § 634. See also Deschler-Brown Precedents Ch. 31 § 8.14, *supra*.

2. The Budget Enforcement Act of 1997 amended section 312(a) of the Congressional Budget Act to provide that levels of new budget authority, outlays, direct spending, entitlement authority, and revenues shall be determined on the basis of estimates made

On Mar. 26, 1992,[3] the following occurred:

AMENDMENT OFFERED BY MR. KLUG

Mr. [Scott] KLUG [of Wisconsin]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.[4] Has the amendment been printed in the RECORD?

Mr. KLUG. Yes, Mr. Chairman, it has.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mr. KLUG: Page 169, line 23, and page 170, line 16, strike "and"; and on page 170 after line 5 and after line 23, insert the following new clauses:
>
> "(iii) not in excess of 3 years during which the borrower is engaged as a full-time teacher in a public on nonprofit private elementary or secondary school in a teacher shortage area established by the Secretary pursuant to paragraph (4) of this subsection;
>
> Page 177, strike lines 13 through 16 and redesignate the succeeding subsections accordingly.
>
> Page 177, line 18, strike "428(b)(4) of the Act as redesignated)" and insert "428(b)(5) of the Act".
>
> Page 178, line 4, and page 179, lines 14 and 23, redesignate paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively.

Mr. KLUG (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

POINT OF ORDER

Mr. [William] FORD of Michigan. Mr. Chairman, I am constrained to and must make a point of order on this amendment.

The CHAIRMAN. The gentleman will state his point of order.

Mr. FORD of Michigan. Mr. Chairman, I would have reserved a point of order, but what just happened when we tried to do that is an illustration that we will never get finished here if we use the reservation of a point of order for unlimited debate. For that reason I make the point of order without a reservation.

Mr. Chairman, in section 303(a) of the Congressional Budget Act it is not in order to consider any measure which creates entitlement authority or directs spending authority first effective in the fiscal year prior to the budget resolution for that fiscal year.

The amendment would require the Government to pay an interest subsidy for an extended period of time for individuals not otherwise subsidized by the bill.

The amendment expands the class of individuals entitled to an interest subsidy in repayment of their student loans. Consequently, the amendment establishes a beneficiary

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by the Committee on the Budget. Because section 303(a) points of order are fundamentally about the *timing* of new spending authorities, estimates of the *levels* of such authorities are not dispositive of questions raised under that section.

3. 138 CONG. REC. 7185, 7186, 102d Cong. 2d Sess.

4. Donald Pease (OH).

and a right to the benefit in the subsidy satisfying the definition of new entitlement authority under the Budget Act.

While the Congressional Budget Office did not credit the committee with savings for changes in the deferment terms of the student loan programs in the act, the present amendment expands the class of individuals entitled to the economic benefit of loan principal repayment deferments and interest subsidies.

I want to close by saying it makes me extremely sad to have to make this point of order, because I have been trying to get into the law what the gentleman is trying to do in the law. He is right. He is right, but we are operating with something called the Budget Act and we have squeezed every last little smidgeon of money out of everything that we could get our hands on to justify the bill, and we just cannot pass up the clear duty that places on us with the Budget Act.

I am sorry, Mr. Chairman, that we cannot accommodate the gentleman by accepting his amendment.

The CHAIRMAN. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. KLUG. Yes, very briefly, I might add, Mr. Chairman.

The CHAIRMAN. The gentleman may proceed.

Mr. KLUG. First of all, Mr. Chairman, this amendment, like the amendment offered by my colleague, the gentlewoman from Hawaii just a few minutes ago, attempts to expand the higher education authority to also allow deferments for teachers involved in teacher shortage areas. In fact, right now, 34 States have made application to the Federal Government because of shortages of teachers, much like the shortage of physicians in rural areas across the United States.

I accept the gentleman's point of order, but let me tell you, there is some frustration that I feel in that we in good faith went to the Congressional Budget Office last week and asked for an analysis, only to have now today an indication that the CBO estimate no longer holds. They told us there would be no additional expense. We come to the floor and suddenly find out that in this case the Congressional Budget Office, which happens to support our position, no longer holds.

I think that is a very dangerous precedent. If we are going to ask the CBO to do an analysis, then my sense is the CBO analysis should be the rule of law on this floor.

The CHAIRMAN. Does anyone else wish to be heard on the point in order?

Mr. [Robert] WALKER [of Pennsylvania]. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania may proceed. . . .

Mr. WALKER. At this point, Mr. Chairman, what I would ask is that the point of order not be sustained, that the point of order while it comes timely is not sustainable from the standpoint that the CBO has ruled that the matter before the House does not extent an entitlement, that it in fact is something where the particular people covered are assumed to have been covered previously, so therefore the amendment of the gentleman from Wisconsin is in order and should be considered by the House.

Mr. FORD of Michigan. Mr. Speaker, may I be heard further on the point of order?

The CHAIRMAN. The gentleman from Michigan may proceed.

Mr. FORD of Michigan. Mr. Chairman, the gentleman from Pennsylvania apparently was not on the floor when the previous ruling was made by the Chair on precisely the same point of order, and the point of order was raised from that side of aisle.

I think it is really unfair hyperbole for the gentleman to come in late and suggest that because I made the point of order that the ruling would be different than it was when

the gentleman from Missouri [Mr. COLEMAN] on the Republican side made the point of order. It is exactly the same point of order. The same issues are at stake and the same assertion was made on the previous point of order that the Congressional Budget Office made a mistake. It is not because it is my point of order that I expect them to rule on it. I expect them to rule exactly as they did with the Republican point of order.

The CHAIRMAN. Does anyone else wish to be heard on the point of order?

Mr. WALKER. Mr. Chairman, may I be heard?

Mr. FORD of Michigan. Mr. Chairman, the gentleman has already been heard on this point of order.

Mr. WALKER. So has the gentleman from Michigan, Mr. Chairman.

The CHAIRMAN. The gentleman may be heard more than once on a point of order. The gentleman from Pennsylvania may proceed.

Mr. WALKER. I thank the gentleman.

Mr. Chairman, I plead guilty to not raising the point on the previous question. But the point that I am making here is one of who is going to make determinations with regard to the Budget Act? Our understanding all the way along had been that the Budget Act was determined by the CBO. . . .

The CHAIRMAN (Mr. [Ed] PEASE [of Ohio]). Does anyone else desire to be heard on the point of order? If not, the Chair is prepared to rule.

The Chair would observe that the fact that CBO assumed the inclusion of these borrowers in its estimating model is not dispositive to the question of order under section 303. Moreover, under section 303 the Chair must be guided by the text and, unlike sections 302 and 311, is not required to accept Budget Committee estimates as conclusive.

Having said that, the Chair would point out that the issue here is identical to what it was in the amendment raised by the gentlewoman from Hawaii, and based on the same reasoning the Chair sustains the point of order.

§ 9.12 While under section 303 of the Congressional Budget Act[1] the chairman of the Committee of the Whole is not required to rely upon estimates from the Committee on the Budget in determining whether a provision constitutes new budget authority in advance of adoption of a budget resolution, the chairman of the Committee of the Whole may rely upon Congressional Budget Office estimates in order to maintain scorekeeping consistency under enforcement provisions of title III of the Congressional Budget Act.

An amendment repealing an agricultural marketing quota (entitlement) program for peanuts over a 5-year period was nevertheless held to provide new budget authority for the ensuing fiscal year and not to be in order under section 303(a) of the Congressional Budget Act prior to adoption of the concurrent resolution on the budget for that fiscal year, where the chairman was persuaded by estimates from the Congressional Budget Office that economic conditions under that repeal would result in decreased receipts and increased Federal outlays during that (first) fiscal year.

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1. 2 USC § 634.

On July 25, 1990,[2] the following occurred:

TITLE VIII—PEANUTS

SEC. 801. SUSPENSION OF MARKETING QUOTAS AND ACREAGE ALLOTMENTS.

The following provisions of the Agricultural Adjustment Act of 1938 shall not be applicable to the 1991 through 1995 crops of peanuts:

(1) Subsections (a) through (j) of section 358 (7 U.S.C. 1358(a)–(j)).

(2) Subsections (a) through (h) of section 358a (7 U.S.C. 1358a(a)–(h)).

(3) Subsections (a), (b), (d), and (e) of section 359 (7 U.S.C. 1359 (a), (b), (d), (e)).

(4) Part I of subtitle C of title III (7 U.S.C. 1361 et seq.).

(5) Section 371 (7 U.S.C. 1371). . . .

AMENDMENT OFFERED BY MR. ARMEY

Mr. [Richard] ARMEY [of Texas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ARMEY: Strike out title VIII (page 153, line 1 through page 189, line 22), and insert in lieu thereof the following:

TITLE VIII—PEANUTS

SEC. 801. REPEAL OF MARKETING QUOTA PROGRAM FOR PEANUTS.

(a) MARKETING QUOTAS.—Part VI of subtitle B of title III of the Agricultural Adjustment Act of 1933 (7 U.S.C. 1357–1359), relating to peanuts, is repealed.

(b) PRICE SUPPORT LEVELS.—The Agricultural Act of 1949 (7 U.S.C. 1441 et seq.) is amended—

(1) in section 101(b) (7 U.S.C. 1441(b)), by striking "and peanuts";

(2) in section 408(c) (7 U.S.C. 1428(c)), by striking "peanuts,"; and

(3) by repealing sections 108, 108A, and 108B (7 U.S.C. 1445c, 1445c–1, and 1445c–2).

(c) CONFORMING AMENDMENTS.—(1) Sections 361, 371(a), 371(b), 373(a), 373(b), and 375(a) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361, 1371, 1373, and 1375) are amended by striking "peanuts" each place it appears.

(2) Section 373(a) of such Act (7 U.S.C. 1373(a)) is further amended—

(A) by inserting "and" in the first sentence after "from producers,"; and

(B) by striking ", all producers engaged in the production" and all that follows through "peanut-threshing machines".

(3) Section 8(b)(2) of the Agriculture Adjustment Act (7 U.S.C. 608b(b)(2)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking ", as determined under section 108B of the Agricultural Act of 1948 (7 U.S.C. 1445c–2),".

SEC. 802. PRICE SUPPORT PROGRAM.

The Agricultural Act of 1949 (7 U.S.C. 1441 et seq.) is amended by inserting after section 107F (7 U.S.C. 1445b–5) the following new section:

"SEC. 108. PRICE SUPPORT PROGRAM FOR PEANUTS.

"(a) IN GENERAL.—Except as provided in subsection (c), the prices of the 1991 and subsequent crops of peanuts shall be supported at such level as the Secretary determines to be appropriate.

"(b) FACTORS.—In making the determination, the Secretary shall take into consideration—

"(1) the factors specified in paragraphs (1) through (8) of section 401(b);

"(2) the cost of production;

"(3) any change in the index of prices paid by farmers for production items, interest, taxes, and wage rates during the period beginning January 1 and ending December 31 of the calendar year immediately preceding the crop year for which the level of support is being determined;

"(4) the demand for peanuts for domestic edible use, peanut oil, and meal;

"(5) expected prices of other vegetable oils and protein meals; and

"(6) the demand for peanuts in foreign markets.

"(c) LIMITATION.—The level of price support determined by the Secretary for a crop of peanuts shall not result in a net loss to the Federal Government in excess of the average

2. 136 CONG. REC. 19155, 19160, 19161, 101st Cong. 2d Sess.

net loss to the Federal Government from supporting the 1987, 1988, and 1989 crops of peanuts.''.

SEC. 803. EFFECTIVE DATE.

The amendments made by this title shall take effect beginning with the 1991 crop of peanuts.

POINT OF ORDER

Mr. [Charles] HATCHER [of Georgia]. Mr. Chairman, I have a point of order.

The CHAIRMAN.(3) The gentleman will state it.

Mr. HATCHER. Mr. Chairman, the Armey amendment violates section 303 of the Budget Act because it provides new budget authority in 1991 with no budget resolution in place.

According to the Congressional Budget Office, commercial users of peanuts would suspend their 1990 purchasing in anticipation of lower 1991 prices. CBO estimates that 1990 carryover stocks would fall by 50 percent, about 335 million pounds. Producers would fail to redeem a similiar [sic] volume of peanut price support loans in the absence of commercial use, resulting in a reduction of loan repayments of $110 million in fiscal year 1991. CBO projects that CCC would be able to sell the acquired stocks of peanuts at about half the acquisition price, netting $55 million of receipts in fiscal year 1992 and no net cost in fiscal year 1993 through fiscal year 1995.

□ 1440

The CHAIRMAN. Does the gentleman from Texas [Mr. ARMEY] wish to be heard on the point of order?

Mr. ARMEY. I would like to be heard on the point of order, Mr. Chairman.

Mr. Chairman, if one reads the amendment on page 3, line 13, it begins "limitation," and the limitation is very, very much to the point. If I can just take a moment I will read the limitation. It says:

> The level of price support determined by the Secretary for a crop of peanuts shall not result in a net loss to the Federal Government in excess of the average net loss to the Federal Government for supporting the 1987, 1988 and 1989 crops of peanuts.

Mr. Chairman, on the basis of the inclusion of that limitation in the amendment I would suggest that it does not violate, it does not have the violation that the gentleman has raised as a point of order against the amendment.

The CHAIRMAN. . . .

Under section 302, where levels of spending and revenues are pertinent, the Chair must rely on estimates—this is important, the Chair has to rely on estimates—provided by the Committee on the Budget pursuant to subsection 302(g).(4) Under section 303, however, the Chair is guided by arguments as to whether an amendment provides new budget authority for the ensuing fiscal year.

In the instant case, having been informed by the gentleman from Georgia that the Congressional Budget Office has scored the language of the amendment as providing new

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3. David Bonior (MI).

4. Now section 312(a) of the Congressional Budget Act (2 USC § 643). Pursuant to Rule XXIX clause 4, adopted at the beginning of the 112th Congress, such authoritative guidance with respect to budgetary levels may now be provided by the chairman of the Committee on the Budget. *House Rules and Manual* § 1105d (2011).

budget authority of $110 million for fiscal 1991 based upon economic assumptions and estimates that are unique to the peanut program, the Chair is inclined to give weight to those estimates in order to maintain consistency in determinations under title III of the Budget Act.

The Chair sustains the gentleman's point of order.

Economic Assumptions

§ 9.13 To a section of a committee amendment providing eligibility for benefits under the food stamp program and allowing an excess shelter cost deduction not to exceed a certain dollar limit in computing household income, an amendment requiring an adjustment in the deduction ceiling, effective January 1, 1979, to reflect changes in shelter and utility costs, was ruled out (on the assumption that such costs would continue to rise) as providing new spending (entitlement) authority to become effective in a fiscal year for which a concurrent resolution on the budget had not yet been adopted, in violation of section 303(a) of the Congressional Budget Act.[1]

On July 27, 1977,[2] the following occurred:

The Clerk read as follows:

ELIGIBLE HOUSEHOLDS

SEC. 1205. (a) Participation in the food stamp program shall be limited to those households whose incomes and other financial resources held singly or in joint ownership are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Assistance under this program shall be furnished to all eligible households who make application for such participation. . . .

(e) In computing household income the Secretary shall allow (1) a standard deduction of $60 a month for each household, except those in Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands which shall be allowed a standard deduction determined by the Secretary in accordance with the best available information on the relationship of actual or potential itemized deductions claimed under the food stamp program in those areas to such deductions in the forty-eight other States and the District of Columbia. Such standard deductions, starting on July 1, 1978, shall be adjusted every July 1 and January 1 to the nearest $5 to reflect changes in the Consumer Price Index of the Bureau of Labor Statistics for items other than food for the six months ending the preceding March 31 and September 30, respectively. The Secretary shall allow additional deductions (2) equal to 20 per centum of all earned income (other than that excluded by subsection (d)), to any household receiving earned income in order to compensate for taxes, other mandatory deductions from salary, and work expenses, (3) for excess shelter costs to any household to the extent that the amount of actual shelter costs of such household are in excess of 50 per centum of its income after all other

1. 2 USC § 634(a).
2. 123 CONG. REC. 25222, 25223, 95th Cong. 1st Sess.

deductions have been subtracted, but such excess shelter deduction shall not exceed $75 in the forty-eight States in the contiguous United States and the District of Columbia, or in the case of Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, an amount determined by the Secretary in accordance with the best available information on the relationship of actual shelter costs of food stamp recipients in Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, to such costs in all of the other States, and such excess shelter deduction shall not be applied in any State for the purpose of computing household income in order to determine eligibility pursuant to subsection (c); and (4) a dependent care deduction, but not to exceed $75 a month per household, for the actual cost of payments necessary for the care of a dependent when such care enables a household member to accept or continue employment or training or education preparatory to employment. . . .

Mr. [Matthew] McHUGH [of New York]. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offecer [sic] by Mr. McHugh to the amendment offered by Mr. Foley: Insert the following language after the figure "$75" in section 1205(e)(3) at page 14, line 11: "(adjusted annually to the nearest $5, commencing January 1, 1979, (to reflect changes in the shelter and fuel and utilities components of housing in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the 12 month period ending the preceding September 30th)".

POINT OF ORDER

Mr. [Steven] SYMMS [of Idaho]. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN.[3] The gentlemen will state the point of order.

Mr. SYMMS. Mr. Chairman, I make a point of order against the amendment offered by the gentleman from New York (Mr. McHugh) on the grounds that it violates section 303(a)(4) of the Budget Control Act—Public Law 93–344.

Section 303(a) provides as follows:[4]

Sec. 303. (a) In General.—It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution (or amendment thereto) which provides—

(1) new budget authority for a fiscal year;

(2) an increase or decrease in revenues to become effective during a fiscal year;

(3) an increase or decrease in the public debt limit to become effective during a fiscal year; or

(4) new spending authority described in section 401(c)(2)(C) to become effective during a fiscal year;

until the first concurrent resolution on the budget for such year has been agreed to pursuant to section 301.

The amendment obviously provides for additional entitlement in fiscal year 1979 and is offered prior to the adoption of the first concurrent resolution for 1979 and is, therefore, subject to a point of order.

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3. Frank Evans (CO).

4. Section 303 of the Congressional Budget Act (2 USC § 634) has been amended on several occasions since the time of this precedent and no longer takes the form described here. Section 303(a)(4) now relates only to Senate proceedings.

The CHAIRMAN. Does the gentleman from New York wish to be heard on the point of order?

Mr. McHUGH. Yes, Mr. Chairman.

Mr. Chairman, as anyone knows, this bill covers a 4-year period. All the provisions relating to entitlement relate to that 4-year period. Therefore, I think that the gentleman's point of order is not well taken.

Second, there is no guarantee that there will be any additional funds required by this amendment, if it should be adopted. It is an indexing amendment which is related to the cost of shelter in the Consumer Price Index. If those costs should not rise, then this amendment would have no impact.

So for those two reasons, I would indicate to the Chairman that this point of order is not well taken.

The CHAIRMAN. Does the gentleman from Idaho wish to be heard further on the point of order?

Mr. SYMMS. Mr. Chairman, speaking further on the point of order, the gentleman's own explanation of the amendment, the purpose of the cost index is to cover additional costs incurred, estimated by economic planners of the future, and I think it does, in effect, and will, in fact, incur additional funding. Therefore, the point of order should be sustained.

The CHAIRMAN. The Chair is ready to rule.

The gentleman from Idaho makes the point of order that the amendment offered by the gentleman from New York (Mr. McHugh) violates section 303(a) of the Congressional Budget Act of 1974 by providing for new spending—entitlement—authority which becomes effective in fiscal year 1979, and is proposed in advance of the adoption of the first concurrent resolution on the budget(5) for that fiscal year.

The amendment would, beginning January 1, 1979, change the formula in H.R. 7940 by which households are determined to be eligible for food stamp entitlement benefits. In determining such income level eligibility the bill provides that the household's deduction that it may claim for excess shelter costs shall not exceed $75. The amendment would permit an annual adjustment of that deduction to reflect changes in shelter and fuel housing costs, and would, if such costs continued to escalate as they have, result in new eligibility after January 1, 1979, for households which would not be eligible under H.R. 7940 for food stamps.

In the opinion of the Chair, the amendment as drafted appears to constitute new spending authority which first becomes effective in fiscal year 1979 and for that reason is in violation of section 303(a) of the Congressional Budget Act. The Chair sustains the point of order.

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5. As noted in Section 1, the reforms to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a first and second budget resolution for a given fiscal year. Section 303(a) now applies to the one (and only) budget resolution required by the Budget Act.

§ 10. Section 311

Background

Section 311 of the Congressional Budget Act[1] provides a point of order against the consideration of legislation providing budget authority that exceeds the spending ceiling or reduces revenues below the revenue floor established by the most recent concurrent resolution on the budget. The point of order addresses budget aggregates (*i.e.*, total levels of budget authority and revenues), rather than committee allocations (which are governed by section 302(f)) or individual functional categories.

A point of order under section 311(a) is applicable to bills, joint resolutions, amendments, motions and conference reports. The point of order will be sustained if the enactment of the bill or resolution (in either its reported form or the form recommended in a conference report) or the adoption and subsequent enactment of an amendment would cause a breach of the spending limit (or a reduction of revenues below the revenue floor) established by the concurrent resolution on the budget.[2] With respect to revenues, the point of order applies not only to the first fiscal year covered by the budget resolution, but also the total of that first fiscal year and the ensuing fiscal years for which allocations are provided under section 302(a) of the Congressional Budget Act.[3] Gramm-Rudman-Hollings[4] added an exception providing that when a declaration of war by the Congress is in effect, section 311(a) points of order are not applicable.

A waiver of section 311(a) points of order against the initial consideration of a measure in the House does not extend to consideration of amendments to that measure[5] or to consideration of conference reports on that measure, unless specified in the waiver.[6] Likewise, a waiver against initial consideration of a measure in the House does not extend to motions to concur in Senate amendments containing additional violations of sections 311(a), such motions requiring separate waivers.[7]

The point of order is applicable in both the House and the Senate.[8] As with other points of order under the Congressional Budget Act, a vote of

1. 2 USC § 642.

2. See §§ 10.1–10.3, *infra*.

3. 2 USC § 642(a)(1). See § 11, *infra*.

4. Pub. L. No. 99–177.

5. See § 10.8, *infra*.

6. See 128 CONG. REC. 1270, 97th Cong. 2d Sess., Feb. 9, 1982 (H. Res. 356).

7. See § 10.7, *infra*.

8. For an example of a section 311(a) point of order sustained in the Senate for an amendment causing an outlay breach, see 133 CONG. REC. 11990, 100th Cong. 1st Sess., May

three-fifths of Senators duly chosen and sworn is required to waive section 311(a), pursuant to section 904(c).[9]

In the House, the point of order must be raised at the time the bill, amendment, or conference report is first considered, and is untimely once debate has begun on the measure.[10]

Gramm-Rudman-Hollings also codified the so-called "Fazio exception" at section 311(c) of the Congressional Budget Act.[11] That subsection exempts from the application of section 311 certain measures that, although in breach of the overall budget authority ceiling, would not cause the appropriate allocation of new budget authority made pursuant to section 302(a)[12] of the Budget Act for that fiscal year to be exceeded. Thus, if the enactment of a bill or resolution (in its reported form or the form recommended by a conference report) or the adoption and enactment of an amendment would not cause the bill to exceed that committee's 302(a) allocation, it would be exempt from 311(a) points of order. The rationale for this exception is to prevent penalizing committees that had avoided breaching their own budget allocations but had, due to overspending by other committees, reported bills breaching the total level of budget authority as established in the most recent concurrent resolution on the budget.[13]

The Budget Enforcement Act of 1990 created a broad exception[14] to certain Congressional Budget Act points of order (including sections 302, 303 and 311), which provided that certain categories of spending (including emergency spending)[15] shall not be taken into account when evaluating

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12, 1987. For examples of amendments struck down in the Senate on section 311(a) points of order for reducing revenues below the revenue floor, see, *e.g.*, 129 CONG. REC. 9131, 9132, 9151, 98th Cong. 1st Sess., Apr. 20, 1983; and 129 CONG. REC. 6564, 6565, 6573, 98th Cong. 1st Sess., Mar. 22, 1983. For an example of an amendment struck down in the Senate for reducing a rescission (thus having the net effect of increasing budget outlays above the spending ceiling), see 126 CONG. REC. 17469–79, 96th Cong. 2d Sess., June 27, 1980.

9. 2 USC § 621 note; *House Rules and Manual* § 1127 (2011). For an example of a successful waiver of this point of order, see 140 CONG. REC. 29956, 103d Cong. 2d Sess., Nov. 30, 1994. For an example of an attempted waiver that failed to achieve the necessary three-fifths vote, see 142 CONG. REC. 1462, 1476, 104th Cong., 2d Sess., Jan. 26, 1996.

10. See Deschler-Brown Precedents Ch. 31 § 4.3, *supra*.

11. 2 USC § 642(c).

12. See § 10.9, *infra*.

13. Prior to the advent of Gramm-Rudman-Hollings, concurrent resolutions on the budget would occasionally provide this same exception on an *ad hoc* basis. See § 4, *supra*, and § 10.4, *infra*.

14. This exception was found in the temporary title VI of the Congressional Budget Act, at section 606(d)(2). Pub. L. No. 101–508.

15. See Pub. L. No. 99–177, secs. 251(b)(1), 251(b)(2)(A–D), and 252(e).

points of order under those sections. The BEA of 1990 also clarified the scope of section 311 by substituting "joint resolution" for "resolution" to avoid the possibility that a simple resolution of the House (such as a special order of business reported from the Committee on Rules) could violate section 311.[16] Finally, the BEA of 1990 also inadvertently broke a cross-reference in section 311(c) (the "Fazio exception") to committee allocations made pursuant to title VI of the Congressional Budget Act.[17] This error was temporarily repaired by a specific clarification contained in the budget resolution for fiscal year 1993.[18]

Rule XXI clause 8[19] provides that points of order under title III of the Budget Act (including section 311(a)) apply to unreported as well as reported measures, beginning in 2007.[20]

Pursuant to section 308(b) of the Budget Act,[21] the Committee on the Budget must report periodically to the House a status update on current House budget actions as compared to the spending ceiling and the revenue floor of the latest budget resolution in order to aid point of order enforcement (including section 311 of the Budget Act).[22] Section 312(a) provides that evaluation of points of order under titles III and IV of the Budget Act, including section 311(a), shall be made on the basis of estimates provided by the Committee on the Budget.[23] Pursuant to Rule XXIX clause 4, such estimates may be provided by the chairman of that committee.[24]

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16. *Parliamentarian's Note:* Prior to this change, section 311 was liable to the interpretation that a special order of business "self-executing" text containing budget authority violating aggregate budget levels or "hereby" concurring in Senate amendments with similar violations would "provide" such impermissible budget authority and therefore not be in order. The revision described here allowed the Committee on Rules this additional procedural flexibility without the need for Budget Act waivers.

17. Between 1990 and 1998, committee allocations were made pursuant to authority found in section 602 of the Congressional Budget Act, rather than section 302. See § 11, *infra*. However, section 311(c) was not amended to account for this change and its provisions were still textually tied to (non-existent) committee allocations made pursuant to section 302. As noted in the following footnote, a clarifying statement was carried in the budget resolution for fiscal year 1993 to reflect congressional intent to continue the "Fazio exception" during this time period.

18. 138 CONG. REC. 12156, 102d Cong. 2d Sess., May 20, 1992 (H. Con. Res. 287, sec. 11). See § 4, *infra*.

19. *House Rules and Manual* § 1068c (2011).

20. See § 11, *infra*.

21. 2 USC § 639(b).

22. See § 7, *supra*.

23. 2 USC § 643(a). A form of this provision (applicable only to section 311 points of order) was originally found in section 311(b) of the Congressional Budget Act, prior to Gramm-Rudman-Hollings.

24. *House Rules and Manual* § 1105d (2011).

Provisions Constituting a Breach

§ 10.1 Against a motion to concur in a Senate amendment with an amendment providing additional new budget authority for a fiscal year for which current levels of such authority were already in breach of the totals and allocations established under the pertinent budget resolution, the Speaker sustained points of order raised under sections 302(f) and 311(a) of the Congressional Budget Act(1) as further exceeding the relevant levels.

On Sept. 28, 1989,(2) the following occurred:

The text of the amendment is as follows:

Senate amendment No. 6: Page 12, line 10, strike out "$124,532,000" and insert: "$48,000,000".

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I make a point of order against the language in the pending motion as a violation of section 311(a).

The SPEAKER pro tempore.(3) The gentleman will suspend and let the motion be read first.

MOTION OFFERED BY MR. FAZIO

Mr. [Victor] FAZIO [of California]. Mr. Speaker, I offer a substitute motion.

The SPEAKER pro tempore. First the Clerk will report the original motion.

The Clerk read as follows:

Mr. FAZIO moves that the House recede from its disagreement to the amendment of the Senate numbered 6 and concur therein with an amendment, as follows:

In lieu of the sum stricken and inserted by said amendment, insert the following: "$115,661,000, of which $29,379,000 is available only for Senate official mail costs, to be disbursed by the Secretary of the Senate, $54,561,000 is available only for House official mail costs, to be disbursed by the Clerk of the House, and $31,721,000 is an additional amount for fiscal year 1989".

Mr. [Jerry] LEWIS of California (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. HERTEL). Is there objection to the request of the gentleman from California?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, I want to hear the amendment. I object to the request of the gentleman from California.

The SPEAKER pro tempore. The Clerk will read the motion.

The Clerk read the balance of the motion.

The SPEAKER pro tempore. The Clerk read the original motion, not the substitute motion of the gentleman from California [Mr. FAZIO].

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1. 2 USC §§ 633(f), 642(a).
2. 135 CONG. REC. 22267, 101st Cong. 1st Sess.
3. Dennis Hertel (MI).

Does the gentleman from Minnesota [Mr. FRENZEL] have a point of order on that motion?

Mr. FRENZEL. Mr. Speaker, I do have a point of order against the original motion.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. FRENZEL. Mr. Speaker, I make a point of order against the language in the pending motion under section 311(a) and section 302(f)(1) of the Congressional Budget Act of 1974.

This language violates the above-mentioned sections of the Budget Act because it contains $31.7 million in new budget authority for fiscal year 1989.

Section 311(a) of the Budget Act provides a point of order against any bill, amendment, or conference report which provides new budget authority that would cause the appropriate level of total new budget authority for a fiscal year to be exceeded. According to the Parliamentarian's status report filed in the CONGRESSIONAL RECORD of September 19, 1989, the appropriate level of total new budget authority contained in House Concurrent Resolution 268, the concurrent budget resolution for fiscal year 1989, has been exceeded by $16.6 billion. This language would add an additional $31.7 million to the amount of this excess.

Section 302(f)(1) of the Budget Act provides that it shall not be in order to consider a bill, amendment, or conference report providing new budget authority which would cause the appropriate committee allocation to be exceeded. The Appropriations Committee has exceeded its committee allocation for fiscal year 1989 by $1.3 billion. This language would add $31.7 million new budget authority to this overage, thereby violating section 302(f)(1) of the Budget Act.

I believe the motion before us constitutes a violation of both of those sections.

The SPEAKER pro tempore. Does the gentleman from California [Mr. FAZIO] wish to be heard on the point of order?

Mr. FAZIO. Yes, I do, Mr. Speaker.

The SPEAKER. The gentleman is recognized.

Mr. FAZIO. Mr. Speaker, this is simply an effort to keep our commitment to pay for the bills that have been incurred. We are paying in this supplemental appropriation for the current fiscal year, $31.7 million which has already been expended. Rather than carry that forward into the future as has been the case in the past on occasion, we felt it was most appropriate to pay it in this fiscal year as part of the supplemental attached to this bill. This money ought not to be paid by the public through postal rates. It certainly has been incurred by the Congress. We believe that we ought to keep faith with the Postal Service and pay every one of the bills that come due for services rendered. I hope we will be willing to continue our record of having paid all our bills.

Therefore I would hope the gentleman would withdraw his point of order.

The SPEAKER pro tempore. Does the gentleman from Minnesota insist on his point of order?

Mr. FRENZEL. Mr. Speaker, I do insist.

Mr. FAZIO. Mr. Speaker, I concede the point of order.

The SPEAKER pro tempore (Mr. HERTEL). For the reasons stated by the gentleman from Minnesota, the point of order is sustained by the Chair based on the estimate furnished by the Budget Committee.

Provisions Not Constituting a Breach

§ 10.2 Sections 311(a) and 302(f) of the Congressional Budget Act[1] prohibit consideration of bills and amendments containing new

1. 2 USC §§ 642(a), 633(f).

budget authority or outlays in excess of aggregate totals or amounts allocated to committees, but do not apply to provisions which do not constitute new budget authority or outlays but instead result in outlay savings such as prepayment of government loans.

On June 30, 1987,(2) an amendment was found not to violate section 311(a) of the Budget Act:

The SPEAKER pro tempore.(3) The Clerk will designate the next amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 223: Page 49, after line 17, insert:

RURAL ELECTRIFICATION ADMINISTRATION

Notwithstanding the amount authorized to be prepaid under section 306A(d)(1) of the Rural Electrification Act of 1936 (7 U.S.C. 936a(d)(1)), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) that serves six or fewer customers per mile may, at the option of the borrower, prepay such loan (or any loan advance thereunder) during fiscal year 1987 or 1988, in accordance with section 306A of such Act.

MOTION OFFERED BY MR. WHITTEN

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will designate the motion.

The text of the motion is as follows:

Mr. WHITTEN moves that the House recede from its disagreement to the amendment of the Senate numbered 223 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

RURAL ELECTRIFICATION ADMINISTRATION

Hereafter, notwithstanding section 306A(d) of the Rural Electrification Act of 1936 (7 U.S.C. 936(d)), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with section 306A of such Act.

PARLIAMENTARY INQUIRY

Mr. [Ronald] PACKARD [of California]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. PACKARD. Mr. Speaker, is this the amendment that deals with the Rural Electrication [sic] Administration?

The SPEAKER pro tempore. The gentleman is correct.

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2. 133 CONG. REC. 18307, 18308, 100th Cong. 1st Sess. For section 302(f) points of order, see § 11, *infra*.

3. Daniel Glickman (KS).

POINT OF ORDER

Mr. PACKARD. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state it.

Mr. PACKARD. Mr. Speaker, I make a point of order, the following points of order, actually:

No. 1, that subject to rule 21, clause 2, this amendment is legislating on appropriation bills.

No. 2, that this amendment is not germane to the supplemental appropriations bill.

No. 3, that this amendment violates section 302(f) of the Congressional Budget Act.

No. 4, that this amendment violates section 311(a) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman from Mississippi wish to be heard on the point of order?

Mr. WHITTEN. Mr. Speaker, I rise in opposition to the point of order. This amendment is germane to the amendment of the Senate.

What the amendment does is quite straightforward. It removes the phrase "that serves 6 or fewer customers per mile" from the Senate amendment. This has the direct result of allowing REA's that have population density of up to 12.4 customers per mile to qualify, rather than just 6 customers per mile.

The amendment does not change the class of borrowers that can prepay; it simply enlarges the same class. It does not add some other type of borrower.

The Senate amendment allows Rural Electrification Administration borrowers who serve six or fewer customers per mile of line to refinance their REA guaranteed debt with the Federal Financing Bank without being assessed a prepayment penalty.

There are 51 borrowers whose loans bear an interest rate such that they would be worthwhile to refinance at present interest rates.

At present there are 31 borrowers with loans whose density is 6 or fewer per mile. There are 20 borrowers with loans whose density is greater than 6 customers per mile of line.

The conference agreement would allow all 51 borrowers to refinance their loans rather than only 31 borrowers.

This type of amendment is clearly in order and is germane.

Cannon's procedures states, "A general subject may be amended by specific proposition of the same class." Mr. Speaker, this is exactly what is being done.

In fact, the amendment is even stricter. In effect, what is involved is a proposition being amended by the same proposition in the same class. Clearly, such an amendment expands the scope, but is germane.

Mr. Speaker, I respectfully request that the point of order be overruled.

I believe this is not a violation of any provision of the Budget Act. It is not in violation, since no allocation of discretionary budget authority has been exceeded.

The SPEAKER pro tempore. Are there other Members who wish to be heard on the point of order?

Mr. PACKARD. Simply, Mr. Speaker, that it appears to me obvious that this is legislating differently than what is in the supplemental, in that it does change the Government's budget responsibilities to the loans that have been executed some years ago by the different providers from the REA.

I cannot conceive that changing those budget requirements and obligations would be a legislative matter.

The SPEAKER pro tempore. The Chair is prepared to rule.

With respect to the issue of whether this motion constitutes legislation on an appropriations bill, the Chair rules that it is not in violation of clause 2 ––––XX, since the amendment was brought back in disagreement for a separate vote, not as part of the conference report. Therefore, the Chair rules that the motion, while continuing legislation on an appropriation bill; does not violate any rule of the House at this stage of the proceedings as an amendment to the Senate amendment.(4)

With respect to the germaneness issue that the gentleman raises, the motion is germane to the Senate amendment since relating to the same class of borrowers covered by the Senate amendment and the Senate amendment itself is being brought back in disagreement for a separate vote. Therefore, there is no valid germaneness point of order with respect to the motion disposing of the Senate amendment.(5)

With respect to the Budget Act points of order, the sections that the gentleman cited, this motion provides for a prepayment provision on loans. It involves no budget authority or budget outlays in fiscal year 1987. It actually results in outlay savings, not expenditures, in 1987, since it involves prepayment of loans.

Therefore, the Chair overrules the various points of order.

§ 10.3 To an appropriation bill containing new budget outlays already in excess of the total level permitted by the second concurrent resolution(1) on the budget for that fiscal year, where the bill was considered under a waiver of section 311(a) of the Congressional Budget Act,(2) an amendment striking a proposed rescission of existing budget authority in the bill was ruled out in the House for violating section 311(a), as further exceeding the total budget outlay ceiling in the second concurrent resolution on the budget.

Section 311(a) of the Budget Act, precluding any amendment "providing additional new budget authority" which would cause the appropriate level of total new budget authority or budget outlays to be exceeded, has been interpreted to prohibit consideration of an amendment striking out a rescission of existing budget authority where its effect was to increase the net total new budget authority in the bill (an amount calculated by offsetting rescissions in the bill against new appropriations) resulting in a further breach of the spending ceiling in the applicable budget resolution.

On May 12, 1981,(3) the following occurred:

The Clerk read as follows:

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4. For more on points of order under Rule XXI clause 2, see generally Deschler's Precedents Ch. 26, *supra*.
5. For more on the germaneness rule, see generally Deschler-Brown Precedents Ch. 28, *supra*.
1. The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a second annual budget resolution.
2. 2 USC § 642(a).
3. 127 Cong. Rec. 9314, 9315, 97th Cong. 1st Sess.

PAYMENTS IN LIEU OF TAXES

(RESCISSION)

Of the funds appropriated under this head in the Interior and Related Agencies Appropriations Act, 1981 (Public Law 96–514) and previous Interior Department Appropriations Acts $108,000,000 are rescinded.

AMENDMENT OFFERED BY MR. LUJAN

Mr. [Manuel] LUJAN [of New Mexico]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LUJAN: Page 57 strike out line 7 through line 12.

Mr. [Sidney] YATES [of Illinois]. Mr. Chairman, I reserve a point of order against the amendment. . . .

Mr. YATES. Mr. Chairman, I insist on my point of order.

The CHAIRMAN pro tempore.[4] The gentleman will state his point of order.

Mr. YATES. Mr. Chairman, I make a point of order against the amendment.

I make a point of order against the gentleman's amendment because it provides additional budget authority and budget outlays in excess of the budget authority and budget outlay totals agreed to in the latest concurrent budget resolution and is in violation of section 311 of the Congressional Budget Act (Public Law 93–344).

The gentleman's amendment proposes to delete language (to reduce an amount) in the bill which has the effect of providing budget authority and budget outlays in excess of the current budget ceilings for fiscal year 1981. Section 311 of the Congressional Budget Act states that it shall not be in order to consider any amendment providing additional budget authority or spending authority the adoption of which would cause the appropriate level of total budget authority of total budget outlays set forth in the most recently agreed to concurrent resolution on the budget to be exceeded.

As we all know, on March 18, 1981, Mr. JONES, chairman of the House Budget Committee, placed in the CONGRESSIONAL RECORD the reestimates of budget authority and budget outlays required of him by the Congressional Budget Act which indicate that the fiscal year 1981 budget authority ceiling has been exceeded by $19.6 billion and the budget outlay ceiling has been exceeded by $27.6 billion. The House has recently passed a measure adjusting those ceilings upward but that measure must still be worked out in conference with the Senate.

With these reestimates in place and in the absence of a new resolution having been agreed to raising these ceilings, there is no room left to provide any additional budget authority or outlays. In fact, these budget levels are currently in deficit by billions of dollars.

The gentleman's amendment therefore exceeds the current budget ceilings and is in violation of section 311 of the Congressional Budget Act. It is out of order.

The CHAIRMAN pro tempore. Does the gentleman from New Mexico care to respond to the point of order?

Mr. LUJAN. I would like to address the point of order; I certainly would, Mr. Chairman.

4. Jonas Frost (TX).

What the gentleman says is absolutely correct, but I think we are forgetting one fact here. The previous amendment that just passed reduced that budget amount by $376 million. Certainly, $108 million would fit very nicely under that figure of $376 million.

The CHAIRMAN pro tempore. The Chair is prepared to rule. The amendment offered by the gentleman from New Mexico proposes to strike a rescission of funds contained in the bill.

The amendment, by striking the amount of the rescission in the bill, has the effect of increasing the net amount of new budget authority contained in the bill as a whole, and also has the obvious effect of increasing total outlay levels further above the ceiling currently in place for fiscal year 1981, contained in House Concurrent Resolution 448 of the 96th Congress.

As indicated in the letter from the Budget Committee to the Speaker inserted in the RECORD of March 18, 1981, the outlay ceiling for fiscal year 1981 as of that date had already been exceeded by $27 billion. Thus, despite adoption of the prior amendment, the amendment falls within the prohibition stated in section 311 of the Budget Act, as indicated in a ruling by the Presiding Officer in the other body on June 27, 1980, wherein an attempt was made to reduce a rescission in last year's supplemental appropriation bill.

The Chair, therefore, sustains the point of order raised by the gentleman from Illinois (Mr. [Sidney] YATES).

Rejection of Legislation

§ 10.4 During debate on the second concurrent resolution on the budget,(1) the chairman of the Committee on the Budget evinced his opinion(2) that a resolution of disapproval under the Trade Act of 1974 (disapproving of the President's recommendation to extend most-favored nation status) would not violate the Congressional Budget Act (even though its rejection would cause a decrease in revenues).(3)

On Sept. 19, 1979,(4) the following occurred:

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1. The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a second annual budget resolution.
2. These comments are especially noteworthy given the present authorities of the chairman of the Committee on the Budget under section 312(a) of the Congressional Budget Act (2 USC § 643(a)) and Rule XXIX clause 4 (*House Rules and Manual* § 1105d (2011)). See § 7, *supra*.
3. *Parliamentarian's Note:* The extension of most-favored nation status was scored to provide a small revenue loss. The extension (and thus the revenue loss) would occur automatically unless Congress adopted a resolution of disapproval under the procedures of the Trade Act. If Congress were to reject such a resolution of disapproval, the extension would go into effect along with the resulting revenue loss. However, section 311(a) of the Congressional Budget Act only prohibits consideration of measures whose *enactment*, not whose *rejection*, would cause a breach of the relevant budgetary levels. Thus, the revenue loss occasioned by such rejection would have no cognizance under section 311(a).
4. 125 CONG. REC. 25409, 96th Cong. 1st Sess.

Mr. [Robert] GIAIMO [of Connecticut]. Mr. Chairman, I move to strike the last word.

The CHAIRMAN.[5] The gentleman from Connecticut (Mr. GIAIMO) is recognized for 5 minutes.

Mr. GIAIMO. Mr. Chairman, I yield to the gentleman from Ohio (Mr. VANIK) who is concerned about a matter which he wishes to discuss with me.

Mr. [Charles] VANIK [of Ohio]. Mr. Chairman, later during this session or during the fiscal year for which we are preparing the budget, the administration may submit a most-favored-nation treaty for the approval of the Congress. Under the Trade Act, such recommendation takes effect unless the Congress does not disapprove. Now, such an extension of most-favored-nation status involves a small revenue loss.

Can the chairman of the committee advise me as to whether in his opinion such resolutions of disapproval would be subject to points of order under the provisions of the Budget Act?

Mr. GIAIMO. Mr. Chairman, I have checked into this matter, and my best understanding is that since they are resolutions of disapproval, they would not be subject to a point of order under the provisions of the Budget Act.

Mr. VANIK. Mr. Chairman, I thank the distinguished chairman of the Committee on the Budget.

Waivers

§ 10.5 Although under section 311(a) of the Congressional Budget Act[1] a point of order that new budget authority or outlays in the bill exceeds the spending ceiling of a concurrent resolution on the budget must be made against initial consideration of the bill, and not against separate paragraphs therein, the Committee on Rules may report a special order waiving that point of order against consideration but providing instead for separate points of order against designated paragraphs containing excessive budget authority or outlays.

On May 6, 1982,[2] a Member called up the following special order of business resolution (not ultimately agreed to by the House) providing that some portions of the bill (but not others) would be subject to points of order under section 311(a) of the Congressional Budget Act:

H. RES. 415

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5922) making urgent supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes, and the provisions of section 311(a) of the Congressional Budget Act of 1974. [sic] (Public

5. William H. Natcher (KY).

1. 2 USC § 642(a).

2. 128 CONG. REC. 8905, 97th Cong. 2d Sess.

Law 93–344) are hereby waived only against the initial consideration of said bill in the House: *Provided, however,* That it shall be in order, when each of the following paragraphs of the bill is read, and before debate thereon or amendment thereto, to make a point of order that the paragraph contains new budget authority for fiscal year 1982 which would cause the appropriate level of total new budget authority or total budget outlays set forth in the second concurrent resolution on the budget for fiscal year 1982 (S. Con. Res. 50) to be exceeded in a manner which would be proscribed by section 311(a) of the Congressional Budget Act if such paragraph were considered as a separate bill, and if the Chair sustains any such point of order the paragraph in question shall be stricken from the bill without further action of the House: page 4, lines 1 through 4 ("Special Institutions-Howard University"); page 4, lines 5 through 12 ("Related Agencies—Action—Operating Expenses, Domestic Programs"); page 10, lines 1 through 9 ("Bureau of Alcohol, Tobacco and Firearms—Salaries and Expenses"); page 11, lines 3 through 6 ("Department of Commerce—General Administration—Salaries and Expenses"); page 11, lines 7 through 12 ("Economic Development Administration—Salaries and Expenses (Transfer of Funds)"); and page 11, lines 13 through 16 ("National Oceanic and Atmospheric Administration—Operations, Research, and Facilities"). During the consideration of said bill, all points of order against the following provisions in said bill for failure to comply with the provisions of clauses 2 and 6 of rule XXI are hereby waived: beginning on page 2, lines 4 through 10; beginning on page 2, lines 11 through 17; beginning on page 2, lines 18 through 24; beginning on page 3, lines 8 through 15; beginning on page 4, line 16 through page 7, line 10; beginning on page 7, lines 11 through 18; beginning on page 7, line 20 through page 8, line 8; beginning on page 9, lines 3 through 6; beginning on page 9, lines 12 through 16; beginning on page 10, lines 10 through 13; and beginning on page 12, lines 12 through 21.

□ 1200

The SPEAKER.[3] The gentleman from Mississippi is recognized for 1 hour.

§ 10.6 The House has agreed to a special order of business resolution reported from the Committee on Rules containing an explicit waiver of points of order under section 311 of the Congressional Budget Act.[1]

On May 9, 2001,[2] the following occurred:

PROVIDING FOR CONSIDERATION OF H.R. 581, WILDLAND FIRE MANAGEMENT ACT

Mr. [Doc] HASTINGS of Washington. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 135 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 135

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R.

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3. Thomas O'Neill (MA).

1. 2 USC § 642.

2. 147 CONG. REC. 7474, 7475, 107th Cong. 1st Sess.

581) to authorize the Secretary of the Interior and the Secretary of Agriculture to use funds appropriated for wildland fire management in the Department of the Interior and Related Agencies Appropriations Act, 2001, to reimburse the United States Fish and Wildlife Service and the National Marine Fisheries Service to facilitate the interagency cooperation required under the Endangered Species Act of 1973 in connection with wildland fire management. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 311 of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Resources. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. All points of order against provisions in the bill are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the CONGRESSIONAL RECORD designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore.[3] The gentleman from Washington (Mr. HASTINGS) is recognized for 1 hour.

Mr. HASTINGS of Washington. . . .

The rule further provides that the bill shall be open for amendment at any point and waives all points of order against the bill. Finally, the rule authorizes the Chair to accord priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD, and provides one motion to recommit, with or without instructions. . . .

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 10.7 By unanimous consent, the House agreed to consider (prior to the stage of disagreement) a motion in the House to concur in a Senate amendment to a special appropriation bill without intervening motion and to waive all points of order[1] against consideration of the Senate amendment (containing new budget authority in excess of the ceiling established by the second concurrent resolution on the budget for fiscal 1982, in violation of section 311 of the Congressional Budget Act).[2]

3. Judy Biggert (IL).

1. *Parliamentarian's Note:* Although section 311(a) points of order had been waived against initial consideration of the bill in the House, such a waiver does not extend to consideration of a motion to concur in a Senate amendment.

2. 2 USC § 642. See also Deschler-Brown Precedents Ch. 29 § 2.39, *supra*. The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a second annual budget resolution.

On Feb. 10, 1982,[3] the following occurred:

MAKING IN ORDER ON TODAY OR ANY DAY THEREAFTER CONSIDERATION OF HOUSE JOINT RESOLUTION 389, URGENT SUPPLEMENTAL APPROPRIATION FOR DEPARTMENT OF AGRICULTURE, 1982

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I ask unanimous consent that it shall be in order today or any day thereafter, any rule of the House to the contrary notwithstanding, to consider a motion in the House to take from the Speaker's table the joint resolution (H.J. Res. 389) making an urgent supplemental appropriation for the Department of Agriculture for the fiscal year ending September 30, 1982, with the Senate amendment thereto, and to concur in said Senate amendment, and that the previous question shall be considered as ordered on said motion to final adoption without intervening motion.

The SPEAKER pro tempore.[4] Is there objection to the request from the gentleman from Texas?

Mr. FRENZEL. Reserving the right to object, Mr. Speaker, if the distinguished majority leader would answer a question.

As I understand the Senate amendment to House Joint Resolution 389, it is in fact the low-income energy assistance bill as that bill was reported out of the House Appropriations Committee before the Broyhill amendment was adopted in this body; is that correct?

Mr. WRIGHT. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. I yield to the gentleman from Texas.

Mr. WRIGHT. I thank the gentleman for yielding.

I believe that is essentially correct. I do know that the amendment to this Commodity Credit Corporation bill is the low-income fuel assistance bill which we passed in the House as separate legislation.

Mr. FRENZEL. I thank the gentleman for his comments.

Further reserving the right to object, Mr. Speaker, I do have a strong objection to the low-income energy assistance bill. I think it is a bad thing that it has been attached to House Joint Resolution 389 which in my judgment is absolutely essential.

Because the majority has accepted the suggestion to make the unanimous-consent agreement one for consideration rather than immediate approval and the House will therefore have the opportunity to express its objection, at least as many of those in the House who wish to do so will have that right, I have no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

§ 10.8 The House has adopted a special order of business resolution making in order consideration of a supplemental and continuing appropriation bill and waiving points of order under sections 303(a)[1] and 311(a)[2] of the Congressional Budget Act against initial consideration of the bill (but not against amendments thereto).

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3. 128 CONG. REC. 1462, 97th Cong. 2d Sess.
4. David Obey (WI).
1. 2 USC § 634(a).
2. 2 USC § 642(a)

On May 12, 1981,[3] the following occurred:

Mr. [Richard] BOLLING [of Missouri]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 137 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 137

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3512) making supplemental and further continuing appropriations for the fiscal year ending September 30, 1981, rescinding certain budget authority, and for other purposes, and the provisions of sections 303(a)(1) and 311(a) of the Congressional Budget Act of 1974 (Public Law 93–344) are hereby waived only against the initial consideration of said bill in the House. During the consideration of said bill, the provisions of clauses 2 and 6, rule XXI shall apply as if the bill had been reported from the Committee on Appropriations, and all points of order against the bill for failure to comply with said provisions are hereby waived.

The SPEAKER pro tempore.[4] The gentleman from Missouri (Mr. Bolling) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from Mississippi (Mr. Lott).

Mr. Speaker, this rule makes in order a very complicated appropriations bill which includes the supplemental, rescissions and the continuing resolution. It deals with a couple of years, 1981 and 1982. The waivers are necessary because of the Budget Act and the rules of the House. There are a rather limited number of amendments that will be in order. Most of them would be amendments to strike.

Unless there is a desire for a great deal of detail, I would just say that it makes in order the second bill, rather than the first one brought to the Committee on Rules from the Appropriations Committee.

The second bill is somewhat modified. It reduces $500 million in defense spending and it knocks out some language violently objected to by several of the committees; but I think the matter represents a bipartisan and unanimous, as I understand it, Appropriations Committee.

I therefore think the rule should be passed.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. BOLLING. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Did I understand in the rule that sections of the Budget Act were waived by the bill itself, but those sections of the Budget Act would not be waived in the amending process; is that the situation?

Mr. BOLLING. That is the effect. As the result of this, there is no way to waive points of order against amendments unless the amendments are listed and we have listed no such amendments.

Mr. WALKER. I thank the gentleman.

Mr. BOLLING. Mr. Speaker, I reserve the balance of my time.

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3. 127 CONG. REC. 9272–74, 97th Cong. 1st Sess. See § 10.3, *supra*. See also Deschler-Brown Precedents Ch. 29 § 2.40, *supra*.

4. Joe Moakley (MA).

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of this rule. H.R. 3512, which will be made in order if this rule is adopted, contains supplemental appropriations, rescissions, and deferrals for fiscal year 1981, and also extends the continuing resolution for agencies whose regular fiscal year 1981 appropriations were never enacted. . . .

The rule before us makes in order H.R. 3512, instead of H.R. 3400, which is the supplemental bill initially reported out of the Appropriations Committee on April 30 of this year. This parliamentary device is used to accommodate two changes adopted by the Appropriations Committee just last Thursday. One of these changes deletes language in the original bill which would have revised certain procedures of the Nuclear Regulatory Commission, and another change reduces by $500 million the supplemental appropriations for the Defense Department. The cut in defense supplements was done to avoid the possibility that the bill would breach the fiscal year 1981 spending ceiling adopted by the House last week in the first concurrent budget resolution.

Because of the nature of this bill, certain points of order must be waived to allow its consideration. Clause 2 of rule XXI must be waived because language is included throughout the bill, particularly with regard to rescissions and deferrals, which could be considered legislation. Clause 6 of rule XXI is also waived to provide for the inclusion of transfers, which amount to reappropriations.

Section 311(a) of the Budget Act is waived in this rule because the current budget ceilings, contained in the second concurrent resolution for fiscal year 1981, have been breached due to reestimates. In addition, section 303(a)(1) of the Budget Act is waived to provide for the inclusion in the bill of a $3.883 billion advance appropriation for the Strategic Petroleum Reserve, as requested by the administration.

To summarize the provisions of this rule, points of order against the bill are waived concerning legislation in an appropriations bill, reappropriations, and certain breaches of the Budget Act. I should point out that these points of order are not waived against amendments to the bill, and therefore any amendments offered must be drafted so as to comply with the House rules and the Budget Act. However, this rule does not preclude consideration of amendments which are otherwise in order. Amendments which will be in order include those which would increase rescissions or deferrals or which would decrease a supplemental appropriation, since such amendments would not operate to exceed the current budget ceiling. In addition, legitimate limitations on the use of appropriated funds will be in order. . . .

Mr. BOLLING. Mr. Speaker, I have one request for time, but I do not see the Member on the floor.

Therefore, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The "Fazio Exception"

§ 10.9 In response to parliamentary inquiries, pending consideration of a reported supplemental appropriation bill, the Speaker affirmed that, pursuant to a provision in the first concurrent resolution on the budget for fiscal year 1984,[1] section 311(a) of the Congressional Budget Act[2] would not apply to any measure or amendments thereto whose new budget authority did not exceed the section 302(a) allocation of the reporting committee.

On Mar. 6, 1984,[3] the following occurred:

URGENT SUPPLEMENTAL APPROPRIATION FOR THE DEPARTMENT OF AGRICULTURE, 1984

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, pursuant to the order of the House of Wednesday, February 29, 1984, I call up for consideration in the House as in the Committee of the Whole the joint resolution (H.J. Res. 492) making an urgent supplemental appropriation for the fiscal year ending September 30, 1984, for the Department of Agriculture.

The Clerk read the title of the joint resolution.

PARLIAMENTARY INQUIRY

Mr. [Thomas] LOEFFLER [of Texas]. Mr. Speaker, a parliamentary inquiry.

The SPEAKER.[4] The gentleman will state it.

Mr. LOEFFLER. Mr. Speaker, I make this parliamentary inquiry because the bills under consideration today—House Joint Resolution 492 and House Joint Resolution 493, which provide for urgent supplementals for the Public Law 480 program and low income energy assistance—are the first appropriation bills to come before the House this year. It is my purpose to be certain that I and other Members fully understood the procedures that will be used in scorekeeping for these and future appropriation bills.

In particular, my inquiry relates to the enforcement of section 311 of the Congressional Budget Act. I have several questions, so if the Chair will bear with me, I will proceed as expeditiously as possible.

Mr. Speaker, I note that the Parliamentarian's status report on the current level of total Federal spending, printed in the CONGRESSIONAL RECORD of February 22, indicates that there are $3,079 million in budget authority and only $16 million in outlays remaining under the aggregate spending ceilings set forth in the concurrent resolution on the budget for fiscal year 1984.

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1. H. Con. Res. 91, sec. 5(b).

   Parliamentarian's Note: As noted in Section 4, the budget resolutions for fiscal years 1984, 1985, and 1986 each contained an optional *ad hoc* budgetary enforcement mechanism that operated in the same manner as what was later codified as the "Fazio exception" in section 311(c) of the Congressional Budget Act.
2. 2 USC § 642(a).
3. 130 CONG. REC. 4620–22, 98th Cong. 2d Sess. See also Deschler-Brown Precedents Ch. 31 § 14, *supra*.
4. Thomas O'Neill (MA).

Under section 311 of the Budget Act, once Congress has completed a second budget resolution, bills, resolutions or amendments providing new budget authority or new spending authority as described in section 401(c)(2)(C) of the Budget Act, would be subject to a point of order against their consideration in the House if their adoption would cause the aggregate budget authority or outlay ceilings in the most recently agreed to budget resolution to be exceeded.

For fiscal year 1984, as was the case in fiscal year 1983, the first budget resolution included language which allows enforcement of section 311 after October 1 of the fiscal year, if Congress does not adopt a second budget resolution by that date.

As reported by the Appropriations Committee, both bills under consideration would cause the aggregate outlay ceilings under the first budget resolution to be breached—although not the aggregate budget authority ceiling—which, under enforcement provisions in effect for fiscal year 1983, would have resulted in these bills being subject to a point of order under section 311.

Is my understanding correct that this year the operation of section 311 has been further modified by a provision, section 5(B), contained in House Concurrent Resolution 91, the first concurrent resolution on the budget for fiscal year 1984—the so-called Fazio language?

Further, could the Chair explain how section 5(B) of House Concurrent Resolution 91 affects the applicability of section 311 points of order to spending bills, including those before us today, and to any amendments that may be offered to such bills?

Is it correct that neither the total level of outlays nor a committee's outlay allocation under section 302(A) of the Budget Act would be considered in determining whether a section 311 point of order would apply to spending bills or amendments thereto?

Could the Chair explain the basis upon which it makes a determination regarding the discretionary budget authority remaining available to committees of the House?

Further, is it not the case that once the Congress adopts a second budget resolution for fiscal year 1984, updating and revising the first budget resolution, that the provisions of section 5(B) in House Concurrent Resolution 91 would no longer be in effect, and section 311 would operate as set forth in the Budget Act, based on the newly established aggregate ceilings and provisions in the second budget resolution? Finally, can one assume that the Appropriations Committee's discretionary budget authority allocation will be reduced by the amounts in these bills plus any amendments adopted that increase spending, once they are enacted? . . .

The SPEAKER. The Chair will respond to the inquiry of the gentleman from Texas.

The gentleman from Texas has requested the Chair to interpret the relationship between [sic] bills providing new spending for fiscal year 1984 and the provisions of the most recently agreed to budget resolution for that fiscal year.[5]

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5. The Speaker is referring to section 5(b) of the fiscal year 1984 concurrent resolution on the budget (H. Con. Res. 91), the text of which is follows: "Section 311(a) of the Congressional Budget Act, as made applicable by subsection (a) of this section, shall not apply to bills, resolutions, or amendments within the jurisdiction of a committee, or any conference report on any such bill or resolution, if—(1) the enactment of such bill or resolution as reported; (2) the adoption and enactment of such amendment; or (3) the enactment of such bill or resolution in the form recommended in such conference report; would not cause the appropriate allocation for such committee of new discretionary budget authority, new budget authority, or new spending authority as described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 made pursuant to section 302(a) of such Act for fiscal year 1984 to be exceeded."

As the gentleman has pointed out in his inquiry. The first concurrent resolution the budget for fiscal year 1984 (H. Con. Res. 91), adopted by the House and Senate on June 23, 1983, provided, in section 5, that it would become the second concurrent resolution on the budget for the purpose of section 311 of the Budget Act. Failing actual adoption of a second budget resolution by October 1, 1983. However, section 5(b) of the budget resolution provided for a more limited application of section 311 than would apply if a second budget resolution had actually been adopted. The Speaker received today from the chairman of the Committee on the Budget a revised status report on the current level of spending under the budget resolution. The status report indicates that any measure providing budget in excess of $6 million would cause the total level of outlays under the budget resolution to be exceeded. The chairman of the Committee on the Budget included in that letter a summary and explanation of the operation of section 5 of the budget resolution once outlays are exceeded, and the Chair will now read that statement, which is responsive to much of the gentleman's inquiry: "The procedural situation with regard to the spending ceiling will be affected this year by section 5(b) of House Concurrent Resolution 91. As I explained during debate on the conference report on that resolution, enforcement against breaches of the spending ceiling under section 311(a) of the Budget Act will not apply where a measure would not cause a committee to exceed its appropriate allocation pursuant to section 302(a) of the Budget Act. In the House, the appropriate 302(a) allocation includes "new discretionary budget authroity [sic]" and "new entitlement authority" only. It should be noted that under this procedure neither the total level of outlays nor a committee's outlay allocation is considered. This exception is only provided because an automatic budget resolution is in effect and would cease to apply if Congress were to revise the budget resolution for fiscal year 1984.

The intent of the section 302(a) discretionary budget authority and new entitlement authority subceiling provided by section 5(b) of the resolution is to protect a committee that has stayed within its spending allocation—discretionary budget authority and new entitlement authority—from points of order if the total spending ceiling has been breached for reasons outside of its control. The 302(a) allocations to House committees made pursuant to the conference report on House Concurrent Resolution 91 were printed in the CONGRESSIONAL RECORD, June 22, 1983, H4326.

The Chair has been advised that each of the supplemental appropriation joint resolutions scheduled for today, House Joint Resolution 492 and House Joint Resolution 493, provides more than $6 million in budget outlays for fiscal year 1984 and would thus cause the total level of outlays to be exceeded. The Committee on Appropriations has, however, a remaining allocation of $2 billion, $351 million in discretionary budget authority, according to tables prepared by the Budget Committee, inserted in the CONGRESSIONAL RECORD of March 1, 1984, and included in today's status report. The amount of budget authority contained in the joint resolutions scheduled for today is well within that allocation. As to amendments to those joint resolutions, or to other spending measures for fiscal year 1984, germane amendments which increase budget authority are in order as long as they do not cause the measure, as amended, to exceed the total remaining allocation of discretionary budget authority to the committee with jurisdiction over the measure or amendment.

The Chair's determination, whether a measure or amendment thereto, violates section 311 as made applicable by the budget resolution, is based upon estimates made by the Committee on the Budget, pursuant to section 311(b) of the Budget Act, of the remaining allocation to each committee. Once a bill providing new budget authority or entitlement

authority is enacted, the remaining allocation of the committee with subject matter jurisdiction will be changed by the net amount of new budget authority contained in the measure, and the Chair is confident that the Committee on the Budget will keep the Chair currently informed as to the status of each committee.

The Chair would finally point out that the provisions of section 5 of the current budget resolution would cease to apply if Congress does adopt a second concurrent resolution on the budget for fiscal year 1984. In that event, the actual prohibition contained in section 311 of the Budget Act would take effect, unless modified by any special procedures contained in a second budget resolution.

§ 11. Section 302

As noted in Sections 4 and 5, the concurrent resolution on the budget serves as a guide or blueprint for Congress in making spending decisions throughout the appropriations process. An important part of that framework is the division of the recommended totals for new budget authority and outlays into separate portions assigned to the various committees of Congress. Pursuant to section 302(a) of the Congressional Budget Act,(1) the joint explanatory statement accompanying the conference report on the budget must include "allocations" of total new budget authority and total outlays to each House committee with jurisdiction over legislation providing or creating such amounts. As described below, points of order can be raised to keep spending within the limits of these section 302(a) allocations.

As originally written, the Congressional Budget Act mandated that each committee given a section 302(a) allocation of spending authority further subdivide that allocation among its various subcommittees (or programs). Pursuant to the Budget Enforcement Act of 1997,(2) however, this requirement was dropped for all committees except for the Committee on Appropriations, which is still required to subdivide its section 302(a) allocation among its subcommittees. The Committee on Appropriations files a report with the House to indicate how the committee has divided its section 302(a) allocation among its subcommittees,(3) and supplemental reports may revise such subcommittee allocations.(4) This requirement is found in section 302(b)

1. 2 USC § 633(a).
2. Pub. L. No. 105–33.
3. For an example of the filing of such a report, see 136 CONG. REC. 14612, 101st Cong. 2d Sess., June 19, 1990.
4. 143 CONG. REC. 12009, 105th Cong. 1st Sess., June 24, 1997.

of the Congressional Budget Act, and these suballocations are sometimes referred to as section 302(b) allocations to distinguish them from allocations made under section 302(a).

Former Section 602

The Budget Enforcement Act of 1990[1] added a new title VI to the Congressional Budget Act. For the years in which such title was operative (1990–1998), the requirement to allocate budget authority and outlays to the legislative committees of the House was found in section 602, and allocations were made pursuant to this section rather than section 302. Section 603 authorized the chairman of the Committee on the Budget to publish a section 602(a) allocation for the Committee on Appropriations after April 15 if no concurrent resolution on the budget had been agreed to by that date. This would allow the Committee on Appropriations to begin work on appropriation bills even in the absence of a budget resolution. Section 606(e), added by the Contract with America Advancement Act[2] (and subsequently amended by the Personal Responsibility and Work Opportunity Reconciliation Act)[3], gave additional authority to the chairman of the Committee on the Budget to make "adjustments" to the section 602(a) allocation made to the Committee on Appropriations to reflect an increase in the budget authority and outlays for continuing disability reviews under the Social Security Act. For more on the history of the Budget Enforcement Act of 1990, see Section 1.

Section 314

The Budget Enforcement Act of 1997 created a new section 314 of the Congressional Budget Act.[1] Section 314 mandated certain "adjustments" to applicable section 302(a) allocations in response to legislation providing new budget authority and outlays. Such legislation was limited to certain categories (such as emergency spending or continuing disability reviews), as defined in section 314(b).[2] The chairman of the Committee on the Budget was required to revise section 302(a) allocations to reflect these adjustments

1. Pub. L. No. 101–508.

2. Pub. L. No. 104–121.

3. Pub. L. No. 104–193.

1. 2 USC § 645.

2. Those categories are: (1) amounts designated as emergencies; (2) amounts for continued disability review; (3) certain amounts relating to the International Monetary Fund; (4) certain amounts for international organizations and multilateral development banks; (5) amounts for an earned income tax credit compliance initiative; and (6) certain amounts for adoption incentive payments.

after the reporting of legislation meeting the requirements of section 314(b), and the adjustment took effect upon enactment of such legislation. Pursuant to section 314(d), the Committee on Appropriations was authorized to submit a revised section 302(b) report in order to subdivide any potential adjustment to its section 302(a) allocation among its subcommittees.(3) However, the Committee on Appropriations was not required to submit such a report, and in the absence of such a report, the underlying section 302(b) allocations remained as they were prior to the adjustment occasioned under section 314.

The Budget Control Act of 2011(4) extensively revised section 314 of the Congressional Budget Act. The former "automatic" adjustments were replaced with discretionary authority for the chairman of the Committee on the Budget to make allocation adjustments in response to qualifying legislation. Such qualifying legislation was defined by reference to section 251(b) of Gramm-Rudman-Hollings.(5) A new section 314(d) rendered "invisible" for certain Budget Act purposes spending designated as emergency spending. Section 314(d)(2)(B) also provided that a proposal to strike an emergency designation shall be "excluded from an evaluation of budgetary effects" for purposes of titles III and IV of the Congressional Budget Act. Without this provision, such a proposal could violate section 302(f) of the Budget Act if the spending at issue (whose budgetary effects are now to be included by the proposal) exceeded the committee's section 302 allocation.

302(f) Points of Order

Section 302(a) and section 302(b) allocations define certain spending limits that may not be exceeded. The Gramm-Rudman-Hollings reforms to the Congressional Budget Act created a new section 302(f) point of order that could be raised against any bill, joint resolution, or amendment that contains spending authority in excess of a committee's section 302(a) allocation or a subcommittee's section 302(b) suballocation.(1) In evaluating a section 302(f) point of order, the Chair must determine: (1) if the measure contains provision(s) constituting new budget authority; and (2) whether such new budget authority, if enacted into law, would cause the relevant section

3. For an example of a section 302(f) point of order being sustained in the context of such an "un-adjusted" section 302(b) suballocation, see § 11.14, *infra*.

4. Pub. L. No. 112–25.

5. Pub. L. No. 99–177.

1. As noted above, for the period 1990–1998, committee allocations were made pursuant to title VI of the Congressional Budget Act, as added by the Budget Enforcement Act of 1990. Thus, during this time period, section 302(f) points of order could be raised against measures exceeding the relevant section 602 allocations.

302(a) or section 302(b) allocation to the committee or subcommittee to be exceeded. The Chair is authoritatively guided by estimates from the Committee on the Budget in determining these budgetary levels.[2]

In 2007, Rule XXI clause 8[3] was added to the House rules to expand the reach of title III of the Congressional Budget Act to certain unreported measures. If a measure is considered pursuant to a special order of business, title III of the Congressional Budget Act will continue to apply to such measure regardless of whether it was reported from committee. Thus, since 2007, section 302(f) points of order have been applicable to unreported measures pursuant to this clause.[4] Section 302(f) points of order are applicable only after Congress has adopted a concurrent resolution on the budget and cannot be raised prior to said adoption.[5]

During the period of applicability of title VI of the Congressional Budget Act,[6] section 606(d)(2) provided an exception to the normal operation of section 302(f) points of order (as well as other points of order under title III of the Congressional Budget Act). Section 606(d)(2) provided that for consideration of certain categories of spending,[7] evaluations under section 302(f)

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2. The requirement for the Committee on the Budget to provide estimates to the Chair in evaluating section 302(f) points of order was originally found in former section 302(g), as added by Gramm-Rudman-Hollings. The Budget Enforcement Act of 1997 broadened this requirement to cover not only section 302(f) points of order, but any applicable point of order made under title III or title IV of the Congressional Budget Act. This new authority is currently found in section 312(a) of the Congressional Budget Act. 2 USC § 643(a). Pursuant to Rule XXIX clause 4, added in the 112th Congress, authoritative guidance on budgetary matters may be provided by the chairman of the Committee on the Budget. See *House Rules and Manual* § 1095d (2011).

3. *House Rules and Manual* § 1068c (2011).

4. For parliamentary inquiries on the application of section 302(f) points of order prior to the advent of Rule XXI clause 8, see Deschler-Brown Precedents Ch. 31 § 10.23, *supra*.

5. 2 USC § 633(f)(1). For a discussion of House actions to "deem" committee allocations effective for Congressional Budget Act purposes in the absence of a final budget resolution, see § 18. Because section 302(f) points of order become available only after a concurrent resolution on the budget has been adopted, any such "deeming" resolution must include language to affirmatively trigger the application of section 302(f) in the absence of a final budget. For an example of a resolution "deeming" committee allocations in place for Budget Act enforcement but arguably failing to properly engage section 302(f) points of order, see 144 CONG. REC. 12991, 105th Cong. 2d Sess., June 19, 1998 (H. Res. 477).

6. Title VI was effective from 1990 until 1998.

7. The specific categories are defined by reference to section 251 of Gramm-Rudman-Hollings. The five categories are: (1) Internal Revenue Service compliance initiatives; (2) debt forgiveness for the Arab Republic of Egypt and the Government of Poland; (3) the United States quota for the International Monetary Fund; (4) certain emergency requirements (including the costs for Operation Desert Shield); and (5) amounts specifically designated by the President and Congress as emergencies.

shall not take into account any "new budget authority, new entitlement authority, outlays, receipts, or deficit effects." The practical effect of this provision was to render "invisible" for certain Congressional Budget Act enforcement purposes spending that fell within the defined categories.[8]

Prior to the enactment of the Budget Control Act of 2011, section 314 of the Congressional Budget Act (as added by the Budget Enforcement Act of 1997) provided for automatic "adjustments" to be made to committee allocations if the spending at issue fell within certain pre-defined categories.[9] By increasing committee allocations in this way, measures containing such spending could be protected from points of order under 302(f). However, the Budget Control Act eliminated the automatic adjustment mechanism and replaced it with discretionary authority to make such adjustments.[10]

The "Fazio Exception"

As discussed in Section 10, section 302(a) allocations are used in evaluating a particular exception to the regular operation of section 311 points of order. Section 311(a) of the Congressional Budget Act prevents the consideration of measures, the enactment of which would cause the total budget authority in the most recent concurrent resolution on the budget to be exceeded. Section 311(c) provides the following exception: if a measure that would cause a breach of the total budget authority contained in the concurrent resolution on the budget nevertheless remains within the section 302(a) allocation to the committee of jurisdiction for that measure, then the section 311 point of order will not lie. The rationale for this exception is that a committee should not be punished for advancing measures that do not exceed such committee's own section 302(a) allocation but which, due to overspending by other committees, would cause the total budget authority level to be breached.

This exception was first made part of the Congressional Budget Act by the Gramm-Rudman-Hollings reforms of 1985.[1] Prior to these changes to

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8. For an example of a special order "self-executing" an amendment designating certain amounts as emergency spending under former section 606(d) of the Congressional Budget Act, see 137 CONG. REC. 6114, 102d Cong. 1st Sess., Mar. 13, 1991 (H. Res. 111).

9. The Budget Control Act of 2011 revised these adjustments to accommodate: (1) changes in concepts and definitions; (2) appropriations designated as emergency requirements; (3) appropriations for Overseas Contingency Operations and Global War on Terrorism; (4) appropriations for continuing disability reviews and redeterminations; (5) appropriations for controlling health care reform; and (6) appropriations for disaster relief. See 2 USC §§ 645, 901.

10. For more on the Budget Control Act of 2011, see § 1, *supra*, and § 26, *infra*.

1. This provision was originally found in section 311(b) but was moved to section 311(c) by the Budget Enforcement Act of 1997.

the Congressional Budget Act, concurrent resolutions on the budget would occasionally provide for a similar exception to section 311(a) points of order.[2]

When the Budget Enforcement Act of 1990 created the new title VI of the Congressional Budget Act, the committee allocation provisions were temporarily[3] located in section 602 rather than section 302. However, the exception to section 311 maintained its reference to allocations made "pursuant to section 302(a)." This broken cross-reference was temporarily repaired in the concurrent resolution on the budget for fiscal year 1993, which included a separate section "clarifying" the relationship between the exception in section 311 and the new title VI.[4]

Section 302(c)

The Gramm-Rudman-Hollings reforms of 1985 amended section 302 of the Congressional Budget Act to create a new point of order related to section 302(b) suballocations. This point of order, found in section 302(c), prohibited the consideration of any bill, joint resolution, amendment, motion or conference report providing new budget authority or new spending authority unless and until the committee of jurisdiction filed a report dividing its overall section 302(a) allocation into section 302(b) suballocations among its subcommittees.[1] If the committee had not received a section 302(a) allocation at the time the measure was considered, the point of order did not apply.

Prior to this change, concurrent resolutions on the budget would occasionally contain a separate requirement that no measure providing new budget or spending authority would be considered until the committee of jurisdiction filed its section 302(b) report.[2]

When the Budget Enforcement Act of 1997 eliminated the requirement that all legislative committees file reports subdividing their section 302(a) allocations among their subcommittees, and instead maintained this requirement only for the Committee on Appropriations, it likewise changed the operation of section 302(c) to apply only to that committee. Section 302(c)

2. See 131 Cong. Rec. 22637, 99th Cong. 1st Sess., Aug. 1, 1985; 130 Cong. Rec. 28049, 98th Cong. 2d Sess., Oct. 1, 1984; and 129 Cong. Rec. 16585, 98th Cong. 1st Sess., June 21, 1983. See § 4, *supra*.

3. Title VI of the Congressional Budget Act expired in 1998 and ceased to be effective after this date.

4. 138 Cong. Rec. 12156, 102d Cong. 2d Sess., May 20, 1992. See also § 4, *supra*.

1. For an example of such a report being filed, see 136 Cong. Rec. 14612, 101st Cong. 2d Sess., June 19, 1990.

2. See 130 Cong. Rec. 28049, 98th Cong. 2d Sess., Oct. 1, 1984; and 128 Cong. Rec. 14546, 97th Cong. 2d Sess., June 22, 1982. See § 4, *supra*.

states that after the Committee on Appropriations has received its section 302(a) allocation, no bill, joint resolution, amendment, motion or conference report within the jurisdiction of such committee that provides new budget authority may be considered until the committee has filed the report dividing its section 302(a) allocation into section 302(b) suballocations for each of its subcommittees.

The section 302(c) point of order is fundamentally about timing. Whether the point of order will be sustained rests solely on: (1) the threshold question of whether the committee of jurisdiction (now applicable only to the Committee on Appropriations) has received a section 302(a) allocation; and (2) whether the committee has filed the requisite section 302(b) report subdividing the section 302(a) allocation. The point of order will not lie *before* the Committee on Appropriations has received its section 302(a) allocation, and neither will it lie *after* the committee has filed the necessary report.

Section 401(b)(2) Referrals

Section 401(b)(2)[1] of the Congressional Budget Act provides authority for the Speaker to sequentially refer[2] any bill or resolution providing new entitlement authority that exceeds the relevant committee's section 302 allocation to the Committee on Appropriations for a 15-day period. The purpose of the referral is to allow the Committee on Appropriations to recommend an amendment to the House that would reduce the level of new entitlement authority and thus bring such amounts under the relevant section 302 allocation. Indeed, section 401(b)(3) defines the role of the Committee on Appropriations as reporting the bill or resolution at issue "with an amendment which limits the total amount of new spending authority provided in such bill or resolution."[3]

A bill or resolution may be referred pursuant to this authority any time that the breach of the section 302 allocation is discovered. This includes measures that were already placed on the appropriate calendar of the House,[4] or measures reported prior to the establishment of section 302(a)

1. This provision of the Congressional Budget Act was codified in the standing rules of the House at Rule X clause 4(a)(2), *House Rules and Manual* § 747 (2011).

2. See Deschler's Precedents Ch. 17 § 26, *supra*. This provision of the Congressional Budget Act does not otherwise affect the sequential referral process. For an example of a bill sequentially referred both to the Committee on Appropriations pursuant to section 401(b)(2) and to another committee pursuant to the Speaker's general referral authority, see 129 CONG. REC. 14699, 98th Cong. 1st Sess., June 7, 1983. For an example of a bill sequentially referred to additional committees after a sequential referral to the Committee on Appropriations (but before such committee reported), see 127 CONG. REC. 11746, 97th Cong. 1st Sess., June 8, 1981.

3. 2 USC § 651(b)(3).

4. See § 11.31, *infra*.

allocations (contained in the joint statement of managers accompanying a concurrent resolution on the budget or established pursuant to another authority).[5]

Although the Committee on Appropriations has authority to report the bill or resolution within the 15-day period, it is not required to do so, and failure to report the bill or resolution within the requisite time period results in an automatic discharge from the committee.[6] The bill or resolution is then placed on the appropriate calendar of the House.

Section 401(c) provides exceptions to the operation of section 401(b)(2) by exempting certain categories of spending from the analysis of a measure's effect on the relevant section 302 allocation. These categories include budget authority whose outlays flow from certain trust funds or are made by certain mixed-ownership government corporations.[7]

The Budget Enforcement Act of 1997 made several major changes to the Congressional Budget Act that either directly amended section 401(b)(2) or had an indirect impact on its operation. First, it changed the Speaker's section 401(b)(2) referral authority from a mandatory requirement whenever a bill or resolution exceeded the relevant section 302 allocation to mere discretionary authority. Since 1997, the Speaker has not exercised this authority. Secondly, it eliminated the requirement that committees other than the Committee on Appropriations subdivide their section 302(a) allocations into section 302(b) suballocations. Thus, section 401(b)(2) is currently only triggered when legislative committees exceed their 302(a) allocations.[8] Finally, the Budget Enforcement Act of 1997 made several changes regarding the definition of "spending" and "entitlement" authority.

Breach of Allocation

§ 11.1 An amendment extending eligibility for foster care maintenance payments to a new class and thus providing an increase in

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5. See § 11.30, *infra*.

6. For an example of a special order having the effect of discharging the Committee on Appropriations from further consideration of a measure sequentially referred thereto under section 401(b)(2) of the Congressional Budget Act, see 137 Cong. Rec. 6114, 102d Cong. 1st Sess., Mar. 13, 1991 (H. Res. 111).

7. 2 USC § 651(c).

8. This is consistent with the current wording of Rule X clause 4(a)(2), which mirrors the requirements of section 401(b)(2) and refers explicitly to section 302(a) allocations. *House Rules and Manual* § 747 (2011). Prior to the Budget Enforcement Act of 1997, section 401(b)(2) referrals could be made for breaches of legislative committee section 302(b) suballocations.

mandatory budget authority was ruled out of order for violating section 302(f) of the Congressional Budget Act[1] by exceeding (as estimated by the Committee on the Budget) the section 302(a) allocation to the Committee on the Judiciary.

On Sept. 14, 2005,[2] during consideration of a children's safety bill (H.R. 3132), the following took place in the Committee of the Whole:

AMENDMENT NO. 10 OFFERED BY MR. MC DERMOTT

Mr. [James] MCDERMOTT [of Washington]. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN.[3] The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Mr. MCDERMOTT:

Page 69, after line 17, insert the following:

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. FOSTER CHILDREN IN AREAS AFFECTED BY HURRICANE KATRINA DEEMED ELIGIBLE FOR FOSTER CARE MAINTENANCE PAYMENTS.

(a) IN GENERAL.—As a condition of eligibility for payments under part E of title IV of the Social Security Act, each State with a plan approved under such part shall, during the 12-month period that begins with September 2005, make foster care maintenance payments (as defined in section 475(4) of such Act) in accordance with such part on behalf of each child who is in foster care under the responsibility of the State, and who resides or, just before August 28, 2005, had resided in an area for which a major disaster has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) as a result of Hurricane Katrina.

(b) PAYMENTS TO STATES.—In lieu of any entitlement to payment under section 474 of the Social Security Act with respect to any child described in subsection (a) of this section, each State with such a plan shall be entitled to a payment for each quarter in which there is month in which the State has made a foster care maintenance payment pursuant to such subsection (a), in an amount equal to the sum of—

(1) the total of the amounts expended by the State during the quarter pursuant to such subsection (a) for children described in such subsection (a) who are in foster family homes (as defined in section 472(c)(1) of such Act) or child-care institutions (as defined in section 472(c)(2) of such Act); and

(2) the total of the amounts expended by the State during the quarter as found necessary by the Secretary for the provision of child placement services for such children, for the proper and efficient administration of the plan with respect to such children, or for the provision of services which seek to improve the well-being of such children.

Mr. [Frank] SENSENBRENNER [of Wisconsin]. Mr. Chairman, I reserve a point of order on the amendment.

The Acting CHAIRMAN. The gentleman from Wisconsin reserves a point of order. . . .

POINT OF ORDER

The Acting CHAIRMAN (Mr. SWEENEY). Does the gentleman from Wisconsin (Mr. SENSENBRENNER) insist on his point of order?

Mr. SENSENBRENNER. I do, Mr. Chairman.

The Acting CHAIRMAN. The gentleman from Wisconsin is recognized.

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1. 2 USC § 633(f).

2. 151 CONG. REC. 20218–20, 109th Cong. 1st Sess.

3. John Sweeney (NY).

Mr. SENSENBRENNER. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. This amendment would provide new budget authority in excess of the allocation made under section 302(a) of the Committee on the Judiciary and thus is not permitted under section 302(f) of the Act.

I ask for a ruling of the Chair.

The Acting CHAIRMAN. Is there anyone else who wishes to be heard on the point of order?

If not, the Chair is prepared to rule on the point of order.

The gentleman from Wisconsin raises a point of order that the amendment offered by the gentleman from Washington violates section 302(f) of the Budget Act.

Section 302(f) of the Budget Act provides a point of order against any amendment providing new budget authority that would cause a breach of the relevant allocation of budget authority under section 302(a) of the Budget Act.

The Chair is authoritatively guided under section 312 of the Budget Act by an estimate of the Committee on the Budget that the new mandatory budget authority provided by this amendment would cause a breach of the allocation of the Committee on the Judiciary.

The amendment offered by the gentleman from Washington would increase the level of new mandatory budget authority in the bill above the allocation made under section 302(a). As such, the amendment violates section 302(f) of the Budget Act. The point of order is sustained.

§ 11.2 An amendment that delayed the imposition of a monetary penalty, resulting in a loss of offsetting receipts and thus increasing new discretionary budget authority, was ruled out of order for violating section 302(f) of the Congressional Budget Act[1] by exceeding the section 302(b) allocation of the Committee on Merchant Marine and Fisheries (as estimated by the Committee on the Budget).

On July 18, 1991,[2] during consideration of a Coast Guard authorization bill (H.R. 1776), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. MCMILLEN OF MARYLAND

Mr. [Charles] McMILLEN of Maryland. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McMILLEN of Maryland: Add at the end of the bill the following new section:

SEC. . DELAY OF PENALTIES FOR FAILURE TO COMPLY WITH RECREATIONAL VESSEL FEE REQUIREMENTS.

Notwithstanding any other provision of law, a person shall not be subject to any penalty under section 2110(b) of title 46, United States Code (relating to fees and charges for recreational vessels), for any failure to comply with that section occurring before October 31, 1991.

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1. 2 USC § 633(f).

2. 137 CONG. REC. 18860, 18861, 102d Cong. 1st Sess.

POINT OF ORDER

Mr. [Willis] GRADISON [of Ohio]. I make a point of order that the amendment violates section 302(f) of the Budget Act, because it would exceed the allocation of the Committee on Merchant Marine and Fisheries of new discretionary budget authority.

This amendment delays penalties for failure to comply with recreational vehicle fees requirements until October 31, 1991.

According to CBO, this amendment would increase discretionary budget authority by $120 million in fiscal year 1991, and we have a letter from them to that effect.

The amendment violates section 302(f) of the Budget Act because it would exceed the revised allocation of new discretionary budget authority in fiscal year 1991 of the Committee on Merchant Marine and Fisheries. According to the most recent scorekeeping report, the Committee on Merchant Marine and Fisheries has no new discretionary budget authority in fiscal year 1991.

The CHAIRMAN.[3] Does the gentleman from Maryland [Mr. MCMILLEN] desire to be heard on the point of order?

Mr. MCMILLEN of Maryland. Mr. Chairman, I take issue with this point of order in that the budget statistics are based upon a subjective interpretation of the effect of the amendment.

Let me point out that this amendment in no way alters the fee structure or obviates the obligation of the American boater from paying the fee. All we are doing is allowing an additional 2 months to phase in the user fee—to allow an adequate amount of time for boaters to comply with the law; albeit a bad law.

Furthermore, I am told that the Coast Guard has stated that it will not be actively enforcing this law until October 1. Thus, the effective difference between this amendment and the Coast Guard action is minimal. But what kind of policy is a reliance on nonenforcement?

The Budget Committee's point of order is based upon a hypothetical policy assumption. Whether or not this assumption is valid is not a procedural point, but a policy question. Hence, it should not be contested as a point of order, but should be debated and voted upon by the House.

I, too, am concerned with the fiscal restraints which bind this body. However, we cannot expect the American people to abide by unrealistic restrictions as a result of the administration's delay in implementing the user fee. There are over 4 million boaters, and the current timeframe for implementation is wholly insufficient. As of yesterday, according to the U.S. Coast Guard, just over 32,000 boaters had received their decal, and only about twice that number had requested forms. That leaves 98 percent of America's boaters—over 4 million of them—without the decal.

Mr. Chairman, most boaters do not even know about the new fee. It is my understanding that the only public notice of its implementation has been a notice in the Federal Register and a press release. Boaters deserve a chance to comply with the law, and this amendment will give them that chance.

Mr. Chairman, this is a policy question, and should be decided as such.

Mr. [Robert] DAVIS [of Michigan]. Mr. Chairman, I would like to be heard on the point of order.

Mr. Chairman, you know, I can recognize when the Committee on the Budget has a legitimate argument against something that we might be doing which is going to take

3. George Darden (GA).

away funds that we had planned on receiving, but let me tell the Members that when CBO estimated how much money would be coming in from this tax, not fee, in this next fiscal year, they do not calculate the fines. They calculate how many boats there are. They calculate and they multiply that by how many boats, how much they are going to pay, and that is the way they calculate how much money.

In no way did CBO whatsoever calculate how many fines were going to be levied upon the people that did not actually pay for their registration fee. So it is totally unfair for the Committee on the Budget to come up here and say, well, this is not in concert with what we had agreed to as the Committee on the Budget.

First of all, the Committee on the Budget is going to find that they are going to be way off, but it is not fair to say that you challenge this on the point of order of something that nobody had any idea, nor still does have any idea, on what the fines are going to be.

I agree with the Committee on the Budget when they have a legitimate argument. This is not a legitimate point of order, and I would recommend and hope that the Chair will rule against the point of order.

The CHAIRMAN. Does any Member wish to be heard further on the point of order?

Mr. GRADISON. Mr. Chairman, I wish to be heard.

The issue here is not the amount of penalties. It is the amount of the fees.

Mr. Chairman, without a penalty, less fees will be collected, because it will be clear that if there is no penalty that the failure to purchase the decal will not carry with it a charge.

I refer now to a letter to the chairman of the Committee on the Budget, the gentleman from California [Mr. PANETTA], dated yesterday, written by the Director of the Congressional Budget Office. This letter was prepared at the request of the Committee on the Budget, and it says in part:

> We believe that, if this amendment is enacted, the Coast Guard would not be able to collect most of the recreational boat fees that are due under current law in fiscal year 1991. For scoring purposes, the baseline estimate for this year's fee collections is $127 million, classified as offsetting receipts. Assuming enactment around the beginning of September, we would expect this amendment to reduce these receipts, and thus increase budget authority and outlays, by around $120 million in fiscal year 1991, under baseline assumptions.

The Chairman, it is on that basis that I have raised the point of order.

The CHAIRMAN. Before the Chair rules, does the gentleman from Louisiana [Mr. TAUZIN] desire to be heard on the point of order?

Mr. [Billy] TAUZIN [of Louisiana]. Mr. Chairman, yes, I do.

Mr. Chairman, if I may, I want to point out that the Coast Guard has already put out a directive indicating that boaters cited before October 1, 1991, will be able to avoid payment of civil penalties by showing evidence of fee payment to the district office within 30 days of the citation.

That means you could be cited on October 1, but you would not have to pay a penalty until October 31. Anyway, that is the current directive of the Coast Guard, and if that is the current directive of the Coast Guard, the amendment offered by the gentleman only embodies that current directive into the authorization bill.

The penalties would not be assessed before the Coast Guard says that they will not assess penalties.

It seems to me that can have no fiscal effect whatsoever upon the authority of the committee or upon the numbers of the Committee on the Budget.

I would argue that the point of order is not in order and that it should be denied for that very reason.

Mr. MCMILLEN of Maryland. Mr. Chairman, what we are talking about is confusion and chaos to the boat owners of this country. They are getting this from the Coast Guard that says you have got a grace period to October 31, and here we are debating this on the floor of the Congress, and we are saying that, no, a point of order, and that this will cost the Government money. The bottom line is, I think, our constituents who are boat owners are confused enough by what occurred in the budget agreement last year with regard to boats to further compound that today.

Mr. TAUZIN. Mr. Chairman, the question is, if I can wrap it up, how can a point of order lie to an amendment that simply incorporates the very directive of the Coast Guard that penalties will not be assessed until October 31? If that is the case, the Coast Guard so directed it, and the amendment simply incorporates that same delay, and there can be no effect upon the budget, and I would urge that the point of order be denied.

The CHAIRMAN. Is there further discussion on the point of order?

Mr. GRADISON. Mr. Chairman, on this point of order it is based on the statute. A regulation, once issued, can be changed and therefore, we have to, if we are going to be consistent with regard to these budgetary issues, look to the basic statute which is the basis on which I have raised the point of order.

Frankly, this is not something I made up or the Committee on the Budget has made up. It is the rules of the House, and it is a letter written, not by the Committee on the Budget, not by the gentleman from California [Mr. PANETTA] or the gentleman from Ohio [Mr. GRADISON], but by the Congressional Budget Office.

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The CHAIRMAN (Mr. DARDEN). The Chair is prepared to rule.

Mr. MCMILLEN of Maryland. Mr. Chairman, one further thought.

Some of the penalties can go as high as $5,000. We have less than 2 percent of the boaters in this country who have complied with this. The Coast Guard issued this as a regulation.

Is there not a practical point to say we ought to be consistent with what the Coast Guard is issued with regard to their regulation?

The CHAIRMAN. The Chair is prepared to rule.

The Chair appreciates the very competent, compelling, and creative arguments of the gentlemen from Maryland, Louisiana, and Michigan.

However, under section 302(g)[4] of the Budget Act, the Chair must base his ruling on estimates from the Committee on the Budget. The Chair has examined an estimate from the CBO in this regard, upon which it is asserted the Budget Committee has relied.

Accordingly, the Chair must rule that the amendment would cause the allocation under section 302(b) of discretionary new budget authority to the Committee on Merchant Marine and Fisheries to be exceeded. Accordingly, then the point of order is sustained.

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4. The Budget Enforcement Act of 1997 moved this requirement from section 302(g) of the Congressional Budget Act to section 312(a) of the Congressional Budget Act.

§ 11.3 An amendment that provided an increase in discretionary budget authority in the bill was ruled out of order for violating section 302(f) of the Congressional Budget Act[1] by exceeding the section 302(b) allocation of the relevant subcommittee of the Committee on Appropriations (as estimated by the Committee on the Budget).

On June 8, 2000,[2] during consideration of a Labor–HHS appropriation bill (H.R. 4577), the following occurred in the Committee of the Whole:

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of three sedans, and including up to $7,241,000 for the President's Committee on Employment of People With Disabilities, and including the management or operation of Departmental bilateral and multilateral foreign technical assistance, $244,579,000; together with not to exceed $310,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund: *Provided,* That no funds made available by this Act may be used by the Solicitor of Labor to participate in a review in any United States Court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in Director, Office of Workers' Compensation Programs v. Newport News Shipbuilding, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in rule 15 of the Federal Rules of Appellate Procedure: *Provided further,* That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further,* That any such decision pending a review by the Benefits Review Board for more than 1 year shall be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further*, That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).

AMENDMENT NO. 9 OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.[3] The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. OBEY:

Page 16, line 24, after the dollar amount, insert the following: "(increased by $97,000,000)".

Mr. [John] PORTER [of Illinois]. Mr. Chairman, I reserve a point of order on the amendment offered by the gentleman from Wisconsin (Mr. OBEY). . . .

1. 2 USC § 633(f).
2. 146 CONG. REC. 9940, 9942, 9943, 106th Cong. 2d Sess.
3. Douglas Bereuter (NE).

POINT OF ORDER

Mr. PORTER. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a sub-allocation of budget totals for fiscal year 2001 on June 7, 2000, House report 106–656. This amendment would provide new budget authority in excess of the subcommittee's sub-allocation made under section 302(b) and is not permitted under section 302(f) of the act. I ask for a ruling of the Chair.

The CHAIRMAN. Does the gentleman from Wisconsin (Mr. OBEY) wish to be heard on the point of order against his amendment?

Mr. OBEY. Yes, I do, Mr. Chairman. I would simply say that given the fact that the rule under which this bill is being considered guarantees that at all costs that tax breaks for the wealthiest 1 percent of people in this society will come before the needs of everybody else, I reluctantly agree that because of that rule, the gentleman is technically correct, and the amendment, while correct and just, is not in order under the Rules of the House.

The CHAIRMAN. The Chair is authoritatively guided by the estimate of the Committee on the Budget, pursuant to section 312(a) of the Budget Act, that an amendment providing a net increase in new discretionary budget authority greater than $1 million would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentleman from Wisconsin (Mr. OBEY), on its face, proposes to increase the level of new discretionary budget authority in the bill by greater than $1 million. As such, the amendment would violate section 302(f) of the Budget Act.

The point of order is sustained, and the amendment is not in order.[4]

Breach of a Special Allocation

§ 11.4 To an appropriation bill originating in a subcommittee of the Committee on Appropriations that had received two separate allocations of budget authority by the most recent concurrent resolution on the budget,[1] an amendment attempting to transfer funds from accounts under one allocation to accounts under the other was ruled out of order as violating section 302(f) of the Congressional Budget Act[2] for exceeding the level of the latter allocation (as estimated by the Committee on the Budget).

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4. For another section 302(f) point of order raised against an amendment to the same bill, see 146 CONG. REC. 10377, 10378, 106th Cong. 2d Sess., June 12, 2000.

1. *Parliamentarian's Note:* The concurrent resolution on the budget for fiscal year 2013 provided the Committee on Appropriations with a separate section 302(a) allocation for overseas contingency operations and the global war on terrorism. Pursuant to the committee's section 302(b) report, most of this budget authority was allocated to the Subcommittee on Defense, which thereafter proceeded with both a "general purpose" and an "overseas contingencies" 302(b) suballocation. At the time of the offering of the amendment at issue here, both of these suballocations were at their limit of new budget authority, such that any increase in either allocation would cause a breach of that allocation. As each allocation was evaluated independently, the budgetary savings occasioned by a decrease in one allocation could not be used to offset an increase in the other—hence the violation of section 302(f).

2. 2 USC § 633(f).

On July 18, 2012,[3] the following took place in the Committee of the Whole:

Mr. [Mick] MULVANEY [of South Carolina]. Madam Chair, I have an amendment at the desk.

The Acting CHAIR.[4] The Clerk will report the amendment.

The Clerk read as follows:

> Page 2, line 22, after the dollar amount, insert "(increased by $4,359,624,000)".
> Page 3, line 20, after the dollar amount, insert "(increased by $1,197,682,000)".
> Page 121, line 12, after the dollar amount, insert "(reduced by $4,359,624,000)".
> Page 122, line 3, after the dollar amount, insert "(reduced by $1,197,682,000)".

Mr. [Bill] YOUNG of Florida. Madam Chairman, the amendment is subject to a point of order, but I am going to reserve the point of order to allow the gentleman to have his 5 minutes to explain what it is he wants to do.

The Acting CHAIR. The gentleman reserves a point of order.

Mr. MULVANEY. Madam Chair, I thank the chairman and also the ranking member for the opportunity to present this amendment. . . .

POINT OF ORDER

Mr. YOUNG of Florida. Madam Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation of budget totals for fiscal year 2013 on May 22, 2012, House Report 112–489.

The adoption of this amendment would cause the subcommittee general purpose suballocation for budget authority made under section 302(b) to be exceeded, and is not permitted under section 302(f) of the act, and I ask for a ruling from the Chair.

The Acting CHAIR. Does any Member wish to be heard on the point of order?

Mr. MULVANEY. I ask to be heard on the point of order.

The Acting CHAIR. The gentleman from South Carolina is recognized.

Mr. MULVANEY. Madam Chair, it is true that a new point of order was created under the Budget Control Act preventing any legislation from being considered in the House that would cause discretionary spending to exceed the caps established in the Budget Control Act. Under that part of the act, Madam Chair, the entire bill is technically out of order because the entire bill exceeds the BCA caps by $7.5 billion. Ironically then, if this point of order is sustained, then we will effectively keep within the shadows a nonpartisan policy, something that everyone has supported in the past, a good governance issue, while allowing the entire bill, which also violates the same point of order, to proceed.

My amendment is outlay neutral. It does not increase spending, it does not decrease spending. It simply moves spending from the war budget to the base budget, and vice versa. If the amendment were agreed to, the budget authority in the bill will be exactly the same as it is if the amendment fails, $608,213,000,000.

Accordingly, the amendment does not violate section 302(f)(1) of the Congressional Budget Act, and overruling the point of order gives us the chance to abide by the precedent established long ago and embraced by both parties.

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3. 158 CONG. REC. H4942, 4943 [Daily Ed.], 112th Cong. 2d Sess.

4. Candice Miller (MI).

I respectfully ask that the Chair overrule the point of order.

The Acting CHAIR. Does any other Member wish to be heard on the point of order? If not, the Chair is prepared to rule.

Under House Concurrent Resolution 112, as made applicable by House Resolutions 614 and 643, the Subcommittee on Defense has both a General Purposes allocation and an Overseas Contingency Operations allocation. The accounts in the bill on pages 2 and 3 are under the General Purposes Allocation. The accounts on pages 121 and 122 are under the Overseas Contingency Operations allocation. The amendment transfers funds from the latter to the former.

The Chair is authoritatively guided under section 312 of the Budget Act and clause 4 of Rule XXIX by an estimate of the chair of the Committee on the Budget that an amendment providing any net increase in new discretionary budget authority in either allocation would cause a breach of that allocation.

The amendment offered by the gentleman from South Carolina would increase the level of new discretionary budget authority in the bill under the General Purposes allocation. As such, the amendment violates section 302(f) of the Budget Act.

The point of order is sustained, and the amendment is not in order.

Section 302(f) Point of Order Application to Outlays

§ 11.5 An amendment to an appropriation bill that provided an increase offset by an identical decrease in amounts of new budget authority contained in separate paragraphs (but no net new budget authority) was held not to violate section 302(f) of the Congressional Budget Act,[1] which only proscribes new budget authority in excess of a pertinent allocation and does not enforce outlay levels.

On June 7, 2000,[2] during consideration of a defense appropriation bill (H.R. 4576), the following transpired in the Committee of the Whole:

AMENDMENT NO. 8 OFFERED BY MR. KUCINICH

Mr. [Dennis] KUCINICH [of Ohio]. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment No. 8 offered by Mr. KUCINICH:
>
> Page 33, line 5, insert "(reduced by $174,024,000)" after the dollar amount.
>
> Page 35, lines 10 and 11, insert "(increased by $174,024,000)" after the dollar amount.

Mr. [Jerry] LEWIS of California. Mr. Chairman, I reserve a point of order on the gentleman's amendment.

The CHAIRMAN.[3] The gentleman from California (Mr. LEWIS) reserves a point of order.

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1. 2 USC § 633(f).

2. 146 CONG. REC. 9836, 9837, 106th Cong. 2d Sess.

3. David Camp (MI).

Mr. KUCINICH. Mr. Chairman, my amendment would reduce spending for research, development and testing for the National Missile Defense System by 10 percent, about the same amount of the increase made by the committee for the Ballistic Missile Defense Organization over the budget request. It would increase the budget for the Defense Health Program by the same amount. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from California (Mr. LEWIS) insist on his point of order?

Mr. LEWIS of California. I do, Mr. Chairman. I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act, as amended.

The CHAIRMAN. Does the gentleman from Ohio (Mr. KUCINICH) wish to be heard on the point of order?

Mr. KUCINICH. Mr. Chairman, I do.

The CHAIRMAN. The gentleman may proceed.

Mr. KUCINICH. Mr. Chairman, I would like to respond. This amendment is merely perfecting the number on an unauthorized account by increasing it. This is within the rule, because it merely perfects a number. The rule waives points of order against provisions in the bill for failure to comply with clause 2 of rule XXI prohibiting unauthorized or legislative provisions in a general appropriations bill and prohibiting reappropriations in a general appropriations bill. Therefore, an appropriations bill put in breach by the rule is allowed to remain.

Mr. Chairman, I will read that again. An appropriations bill put in breach by the rule is allowed to remain, so amendments that increase are permitted.

Clause 2(f) of rule XXI states that when we are reaching ahead to increase a program, the CBO must determine budget authority and outlay neutrality. This amendment has been scored by the CBO and has the CBO-determined budget authority and outlay neutrality. This amendment is within the rules of this House. I have the CBO table for the record.

On the note of that according to CBO, if one looks at the entire effect of this amendment, it is outlay neutral. In the end, there is no outlay effect. But for each individual year, there may be an outlay effect.

I would ask a question of the Parliamentarian, and that is if an amendment has an effect on outlays per year but does not change the overall end effect of the bill, is it outlay neutral?

The CHAIRMAN. The Chair will not entertain the question to the Parliamentarian. The gentleman may continue discussing the point of order.

Mr. KUCINICH. Mr. Chairman, I would state then my insistence that this amendment is in order. That if the Parliamentarian had reviewed it, or did review it, he would see that the amendment has an effect on outlays per year, but does not change the overall end effect of the bill. It is outlay neutral.

The CHAIRMAN. The Chair is prepared to rule on the point of order. The gentleman from California makes a point of order under section 302(f) of the Budget Act which constrains budget authority.

The amendment provides no net new budget authority. That it may not be neutral on outlays is of no moment under section 302(f) of the Budget Act.[4] The point of order is overruled.

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4. *Parliamentarian's Note:* At times, the House had made outlays the subject of budgetary enforcement mechanisms. The House had adopted a concurrent resolution on the budget (later "deemed" effective for purposes of Congressional Budget Act enforcement) containing a special reserve fund for highway programs. That provision created a special

Offsetting Breach

§ 11.6 An amendment that provides negative budget authority by precluding the collection of certain fees, but that offsets such negative budget authority by simultaneously authorizing a reduction of expenditures in an amount equal to the uncollected fees, does not violate section 302(f) of the Congressional Budget Act.[1]

On May 9, 1995,[2] during consideration of a Coast Guard authorization bill (H.R. 1361), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. ROTH

Mr. [Toby] ROTH [of Wisconsin]. Mr. Chairman, I offer an amendment. . . .

Mr. [Howard] COBLE [of North Carolina]. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN.[3] The gentleman from North Carolina reserves a point of order on the amendment.

The Clerk will report the amendment.

The Clerk read as follows:

> Amendment offered by Mr. ROTH: At the end of title IV (page 43, after line 13), add the following new section (and amend the table of contents accordingly):
>
> **SEC. . LIMITATION ON FEES AND CHARGES WITH RESPECT WITH RESPECT TO FERRIES.**
>
> The Secretary of the department in which the Coast Guard is operating may not assess or collect any fee or charge with respect to a ferry. Not withstanding any other provision of this Act, the Secretary is authorized to reduce expenditures in an amount equal to the fees or charges which are not collected or assessed as a result of this section. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from North Carolina [Mr. COBLE] insist on his point of order?

Mr. COBLE. Mr. Chairman, I do.

The CHAIRMAN. The gentleman will state his point of order.

Mr. COBLE. First of all, Mr. Chairman, I want to say to the distinguished gentleman from Wisconsin, that much of what he said I am not in disagreement with, but I do not think this is the proper forum, for this reason: I think the amendment offered by the gentleman from Wisconsin [Mr. ROTH] violates section 302(f) of the Budget Act by providing negative budget authority for the fiscal year 1995.

Mr. ROTH. Mr. Chairman, may I be heard on that?

The CHAIRMAN. The Chair recognizes the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I realize the gentleman from North Carolina [Mr. COBLE] is probably one of the most gifted lawyers in the House.

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application of section 302(f) to require neutrality of both budget authority *and outlays* for such programs (contrary to the general principle exemplified by this precedent). See 148 CONG. REC. 3691, 107th Cong. 2d Sess., Mar. 20, 2002. See § 4, *supra*.

1. 2 USC § 633(f).

2. 141 CONG. REC. 12174, 12175, 104th Cong. 1st Sess.

3. Jay Dickey (AR).

I wanted to point out that whenever we cut taxes, it is never in order.

Let me say something: When you read this amendment, and the appropriate statute, you find that the ferry is defined as a public service. Then the tax does not apply.

Also, I want to point out that the second argument is that the amendment gives the Secretary the authority to reduce expenditures in the amount equal to the tax not collected.

Therefore, this amendment is in order.

The CHAIRMAN (Mr. DICKEY). The Chair is prepared to rule. Based on the last argument from the gentleman from Wisconsin, that the record new budget authority would be offset, the Chair holds that the amendment is in order.

Mr. ROTH. Well, I thank the Chair very much, and I ask for an affirmative vote.

The CHAIRMAN. That ruling is based on the last sentence of the amendment.

§ 11.7 An amendment to a supplemental appropriation bill providing new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) cannot be offset by redirecting funds designated as emergency funds (such funds having no budgetary impact pursuant to a provision in the most recent budget resolution)[1] and thus violates section 302(f) of the Congressional Budget Act.

On Mar. 15, 2005,[2] the following point of order was raised in the Committee of the Whole:

AMENDMENT NO. 3 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. [Sheila] JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN.[3] The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment No. 3 offered by Ms. JACKSON-LEE of Texas:
>
> Page 46, after line 20, insert the following:
>
> IMMIGRATION AND CUSTOMS ENFORCEMENT
>
> SALARIES AND EXPENSES
>
> For an additional amount for “Salaries and Expenses”, hereby derived from the amount provided in this Act for “UNITED STATES COAST GUARD—OPERATING EXPENSES”, $40,000,000.

Mr. [Jerry] LEWIS of California. Mr. Chairman, I reserve a point of order on the gentlewoman’s amendment. . . .

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1. 150 CONG. REC. 10040, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, sec. 402). See § 4, *supra*.

2. 151 CONG. REC. 4695, 4696, 109th Cong. 1st Sess.

3. John Shimkus (IL).

POINT OF ORDER

Mr. LEWIS of California. Mr. Chairman, reluctantly I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation on budget totals for fiscal year 2005 on July 22, 2004. The amendment would provide new budget authority in excess of the committee allocations and is not permitted under section 302(f) of the act. I ask for the ruling of the Chair.

Ms. JACKSON-LEE of Texas. Will the gentleman yield for just a moment?

Mr. LEWIS of California. I have asked for a ruling of the Chair.

The Acting CHAIRMAN (Mr. SHIMKUS). The Chair will hear each member on his or her own time. The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE) to speak on the point of order.

Ms. JACKSON-LEE of Texas. Mr. Chairman, my understanding of an emergency supplemental is to deal with emergency funding situations in the government. I realize that the present language speaks directly to Coast Guard, which is part of now the Department of Homeland Security. This amendment amends that section and asks and has a viable offset and asks simply to allow $40 million of that amount to be able to be utilized for the underfunded ICE agents that do not have uniforms, that do not have badges, that do not have IDs.

Frankly, I believe if we are to do our work in Iraq, whether we agree or disagree with the war in Iraq, we do know that it is represented to us by the administration to be a war on terror. How can we fight the war on terror in Afghanistan and Iraq and not fight the war on terror in this country within our boundaries?

The Immigration Customs and Enforcement helps us do that. It separates out those who intend to do us harm from those who are here who may be undocumented but are here simply for economic reasons.

We need to be able to thwart those who may come across the border to do us harm and are not caught at the border. We need to be able to have the agency well equipped to protect us by securing those individuals and detaining them. Without those resources they cannot even continue.

Do not take my word. Take the word of Admiral Loy, who indicated that they needed more dollars to finish out the fiscal year in question.

I would ask my colleague, and I would also ask at this moment, that if he pursues his point of order, whether or not we will have the opportunity, whether in conference or as we continue the appropriations process, to focus on the lack of funding for the Immigration and Enforcement Officers, Immigration, Customs and Enforcement Officers, the Border Patrol, which I think you are aware of, and the detention beds.

I would like very much to yield to the chairman, and on this issue I think we are all in common agreement about the need to secure our homeland.

The Acting CHAIRMAN. Does the gentleman from California wish to be head [sic] further on the point of order?

Mr. LEWIS of California. Mr. Chairman, I would simply say it is our intention to pursue the questions the gentlewoman is asking. It may very well be in conference on the supplemental that it is appropriate, but frankly in some ways we take from Peter to pay Paul. We can pursue this is regular order, and I prefer to use the supplemental process for those emergencies that we cannot deal with in regular order. Because of that, I am not pursuing the recommendations at this time. We will follow through, however, on the questions that the gentlewoman is asking.

Mr. Chairman, I insist on my point of order.

The Acting CHAIRMAN. The Chair is prepared to rule on the point of order.

The Chair is authoritatively guided under section 312 of the Budget Act by an estimate of the Committee on the Budget that an amendment providing any net increase in new discretionary budget authority would cause a breach of pertinent allocation of such authority.

The amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will increase the level of new discretionary budget authority in the bill. As such, the amendment violates section 302(f) of the Budget Act.

The point of order is sustained. The amendment is not in order.

§ 11.8 An amendment to a general appropriation bill providing new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) cannot be offset by the elimination of unauthorized contract authority contained in an earmark (which provides no budgetary savings) and was conceded to violate section 302(f) of the Congressional Budget Act.[1]

On June 26, 2001,[2] during consideration of a transportation appropriation bill (H.R. 2299), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. [Donald] YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. YOUNG of Alaska:
>
> Page 14, after line 25, insert the following:
>
> SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM
>
> For necessary expenses to carry our section 41743 of title 49, United States Code, $10,000,000, to remain available until expended.

Mr. YOUNG of Alaska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN.[3] Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. [Hal] ROGERS of Kentucky. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The point of order is reserved. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Kentucky have a point of order?

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1. 2 USC § 633(f). This unauthorized contract authority was struck from the bill earlier on a point of order. 147 CONG. REC. 11936, 107th Cong. 1st Sess., June 26, 2001.

2. 147 CONG. REC. 11937, 107th Cong. 1st Sess.

3. David Camp (MI).

Mr. ROGERS of Kentucky. Yes.

The CHAIRMAN. The gentleman from Kentucky (Mr. ROGERS) is recognized on his point of order.

Mr. ROGERS of Kentucky. Mr. Chairman, we are in an unfortunate situation here. We had monies in the bill, as has been noted, for the small airports, which was stricken on a point of order. Now the amendment would seek to add monies back in, but we have no monies to add back in. The budget authority that we were given does not permit it.

No one is a bigger advocate for smaller airports than I am because that is all I have in my district.

□ 1600

But I am forced to make a point of order against the amendment because it is in violation of 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations fields a suballocation of budget totals for fiscal year 2002 on June 13, 2001. This amendment would provide new budget authority in excess of the subcommittee's suballocation made under section 302(b) and is not permitted under section 302(f) of the Act. I ask for a ruling from the Chair.

The CHAIRMAN. Does the gentleman from Alaska (Mr. YOUNG) wish to be heard on the point of order?

Mr. YOUNG of Alaska. I do. Mr. Chairman, I agree with the gentleman that one of the most unfortunate things that occurred to the Subcommittee on Transportation is the fact they do not have the money. I do think the budgeteers did a bad thing. Four percent is not enough. I said this all along. So I will continue to try to seek funding of this program as we progress with this bill and other bills to see if we cannot accomplish what we are all seeking.

I have more small airports than any place in the United States and most of my people do not have highways, so I am very supportive of this program, but we also have to make sure it is funded adequately and appropriately and I concede the point of order at this time.

The CHAIRMAN. The gentleman from Alaska concedes the point of order. The point of order is conceded and sustained. The provision is stricken from the bill.

§ 11.9 Amendments to an appropriation bill making a series of numerical changes intended to offset one another considered *en bloc* are subject to points of order under section 302(f) of the Congressional Budget Act[1] where the intended reductions in contract authority (not considered budget authority) fail to offset new increases in new discretionary budget authority (as estimated by the Committee on the Budget), so that the net effect of the amendments is to cause the bill to exceed the appropriate allocation of new discretionary budget authority made pursuant to section 302(b) for that fiscal year.

On July 30, 1986,[2] during consideration of a transportation appropriation bill (H.R. 5205), the following occurred in the Committee of the Whole:

1. 2 USC § 633(f).
2. 132 CONG. REC. 18153, 18154, 99th Cong. 2d Sess.

Mr. [William] LEHMAN of Florida. Mr. Chairman, I reserve a point of order against the amendments.

The CHAIRMAN.[3] The gentleman from Florida [Mr. LEHMAN] reserves a point of order on the amendments.

The Clerk will report the amendments.

The Clerk read as follows:

> Amendments offered by Mr. WALKER: In title I, on page 4, line 9, strike "$1,849,800,000" and insert in lieu thereof "$1,850,115,000".
>
> And on line 11, strike "$372,983,000" and insert in lieu thereof "$373,298,000".

The CHAIRMAN. Prior to proceeding with the amendments, is the gentleman's request to be amended?

Mr. [Robert] WALKER [of Pennsylvania]. Yes, Mr. Chairman, it would be 1, 3, and 5.

The CHAIRMAN. The Chair understands that the gentleman is amending the request for consideration en bloc.

Mr. WALKER. Mr. Chairman, because of the fact that the two amendments that were meant to coordinate these would amend the same place twice, there is an amendment at the desk that would go to numbers 1, 3, and 5, which would in fact then overcome that problem.

The CHAIRMAN. The Clerk will report amendments 1, 3, and 5.

The Clerk read as follows:

> Amendments offered by Mr. WALKER: In title I, on page 2, line 11, strike "$7,465,000" and insert in lieu thereof "$7,150,000".
>
> In title I, on page 24, line 8, strike "$122,000,000" and insert in lieu thereof "$102,000,000".
>
> And on page 24, line 11, strike "$121,060,000" and insert in lieu thereof "$101,060,000".
>
> In title I, on page 4, line 9, strike "1,849,800,000" and insert in lieu thereof "$1,870,115,000".
>
> And on line 11, strike "$372,983,000" and insert in lieu thereof "$393,298,000".

The CHAIRMAN. The Chair will now put the question on the unanimous-consent request, as modified.

The request is to consider these amendments en bloc. Is there objection to that request?

There was no objection.

POINT OF ORDER

Mr. LEHMAN of Florida. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. LEHMAN of Florida. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act, as amended by Public Law 99–177. The Committee on Appropriations filed its subcommittee allocation for fiscal year 1987 pursuant to section 302 of the Congressional Budget Act on July 15, 1986. This is House Report 99–673.

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3. Leon Panetta (CA).

These amendments would provide new budget authority in excess of the subcommittee allocation and is not permitted under section 302(f) of this act.

I ask that the amendments be ruled out of order, and Mr. Chairman, under the gentleman's amendment, $20 million in new budget authority is being added to the Coast Guard; however, all but $350,000 of the amounts intended to offset come from contract authority obligation limitations. These do not count as the budget authority and cannot be used to keep this bill within our budget allocation. Contract authority is separate from the rest of these kinds of moneys.

The CHAIRMAN. Does the gentleman from Pennsylvania wish to respond?

Mr. WALKER. Mr. Chairman, the 302 authority being brought to the Congress under its own report specifies the amounts that are included in the committee's report as a total sum.

I have reduced figures in one portion of the bill in order to add figures in the other portion of the bill; and so therefore bring it in with the same 302 numbers that the committee has brought to us.

So I am, in fact, under the legislation, bringing the cuts that are necessary in order to keep the committee from exceeding its 302 allocations.

The CHAIRMAN. The Chair would ask the gentleman from Pennsylvania [Mr. WALKER] if he counts as toward his reduction the elimination of the contract authorization on page 24 of the Highway Safety Act?

Mr. WALKER. Under the amendment that is before the House, included in the cuts, on page 24, line 8, is the cut specified.

Let me say to the Chair, however, that that is money which is given in grant authority to the States. That is, both the Congressional Research Service and the Department of Transportation, have told this gentleman that that is money which goes to the States in grants and so therefore is money that should be allocated under 302.

□ 1120

The CHAIRMAN. Does the gentleman from Florida wish to speak to the point?

Mr. LEHMAN of Florida. Mr. Chairman, just for a point of clarification, the sums that the gentleman from Pennsylvania is talking about are not considered budget authority. I think that is the problem that we are dealing with now.

The CHAIRMAN. Does the gentleman from Pennsylvania [Mr. WALKER] have any further arguments to make?

Mr. WALKER. No, Mr. Chairman.

The CHAIRMAN (Mr. PANETTA). The Chair is prepared to rule.

The Chair is to be guided by the requirements of 302(f) in that any amendment to H.R. 5205 which would increase new discretionary authority in the bill or would increase direct loan new credit authority in the bill by more than $24 million would violate section 302(f) of the Congressional Budget and Impoundment Control Act of 1974.

Section 302(f) provides that it shall not be in order to consider any bill, resolution or amendment which, if enacted, would exceed the appropriate allocation made pursuant to section 302(b) for the fiscal year of new discretionary budget authority or new credit authority.

The question then comes down to whether the provision on page 24 relates to discretionary budget authority or not. It is the Chair's view that this deals not with such budget authority but with grant money and therefore the amendment would indeed violate

section 302(f) by causing a net increase in discretionary budget authority and therefore sustains the point of order.

Contingent Breach

§ 11.10 An amendment proposing to strike from a general appropriation bill a proviso stating that a specified increment of new discretionary budget authority ostensibly provided by the bill would "become available for obligation only upon the enactment of future appropriations legislation" was held to cause the bill to provide additional new discretionary budget authority in that incremental amount, in breach of the pertinent allocation under former section 602,[1] (as estimated by the Committee on the Budget) and therefore in violation of section 302(f) of the Congressional Budget Act.[2]

On June 26, 1996,[3] during consideration of an agriculture appropriation bill (H.R. 2698), the following transpired in the Committee of the Whole:

AMENDMENT OFFERED BY MR. PALLONE

Mr. [Frank] PALLONE [of New Jersey]. Mr. Chairman, I ask unanimous consent to offer an amendment to a portion of the bill not yet read.

The CHAIRMAN.[4] Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PALLONE: Strike the last proviso under the heading HAZARDOUS SUBSTANCE SUPERFUND.

Mr. [Michael] OXLEY [of Ohio]. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from Ohio reserves a point of order. . . .

POINT OF ORDER

Mr. OXLEY. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. OXLEY. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act as amended. The Committee on Appropriations filed a subcommittee allocation for fiscal year 1997 on June 17,

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1. For more information on title VI of the Congressional Budget Act, see the introduction to this section.

2. 2 USC § 633(f).

3. 142 CONG. REC. 15561–63, 104th Cong. 2d Sess.

4. Larry Combest (TX).

1996 (H. Rept. 104–624). This amendment would provide a new budget authority in excess of the subcommittee allocation and is not permitted under section 302(f) of the act.

Mr. Chairman, I ask that the amendment be ruled out of order.

The CHAIRMAN. Does any other Member wish to be heard on the point of order?

The Chair recognizes the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Chairman, again, as I said before, if the money is really in this bill, then why should it be subject to a point of order. All we are saying is that if it is really there, if the money is really there, it should be used now for cleanups and not later for some polluter slush fund which basically gives money back in rebates to polluters. As I said on page 60 of the committee report, it says that the committee is appropriating $2.2 billion for Superfund in fiscal year 1997.

In addition, it claims that they are appropriating almost 861 million more than the President included in his budget. Our amendment simply strikes that contingency and would truly fund the Superfund Program at the 2.2 billion and have the money spent this year.

If the amendment is subject to a point of order, then the money really is not there after all and the Republicans are appropriating about 55 million less than the President requested. So I just wanted to make it clear that by bringing this point of order and having it sustained, they are admitting that the $2.2 billion figure is basically a sham. They are admitting that they funded the program at $55 million less than the President requested and that they have turned this appropriation process into something that we may never see. . . .

The CHAIRMAN. Does the gentleman from New York, [Mr. BOEHLERT] wish to be heard on the point of order?

Mr. [Sherwood] BOEHLERT [of New York]. Yes, Mr. Chairman, I wish to speak in support of the point of order. . . .

The budget resolution creates a Superfund reserve fund. This reserve fund allows the chairman of the Committee on the Budget to increase the committee allocations when the Superfund taxes are extended and the program is reformed. That is what we are all about. We want to reform a program that everyone agrees is broken.

It is deficit neutral, this fund, because it will come from the reauthorized Superfund business taxes. This bill sets the marker for the funding level that will be provided when these conditions are met. We are saying that we are committed, let me repeat that, we are saying that we are committed to fund a reformed Superfund at $2.2 billion and will use the extension of the Superfund taxes for that purpose.

□ 1415

What we have said repeatedly from the beginning of this historic 104th Congress is that we want to reform Superfund. We have a plan; it is falling on deaf ears.

Mr. Chairman, I support the point of order.

The CHAIRMAN. Does the gentleman from Pennsylvania [Mr. BORSKI] seek to be heard on the point of order?

Mr. [Robert] BORSKI [of Pennsylvania]. I do, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania.

Mr. BORSKI. Mr. Chairman, I urge that the point of order raised against this amendment be overruled. The Pallone-Borski-Markey amendment does not change any of the monetary figures in the bill. It simply strikes the very unusual language limiting the

use of $861 million, language that makes the $861 million totally meaningless. If the $861 million is real and will impact the budget, then our amendment will have no impact whatsoever on the budget. If this point of order is sustained, the ruling will support the contention that the $861 million is meaningless. The $861 million figure in this bill is the most meaningless thing I have seen on this House floor in 14 years. . . .

The CHAIRMAN. The Chair is prepared to rule.

The amendment offered by the gentleman from New Jersey proposes to strike from the bill the last proviso under the heading "Hazardous Substance Superfund." That proviso states that a specified increment of the amount ostensibly provided in that paragraph of the bill "shall become available for obligation only upon the enactment of future appropriations legislation that specifically makes these funds available for obligation."

The Chair is advised that the Committee on the Budget has analyzed this proviso under scorekeeping rule 9 from the joint explanatory statement of managers on the Budget Enforcement Act of 1990, entitled "Delay of obligations." That rule reads in part as follows:

> If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation.

Thus, pursuant to section 302(g)[5] of the Budget Act, the Committee on the Budget estimates that the incremental amount of funding affected by this proviso is presently attributable to the "future appropriations legislation" and not to the pending appropriation bill. Consequently, to strike the proviso would cause the incremental amount of budget authority affected by the proviso to be attributed to the pending bill.

The Chair is further advised that the Committee on the Budget estimates that the bill, as perfected to this point, provides new discretionary budget authority in the approximate amount of $64,327,000,000, and that the pertinent allocation of such budget authority for this bill under sections 302 and 602 of the Budget Act is $64,354,000,000. Thus, an amendment providing new discretionary budget authority in an amount greater than $27 million would breach the pertinent allocation, in violation of section 302(f) of the Budget Act.

Because the amendment offered by the gentleman from New Jersey would cause the pending bill to provide an additional $861 million in new discretionary budget authority, it violates section 302(f) of the Budget Act.

The point of order is sustained.

Striking Rescission

§ 11.11 An amendment proposing to strike from a general appropriation bill a rescission scored as negative budget authority was held to provide new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) and thus in violation of section 302(f) of the Congressional Budget Act.[1]

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5. The Budget Enforcement Act of 1997 moved this requirement from section 302(g) of the Congressional Budget Act to section 312(a).

1. 2 USC § 633(f).

On June 20, 2001,(2) during consideration of a supplemental appropriation bill (H.R. 2216), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. BENTSEN

Mr. [Kenneth] BENTSEN [of Texas]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.(3) The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BENTSEN:

In chapter 9 of title II, strike the item relating to "FEDERAL EMERGENCY MANAGEMENT AGENCY—DISASTER RELIEF".

The CHAIRMAN. Pursuant to the order of the Committee of today, the gentleman from Texas, (Mr. BENTSEN) and a Member opposed each will control 10 minutes.

Mr. [Bill] YOUNG of Florida. Mr. Chairman, I reserve a point of order on the amendment. . . .

POINT OF ORDER

Mr. YOUNG of Florida. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation of budget totals for fiscal year 2001 on June 19, 2001. That was House Report 107–104. This amendment would strike a rescission and, therefore, provide in effect a new budget authority in excess of the subcommittee suballocation made under section 302(b) and is not permitted under section 302(f) of the act.

And so, Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman advances his point of order. Does the gentleman from Texas (Mr. BENTSEN) wish to be heard on the point of order?

Mr. BENTSEN. Briefly, Mr. Chairman, because of the time agreement that we honored.

As the chairman read the point of order, I think it underscores the point, because he says were this to be allowed, the rescission would result in new budget authority. But, in fact, what the rescission does is it strikes budget authority that was created by the 106th Congress. It really is not new budget authority, but it underscores the nuance of the Budget Act and the fact that additional spending in this supplemental had to be offset both through emergency declaration and then through the rescission of FEMA, which I believe, I truly believe, will hamstring FEMA.

But I appreciate the chairman's sincerity and I will abide by the point of order.

The CHAIRMAN. The Chair is prepared to rule. The Chair is authoritatively guided by an estimate of the Committee on the Budget under section 312 of the Budget Act that an amendment providing any net increase in new discretionary budget authority would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentleman from Texas would, by striking a rescission contained in the bill, increase the level of new discretionary budget authority in the bill. As such, the amendment violates section 302(f) of the Budget Act.

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2. 147 CONG. REC. 11246, 11248, 11249, 107th Cong. 1st Sess.

3. Douglas Bereuter (NE).

The point of order is sustained. The amendment is not in order.

Striking Limitation

§ 11.12 Where a limitation on funds in a general appropriation bill was estimated (by the Committee on the Budget) under section 312(a) of the Congressional Budget Act to provide negative new budget authority in an amount below the pertinent allocation of such authority, an amendment striking the limitation from the bill was held to provide new budget authority causing a breach in violation of section 302(f) of the Congressional Budget Act.[1]

On June 13, 2000,[2] during consideration of a Labor–HHS appropriation bill (H.R. 4577), the following occurred in the Committee of the Whole:

AMENDMENT NO. 13 OFFERED BY MS. PELOSI

Ms. [Nancy] PELOSI [of California]. Mr. Chairman, I offer Amendment No. 13.

The CHAIRMAN.[3] Is the gentlewoman from California a designee of the gentleman from Wisconsin (Mr. OBEY)?

Ms. PELOSI. Yes, I am, Mr. Chairman.

Mr. [John] PORTER [of Illinois]. Mr. Chairman, I reserve a point of order on the gentlewoman's amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 13 offered by Ms. PELOSI:
Page 49, strike line 1 through 12 (section 213).

The CHAIRMAN. Pursuant to the order of the House of Thursday, June 8, 2000, the gentlewoman from California (Ms. PELOSI) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume. . . .

The CHAIRMAN. All time has expired on this amendment.

POINT OF ORDER

Mr. PORTER. Mr. Chairman, I make a point of order against the amendment because it is in violation of Section 302(f) of the Congressional Budget Act of 1974.

The Committee on Appropriations filed a suballocation of budget totals for fiscal year 2001 on June 8, 2000, House Report 106–660. This amendment would provide new budget authority in excess of the subcommittee's suballocation made under Section 302(b), and is not permitted under section 302(f) of the Act.

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1. 2 USC § 633(f).

2. 146 CONG. REC. 10501, 10505, 10506, 106th Cong. 2d Sess.

3. Douglas Bereuter (NE).

I would ask a ruling of the Chair.

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Ms. PELOSI. Yes, Mr. Chairman.

The CHAIRMAN. The gentlewoman from California (Ms. PELOSI) is recognized.

Ms. PELOSI. Mr. Chairman, the distinguished chairman lodged a point of order on the basis that this is outside the budget allocation. On that score, he may be correct. But the fact is that despite the expressions of priority for the funding at the National Institutes of Health, which the chairman has very sincerely made and others have made in this Chamber, we had other choices in this bill.

In fact, if this is of the highest priority, why was it not given the same status that other Republican priorities are given in this bill?

As we know, there is a $500 million budget adjustment to accommodate $500 million of other spending in this bill. That could have been done for this $1.7 billion and we could have ensured, guaranteed, given peace to the American people that their health and that the research to ensure it to be protected.

Instead, the only thing protected in this bill is the tax break for the wealthiest people in America. That is the decision that Members have to make. It is not about this being fiscally responsible. We all want to be that. Indeed, our alternative Democratic budget resolution had this $1.7 increase and it was fiscally responsible.

Two things, Mr. Chairman. Because the distinguished chairman has said he is calling a point of order because this is beyond the allocation of the budget, it could be protected just the way this other funding had a lifting of the budget, had an adjustment of the budget figure.

□ 1145

Secondly, I would say that if we are not going to go down that path then it is not the priority we say it is, and we have to answer to the American people for that.

Technically, on the point of order, the rule protects the wealthiest 1 percent at the expense of the National Institutes of Health, and I concede the point of order.

Mr. PORTER. Mr. Chairman, can I be heard further on the point of order?

The CHAIRMAN. The gentleman from Illinois (Mr. PORTER) is recognized.

Mr. PORTER. Mr. Chairman, I would simply respond to the gentlewoman that she had every opportunity to make those choices by offering an amendment within the rules that would have taken money from lower priority accounts and put it in this account if that was her desire. She did not take that opportunity to operate within the bounds of fiscal restraint and has simply offered an amendment without any offset, which is clearly out of order.

The CHAIRMAN. The Chair is prepared to rule.

Ms. PELOSI. Mr. Chairman, if I may, since the gentleman characterized my remarks, if I may?

The CHAIRMAN. Very briefly the gentlewoman from California may respond.

Ms. PELOSI. Mr. Chairman, the distinguished gentleman knows that I had no opportunity to have an offset of the $1.7 billion. All I am saying is give this the same treatment as has been given to other Republican priorities by making a budget cap adjustment so that this can be afforded in this bill.

The CHAIRMAN. The gentlewoman from California (Ms. PELOSI) has conceded the point of order, but the Chair would say that he is authoritatively guided by an estimate

of the Committee on the Budget, pursuant to section 312 of the Budget Act, that an amendment providing any net increase in new discretionary budget authority would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentlewoman from California, by proposing to strike a provision scored as negative budget authority, would increase the level of new discretionary budget authority in the bill. As such, the amendment violates section 302(f) of the Budget Act.

The point of order is therefore sustained. The amendment is not in order.

§ 11.13 Where a limitation on funds in a general appropriation bill was estimated to provide negative new budget authority in an amount sufficient to avoid a breach of the pertinent allocation of such authority, an amendment striking the limitation from the bill was held to provide new budget authority causing a breach (as estimated by the Committee on the Budget), in violation of section 302(f) of the Congressional Budget Act.(1)

On June 26, 1991,(2) during consideration of an agriculture appropriation bill (H.R. 2698), the following transpired in the Committee of the Whole:

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary administrative expenses of the Agricultural Stabilization and Conservation Service, including expenses to formulate and carry out programs authorized by title III of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301–1393); the Agricultural Act of 1949, as amended (7 U.S.C. 1421 et seq.); sections 7 to 15, 16(a), 16(f), and 17 of the Soil Conservation and Domestic Allotment Act, as amended and supplemented (16 U.S.C. 590g–590o, 590p(a), 590p(f), and 590q); sections 1001 to 1004, 1006 to 1008, and 1010 of the Agricultural Act of 1970 as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501 to 1504, 1506 to 1508, and 1510); the Water Bank Act, as amended (16 U.S.C. 1301–1311); the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101); sections 202(c) and 205 of title II of the Colorado River Basin Salinity Control Act of 1974, as amended (43 U.S.C. 1592(c), 1595); sections 401, 402, and 404 to 406 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 to 2205); the United States Warehouse Act, as amended (7 U.S.C. 241–273); and laws pertaining to the Commodity Credit Corporation, $720,705,000; of which $719,289,000 is hereby appropriated, and $573,000 is transferred from the Public Law 480 Program Account in this Act and $589,000 is transferred from the Commodity Credit Corporation Program Account in this Act: *Provided,* That other funds made available to the Agricultural Stabilization and Conservation Service for authorized activities may be advanced to and merged with this account: *Provided further,* That these funds shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed $100,000 shall be available for employment under 5 U.S.C. 3109: *Provided further,* That no part of

1. 2 USC § 633(f).

2. 137 CONG. REC. 16484–16486, 102d Cong. 1st Sess.

the funds made available under this Act shall be used (1) to influence the vote in any referendum; (2) to influence agricultural legislation, except as permitted in 18 U.S.C. 1913; or (3) for salaries or other expenses of members of county and community committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, for engaging in any activities other than advisory and supervisory duties and delegated program functions prescribed in administrative regulations: *Provided further,* That none of the funds appropriated or otherwise made available by this Act shall be used to establish or implement a wetlands reserve program as authorized by 16 U.S.C. 3837 et seq.

AMENDMENT OFFERED BY MR. NAGLE

Mr. [David] NAGLE [of Iowa]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NAGLE: Page 28, beginning in line 23, strike ": *Provided*" and all that follows through line 2 on page 29.

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Chairman, I reserve a point of order against the amendment.

Mr. NAGLE. Mr. Chairman, I ask unanimous consent that the amendment, which is to title I, and the amendment, which is to title II, which is directly related to it, be considered en bloc so that we can get this out of the way at the same time.

The CHAIRMAN.[3] Is there objection to the request of the gentleman from Iowa?

Mr. WHITTEN. Mr. Chairman, I reserved a point of order. I now object.

The CHAIRMAN. Objection is heard.

Mr. NAGLE. Mr. Chairman, I would ask Chairman WHITTEN to reconsider that objection, since I do not, when we are done, intend to offer the amendment. I intend to withdraw the amendment.

Mr. WHITTEN. Mr. Chairman, if the gentleman will yield, if I may say so, I hate to make this objection here but, we are going to have to start using our land to produce so we can pay our debts and keep our farmers in business. . . .

Mr. NAGLE. . . .

My amendment will transfer appropriations from within the conservation title to the Wetlands Reserve Program and the Water Quality Reserve Program. It is my intention to fight for these programs so that the future of the great compromise and more importantly, the future of the farm program can be maintained. . . .

POINT OF ORDER

Mr. WHITTEN. Mr. Chairman, I insist on the point of order.

May I say that we operated under very strict limitations this year. We had everybody counting what we could do and this would have the effect of striking out a savings on which we had to count to stay within the budget ceilings. Our provision has the effect of saving $231.8 million in a mandatory program. It has been scored by CBO and by the Budget Committee as a proper savings to the discretionary totals of this bill.

Under Scorekeeping Rule No. 3 of the 1990 Reconciliation Act. If the provision is struck, it will have the effect of breaking the committee's 602(b) allocation and is, therefore, in violation of section 302(f).

3. William Hughes (NJ).

We would be in violation of all of our allocation. The effect would be that this would set in motion another sequestration for everything to be cut.

Members will recall last week we had a cut of thirteen ten-thousandths of a percent, it cost thousands of dollars to implement. We faced it because the Office of Management and Budget said we were over some slight amount. CBO and the General Accounting Office differed with them, but nevertheless we had that. So I insist that if this provision should be changed, it would leave us in violation not only in this bill but the effect would be across the board.

The CHAIRMAN. The gentleman from Mississippi insists on his point of order.

Does the gentleman from Iowa [Mr. NAGLE] wish to argue in opposition to the point of order?

Mr. NAGLE. Mr. Chairman, I do.

The CHAIRMAN. Does the gentleman wish to withdraw the amendment?

Mr. NAGLE. Mr. Chairman, the gentleman does not wish to withdraw the amendment with the point of order pending. The gentleman wishes to argue the point of order.

The CHAIRMAN. The gentleman is recognized.

Mr. NAGLE. Mr. Chairman, this is very simple. What I did quite simply was take money that is already being spent and simply transfer it. That is all this does. It does not provide for new money. It does not take money over the cap. It takes existing money inside the bill, simply transfers it to two different programs that the committee in its wisdom and judgment chose not to fund. So it is not over the limit.

It is not an expenditure that is not already authorized. We are simply shifting money within the account.

Therefore, for that reason, the point of order of the distinguished gentleman from Mississippi is not well taken.

□ 1820

The CHAIRMAN. The Chair might remind the gentleman from Iowa that his unanimous-consent request that the amendments be considered en bloc was objected to by the gentleman from Mississippi, the distinguished chairman of the Committee on Appropriations, so the argument is only addressed to that language at the bottom of page 28 and at the top line of 29 which, in essence, strikes the limitation contained in the bill at page 28, line 23.

Mr. NAGLE. That is correct. It spends no money.

The CHAIRMAN. There is no balancing or offset as such within the bill, because the gentleman did not secure, when he sought unanimous consent, to consolidate the two amendments en bloc.

Mr. NAGLE. The gentleman sought it, but the gentleman was denied it.

The CHAIRMAN. The gentleman was denied that by an objection by the distinguished gentleman from Mississippi who had that right.

Mr. NAGLE. I am asking the Chair, and I think I have made my case, and I respectfully ask the Chair to make a ruling.

The CHAIRMAN. The Chair is prepared to rule unless the gentleman from Pennsylvania seeks recognition, and he can in his own right in opposition.

Mr. [Thomas] RIDGE [of Pennsylvania]. I do not seek recognition.

The CHAIRMAN. The Chair is prepared to rule then that the point of order of the gentleman from Mississippi is well taken, and the Chair sustains the point of order, because striking that language under the circumstances would be scored to violate the Budget Act.

Allocation Adjustment

§ 11.14 An amendment increasing an amount designated as an "emergency" thus triggering an increase in the relevant section 302(a) committee allocation (pursuant to section 314 of the Congressional Budget Act)(1) but failing to trigger a corresponding increase in the section 302(b) subcommittee allocation, was ruled out of order for violating section 302(f) of the Congressional Budget Act(2) by exceeding such section 302(b) allocation (as estimated by the Committee on the Budget).

On June 21, 2000,(3) the following point of order was raised in the Committee of the Whole:

FEDERAL EMERGENCY MANAGEMENT AGENCY

DISASTER RELIEF

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), $300,000,000, and, notwithstanding 42 U.S.C. 5203, to remain available until expended, of which $5,500,000 shall be transferred to "Emergency management planning and assistance" for the consolidated emergency management performance grant program; of which $30,000,000 shall be transferred to the "Flood map modernization fund" account; and up to $50,000,000 may be obligated for pre-disaster mitigation projects and repetitive loss buyouts (in addition to funding provided by 42 U.S.C. 5170c) following disaster declarations.

□ 1345

AMENDMENT OFFERED BY MR. BOYD

Mr. [Allen] BOYD [of Florida]. Mr. Chairman, I offer an amendment.

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1. However, the Budget Control Act of 2011 amended section 314 of the Congressional Budget Act such that it no longer operates in the manner described here. See § 1, *supra* and § 26, *infra*, for more on the Budget Control Act of 2011 and its various reforms to the congressional budget process.

2. 2 USC § 633(f).

3. 146 CONG. REC. 11747–49, 106th Cong. 2d Sess.

Parliamentarian's Note: The following paragraph of the bill, designating these amounts as "emergency requirements" on the condition that the President transmit a reciprocating designation, was later held to constitute legislation in violation of rule XXI clause 2(b) (*House Rules and Manual* § 1038 (2011)): "Notwithstanding any other provision of law, the foregoing amounts are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided*, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress." See 146 CONG. REC. 11749, 106th Cong. 2d Sess., June 21, 2000.

The Clerk read as follows:

Amendment offered by Mr. BOYD:

Page 66, line 18, after the dollar amount, insert the following: "(increased by $2,609,220,000)".

Mr. [James] WALSH [of New York]. Mr. Chairman, I reserve a point of order against the gentleman's amendment.

The CHAIRMAN.[4] The gentleman from New York (Mr. WALSH) reserves a point of order.

The gentleman from Florida (Mr. BOYD) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Florida (Mr. BOYD). . . .

POINT OF ORDER

Mr. WALSH. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation of Budget Totals for fiscal year 2001 on June 20, 2000 (House Report 106–683). This amendment would provide new budget authority in excess of the subcommittee suballocation made under section 302(b) and is not permitted under section 302(f) of the Act.

I ask for a ruling from the Chair.

The CHAIRMAN. The Chair is authoritatively guided by an estimate of the Committee on the Budget, pursuant to section 312 of the Budget Act, that an amendment providing any net increase in new discretionary budget authority would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentleman from Florida (Mr. BOYD) would increase the level of new discretionary budget authority in the bill. Because of the attending emergency designation, the amendment automatically occasions an increase in the section 302(a) allocation to the Committee on Appropriations, but it does not occasion an automatic increase in the section 302(b) suballocation for the pending bill.

As such, the amendment violates section 302(f) of the Budget Act.

The point of order is, therefore, sustained. The amendment is not in order.

§ 11.15 An amendment to a general appropriation bill providing new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) does not trigger a corresponding increase to that allocation pursuant to procedural provisions contained in a concurrent resolution on the budget[1] where such provisions specify that the new budget authority must be contained in a reported bill (and not in an amendment), and such an amendment thus violates section 302(f) of the Congressional Budget Act.[2]

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4. Edward Pease (IN).

1. 143 CONG. REC. 9984, 105th Cong. 1st Sess., June 4, 1997 (H. Con. Res. 84, sec. 205). This section of the fiscal year 1998 budget resolution authorized committee allocation adjustments in response to qualifying Federal land acquisition legislation. For more on similar adjustment authorities contained in budget resolutions, see § 4, *supra*.

2. 2 USC § 633(f).

On July 10, 1997,[3] the following point of order was raised in the Committee of the Whole:

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. [George] MILLER of California. Mr. Chairman, I offer an amendment.

Mr. [Ralph] REGULA [of Ohio]. Mr. Chairman, I reserve a point of order on the gentleman's amendment.

The CHAIRMAN.[4] The point of order is reserved.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of California:
Page 5, after line 15, insert:

PRIORITY FEDERAL LAND ACQUISITIONS AND EXCHANGES

To carry out priority Federal land exchange agreements and priority Federal land acquisitions by the National Park Service, United States Fish and Wildlife Service, Bureau of Land Management, and the United States Forest Service, up to $700,000,000 to be derived from the Land and Water Conservation Fund, to remain available until expended, of which not to exceed $65,000,000 is for the acquisition of identified lands and interests in lands and for other purposes to carry out the Agreement of August 12, 1996, to acquire interests to protect and preserve Yellowstone National Park, and not to exceed $250,000,000 is for the acquisition of identified lands and interests in lands, at the purchase price specified, in the September 28, 1996, Headwaters Forest Agreement. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Ohio insist on his point of order?

Mr. REGULA. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act, as amended.

The Committee on Appropriations filed a revised subcommittee allocation for fiscal year 1998 on June 24, 1997, House Report 105–151. This amendment would provide a new budget authority in excess of the subcommittee allocation and is not permitted under section 302(f) of the act.

In addition, Mr. Chairman, section 205 of the budget resolution only makes the $700 million available for land acquisition if it is in a reported bill from the Committee on Appropriations. The budget resolution does not apply to floor amendments.

Mr. Chairman, I ask that the amendment be ruled out of order.

The CHAIRMAN. Does the gentleman from California [Mr. MILLER] wish to be heard on the point of order?

Mr. MILLER of California. Unfortunately, Mr. Chairman, I think I have to concede that the gentleman from Ohio [Mr. REGULA] is correct. I wish the rule had been written otherwise. But, in fact, the gentleman is correct.

The CHAIRMAN. The point of order is conceded and sustained.

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3. 143 CONG. REC. 14020–23, 105th Cong. 1st Sess.

4. Steven LaTourette (OH).

Section 302(f) Points of Order—Applicability to Motions to Recommit

§ 11.16 A motion to recommit a bill with instructions to report "forthwith"(1) a direct amendment to existing law providing new budget authority in excess of the relevant subcommittee allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) was held to violate section 302(f) of the Congressional Budget Act(2) and ruled out of order.

On July 22, 2004,(3) during consideration of a military construction appropriation bill (H.R. 4837), the following occurred:

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore.(4) Is the gentleman opposed to the bill?

Mr. OBEY. Unless the motion is adopted, Mr. Speaker, yes.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Obey moves to recommit the bill, H.R. 4837, to the Committee on Appropriations with instructions to report the bill forthwith with the following amendment:

"SEC. 129. Section 2883(g)(1) of title 10, United States Code, is amended by striking "$850,000,000" and inserting "$1,300,000,000"."

POINT OF ORDER

Mr. [James] NUSSLE [of Iowa]. Mr. Speaker, I make a point of order against the motion to recommit because it violates Section 302(f) of the Congressional Budget Act.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. OBEY. Mr. Speaker, what this amendment attempts to do is to restore the language just stricken by the gentleman. If the gentleman insists on his point of order, then

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1. *Parliamentarian's Note*: A motion to commit or recommit a bill or joint resolution "forthwith" provides that any amendatory instructions contained therein be carried out immediately, and thus engages the provisions of the Congressional Budget Act. In the 111th Congress, Rule XIX clause 2 was amended to provide that all motions to recommit a bill or joint resolution that contained instructions must be "forthwith." *House Rules and Manual* § 1001 (2011). Prior to this change, such motions may have specified a different adverb (most often "promptly") to indicate a mere non-binding recommendation to the committee of recommittal, and therefore such formulations did not engage the Congressional Budget Act. For an example of such a "promptly" motion to recommit, containing an amendment that had previously been ruled out of order for violating section 302(f) of the Congressional Budget Act, see 147 CONG. REC. 11253, 107th Cong. 1st Sess., June 20, 2001. See also Deschler's Precedents Ch. 23 § 32.25, *supra*.
2. 2 USC § 633(f).
3. 150 CONG. REC. 17321, 108th Cong. 2d Sess.
4. David Camp (MI).

obviously once again the House will have missed an opportunity to provide housing for these 24,000 military families.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

If not, the Chair will rule.

The Chair finds that the instructions contained in the motion to recommit offered by the gentleman from Wisconsin (Mr. OBEY) propose to amend existing law. The instructions, therefore, constitute legislation in violation of clause 2 of rule XXI.[5] The Chair also finds that the amendment contemplated by the motion to recommit proposes spending in excess of the pertinent allocation therefore under Section 302(b) of the Budget Act, as asserted by the point of order of the gentleman from Iowa.

The point of order is sustained, and the motion to recommit is not in order.

§ 11.17 A motion to commit a bill with instructions to report "forthwith" an amendment providing new budget authority in excess of the relevant allocation under section 302(a) of the Congressional Budget Act, and not protected by waiver against similar provisions in the bill, was held to violate section 302(f) of the Congressional Budget Act and ruled out of order.[1]

On Jan. 8, 2003,[2] the following transpired in the House:

EXTENSION OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002

Mr. [William] THOMAS [of California]. Mr. Speaker, pursuant to House Resolution 14, I call up the Senate bill (S. 23) to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. SIMPSON).[3] Pursuant to House Resolution 14, the Senate bill is considered read for amendment.

The text of S. 23 is as follows: . . .

MOTION TO COMMIT OFFERED BY MR. MC DERMOTT

Mr. [James] MCDERMOTT [of Washington]. Mr. Speaker, I offer a motion to commit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. MCDERMOTT. Yes, Mr. Speaker, I am.

The SPEAKER pro tempore. The Clerk will report the motion.

The clerk read as follows:

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5. For more on points of order under Rule XXI clause 2, see generally, Deschler's Precedents Ch. 26, *supra*.
1. 2 USC § 633(f).
2. 149 CONG. REC. 181, 193, 194, 108th Cong. 1st Sess.
3. Michael Simpson (ID).

Mr. MCDERMOTT moves to commit the bill S. 23 to the Committee on Ways and Means with instructions that the Committee report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Emergency Unemployment Compensation Act of 2003''. . . .

Mr. MCDERMOTT (during the reading). Mr. Speaker, I ask unanimous consent that the motion to commit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

POINT OF ORDER

Mr. THOMAS. Mr. Speaker, I have no objection to considering the motion as having been read, but I object to the motion to commit on the basis of its violation of the Budget Act.

The SPEAKER pro tempore. Does the gentleman make a point of order?

Mr. THOMAS. Yes, Mr. Speaker, I wish to make a point of order.

The SPEAKER pro tempore. The gentleman may state his point of order.

Mr. THOMAS. Mr. Speaker, I object and make the point of order because this motion, if passed, would cause the allocation to the Committee on Ways and Means to be further exceeded in the first year and over the 5-year period governed by the budget resolution currently deemed in force. The motion therefore violates section 302(f) of the Congressional Budget Act, and I make a point of order that it violates section 302(f) of the Budget Act.

The SPEAKER pro tempore. Is there any other Member who wishes to be heard on the point of order?

Mr. [Benjamin] CARDIN [of Maryland]. Mr. Speaker, on the point of order, if I understand the objection, it is based upon the fact that, as I understand it, the bill before us has a waiver on the Budget Act from the Committee on Rules, but that because there is no waiver of the Budget Act provided in the rules, the minority will not have a chance to offer a similar type of a motion to recommit.

I would ask the chairman, is that the basis that we were not protected in the rule, whereas the underlying bill did not get a waiver in the rule?

Mr. THOMAS. Mr. Speaker, I would tell the gentleman that that is the technical effect. However, had the minority offered an amendment which was in the—

The SPEAKER pro tempore. Will the gentleman suspend? Members will not engage in colloquy on a point of order. The Chair will hear argument on the point of order from each Member in turn.

Mr. THOMAS. Might I make an argument on the point of order, Mr. Speaker?

The SPEAKER pro tempore. The gentleman from Maryland (Mr. CARDIN) may complete his argument first.

Mr. CARDIN. Mr. Speaker, may I yield on my reservation or argument?

The SPEAKER pro tempore. There is no yielding on a point of order.

Mr. CARDIN. Let me just complete my argument, and then I would welcome the chairman's response.

Mr. Speaker, I think that there needs to be some discretion here as far as fairness in the rules. I know that yesterday we adopted the rules of the House. It seems to me that the minority needs to be protected to be able to offer a motion to recommit.

I understand the chairman's point, but it would seem to me that the rules should permit the minority to offer a motion to recommit if we are going to have an open and full debate in the House.

The SPEAKER pro tempore. Are there other Members who wish to be heard on the point of order?

Mr. THOMAS. Yes, sir.

The SPEAKER pro tempore. The gentleman from California (Mr. THOMAS) is recognized.

Mr. THOMAS. Further on my point of order, Mr. Speaker, the reason I believe a 302(f) budget point of order lies against this measure is that it significantly exceeds in its amount the underlying bill.

The legislation before us was not reported by any committee of the House; rather, it was passed by the Senate, and the Committee on Rules has presented it to us.

So my point of order is not based on the fact that the underlying measure has a waiver from the Committee on Rules; it is that if the minority had offered an amendment equal to or less than the Senate position, it would have been in order and not subject to a point of order. Since it is significantly in excess of the Senate measure, it does in fact violate 302(f) of the Budget Act.

□ 1300

The SPEAKER pro tempore (Mr. SIMPSON). Are there other Members who wish to be heard on the point of order?

The Chair is prepared to rule.

The gentleman from California (Mr. THOMAS) makes a point of order that the amendment proposed by the instructions in the motion to commit offered by the gentleman from Washington (Mr. MCDERMOTT) violates section 302(f) of the Congressional Budget Act of 1974.

Section 302(f) of the Budget Act precludes consideration of an amendment providing new budget authority if the adoption of the amendment and enactment of the bill, as amended, would cause the pertinent allocation of new budget authority under section 302(a) of the act to be exceeded.

The Chair is persuasively[4] guided by an estimate of the gentleman from Iowa (Mr. NUSSLE) that an amendment providing any net increase in new budget authority for fiscal year 2003, or the period of fiscal years 2003 through 2007, over that provided by the

4. *Parliamentarian's Note*: The chairman of the Committee on the Budget had not, at the time of this ruling, been elected to that position by the full House, and thus that committee could not provide the Chair with *authoritative* guidance as to the budgetary effect of the amendment contained in the motion to commit, pursuant to section 312(a). However, the presumptive chairman of the Committee on the Budget (Mr. Nussle) had been authorized by a separate order of the House to submit for inclusion in the *Congressional Record* binding section 302(a) allocations for the committees of the House. On this basis, the Chair was *persuasively* guided by estimates from the Member so authorized. For the order of the House authorizing Mr. Nussle to make the binding section 302(a) submission, see 149 CONG. REC. 172, 173, 108th Cong. 1st Sess., Jan. 8,

bill would exacerbate the breach of the applicable section 302(a) allocations of the Committee on Ways and Means.

As such, the motion to commit violates section 302(f) of the Budget Act. The point of order is sustained, and the motion is not in order.

§ 11.18 A motion to recommit a bill with instructions to report "forthwith" an amendment providing new budget authority in excess of the relevant allocation under section 302(a) of the Congressional Budget Act (as estimated by the Committee on the Budget) was held to violate section 302(f) of the Congressional Budget Act[1] and ruled out of order (sustained by tabling of appeal).

On June 28, 2000,[2] the following occurred:

Mr. [Pete] STARK [of California]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore.[3] Is the gentleman opposed to the bill?

Mr. STARK. I am, Mr. Speaker.

Mr. [William] THOMAS [of California]. Mr. Speaker, I reserve all points of order against the motion.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. STARK moves to recommit the bill H.R. 4680 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:
>
> Strike all after the enacting clause and insert the following:
>
> **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**
>
> (a) SHORT TITLE.—This Act may be cited as the ''Medicare Guaranteed and Defined Rx Benefit and Health Provider Relief Act of 2000''. . . .

POINT OF ORDER

The SPEAKER pro tempore. The gentleman from California (Mr. STARK) will suspend. The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I had reserved points of order against the measure.

The SPEAKER pro tempore. The gentleman from California (Mr. THOMAS) has reserved the point of order and is recognized on his point of order.

Mr. THOMAS. Mr. Speaker, I raise a point of order against the motion on the grounds that it violates section 302(f) of the Budget Act which prohibits consideration of legislation that would exceed the Committee on Ways and Means allocation of New Budget Authority for the period of 2001 to 2005.

2003. Pursuant to Rule XXIX clause 4, added in the 112th Congress, authoritative guidance as to budgetary estimates may now be provided by the chairman of the Committee on the Budget (rather than the committee itself). *House Rules and Manual* § 1095d (2011).

1. 2 USC § 633(f).

2. 146 CONG. REC. 12736, 12750–2, 106th Cong. 2d Sess.

3. Ray LaHood (IL).

The SPEAKER pro tempore. It is proper for the gentleman from California to insist on his point of order.

Mr. STARK. Mr. Speaker, may I be heard on the point of order?

The SPEAKER pro tempore. The gentleman may be heard.

Mr. STARK. Mr. Speaker, I ask the Speaker's brief indulgence as this is a complex issue, but it is important to the seniors in our country.

Mr. Speaker, this Republican resolution has all points of order waived, and we have none. The budget resolution which the Republicans have created that makes our hundred billion dollar bill out of order does not comport with what the Republicans have done to provide tax cuts for the wealthiest.

For example, there is $661,000 each for the wealthiest Americans under a tax cut, and yet only $460 a year for senior citizens in prescription drugs. That basically gets to the heart of why I would object to the gentleman's point of order against our bill.

There is a doctrine. It is clearly not fair. We have no points of order waived, and they do. . . .

So, Mr. Speaker, I would like to object to the point of order on the grounds of fairness that has been established in this House for over 100 years and urge that the Speaker rule to allow the Democrats to present a plan which is arguably better than the Republican plan. Based on fairness, I do urge that the point of order is overridden.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, am I allowed to speak on the point of order, or would it be appropriate for others to speak?

The SPEAKER pro tempore. The gentleman from California may proceed.

Mr. THOMAS. Mr. Speaker, I am tempted to use the statement of the gentleman from California (Mr. STARK) who conceded that it was, in fact, in violation of the Budget Act, but I believe the Chair is in possession of a statement from the chairman on the Committee of the Budget which, in fact, supports the point of order that has been presented. Therefore, I would insist on my point of order.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Rhode Island (Mr. WEYGAND).

Mr. [Robert] WEYGAND [of Rhode Island]. Mr. Speaker, may I be heard on the point of order? . . .

The SPEAKER pro tempore (Mr. LAHOOD). The Chair is prepared to rule.

The gentleman from California (Mr. THOMAS) makes a point of order that the amendment proposed by the instructions in the motion to recommit offered by the gentleman from California (Mr. STARK) violates section 302(f) of the Congressional Budget Act of 1974.

Section 302(f) of the Budget Act prescribes a point of order against consideration of an amendment providing new budget authority if the adoption of the amendment and enactment of the bill, as amended, would cause the pertinent allocation of new budget authority for the relevant fiscal years under section 302(a) of the Act to be exceeded.

The Chair is authoritatively guided by estimates provided by the Committee on the Budget indicating that (1) any amendment that proposes to provide new budget authority in excess of $2.964 billion over the amount provided by the underlying bill for the period of fiscal years 2001 through 2005 would exceed the section 302(a) allocation of the Committee on Ways and Means, as adjusted under section 214 of House Concurrent Resolution 290, in violation of section 302(f) of the Congressional Budget Act of 1974; and

(2) the bill, as it is proposed to be changed by the amendment, would so cause the new budget authority provided by the bill to exceed that level.

The Chair therefore holds that the amendment violates section 302(f) of the Budget Act. Accordingly, the point of order is sustained and the motion to recommit is not in order.

Mr. WEYGAND. Mr. Speaker, I respectfully disagree with the Chair's ruling and appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. THOMAS

Mr. THOMAS. Mr. Speaker, I move to table the motion to appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. THOMAS) to lay on the table the appeal of the ruling of the Chair.

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

Mr. STARK. 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.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 224, nays 202, not voting 8, as follows:

[ROLL NO. 355] . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Applicability to Motions to Concur in Senate Amendments

§ 11.19 A motion to recede and concur in a numbered Senate amendment was ruled out of order for violating section 302(f) of the Congressional Budget Act[(1)] where the Senate amendment exceeded the section 302(b) allocation to the relevant subcommittee of the Committee on Appropriations (as estimated by the Committee on the Budget).

On Oct. 20, 1990,[(2)] the following occurred:

MOTION OFFERED BY MR. TRAXLER

Mr. [Jerome] TRAXLER [of Michigan]. Madam Speaker, I offer a motion.

The SPEAKER pro tempore.[(3)] The Clerk will designate the motion.

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1. 2 USC § 633(f).

2. 136 CONG. REC. 31517, 101st Cong. 2d Sess.

3. Jolene Unsoeld (WA).

The text of the motion is as follows:

Mr. TRAXLER moves that the House recede from its disagreement to the amendment of the Senate numbered 42, and concur therein.

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Madam Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state it.

□ 1550

Mr. FRENZEL. Madam Speaker, amendment No. 42 proposes that the House recede from its position of $140 million in section 108, loan guarantees, which was the proper amount under the Budget Act, and recede to the Senate, which has an excessive amount of $250 million. This is a violation of section 302(f), and, therefore, it is on that basis that I make the point of order. I state positively that the House position was strictly within the law. It is only by receding to the Senate that we would be in danger of violating the limit, and I urge that my point of order be sustained.

Mr. TRAXLER. Madam Speaker, I concede the point of order.

Mr. [Bill] GREEN of New York. Madam Speaker, I, too, concede the point of order.

The SPEAKER pro tempore (Mrs. UNSOELD). The point of order is sustained based on the estimate from the Committee on the Budget furnished to the Chair.

§ 11.20 A motion to recede and concur in a Senate amendment with a further House amendment was ruled out of order for violating section 302(f) of the Congressional Budget Act[1] where the House amendment exceeded the section 302(b) allocation to the relevant subcommittee of the Committee on Appropriations (as estimated by the Committee on the Budget).

On Oct. 31, 1989,[2] the following transpired:

The SPEAKER pro tempore.[3] The Clerk will designate the final amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 136: Page 54, after line 11, insert:

TITLE IV—EMERGENCY DRUG FUNDING

SEC. 401. (a) Except as provided in subsection (b) and notwithstanding any other provision of this or any other Act— . . .

MOTION OFFERED BY MR. WHITTEN

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I offer a motion.

The Clerk read as follows:

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1. 2 USC § 633(f).

2. 135 CONG. REC. 26540, 26541, 26544, 26545, 26546, 101st Cong. 1st Sess.

3. James McDermott (WA).

Mr. WHITTEN moves that the House recede from its disagreement to the amendment of the Senate numbered 136 and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

TITLE IV—EMERGENCY DRUG FUNDING

CHAPTER I

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For carrying out efforts at National Drug Control and the President's initiative to combat violent crime . . .

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I have a point of order.

Mr. Speaker, I make a point of order against the language in the pending motion under section 302(f)(1) of the Congressional Budget Act of 1974.

Section 302(f)(1) of the Congressional Budget Act, as amended, provides that it shall not be in order to consider a bill or amendment providing new budget authority for a fiscal year if enactment of such bill would cause the appropriate section 302(b) allocation of new discretionary budget authority for such fiscal year to be exceeded.

The net effect of the language in amendment No. 136 is to increase new discretionary budget authority by $3.02 billion. This amendment causes the transportation subcommittee of the Committee on Appropriations to exceed its 302(b) allocation for new discretionary budget authority as set forth in House Report 101–302 by some $2.113 billion.

The appropriate 302(b) allocation for the new discretionary budget authority for the Transportation Subcommittee is $13.454 billion. The total enacted by the subcommittee to date is $1 billion in Public Law 101–130. The total contained in the conference agreement plus all the amendments in disagreement is $14.567 billion. Therefore, enactment of this amendment would cause the subcommittee's 302(b) allocation to be exceeded by $2.113 billion.

I urge the Speaker to sustain my point of order. . . .

Mr. WHITTEN. Mr. Speaker, first may I congratulate my fellow subcommittee members, my colleagues and friends. A great job on this bill has been done.

I asked unanimous consent to proceed so that I may discuss the point of order rather than speak in opposition to it.

□ 1420

The point raised by the gentleman from Minnesota raises objection to the action of the conference with regard to title IV of the Transportation bill—that dealing with funding for the war on drugs. As all Members know, the war on drugs is the No. 1 priority of both the Bush administration and the Congress. To this end, the conferees worked with the administration to present a deficit-neutral package for consideration to the Congress that would address this problem.

The conferees worked diligently to develop a deficit-neutral package that is balanced between supply reduction and demand reduction. The conferees worked hard to develop

a responsible funding package that will address our most immediate concerns while keeping our eye on the issue of government spending. We are presenting in amendment No. 136, a package that provides $3,183,000,000 in budget authority and $1,237,000,000 in outlays. The actual spending from the Treasury that will result from enactment of this bill is completely offset by a combination of spending reductions, or restraints through the 302 allocation process between the various subcommittees.

Mr. Speaker, the vote that we had, 394 to 21, on the conference report represents the feeling of the Members of Congress. I would like an opportunity to express my appreciation in the RECORD for the job that our committee has done in trying to handle this matter within the rules of the House.

The SPEAKER pro tempore (Mr. MCDERMOTT). Does the gentleman concede the point of order?

Mr. WHITTEN. Mr. Speaker, I do not. I moved to strike the last word.

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Speaker, may I be heard on the point of order.

The SPEAKER pro tempore. The Chair will hear the gentleman.

Mr. CONTE. Mr. Speaker, if I may, I am surprised that this point of order is being raised. The drug package in title IV is deficit neutral. All the outlays expected in this year have been offset; $1.2 billion in new drug outlays, $1.2 billion in outlay reductions in all 13 appropriation bills.

I don't know if the gentleman recalls, but when we had the 1989 supplemental up here all last spring, the proposal was to spend $1.2 billion more on drugs without offsets. We battled that one to the ground, to the point where we now have a drug package with outlay offsets. Combine that one with what we did on the earthquake package, insisting that that money count against Gramm-Rudman-Hollings, and it's clear we're not taking money off budget. Any money spent this year is offset. Any money spent in the outyears will have to fit within budget and Gramm-Rudman ceilings. I would have thought that the gentleman would be pleased.

This package was negotiated in conjunction with the administration. It had their concurrence. No objection to passing this bill has been registered. This is the President's drug package, and the gentleman is knocking it down.

The SPEAKER pro tempore (Mr. MCDERMOTT). The Chair must sustain the point of order, based upon the estimates submitted by the Committee on the Budget, pursuant to section 203(g) [sic] of the Budget Act, which are inserted at this point, that the allocation of new budget authority to the Subcommittee on Transportation and Related Agencies contained in House Report 101–302, pursuant to section 203(b) [sic] would be exceeded by the adoption of the Senate amendment No. 136 as amended.[4]

§ 11.21 The House has, by unanimous consent, agreed to recede from a House amendment to a numbered Senate amendment and concur in the original Senate amendment, notwithstanding the fact that budget authority in the Senate amendment exceeded the applicable section 302(b) allocation (as estimated by the Committee on the

4. As recorded in the *Congressional Record*. The Speaker pro tempore most probably meant section 302(g) of the Congressional Budget Act and section 302(b) of the Budget Act based on context.

Budget) and would have thus violated section 302(f) of the Congressional Budget Act.[1]

On Oct. 31, 1989,[2] the following transpired:

Mr. [Jerome] TRAXLER [of Michigan]. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2916) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1990, and for other purposes, with a House amendment to the Senate amendment numbered 25, recede from the House amendment to the Senate amendment numbered 25, and concur in the Senate amendment numbered 25.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment No. 25: Page 20, after line 13, insert:

FEDERAL HOUSING ADMINISTRATION FUND

For payment to cover losses, not otherwise provided for, sustained by the Special Risk Insurance Fund and General Insurance Fund as authorized by the National Housing Act, as amended (12 U.S.C. 1715z–3(b) and 1735c(f)), $350,093,000, to remain available until expended.

During fiscal year 1990, within the resources available, gross obligations for direct loans are authorized in such amounts as may be necessary to carry out the purposes of the National Housing Act, as amended.

During fiscal year 1990, additional commitments to guarantee loans to carry out the purposes of the National Housing Act, as amended, shall not exceed a loan principal of $75,000,000,000.

During fiscal year 1990, gross obligations for direct loans of not to exceed $88,600,000 are authorized for payments under section 230(a) of the National Housing Act, as amended, from the insurance fund chargeable for benefits on the mortgage covering the property to which the payments made relate, and payments in connection with such obligations are hereby approved.

Mr. TRAXLER (during the reading). Mr Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MCDERMOTT).[3] Is there objection to the request of the gentleman from Michigan?

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, reserving the right to object, under my reservation of objection, I rise to express my reservations about the action taken by the Senate in amendments Nos. 25 and 54 of this appropriations bill.

The Senate wants to spend more on this bill than had been allocated for this purpose. To raise an additional $104 million, the Senate increased the FHA loan limit for a one-family home from $101,250 to $124,875 in fiscal year 1990. The higher loan limit would result in higher premium revenue paid by borrowers.

The Senate's action caused a Budget Act violation which the House corrected last week by lowering the FHA loan guarantee ceiling. On October 27, the Senate reasserted its

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1. 2 USC § 633(f).

2. 135 CONG. REC. 26519, 101st Cong. 1st Sess.

3. James McDermott (WA).

original position so that we are again faced with a bill which violates section 302(F)(1) of the Budget Act.

Mr. Speaker, even if we forced this contest to go for several more rounds, the final outcome is already evident. Compelling the Appropriations Committee to get a rule would only use up time and energy but it would not alter the final decision.

The Senate's action is bad policy and we should not allow this to set a precedent.

The Senate has legislated in an appropriations bill. Its action has a direct impact on the FHA insurance fund—the soundness of which has recently been questioned. The Senate's action does not represent a concern for housing but a concern for additional spending. In order to allow $104 million in additional spending, the Senate is using a backdoor device and creating $3.8 billion in additional loan guarantees which the Government must stand behind.

This is not good budget policy, housing policy, or legislative policy. I hope that today's action will not become a precedent for future action.

Mr. Speaker, I withdraw my reservation of objection.

The Speaker pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Michigan?

There was no objection.

Withdrawal

§ 11.22 A point of order raised against a bill on the grounds that it violates section 302(f) of the Congressional Budget Act[(1)] may be withdrawn as a matter of right and such withdrawal does not require unanimous consent.

On Sept. 8, 1999,[(2)] during consideration of an appropriation bill (H.R. 2684), the following occurred in the House:

POINT OF ORDER

Mr. [David] OBEY [of Wisconsin]. Madam Speaker, I make a point of order against the consideration of the bill.

The SPEAKER pro tempore (Mrs. BIGGERT).[(3)] The gentleman will state his point of order.

Mr. OBEY. Madam Speaker, I make a point of order that the bill provides new discretionary budget authority in an amount which would exceed the applicable allocation made pursuant to section 302(b) of the Congressional Budget Act, and therefore violates section 302(f) of the Congressional Budget Act.

The most recent subcommittee allocations filed under section 302(b), as contained in House Report 106–288, allocate a total $68.633 billion in new discretionary budget authority to the Subcommittee on VA, HUD, and Independent Agencies. According to the

1. 2 USC § 633(f).
2. 145 CONG. REC. 20865, 20866, 106th Cong. 1st Sess.
3. Judy Biggert (IL).

scoring table from the Congressional Budget Office, the bill appropriates $71.632 billion in discretionary budget authority. Therefore, and as the CBO scoring table indicates, the bill exceeds its section 302(b) allocation by $2.999 billion. A point of order, therefore, should lie against its consideration under section 302(f) of the Budget Act.

The reason that the bill is scored as exceeding its allocation is that the Committee on Appropriations is apparently counting as an offset a $3 billion reduction in the borrowing authority of the TVA. This is authority for TVA to borrow from the public and has nothing to do with appropriations or amounts in this bill. Neither CBO nor OMB regard this so-called offset as producing any budget authority savings whatsoever. Therefore, the bill exceeds its allocation.

I should also note a second consequence. Because OMB does not recognize the $3 billion supposed offset, if this bill were enacted in its present form, it would trigger an automatic across-the-board sequestration of appropriations under the Budget Enforcement Act, in the amount of $3 billion. That would roughly be about a billion and a half dollars sequestration that would be required in the Defense budget and about a billion and a half dollars that would be required to be sequestered on the domestic side of the appropriations ledger.

Now, I recognize that the chairman of the Committee on the Budget could produce a letter which, in essence, urges the Congress to ignore this financial fact, but the fact is that, if it chooses to do that, there will, in fact, be a sequestration under this bill. Because if we take a look at the OMB Sequestration Update Report to the President and Congress for Fiscal Year 2000, we will see that, on page 11, it states: "Current OMB estimates of House action to date, unless offset, indicate that a sequester of $3.7 billion in budget authority and $2.9 billion in outlays would be triggered."

The major amounts in question are related to this bill. If we take a look at the table sent down by the CBO on their budget analysis, on page 18, we will see that they report the same results.

So, therefore, I would suggest that this bill, for reasons that I have cited, should not be before the House. I would certainly say that, even if the Committee on the Budget chairman produces a letter which claims that this bill is not $3 billion over its authorized allocation, the fact is that, according to the people who are charged by law with actually measuring the bill, it is; and, therefore, it will result in the automatic reduction in the other programs that are not in this bill that I have just cited.

The SPEAKER pro tempore. Is there any other Member who wishes to be heard on the point of order?

Does the gentleman from Wisconsin (Mr. OBEY) insist on his point of order?

Mr. OBEY. Madam Speaker, I have no desire to delay this bill, and so I guess what I would say is that I think I have demonstrated, by raising the point of order, that this bill, in fact, is not in compliance. If the House wishes to proceed and vote for a bill which is going to result in the kind of massive sequestration that I have just indicated, then so be it. That would be the House's choice.

So I guess I am in a position where, in order to contribute to the ability of the House's ability to do its business, I will withdraw the point of order, but I would caution every Member who intends to vote for this bill that, if they do so, they will in fact be imposing just such a sequestration on both the Defense budget and on the domestic programs.

With that, Madam Speaker, I withdraw my point of order.

The SPEAKER pro tempore. The gentleman withdraws his point of order.

The "Rise and Report" Point of Order

§ 11.23 The House has adopted a special order of business resolution reported from the Committee on Rules containing a separate section creating a point of order (applicable during that Congress)[1] against rising from the Committee of the Whole and reporting a general appropriation bill that exceeded the applicable section 302(b) allocation and providing additional procedures should such a point of order be sustained.

On Apr. 28, 2005,[2] the House adopted the following resolution:

Mr. PUTNAM. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 248 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 248

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the concurrent resolution (H. Con. Res. 95) establishing the congressional budget for the United States Government for fiscal year 2006, revising appropriate budgetary levels for fiscal year 2005, and setting forth appropriate budgetary levels for fiscal years 2007 through 2010. All points of order against the conference report and against its consideration are waived. The conference report shall be

1. *Parliamentarian's Note*: As noted, this point of order was applicable only during the 109th Congress. However, in the 110th, 111th, and 112th Congresses, the same point of order was carried as a separate order in the resolution adopting the rules of the House for those Congresses. See 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(4)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(4)); and 153 CONG. REC. 24, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 5, sec. 511(a)(4)). The procedural provisions triggered upon sustaining this point of order operate in a similar manner to the question of consideration (see Deschler-Brown Precedents Ch. 29 § 5, *supra*): the chairman of the Committee of the Whole puts the question, "Shall the Committee of the Whole rise and report the bill to the House with such amendments as may have been adopted notwithstanding that the bill exceeds its allocation of new budget authority under section 302(b)?" Such question is debatable for 10 minutes, equally divided between the proponent and an opponent. If decided in the negative, only one proper amendment is in order — debatable for 10 minutes and not subject to a demand for a division of the question — and certain pro forma amendments. It should also be noted that this point of order lies against a *motion* to rise and report a non-compliant bill. A special order of business resolution reported by the Committee on Rules for the consideration of a bill may specify that the Committee *automatically* rise (without motion) to report the bill back to the House upon the completion of all debate and consideration of any permitted amendments. Such a special order of business prevents any opportunity to raise this point of order. For an example thereof, see 155 CONG. REC. 16078, 16079, 111th Cong. 1st Sess., June 24, 2009 (H. Res. 573).
2. 151 CONG. REC. 8309, 8318, 109th Cong. 1st Sess.

considered as read. The conference report shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

Sec. 2. (a) During the One Hundred Ninth Congress, except as provided in subsection (c), a motion that the Committee of the Whole rise and report a bill to the House shall not be in order if the bill, as amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, as estimated by the Committee on the Budget.

(b) If a point of order under subsection (a) is sustained, the Chair shall put the question: "Shall the Committee of the Whole rise and report the bill to the House with such amendments as may have been adopted notwithstanding that the bill exceeds its allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974?" Such question shall be debatable for 10 minutes equally divided and controlled by a proponent of the question and an opponent but shall be divided without intervening motion.

(c) Subsection (a) shall not apply—

(1) to a motion offered under clause 2(d) of rule XXI; or

(2) after disposition of a question under subsection (b) on a given bill.

(d) If a question under subsection (b) is decided in the negative, no further amendment shall be in order except—

(1) one proper amendment, which shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole; and

(2) pro forma amendments, if offered by the chairman or ranking minority member of the Committee on Appropriations or their designees, for the purpose of debate. . . .

The SPEAKER pro tempore (Mr. [Ray] LAHOOD [of Illinois]). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Section 302(c) Points of Order

§ 11.24 A motion to recommit a joint resolution further continuing appropriations with instructions to report "forthwith" an amendment was held to violate section 302(c) of the Congressional Budget Act[1] (sustained by tabling of appeal) by providing new budget authority in a fiscal year for which the Committee on Appropriations had received an allocation under section 302(a) but had yet to file the required section 302(b) report dividing such allocation among its subcommittees.

On Jan. 28, 2003,[2] the following events occurred in the House:

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I offer a motion to recommit.

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1. 2 USC § 633(c).

2. 149 CONG. REC. 2009, 2010, 108th Cong. 1st Sess.

The SPEAKER pro tempore.[3] Is the gentleman opposed to the joint resolution?
Mr. OBEY. Without the pending recommit motion, certainly.
The SPEAKER pro tempore. The Clerk will report the motion to recommit.
The Clerk read as follows:

Mr. OBEY moves to recommit the joint resolution, H.J. Res. 13, to the Committee on Appropriations with instructions to report the same back forthwith with an amendment:

Section 101 of Public Law 107–229 in further amending by adding at the end:

"*Provided further,* $3,500,000,000 is available for Federal Emergency Management Agency, Emergency Management and Planning Assistance, for state and local first responders homeland security grants to equip first responders, and $90,000,000 is available for the Centers for Disease Control for baseline health screening and long-term medical monitoring of emergency response and recovery personnel exposed to toxic substances at the World Trade Center site."

POINT OF ORDER

Mr. [Adam] PUTNAM [of Florida]. Mr. Speaker, I make a point of order against the motion to recommit.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. PUTNAM. Mr. Speaker, I make a point of order against the motion to recommit because it violates section 302(c) of the Congressional Budget Act. Section 302(c) prohibits the consideration of any amendment that provides new budget authority for a fiscal year until the Committee on Appropriations has made the suballocations required by section 302(b) of the Congressional Budget Act.

This motion to recommit increases the amount of budget authorities provided by the measure. The suballocations published by the Committee on Appropriations on October 10, 2002, lapsed upon the adjournment of the 107th Congress and no new 302(b) suballocations have been made for the 108th Congress. Hence, I make a point of order that this motion to recommit violates section 302(c) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. OBEY. I certainly do, Mr. Speaker.

The gentleman contends the motion is not in order because the majority has failed to file its 302(b) allocations. If this amendment were to be ruled out of order, what that would mean is that the majority has put the fix in in the Committee on Rules so that they can bring what they want to bring to the floor but the minority cannot.

In other words, the minority would be penalized procedurally for a failure to act on the part of the majority. I would find that to be a quaint interpretation indeed. It is patently unfair to allow the majority to bring up a bill without filing its suballocations and then punish the minority for something the majority has not done.

□ 1330

The SPEAKER pro tempore (Mr. THORNBERRY). If no further Members wish to be heard on the point of order, the Chair is prepared to rule.

As the Chair ruled on January 8, 2003,[4] supported by the House on appeal, section 302(c) of the Congressional Budget Act of 1974 precludes consideration of an appropriations measure, including an amendment, providing new budget authority after the Committee on Appropriations has received a section 302(a) allocation for a fiscal year until the committee makes the suballocations required under section 302(b).

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3. Mac Thornberry (TX).

4. See § 11.25, *infra*.

The Committee on Appropriations has not made the required section 302(b) suballocations, and the motion to recommit provides new budget authority in violation of section 302(c) of the Budget Act. The point of order is sustained.

Mr. OBEY. Mr. Speaker, if the majority is going to abuse the rules in such a way that the minority is precluded from meeting its responsibilities, I have no alternative but to appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. PUTNAM

Mr. PUTNAM. Mr. Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. PUTNAM) to lay the appeal on the table.

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

Mr. OBEY. 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.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 222, nays 196, not voting 16, as follows:

[Roll No. 15] . . .

So the motion to table was agreed to.

So the decision of the Chair stands as the judgment of the House.[5]

§ 11.25 A motion to recommit a joint resolution continuing appropriations with instructions to report "forthwith" an amendment was held to violate section 302(c) of the Congressional Budget Act[1] by providing new budget authority in a fiscal year for which the Committee on Appropriations had received an allocation under section 302(a) but had yet to file the required report dividing such allocation among its subcommittees (sustained by tabling of appeal).

On Jan. 8, 2003,[2] the following events occurred in the House:

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5. *Parliamentarian's Note*: As the proceedings indicate, a waiver of section 302(c) of the Congressional Budget Act applies only to the specific text or measure referenced in the waiver. Here, although the broad waiver of points of order against the underlying bill covered section 302(c) points of order, no such points of order were waived for amendments thereto (including amendments contained in a motion to recommit). For an example of a special order of business resolution that specifically waived section 302(c) for an amendment in the nature of a substitute, see 135 CONG. REC. 26843, 101st Cong. 1st Sess., Nov. 1, 1989 (H. Res. 277).

1. 2 USC § 633(f).

2. 149 CONG. REC. 217, 224–226, 108th Cong. 1st Sess.

FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 2003

Mr. [Bill] YOUNG of Florida. Mr. Speaker, pursuant to House Resolution 15, I call up the joint resolution (H.J. Res. 1) making further continuing appropriations for the fiscal year 2003, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The text of H.J. Res. 1 is as follows:

H.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 107–229 is further amended by striking the date specified in section 107(c) and inserting in lieu thereof "January 31, 2003". . . .

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore.[3] Is the gentleman opposed to the joint resolution?

Mr. OBEY. I think the Speaker can safely assume that, yes.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. OBEY moves to recommit the joint resolution H.J. Res. 1 to a select committee consisting of Mr. YOUNG of Florida and Mr. OBEY of Wisconsin with instructions to report the same back to the House forthwith with the following amendments:

Page 1, line 5, after "2003", insert the following:

"*Provided,* That notwithstanding any other provision of this joint resolution, $776,000,000 is available for the Securities and Exchange Commission, Salaries and expenses."

At the end of the joint resolution, add the following new section:

SEC. 7. Public Law 107–229 is further amended by adding at the end the following new section:

"SEC. 138. In addition to the amounts made available by section 101, and subject to sections 107(c) and 108, amounts made available in Public Law 107–206 only to the extent that an official budget request is transmitted by the President shall be considered available for obligation.".

Mr. OBEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

POINT OF ORDER

Mr. [Gilbert] GUTKNECHT [of Minnesota]. Mr. Speaker, I make a point of order against the motion to recommit because it violates section 302(c) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman care to argue further on his point of order?

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3. C. L. Otter (ID).

Mr. GUTKNECHT. Mr. Speaker, Section 302(c) prohibits the consideration of any amendment that provides for new budget authority for a fiscal year until the Committee on Appropriations has made the suballocations required by section 302(b) of the Congressional Budget Act.

This motion to recommit increases the amount of budget authority provided by the measure. The suballocations published by the Committee on Appropriations on October 10 of 2002 lapsed upon the adjournment of the 107th Congress, and no 302(b) suballocations have been made for the 108th Congress. Hence I make the point of order that this motion to recommit violates section 302(c) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. OBEY. Mr. Speaker, what the gentleman from Minnesota is asserting is that the minority should not be allowed to offer a legitimate amendment because the majority did not fulfill its responsibilities to abide by certain provisions of the Budget Act and by the timetable of that act. I find that highly objectionable especially since the Committee on Rules has already waived the requirement as far as the majority party is concerned. It seems to me that the House rules certainly ought to allow the minority the same privilege that the majority has arranged by rule. . . .

Mr. [James] NUSSLE [of Iowa]. Mr. Speaker, I wish to be heard on the point of order.

The SPEAKER pro tempore. The gentleman from Iowa is recognized.

Mr. NUSSLE. Mr. Speaker, just to correct the record, the gentleman from Massachusetts is one of the experts when it comes to the rules of the House, and I commend him for that, but just to be technically correct with regard to his statement, it is not because we failed to do appropriation bills that the 302(b) allocations did not carry forward. It is because the Senate failed to produce a budget that the 302(b) allocation did not carry forward. Had a budget resolution been completed, the 302(b) allocations would have carried forward even though it was a new Congress.

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the gentleman, and that is true. But it is also true that we could have in this House passed those appropriation bills without any action from any other body, and it is a fact in addition that we did not finish the work last year that put us in the situation which the majority takes advantage of by denying the House the chance to have even a germane recommit on the motion.

The SPEAKER pro tempore. The Chair would take this opportunity to remind those who are speaking to the point of order that their comments should be directed through the Chair.

The gentleman from Iowa is recognized.

Mr. NUSSLE. Mr. Speaker, I support the point of order. The gentleman from Massachusetts is correct that certainly appropriation bills could have moved forward. We deemed the budget in order for that process to continue. There are many reasons why appropriation bills did not move forward, but the only fact I wanted to make clear for the RECORD and for the purpose of precedent setting, if there will be precedent setting this evening, is that in fact it was the failure of a budget to be produced by the Senate and not failure of appropriation bills to be produced that causes this extraordinary procedure to occur this evening. I hope this is not precedent setting because it is very unfortunate that in fact for the first time since the 1974 Budget Act was passed that the other body failed to produce a budget.

Mr. Speaker, I support the point of order.

The SPEAKER pro tempore. Unless the gentleman from Minnesota desires to speak further on the point of order, the Chair is prepared to rule.

Mr. GUTKNECHT. Mr. Speaker, I will let the Chair rule.

The SPEAKER pro tempore. The gentleman from Minnesota (Mr. GUTKNECHT) makes a point of order that the amendment proposed in the motion to recommit offered by the gentleman from Wisconsin (Mr. OBEY) violates section 302(c) of the Congressional Budget Act of 1974. Section 302(c) precludes consideration after the Committee on Appropriations has received a section 302(a) allocation for a fiscal year of a measure within the committee's jurisdiction that provides new budget authority until the committee makes the suballocations required under section 302(b).

The amendment proposed in the motion offered by the gentleman from Wisconsin provides new budget authority, and the Committee on Appropriations has not made the required section 302(b) suballocations, and as such, the motion to recommit violates section 302(c) of the Budget Act. The point of order is sustained, and the motion is not in order.

Mr. FRANK of Massachusetts. Mr. Speaker, I move to appeal the decision of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. GUTKNECHT

Mr. GUTKNECHT. Mr. Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) to lay the appeal on the table.

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

Mr. OBEY. 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.

The Sergeant at Arms will notify absent Members. . . .

[Roll No. 10] . . .

So the motion to table the appeal of the ruling of the Chair was agreed to.

The result of the vote was announced as above recorded.

§ 11.26 Where a general appropriation bill containing new budget authority was permitted to be considered by a special order of business waiving the application of points of order under section 302(c) of the Congressional Budget Act[1] against the bill, an amendment further increasing budget authority was ruled out of order (despite failure to raise similar points of order against other amendments) for violating section 302(c), which prohibits consideration of such amendments prior to the filing of a section 302(b) report by the Committee on Appropriations.

On July 13, 1987,[2] the following events occurred in the Committee of the Whole:

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1. 2 USC § 633(c).

2. 133 CONG. REC. 19513, 19514, 100th Cong. 1st Sess.

The CHAIRMAN.[3] The Clerk will read.

The Clerk read as follows:

RESEARCH, ENGINEERING, AND DEVELOPMENT

(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research. engineering, and development, in accordance with the provisions of the Federal Aviation Act (19 U.S.C. 1301-1542), including construction of experimental facilities and acquisition of necessary sites by lease or grant, $161,500,000, to be derived from the Airport and Airway Trust Fund and to remain available until expended. *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for research, engineering, and development.

AMENDMENT OFFERED BY MR. GLICKMAN

Mr. [Daniel] GLICKMAN [of Kansas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GLICKMAN: On page 12, line 15, strike ''$161,500,000'' and insert in lieu thereof ''$175,000,000''.

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Chairman, I reserve a point of order against the amendment. . . .

POINT OF ORDER

Mr. WALKER. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman persist with his point of order?

Mr. WALKER. I do, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized on his point of order.

Mr. WALKER. Let me say to the gentleman from Kansas first it is my understanding this is the first time that this point of order would be available in the course of the deliberations today. Some of the other amendments did not have the point of order raised against them. In this particular case I make an objection to the amendment, it is in violation of section 302(c) of the Budget Act.

The CHAIRMAN. Does the gentleman from Kansas wish to respond?

Mr. GLICKMAN. Mr. Chairman, I am not going to concede the point of order, because I think that we may be establishing a precedent here and I would like to see the Chair work for his money today and rule on this issue.

As I understand it, the Appropriations Committee has not made an allocation pursuant to section 302(b) of the Budget Act and this particular subcommittee has no such allocation before it and as a matter of fact I am told that this morning they voted down an allocation reflecting the transportation portions of this bill. Inasmuch as there is no pending allocation, pursuant to section 302(b), I submit to you there is no reason why I cannot offer this amendment to add funds under the general bill. Second of all, the rule waives points of order under the Budget Act. I would submit that since it waives points of order under the Budget Act itself it also waives points of order with respect to amendments offered under the Budget Act. Third of all, Mr. Chairman, there have been previous amendments offered that would increase funding including Mr. LEHMAN'S own amendment to increase the Coast Guard authorization appropriation by $30 million together with Mr. JONES of North Carolina. So for the following reasons I would urge the Chair to reject, overrule the point of order raised by the gentleman from Pennsylvania.

3. Leon Panetta (CA).

The CHAIRMAN. [Mr. Panetta]. Is there anyone else who wishes to be heard on the point of order? If not, the Chair is prepared to rule.

The gentleman from Pennsylvania makes a point of order that the amendment offered by the gentleman from Kansas violates section 302(c) of the Budget Act. That section of the Budget Act prohibits consideration of bills, resolutions, or amendments that provide net budget authority within the jurisdiction of a committee until that committee has made the allocations required by section 302(b) of the Budget Act. Although the Appropriations Committee has received an allocation of new budget authority following adoption of the budget resolution, the committee has not filed its report subdividing that allocation among its subcommittees as required by section 302(b). Thus it was necessary for House Resolution 221 to waive the point of order under section 302(c) in order to permit consideration of this bill. House Resolution 221, however, which is the rule, does not apply to amendments providing new budget authority. The amendment offered by the gentleman from Kansas by increasing the amount of new budget authority in the bill provides new budget authority prior to the Appropriations Committee reporting its allocations as required by section 302(b). The amendment thus violates section 302(c) and the Chair sustains the point of order.

The Chair would add that with regard to other amendments that points of order were not raised. The Budget Act applies to each amendment separately. The mere fact that other amendments did not receive a point of order does not argue against a point of order with regard to this amendment.

So for those reasons the Chair sustains the point of order.

Section 401(b)(2) Referrals

§ 11.27 Pursuant to section 401(b)(2) of the Congressional Budget Act,[1] the Speaker sequentially referred a bill reported by the Committee on Armed Services (containing new spending authority in excess of such committee's section 302(a) allocation) to the Committee on Appropriations for a period not to exceed 15 legislative days.

On Mar. 7, 1991,[2] the Speaker sequentially referred a supplemental authorization bill (H.R. 1175), reported from the Committee on Armed Services, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. [Leslie] ASPIN [of Wisconsin]: Committee on Armed Services. H.R. 1175, a bill to authorize supplemental appropriations for fiscal year 1991 in connection with operations in and around the Persian Gulf presently known as Operation Desert Shield/

1. 2 USC § 651(b)(2).
2. 137 CONG. REC. 5579, 5580, 102d Cong. 1st Sess.

Storm, and for other purposes with amendments; referred to the Committee on Appropriations for a period not to exceed 15 legislative days, with instructions to report back to the House as provided in section 401(b) of Public Law 93–344 (Rept. 102–16, Pt. 1). Ordered to be printed.

§ 11.28 Pursuant to section 401(b)(2) of the Congressional Budget Act,(1) the Speaker sequentially referred a bill reported by the Committee on Agriculture (containing new spending authority in excess of such committee's section 302(a) allocation) to the Committee on Appropriations for a period not to exceed 15 legislative days.

On June 11, 1980,(2) the Speaker sequentially referred an agricultural loan bill (H.R. 7142), reported from the Committee on Agriculture, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. [Thomas] FOLEY [of Washington]: Committee on Agriculture. H.R. 7142. A bill to eliminate any cross compliance requirement as a condition of eligibility for loans and purchases in the case of 1979 crop soybeans thus providing soybean producers with a needed source of short-term credit during their financial crisis; with amendments, and referred to the Committee on Appropriations for a period not to exceed 15 legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344. (Rept. No. 96–1085, pt. 1). Ordered to be printed.

§ 11.29 The House has agreed to a unanimous-consent request to extend by another 15 legislative days the sequential referral of a bill to the Committee on Appropriations pursuant to section 401(b)(2) of the Congressional Budget Act.(1)

On Jan. 24, 1980,(2) the following unanimous-consent request was agreed to by the House:

EXTENDING FOR CONSIDERATION OF H.R. 1262

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I ask unanimous consent that the period of time for which the bill (H.R. 1262) to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes, reported from the Committee on Post Office and

1. 2 USC § 651(b)(2).
2. 126 CONG. REC. 14049, 96th Cong. 2d Sess.
1. 2 USC § 651(b)(2).
2. 126 CONG. REC. 559, 96th Cong. 2d Sess.

Civil Service on December 20, 1979, and sequentially referred to the Committee on Appropriations for 15 legislative days as required[3] by section 401(a)[4] of the Congressional Budget Act, be extended for an additional 15-legislative-day period.

The SPEAKER.[5] Is there objection to the request of the gentleman from Mississippi?

There was no objection.

§ 11.30 Where a bill is reported prior to the adoption of a concurrent resolution on the budget, and the subsequent adoption of a budget resolution reveals that such bill exceeds the committee's section 302(a) allocation, the Speaker may discharge the bill from the Union Calendar and, pursuant to section 401(b)(2) of the Congressional Budget Act,[1] sequentially refer such bill to the Committee on Appropriations for a period not to exceed 15 legislative days.

On July 18, 1978,[2] the Speaker sequentially referred a child nutrition bill (H.R. 12511), reported from the Committee on Education and Labor, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X,

[*Omitted from the Record of July 18, 1978*]

The bill to extend for 1 year the child care food program of the National School Lunch Act and the women, infants, and children program of the Child Nutrition Act of 1966 (H.R. 12511, as reported on May 15, 1978) was referred by the Speaker as follows:

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Appropriations for a period not to exceed 15 legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344.

§ 11.31 Pursuant to section 401(b)(2) of the Congressional Budget Act,[1] the Speaker may discharge from the Union Calendar a bill

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3. The Budget Enforcement Act of 1997 changed the referral process under section 401(b)(2) from a mandatory requirement to discretionary authority that the Speaker may or may not choose to exercise. For more on the BEA of 1997, see § 1, *supra*.

4. As in the *Congressional Record*. This should be section 401(b) of the Congressional Budget Act.

5. Thomas O'Neill (MA).

1. 2 USC § 651(b)(2).

2. 124 CONG. REC. 21786, 21787, 95th Cong. 2d Sess. For examples of other bills taken off the Union Calendar and sequentially referred after the adoption of a concurrent resolution on the budget revealed an allocation breach, see 125 CONG. REC. 13385, 96th Cong. 1st Sess., June 5, 1979; and 127 CONG. REC. 10622, 97th Cong. 1st Sess., May 21, 1981.

1. 2 USC § 651(b)(2).

that exceeds the reporting committee's section 302 allocation (whenever such breach is discovered) and refer such bill to the Committee on Appropriations for a period not to exceed 15 legislative days.[2]

On Sept. 7, 1977,[3] the Speaker sequentially referred a bill establishing a national park (H.R. 3813), reported from the Committee on the Interior, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILL SEQUENTIALLY REFERRED

[*Omitted from the Record of September 7, 1977*]

Under clause 5 of rule X, the bill to amend the act of October 2, 1968, an act to establish a Redwood National Park in the State of California, and for other purposes (H.R. 3813), as reported on August 5, 1977, was referred by the Speaker, as follows:

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93–344.

§ 12. Section 401(a)

Section 401(a)[1] prohibits the consideration of legislation that provides new authority to enter into contracts under which the Federal Government is obligated to make outlays, new authority to incur indebtedness, or new credit authority, unless that legislation provides that the new authority be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation acts. The point of order prevents such "backdoor" spending that is not constrained by the appropriations process. Mere authorizations do not violate this section of the Congressional Budget Act.[2] This section applies to reported bills and joint resolutions (in the House), amendments, motions, or conference reports.[3]

Prior to the revisions by Gramm-Rudman-Hollings, the Congressional Budget Act did not contain a mechanism to subject credit authority to the

2. For examples of other bills discharged from the Union Calendar for a sequential referral pursuant to section 401(b)(2), see, *e.g.*, 124 CONG. REC. 28543, 95th Cong. 2d Sess., Sept. 8, 1978; and 128 CONG. REC. 24317, 97th Cong. 2d Sess., Sept. 20, 1982.

3. 123 CONG. REC. 28173, 95th Cong. 1st Sess.

1. 2 USC § 651(a). The Budget Enforcement Act of 1997 collapsed the original section 402 point of order into section 401 and repealed the definition of "new spending authority."

2. See § 9.2, *supra*.

3. See § 12.1, *infra*.

appropriations process. Gramm-Rudman-Hollings created this requirement (with a corresponding point of order against credit authority not subject to appropriations) in former section 402. The Budget Enforcement Act of 1997,[4] moved this requirement to section 401(a).

Title V of the Congressional Budget Act, added by the Budget Enforcement Act of 1990[5] and known as the Federal Credit Reform Act, provided a separate requirement for new credit authority (direct loan and loan guarantee programs) to be funded in advance by appropriation acts. This statutory requirement makes any credit authority effective only to the extent and in amounts provided in appropriation acts. Thus, unless the provision carrying such credit authority explicitly supersedes the requirements of section 504(b), it will be limited in this manner.[6]

Section 401(c)[7] provides certain exceptions to the normal operation of both section 401(a) and section 401(b).[8] The exception provides that sections 401(a) and 401(b) will not apply to new budget authority if outlays therefrom are derived from certain trust funds (including, specifically, a trust fund established by the Social Security Act).

A point of order raised on the basis of an alleged violation of section 401(a) must be made at the time a motion is made to resolve into the Committee of the Whole.[9]

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§ 12.1 In response to a parliamentary inquiry, the Speaker noted that points of order under sections 302, 303, 311, 401, and 402 of the Congressional Budget Act[1] operate with respect to a bill or

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4. Pub. L. No. 105–33.

5. Pub. L. No. 101–508.

6. *Parliamentarian's Note:* The proceedings of Mar. 26, 1992 should be viewed in light of the separate requirement contained in section 504(b). 138 CONG. REC. 7228–31, 102d Cong. 1st Sess. On that occasion, the Chair ruled that an amendment providing new authority to incur primary loan guarantee commitments, but failing to explicitly condition the effectiveness of such commitments to amounts provided in appropriation acts, violated section 402(a) (now section 401(a)). The Chair did not include section 504(b) in the analysis on this particular point of order. Had he done so, the lack of language explicitly superseding section 504(b) would have been sufficient to render the amendment in order under section 402(a) (now section 401(a)). Ultimately, the question was moot as the amendment was out of order under a separate rationale for violating section 303(a) of the Congressional Budget Act.

7. The Budget Enforcement Act of 1997 eliminated the original section 401(c) (defining certain terms) and moved the exceptions contained in section 401(d) to section 401(c).

8. See § 13, *infra*.

9. 121 CONG. REC. 28270, 94th Cong. 1st Sess., Sept. 10, 1975.

1. 2 USC §§ 633, 634, 642, 651, 652. While this precedent remains accurate for points of order under title IV of the Budget Act, beginning in the 110th Congress, points of order

joint resolution in its reported state and thus do not lie against consideration of an unreported measure.

On Mar. 21, 1995,(2) the following occurred:

Mr. [Scott] MCINNIS [of Colorado]. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PARLIAMENTARY INQUIRY

Mr. [James] MCDERMOTT [of Washington]. I have a parliamentary inquiry, Mr. Speaker.

The SPEAKER pro tempore (Mr. DOOLITTLE).(3) The gentleman will state it.

Mr. MCDERMOTT. Mr. Speaker, does the rule we have just adopted make in order general debate on H.R. 4 or H.R. 1214?

The SPEAKER pro tempore. The rule makes in order debate on H.R. 4.

Mr. MCDERMOTT. As I understand it, Mr. Speaker, the committees of jurisdiction reported out three other bills, none of which is before the House today. Am I correct that H.R. 4 has not been reported out by any committee of jurisdiction?

The SPEAKER pro tempore. The gentleman is correct.

Mr. MCDERMOTT. Mr. Speaker, continuing that inquiry, is it true that the Budget Act points of order which are designed to assure that the budget rules we established for ourselves are adhered to apply only to measures that have been reported by the committee of jurisdiction?

The SPEAKER pro tempore. The Chair observes that sections 302, 303, 311, 401, and 402 of the Congressional Budget Act of 1974 all establish points of order against the consideration of bills or joint resolutions as reported. That is, in each case the point of order against consideration operates with respect to the bill or joint resolution in its reported state. Thus, in the case of an unreported bill or joint resolution, such a point of order against consideration is inoperative.

Mr. MCDERMOTT. In other words, Mr. Speaker, if we had followed the regular order and reported either H.R. 4 or H.R. 1214 from the committees of jurisdiction, several points of order would have applied. To get around those rules, the majority has instead put before the House an unreported bill making it impossible for those of us who believe the House should be bound by the rules it sets for itself to exercise those rights.

Mr. MCINNIS. Regular order.

The SPEAKER pro tempore. The House has just adopted House Resolution 117.

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under title III of the Congressional Budget Act now operate against unreported measures. See Rule XXI clause 8, *House Rules and Manual* § 1068c (2011).

2. 141 CONG. REC. 8491, 104th Cong. 1st Sess. See Deschler-Brown Precedents Ch. 31 § 10.23, *supra*.

3. John Doolittle (CA).

Mr. McDERMOTT. It is my understanding that we went around the rules because we did not follow the rules.

The SPEAKER pro tempore. The gentleman has not stated a parliamentary inquiry.

Mr. McINNIS. A point of order, Mr. Speaker, I thought it was a parliamentary inquiry, not a speech.

The SPEAKER pro tempore. The gentleman is correct.

Provisions Constituting New Spending Authority

§ 12.2 Language in a bill authorizing receipts from loans made under prior foreign assistance legislation to be made available for designated purposes was held not to be "new spending authority" within the meaning of section 401 of the Congressional Budget Act[1] (requiring the budget authority for contracts and indebtedness to be provided in advance by appropriation acts), where it was shown from the term "authorized" and from the committee report that the amounts of repaid loans were subject to the appropriations process before the funds could be expended.

On Sept. 10, 1975,[2] the following occurred:

PARLIAMENTARY INQUIRY

Mr. [Robert] BAUMAN [of Maryland]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER.[3] The gentleman will state it.

Mr. BAUMAN. If the gentleman from Maryland is disposed to make a point of order against the consideration of this bill because of any provisions it contains contrary to Public Law 93–344, the Budget Control Act, when would that point of order lie?

The SPEAKER. It will depend on when the motion is made to go into the Committee of Whole. It would lie at the time the motion is made.

Mr. BAUMAN. Mr. Speaker, then I would like to make a point of order.

The SPEAKER. As soon as the gentleman from Pennsylvania (Mr. MORGAN), makes his motion, the Chair will recognize the gentleman.

INTERNATIONAL DEVELOPMENT AND FOOD ASSISTANCE ACT OF 1975

Mr. [Thomas] MORGAN [of Pennsylvania]. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 9005) to authorize assistance for disaster relief and rehabilitation,

1. 2 USC § 651. The Budget Enforcement Act of 1997 collapsed the original section 402 point of order into section 401 and repealed the definition of "new spending authority." Although the types of spending authority covered by this section of the Congressional Budget Act have changed, the principle that a mere authorization remains subject to further appropriation of funds remains applicable.
2. 121 CONG. REC. 28270, 28271, 94th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 31 § 4.2, *supra*.
3. Carl Albert (OK).

to provide for overseas distribution and production of agricultural commodities, to amend the Foreign Assistance Act of 1961, and for other purposes.

POINT OF ORDER

Mr. BAUMAN. Mr. Speaker, I make a point of order against the present consideration of the bill H.R. 9005 on the grounds that on page 15 of this bill, in section 302(e),(4) lines 6 to 17, there is contained a provision which in essence changes the law governing repayments on previous foreign assistance loans making these sums available for certain purposes without reappropriation by Congress. At the present time the proceeds from repayments of these loans are returned to the Treasury for later reappropriation by the Congress.

Apparently this provision allows at least $200 million in loan reflows, as the report refers to them, to be respent without either authorization or further appropriation by the Congress each year.

It would be my contention that this provision violates Public Law 93–344, section 401(a), the Congressional Budget Act of 1974, which in effect prohibits the consideration by the House of any bill or resolution which provides any new spending authority. In effect this is backdoor spending without authorization and appropriation each year by the Congress.

The SPEAKER. Does the gentleman from Pennsylvania desire to be heard on the point of order?

Mr. MORGAN. I do, Mr. Speaker.

Mr. Speaker, I rise in opposition to the point of order.

Mr. Speaker, the proposed section 103 of the Foreign Assistance Act of 1961 contained in section 301(a) of House Resolution 905 as reported, which authorizes the repayment on prior year foreign aid loans to be made available for specific purposes, does not in effect appropriate funds and, therefore, is not subject to a point of order under clause 5 of rule XXI. The funds referred to in section 103 will not be available for reuse unless they are appropriated.

The committee does not intend that these funds be exempt from the appropriation process, as can be seen from the following language. The clear language of the bill, Mr. Speaker, proposed in section 103 specifically provides that amounts repaid are authorized to be available for use and authorized for appropriation. It does not provide that they be available for use as an appropriation.

The SPEAKER. The Chair would like to address a question to the gentleman from Maryland.

Is the gentleman raising a point of order under the Budget Act for the purpose of preventing the consideration of the legislation, or is he attempting to make a point of order that this is an appropriation on a legislative bill?

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4. The provision at issue is as follows: "Dollar receipts from loans made pursuant to this part and from loans made under predecessor foreign assistance legislation are authorized to be made available for each of the fiscal years 1976 and 1977 for use, in addition to funds otherwise available for such purposes, for the purposes of supporting the activities of the proposed International Fund for Agricultural Development (a total of $200,000,000 of such receipts may be used only for such purpose), undertaking agricultural research in accordance with section 103A, and making loans for other activities under this section. Such amounts shall remain available until expended."

Mr. BAUMAN. Mr. Speaker, I am making the point of order for the express purpose of preventing the consideration of the bill, inasmuch as the public law to which I have referred says that it shall not be in order for either House to consider a bill which contains such a provision.

I would, therefore, in response to the statement of the chairman of the committee, refer to the committee report on page 46 which says:

> The third subsection added to section 103 authorizes repayments on prior year aid loans to be made available for specified purposes.

This would remove it from the appropriation process.

The SPEAKER. The Chair is ready to rule. The gentleman from Maryland is making the point of order that the portion of the bill under section 302(e) constitutes new spending authority and violates section 401(a) of the Budget Act, Public Law 93–344.

The Chair has reviewed the language shown in the bill and in the report which shows that it is subject to the appropriation process because the whole intent and thrust is predicated on the words "are authorized to be made available." In other words, the reflow funds are to be appropriated by the Committee on Appropriations and by subsequent legislative actions and not as a result of the passage of this bill.

The Chair, therefore, overrules the point of order.

Mr. BAUMAN. Mr. Speaker, if I may be heard further, my contention was that this particular provision in and of itself authorizes the continuing appropriation each year, as the report indicates that it does, and that section 401(a) of Public Law 93–344 prevents consideration of any bill which permits that.

The SPEAKER. If that is true, this is still not in violation of 401. This is still an "authorization" subject to action each year of the Committee on Appropriations.

The Chair overrules the point of order.

§ 12.3 While the former definition of new spending authority in section 401(c)(2) of the Congressional Budget Act,[1] providing that certain spending made subject to budget authority in advance in appropriation acts, did not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government, the authority to make payments in connection with defaults which have already occurred was conceded to constitute a primary liability of the United States to incur indebtedness and to require budget authority in advance in appropriation acts.

On Sept. 27, 1976,[2] the following occurred:

CONFERENCE REPORT ON H.R. 5546, HEALTH PROFESSIONS EDUCATIONAL ASSISTANCE ACT OF 1976

Mr. [Harley] STAGGERS [of West Virginia]. Mr. Speaker, I call up the conference report on the bill (H.R. 5546), to amend the Public Health Service Act to revise and extend

1. The Budget Enforcement Act of 1997 repealed this definition of new spending authority.
2. 122 CONG. REC. 32655, 94th Cong. 2d Sess. See Deschler-Brown Precedents Ch. 31 § 1.27, *supra*.

the programs of assistance under title VII for training in the health and allied health professions, to revise the National Health Service Corps program, and the National Health Service Corps scholarship training program, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

POINT OF ORDER

Mr. [Brock] ADAMS [of Washington]. Mr. Speaker, I make a point of order on the conference report.

The SPEAKER pro tempore.(3) The gentleman from Washington will state his point of order.

Mr. ADAMS. Mr. Speaker, the conference agreement on H.R. 5546, the Health Professions Assistance Act of 1976, contains a provision which appears to provide borrowing authority which is not subject to advance appropriations. Consequently, it would be subject to a point of order under section 401(a) of the Congressional Budget Act.

Section 401(a) provides:

> It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(A) or (B) (or any amendment which provides such new spending authority), unless that bill, resolution, or amendment also provides that such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts.

Section 401(c)(2)(B) of the Budget Act defines spending authority as authority "to incur indebtedness—other than indebtedness incurred under the second Liberty Bond Act—for the repayment of which the United States is liable, the budget authority for which is not provided in advance by appropriation acts." This form of spending authority is commonly known as borrowing authority.

The conference report accompanying H.R. 5546 contains a provision creating a student loan insurance fund under section 734 of the Public Health Service Act.

Clearly, the requirement that the Secretary of the Treasury purchase these obligations constitutes borrowing authority.

And since the provision contains no requirement that the authority be limited to amounts provided in advance in appropriation acts, it appears to give rise to a section 401(A) point of order.

The fact that the provision relates to default payments which might arise pursuant to a loan guarantee program does not bring the provision within the "loan guarantee" exception to section 401 of the Budget Act. Although the loan guarantee itself may not be subject to advance appropriation, the default payment made pursuant to the provision in question does not constitute a loan guarantee and it is fully subject to the requirements of section 401.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. ADAMS. I yield to the gentleman from West Virginia, the chairman of the committee.

Mr. STAGGERS. Mr. Speaker, I concede the point of order.

Mr. Speaker, I have a motion.

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3. John McFall (CA).

The SPEAKER pro tempore. The gentleman from West Virginia (Mr. STAGGERS) concedes the point of order.

Therefore, the point of order is sustained.

§ 13. Section 401(b)

Section 401(b) of the Congressional Budget Act[1] precludes the consideration of "new entitlement authority"[2] that becomes effective during the current fiscal year (*i.e.*, before the start of the next fiscal year). This "timing" point of order is applicable to bills or joint resolutions (in the House, as reported), amendments, motions,[3] or conference reports.[4]

Prior to the Budget Enforcement Act of 1997, section 401(b) used a different terminology when referring to the fiscal year covered by its prohibition. The previous formulation of section 401(b) prohibited the consideration of measures containing new entitlement authority that became effective "before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported."[5] The Budget Enforcement Act of 1997 clarified the definition by referring simply to the "current" fiscal year in which such measure is considered.

As noted earlier,[6] section 401(c) provides an exception to section 401(b) points of order for new budget authority the outlays of which are derived from certain trust funds, including the Social Security Trust Fund.

§ 13.1 An amendment providing a rule of eligibility for certain Federal employee retirement benefits was held to constitute new entitlement authority under section 401(b) of the Congressional Budget Act,[1] which could become effective during the current fiscal year.

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1. 2 USC § 651(b).
2. In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.,* 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(3)).
3. For example, motions to concur in Senate amendments containing new entitlement authority. See § 13.2, *infra*.
4. See § 13.3, *infra*.
5. See *Parliamentarian's Note* at § 13.3, *infra*.
6. See § 12, *supra*.
1. 2 USC § 651(b). In recent Congresses, the House has adopted an order of the House excluding Federal compensation from the definition of entitlement authority. See, *e.g.,*

On May 9, 1995,(2) the following occurred:

AMENDMENT OFFERED BY MR. NADLER

Mr. [Jerrold] NADLER [of New York]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NADLER: At the end of title IV (page 43, after line 13), add the following new section (and amend the table of contents accordingly):

SEC. . TRANSITION FOR CIVILIAN PERSONNEL UNEMPLOYED DUE TO CLOSURE OR REALIGNMENT OF COAST GUARD INSTALLATIONS.

(a) ELIGIBILITY FOR RETIREMENT.—A civilian employee of the Coast Guard assigned to the Coast Guard installation located at Governor's Island, New York, who becomes unemployed as a result of a closure or realignment of that installation and who would have been eligible for retirement within 5 years after becoming unemployed shall be eligible for full retirement benefits.

(b) ELIGIBILITY FOR REEMPLOYMENT.—For purposes of seeking new employment, the authorized geographic area of a civilian employee of the Coast Guard assigned to the Coast Guard installation located at Governor's Island, New York, who becomes unemployed is deemed to be all United States Coast Guard installations located in the United States.

Mr. NADLER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the *Record*. . . .

POINT OF ORDER

The CHAIRMAN.(3) Does the gentleman from North Carolina [Mr. COBLE] persist in his point of order?

Mr. [Howard] COBLE [of North Carolina]. I do, Mr. Chairman.

The CHAIRMAN. The gentleman will state his point of order.

Mr. COBLE. It is my belief, Mr. Chairman, that the amendment from the distinguished gentleman from New York [Mr. NADLER] violates section 401(b)(1) of the Budget Act of 1974. It provides new entitlement authority for the current fiscal year.

The CHAIRMAN. Does the gentleman from New York [Mr. NADLER] wish to be heard?

Mr. NADLER. I await the ruling of the Chair.

The CHAIRMAN (Mr. DICKEY). The Chair is ready to rule.

The gentleman from North Carolina makes a point of order under section 401–B of the Congressional Budget Act that the amendment offered by the gentleman from New York provides new entitlement authority effective during fiscal year 1995 on a bill reported to the House in calendar year 1995.

The Chair finds that amendment offered by the gentleman from New York provides new entitlement authority in the form of public retirement benefits. The Chair also finds that the new entitlement authority would be effective on the date of enactment of the bill. Finally, the Chair is constrained to contemplate immediate enactment of the bill.

Accordingly, the Chair holds that the amendment of the gentleman from New York fails to comply with section 401–B of the Budget Act. Accordingly, the point of order is sustained.

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157 CONG. REC. H9 [Daily Ed.] 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(3)).

2. 141 CONG. REC. 12177, 12718, 104th Cong. 1st Sess.

3. Jay Dickey, Jr. (AR).

§ 13.2 Section 401(b)(1) of the Congressional Budget Act[1] prohibits consideration of motions to concur in Senate amendments providing new entitlement authority that would become effective during the current fiscal year.

On June 26, 1986,[2] the following occurred:

MOTION OFFERED BY MR. WHITTEN TO CONCUR IN SENATE AMENDMENT NO. 175

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 4515) making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes, with the Senate amendment to the House amendment to the Senate amendment No. 175 and to concur therein.

The SPEAKER pro tempore.[3] The Clerk will report the title of the bill and the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to Senate amendment No. 175, as follows:

At the end of the amendment insert:

CHAPTER VIII A—TRADE ADJUSTMENT ASSISTANCE

SECTION 1. (a) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

"SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

"(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"(1) a significant number or proportion of the workers' in such workers firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated, . . .

(c)(1) The amendments made by this section shall apply with respect to petitions for certification which are filed or pending—

(A) on or after September 30, 1986, and

(B) before October 1, 1987.

(2) Notwithstanding any other provision of law, no worker shall be eligible for assistance under subchapter B of chapter 2 of title II of the Trade Act of 1974 if—

(A) such worker is covered by a certification made under subchapter A of such chapter only by reason of the amendment made by subsection (a) of this section, and

(B) the total or partial separation of such worker from adversely affected employment occurs after September 30, 1987. . . .

Mr. WHITTEN. Mr. Speaker, I have moved that the House concur in the Senate amendment to the House amendment to the Senate amendment No. 175.

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I have a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. FRENZEL. Mr. Speaker, I make a point of order that the amendment violates section 401(b)(1) of the Budget Act. Section 401(b)(1) prohibits consideration of any bill, resolution, or amendment which provides new spending authority which is to become effective before the first day of the fiscal year which begins during the calendar year in which the bill or resolution is reported.

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1. 2 USC § 651(b)(1).
2. 132 CONG. REC. 15728, 15729, 99th Cong. 2d Sess.
3. James Wright (TX).

The Senate amendment amends the Trade Act of 1974 to expand eligibility under the trade adjustment assistance program to cover workers and firms supplying essential parts or services to the oil and gas industry. The amendment would apply to petitions for certification which are filed or pending on or after September 30, 1986, and before October 1, 1987. The amendment would thereby provide new spending authority for worker weekly cash benefits effective in fiscal year 1986.

Since the effective date is before the first day of fiscal year 1987, the Senate amendment is a clear violation of section 401(b)(1) of the Budget Act and the point of order should be sustained.

Mr. WHITTEN. Mr. Speaker, I consented to the point of order.

The SPEAKER pro tempore (Mr. WRIGHT). The Chair will rule: The gentleman from Minnesota makes the point of order that the motion offered by the gentleman from Mississippi to concur in the Senate Amendment to the House amendment to the Senate amendment number 175 to H.R. 4515 violates section 401(b)(1) of the Congressional Budget Act of 1974. That provision prohibits the consideration of a bill, or amendment, which provides new entitlement spending authority, as defined in section 401(c)(2)(C) of the Budget Act, which is to become effective before the first day of the fiscal year beginning in the calendar year in which the bill under question is reported.[4]

The bill H.R. 4515 was reported in the 1986 calendar year. The Chair agrees with the argument of the gentleman from Minnesota that the Senate amendment in question provides new entitlement authority for adjustment assistance under the Trade Act of 1974, since it requires the Secretary of the Labor to certify a newly defined group of workers as eligible for trade adjustment assistance. Since the Senate amendment provides for such spending authority to apply to petitions filed or pending on or after September 30, 1986, before the beginning of fiscal year 1987, the Chair therefore sustains the point of order against the motion offered by the Gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, the point I make, if I may be permitted, is that in textiles and in shoes and in many other things in this country we have faced the same situation. The motion that I have to make here I understand is correct under the rules. I can express the hope that the other side of the Capitol will add these other things to it.

Therefore, I move at this time, Mr. Speaker, to disagree to the amendment of the Senate to the amendment of the House to the amendment of the Senate.

Mr. FRENZEL. Mr. Speaker, has the Chair ruled on the point of order?

The SPEAKER pro tempore. The Chair has ruled on the point of order and sustained the point of order of the gentleman from Minnesota.

§ 13.3 It is not in order to consider an amendment, including an amendment recommended in a conference report, which provides new entitlement authority to become effective during the current

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4. See *Parliamentarian's Note* at § 13.3, *infra*.

fiscal year,[1] **under section 401(b)(1) of the Congressional Budget Act.**[2]

On Sept. 23, 1976,[3] the following occurred:

Mr. [Joesph] VIGORITO [of Pennsylvania]. Mr. Speaker, I call up the conference report on the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER.[4] Is there objection to the request of the gentleman from Pennsylvania?

POINT OF ORDER

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, I make a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. ROUSSELOT. Mr. Speaker, I have two points or [sic] order to raise against the conference report on H.R. 10339 (H. Rept. 94–1516).

The first is under the Budget Control Act. The second is under House Rule XXVIII.

Section 401(b)(1) of the Congressional Budget and Impoundment Control Act (Public Law 93–344) provides as follows:

> (b) LEGISLATION PROVIDING ENTITLEMENT AUTHORITY.—
>
> (1) It shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which provides new spending authority described in subsection (c)(2)(C) (or any amendment which provides such new spending authority) which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

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1. *Parliamentarian's Note:* Because section 401(b) points of order are concerned with the timing of the effectiveness of the proposed new entitlement authority, it is important to establish both the "current" fiscal year (as described in section 401(b)) and the effective date of the new entitlement. At the time of this precedent, section 401(b) used a different terminology than "current fiscal year," prohibiting new entitlement authority that became effective "before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported." Such phrasing invites differing interpretations in situations (as here) where a committee's reporting to the House of a measure providing no new entitlement authority occurs in one calendar year but consideration of a Senate amendment that does provide new entitlement authority occurs in the next calendar year. The Parliamentarian's position was that the date on which the conference report containing the new entitlement authority was filed in the House, rather than the date of the initial reporting in the House, governs the analysis under section 401(b). The alternative interpretation opens a loophole to the rule, by which a House measure reported in the previous calendar year could be used by the Senate to add new entitlement authority (to become effective before the start of the fiscal year) without triggering section 401(b) points of order.
2. 2 USC § 651(b)(1).
3. 122 CONG. REC. 32099, 32100, 32104, 94th Cong. 2d Sess. See also Deschler-Brown Precedents Ch. 29 § 2.36, Ch. 31 § 4.14, and Ch. 33 § 25.19, *supra*.
4. Carl Albert (OK).

The text of the conference agreement as set forth in the amendment adding a new section 8 is as follows:

EMERGENCY HAY PROGRAM

SEC. 8. In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

It is clear from a literal reading of this proposed language that certain livestock owners will be entitled to a hay subsidy immediately upon enactment of this bill.

This bill is effective during the so-called transition period of July 1–September 30, 1976.

In any event it is a new spending authority effective before October 1, 1976, which marks the beginning of fiscal year 1977 but occurs in the calendar year in which the conference report is being called up in the House.

"New spending authority" is defined in section 401(c)(2)(C) to include "payments * * * the budget authority for which is not provided for in advance by appropriation Acts, to any person * * * if * * * the United States is obligated to make such payments to persons * * * who meet the requirements established by such law."

In the instance at hand, hay payments are mandated by the language directing that the President shall direct the Secretary of Agriculture to pay 80 percent of hay transportation costs—up to $50 per ton.

The second point of order is that section 8 of the conference report is not in compliance with rule XXVIII, clause 4, and if such language were offered to H.R. 10339 during its consideration in the House it would not be deemed to be germane under rule XI, clause 7.

The SPEAKER. Does the gentleman from Pennsylvania (Mr. VIGORITO) desire to be heard on the points of order?

Mr. VIGORITO. Yes, Mr. Speaker, I would like to be heard on the two points of order.

The SPEAKER. The gentleman from Pennsylvania is recognized.

Mr. VIGORITO. Mr. Speaker, my understanding is that if this program is an entitlement program under section 401 of the Budget Act, the funding could not be given an authorization in this bill until the beginning of the next fiscal year, or, in this case, October 1, 1976. If that is the case, I would think that we could develop legislative intent here in that none of the funding would begin in this bill until fiscal year 1977. As a practical matter, the bill will probably not have cleared the President prior to that time, anyway, and consequently we will not be delaying the impact of the bill for any substantial length of time. We have less than a week before October 1 comes about.

On the second point of order, Mr. Speaker, I only want to say that although the gentleman has a perfect right under the rules to raise a point of order at this point, I rather regret that he is doing so in view of the seriousness of the drought problem and the requirement that we do something now if assistance is going to actually be helpful. I will oppose any motion to delete the hay assistance provision in the event that the point of order should be sustained.

The SPEAKER. The Chair is having difficulty with the argument made by the distinguished gentleman from Pennsylvania, because, as the Chair understands it, theoretically and legally it would be possible to begin the payments before October 1, 1976, which would be in violation of the Budget Impoundment and Control Act, as the entitlement to those payments might vest prior to October 1. If, as the Chair understands it, the entitlement to payments only vested after October 1, 1976, there would be no violation of the Budget Control Act.

What is the gentleman's answer to that?

Mr. VIGORITO. The intent is only to begin after October 1, 1976.

The SPEAKER. Of course, the Chair sees before him language which it seems to the Chair—and the Chair is sympathetic with what the gentleman is trying to do—indicates that:

> In carrying out any emergency hay program for farmers or ranchers in any area of the United States under section 305 of the Disaster Relief Act of 1974 because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed $50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977.

This language does not say when the entitlement to payments vests and does not imply when the payments begin. It does say when the payments end. But the point is that the payments cannot begin before October 31, 1976, without violating the Congressional Budget Act.

Mr. VIGORITO. I would like to bring to the attention of the Speaker and the House that the Department of Agriculture currently has authority to help on this situation. They can pay up to 50 percent of the cost of the freight for transporting the hay.

The SPEAKER. This changes that, though.

Mr. VIGORITO. I beg the Speaker's pardon?

The SPEAKER. This changes that.

Mr. VIGORITO. This changes that?

The SPEAKER. Yes.

Mr. VIGORITO. It increases the entitlement to 80 percent from 50 percent, with a limit of $50.

The SPEAKER. The Chair thinks that under the present circumstances he should insist that the gentleman consider another procedure, because he thinks it can be worked out. Therefore, the Chair must sustain the point of order.

The Chair will not rule on the second point of order, on germaneness grounds, because one point of order against the entire conference report has been sustained.[5]

Will the gentleman undertake to work that out within the next day or two?

Mr. VIGORITO. Mr. Speaker, I ask unanimous consent to pull this off so that we can work this out.

The SPEAKER. The conference report is no longer before the House. The gentleman can dispose of the Senate amendments under another procedure. . . .

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5. If one of multiple points of order is sustained, the Chair need not rule on the others. See Deschler-Brown Precedents Ch. 31 § 1.12, *supra*. With respect to conference reports, the Chair will attempt to rule on points of order which, if sustained, would vitiate the entire report before entertaining points of order which, if sustained, would merely excise the offending material. Deschler-Brown Precedents Ch. 33 § 25.19, *supra*.

Mr. [Robert] BERGLAND [of Minnesota]. Mr. Speaker, I move to take from the Speaker's table the bill (H.R. 10339) to encourage the direct marketing of agricultural commodities from farmers to consumers, with Senate amendments thereto, and consider the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 1, line 4, strike out "1975" and insert: "1976". . . .

Mr. BERGLAND (during the reading). Mr. Speaker, I ask unanimous consent that Senate amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. [John] MCFALL [of California]). Is there objection to the request of the gentleman from Minnesota?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, can the gentleman tell us if the problem of compliance with the budget resolution is included in the gentleman's motion?

Mr. BERGLAND. If the gentleman will yield, the answer is yes. The question which the gentleman raised earlier has been met. The effective date is October 1, 1976, therefore clearing up the question of entitlement in violation of the Budget Act.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, I would like to inquire of the chairman of the Committee on the Budget if he is satisfied that the requirements of the budget resolution have now been complied with.

Mr. [Brock] ADAMS. If the gentleman will yield, I am satisfied with the statement that has been made by the gentleman from Minnesota (Mr. BERGLAND) and it is correct.

Mr. ROUSSELOT. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection. . . .

§ 14. Former Section 402(a)

Former section 402(a) of the Congressional Budget Act[1] provided a point of order that prohibited the consideration of bills or resolutions containing new spending authority unless the bill or resolution was reported in the House or Senate on or before May 15. This point of order was repealed by Gramm-Rudman-Hollings,[2] and replaced with a new provision providing a point of order against bills providing new credit authority not subject to appropriations. That replacement was itself repealed by the Budget Enforcement Act of 1997[3] and the credit authority points of order were collapsed into section 401(a).[4]

1. Now repealed. Formerly codified at 2 USC § 652.

2. Pub. L. No. 99–177.

3. Pub. L. No. 105–33.

4. As noted in Section 12, this requirement that credit authority be subject to appropriations should be read in conjunction with section 504(b) of the Congressional Budget

As noted above, former section 402(a) applied only to bills and resolutions, and not to amendments,[5] including amendments in the nature of a substitute made in order by a special order of business.[6] Consideration of bills or resolutions by suspension of the rules waives all points of order against such legislation, including section 402(a) of the Budget Act.[7] The Committee on Rules was also given authority in former section 402(b) to recommend emergency waivers of section 402(a).

In its original form, section 402(d) provided an exception to points of order under section 402(a) for "companion" measures originating in the Senate. This exception provided that if the House measure complied with the section 402(a) deadline, a Senate companion measure (or similar bill) would be in order in the House, regardless of the date it was reported from committee in the Senate.[8]

The current section 402 of the Budget Act was former section 403—a provision requiring the Congressional Budget Office to provide certain cost estimates for bills and resolutions.[9]

The following precedents relate to the former section 402(a) of the Congressional Budget Act.

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§ 14.1 The chairman of the Committee of the Whole overruled a point of order raised under former section 402(a) of the Congressional Budget Act[1] against an amendment because section 402(a), requiring bills containing authorization of new budget authority to be reported by May 15 preceding the effective fiscal year, only prohibited initial consideration of bills containing such provisions, and not consideration of amendments containing such authorizations or of the bill as so amended.

On Sept. 13, 1983,[2] the following occurred:

Act, which provides a separate limitation on certain government loans not subject to appropriations.

5. See § 14.1, *infra*.
6. See, *e.g.,* 123 CONG. REC. 7858, 95th Cong. 1st Sess., Mar. 17, 1977.
7. See 123 CONG. REC. 11108, 95th Cong. 1st Sess., Apr. 19, 1977.
8. For an example of a special order of business waiving section 402(a) against initial consideration of a House bill that was not reported prior to the May 15 deadline and further making in order a motion to insert the House text into a Senate companion measure, see 123 CONG. REC. 17258, 95th Cong. 1st Sess., June 2, 1977. Because the House measure did not meet the requirements of section 402(a), the Senate companion measure could not take advantage of the exception provided by section 402(d) and thus also required a waiver of 402(a) in the special order of business.
9. See § 7, *supra*.
1. Now repealed. Formerly codified at 2 USC § 652.
2. 129 CONG. REC. 23881–84, 98th Cong. 1st Sess. See § 9.2, *supra*.

AMENDMENT OFFERED BY MR. WRIGHT

Mr. [James] WRIGHT [of Texas]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. WRIGHT: Add at the end of the bill the following new title:

TITLE V—SPECIAL IMPACT AID FOR IMMIGRANT CHILDREN EDUCATION

SHORT TITLE

SEC. 501. This title may be cited as the "Emergency Immigrant Education Act of 1983".

DEFINITIONS

SEC. 502. As used in this title—

(1) The term "immigrant children" means children who were not born in a State and who have been attending schools in any one or more States for less than three complete academic years.

(2) The terms "elementary school", "local educational agency", "secondary school", "State", and "State educational agency" have the meanings given such terms under section 198(a) of the Elementary and Secondary Education Act of 1965.

(3) The term "elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

(4) The term "Secretary" means the Secretary of Education.

AUTHORIZATIONS AND ALLOCATION OF APPROPRIATIONS

SEC. 503. (a) There are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986, such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

(b)(1) If the sums appropriated for any fiscal year to make payments to States under this title are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under this title for such year, the allocations to State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the vent [sic] that funds become available for making payments under this title for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced. . . .

POINT OF ORDER

Mr. [John] ERLENBORN [of Illinois]. Mr. Chairman, I make a point of order against the amendment.

The CHAIRMAN.[3] The gentleman from Illinois (Mr. ERLENBORN) will state his point of order.

3. David Bonior (MI).

□ 1640

Mr. ERLENBORN. Mr. Chairman, I make the point of order against the pending amendment on the grounds that section 503 of the pending amendment violates section 402(a) and 303(a)(1) and (2).

In addition, Mr. Chairman, I make a point of order against the amendment in that section 503(b)(1) violates sections 303(a)(4) and 401(c)(2) of the Budget Control Act.

Now, Mr. Chairman, section 303(a) of the Budget Control Act states that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution or amendment thereto which provides: First, new budget authority for a fiscal year; or second, an increase or decrease in revenues to become effective during a fiscal year.

Mr. Chairman, 503(a) of the pending amendment creates new budget authority in that it states that there are authorized to be appropriated for each of the fiscal years 1984, 1985, and 1986 such sums as may be necessary to make payments to which State educational agencies are entitled under this title and payments for administration under section 504.

Mr. Chairman, the effect of section 503(b)(1) and later provisions of this amendment, the amendment providing for $500 per pupil entitlement under this bill for this new impact act program to be funded jointly from 503(a), which is the direct budget authority, and 503(b)(1) which authorizes transfers from other existing budget authority, violates 401(c)(2) in that it creates new entitlement authority.

For these reasons I believe that the pending amendment violates these provisions of the Budget Act and is subject to this point of order.

The CHAIRMAN. Does the gentleman from Texas (Mr. WRIGHT) wish to be heard on the point of order?

Mr. WRIGHT. Yes, Mr. Chairman, I would like to be heard.

As I understand the gentleman's point of order, he argues that this amendment would not be in order because it would create a new entitlement and because it would be contrary to and excessive of the budget resolution.

With respect to the latter, I should simply point out that this does not create any entitlement which would be triggered absent an appropriation. There would have to be an appropriation in order for these moneys to be made available to the school districts which the amendment would make eligible for said moneys.

503(a), Subsection b, provides that to the extent the Congress should fail to appropriate adequate funds, there would be a rateable reduction to each of the States otherwise made eligible.

In other words, by its own provisions it contains a means of restraining the entitlement that otherwise would be created within the amounts that are appropriated by Congress.

Nothing thus far has been appropriated. This is simply an authorizing proposal. It is no more violative of the provisions cited by the distinguished gentleman from Illinois than are other provisions already adopted in this legislation in title IV in that they also create, just as this new title would create, an additional eligibility for Federal assistance.

Inasmuch as the Supreme Court has ruled that it is the responsibility, under the Constitution, of every school district to provide educational opportunity for all of the children residing within that district, whether legally or not, then quite clearly, it falls within the responsibility of the Federal Government to be able, if the Congress in its wisdom so

determines, to provide assistance to those school districts upon whom this burden has been imposed by decree of the Supreme Court.

The CHAIRMAN. Does the gentleman from Kentucky (Mr. PERKINS) desire to be heard on the point of order?

Mr. [Carl] PERKINS [of Kentucky]. I do, Mr. Chairman.

Mr. Chairman, I concur in the argument made by the gentleman from Texas that the amendment is germane. It is not an entitlement. This amendment creates no entitlements. The program is purely an authorization of appropriations. All grants are subject to reduction if appropriations are not sufficient.

There is nothing here that is nongermane about this amendment. The amendment is germane.

Mr. ERLENBORN. Mr. Chairman, I would submit, respectfully, that the arguments of the gentleman from Texas and the gentleman from Kentucky neither of them addressed the issue of violation of section 303(a) of the Budget Control Act which prohibits the consideration of bills or amendments creating new budget authority until the first concurrent resolution on the budget for such year has been agreed to, pursuant to section 301.

And the provisions of this amendment create new budget authority for fiscal years 1984, 1985, and 1986.

I might also state in support of my point of order, Mr. Chairman, that the amendment may well also—depending upon the interpretation of the Parliamentarian—violate section 402(a) of the Budget Control Act, which prohibits the consideration of bills or resolutions creating new budget authority unless they are reported before May 15.

Now, I submit that this bill was not reported before May 15.

There is a waiver for the bill, but there is no waiver in the rule for amendments to the bill.

Now it could be argued, Mr. Chairman, that because the rule does not prohibit the consideration of an amendment, but only bills and resolutions, that therefore this does not apply.

I would submit, however, that if this amendment is adopted, we will then, in further consideration of the bill, be considering a bill which at that time after the adoption of this amendment would contain new budget authority that had not been reported in the bill before May 15. So that is one additional reason for the sustaining of my point of order.

Mr. WRIGHT. Mr. Chairman, very briefly I would like to be heard. In the first place, it is my distinct impression, and I believe would be confirmed by a reading of the act, that section 402(a) of the Budget Act does not apply to amendments, but only to bills.

Second, that a waiver of that section has been obtained with respect to this bill.

□ 1650

Third, that the language proposed in this amendment provides nothing by way of educational spending authorization beyond that which already has been done in the bill itself and that inasmuch as this bill is permitted to come before the House and is being considered by the House under a waiver of section 402(a), and since section 402(a) has no application whatsoever, by its own terms, to an amendment per se, then the amendment is germane and the amendment would be in order.

The CHAIRMAN. The Chair is prepared to rule.

On the first question that the gentleman from Illinois raised with respect to the amendment, an amendment is not covered by the May 15 reporting deadline in section 402(a) of the Budget Act and, therefore, that point of order is not sustained.

With regard to the issue of budget authority, the Chair would rule that the amendment contemplates that budget authority would rest in an appropriations bill. This is an authorization proposal that is being put forth by the gentleman from Texas.

Now, with respect to the third question that was raised by the gentleman from Illinois on the question of an entitlement, the Chair will read the Congressional Budget Act definition of "entitlement," in section 401(c)(2)(C) of that act, and I quote:

> . . . to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriation Acts, to any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments. . . .

Now, the Chair would point out that in section 503(b)(1) of the amendment by the gentleman from Texas, language pertaining to ratable reduction is being offered by the gentleman from Texas, which negates the entitlement features which the gentleman from Illinois alludes to by giving discretion to the Appropriation Committee and, therefore, the Chair would rule that indeed it does not constitute an advance entitlement that the gentleman referred to. The point of order is overruled.

§ 14.2 By unanimous-consent, the House permitted all committees to file reports by a date certain (when the House would not be in session),[1] and all reports filed by that time were considered to have been filed within the time permitted by former section 402(a) of the Congressional Budget Act,[2] with respect to fiscal year 1981 authorizations.

On May 13, 1980,[3] the following occurred:

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I ask unanimous consent that all committees may have until 12 o'clock noon on Friday, May 16, 1980, to file reports, and that reports filed by that time be considered to have been filed within the time permitted by section 402(a) of the Congressional Budget Act, with respect to fiscal 1981 authorizations.

The SPEAKER.[4] Is there objection to the request of the gentleman from Texas?

□ 1210

Mr. [Robert] BAUMAN [of Maryland]. Mr. Speaker, reserving the right to object, could the gentleman tell us how many bills may fall into this category? Are there a great number? I know in the past the Rules Committee has on each bill waived the filing deadline as the rule was granted.

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1. For additional examples of similar unanimous-consent requests to permit committees to meet the May 15 deadline, see, *e.g.*, 122 CONG. REC. 12922, 94th Cong. 2d Sess., May 7, 1976; and 129 CONG. REC. 12423, 98th Cong. 1st Sess., May 16, 1983.

2. Now repealed. Formerly codified at 2 USC § 652.

3. 126 CONG. REC. 10996, 96th Cong. 2d Sess. See also 122 CONG. REC. 12922, 94th Cong. 2d Sess., May 7, 1976.

4. Thomas O'Neill (MA).

Mr. WRIGHT. If the gentleman would yield, I am not sure that I have an outside number. I honestly do not know how many would be affected by this. I do know that there are bills in the Committee on Interstate and Foreign Commerce which are going to have to be hurriedly prepared and put together if we do not give them this extra 12 hours. Their staff has been burdened with a lot of activity with two conference committees, among other things, and it is largely at their request that we have sought this unanimous consent.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

§ 15. Section 315

Section 315 of the Congressional Budget Act,[1] added by the Budget Enforcement Act of 1997,[2] provides that self-executed amendments or amendments made in order as original text by a special order are considered "as reported" for purposes of titles III and IV of the Budget Act. Special orders utilizing these types of amendments often do so for the purpose of "curing" parliamentary violations (under the Congressional Budget Act or otherwise) contained in the underlying legislation. Before the advent of section 315, such curative amendments would not have qualified under the Congressional Budget Act as having been "reported" from committee.[3] Thus, the legislation would still have required a waiver of Budget Act points of order despite the clear intention to remove any Budget Act violations via the curative amendment.

Relatedly, the House has also adopted free-standing orders to apply Budget Act points of order to such "self-executed" amendments or amendments made in order as original text for purposes of amendment. In the 106th through the 112th Congresses, the House adopted a separate order on opening day[4] to evaluate section 303(a) points of order against reported bills

1. 2 USC § 645a.

2. Pub. L. No. 105–33.

3. See also Rule XXI clause 8 (rendering title III of the Congressional Budget Act applicable to unreported measures). *House Rules and Manual* § 1068c (2011).

4. 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(2)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(2)); 153 CONG. REC. 19, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 6, sec. 511(a)(2)); 151 CONG. REC. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3(a)(2)); 149 CONG. REC. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(2)); 147 CONG. REC. 24, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)(2)); 145 CONG. REC. 47, 106th Cong. 1st Sess., Jan. 6, 1999 (H. Res. 5, sec. 2(a)(3)). See § 9, *supra*.

or joint resolutions considered under a special order of business on the basis of either the text made in order as original text for purposes of amendment or the text on which the previous question is ordered directly to passage.

§ 16. Section 306

Section 306 of the Congressional Budget Act[1] prevents the consideration of measures that contain matter within the jurisdiction of the Committee on the Budget[2] but that have not been reported by (or been discharged from) that committee.[3] The Budget Enforcement Act of 1990 standardized this section in its application to any bill, resolution, or amendment, motion or conference report.[4] The point of order is applicable in both the House and the Senate.[5] Pursuant to section 904(c) of the Congressional Budget Act,[6] a vote of three-fifths of Senators duly chosen and sworn is required to waive section 306 of the Budget Act.[7]

The House has adopted special orders of business resolutions reported from the Committee on Rules that explicitly waive the requirement of section 306.[8] Furthermore, a special order of business that makes in order the consideration of an unreported measure has the effect of discharging that measure from committee (regardless of whether or not the text of the special order uses the term "discharge") and thus would meet the section 306 requirement that the measure be reported or discharged from committee.[9]

1. 2 USC § 637.

2. See § 7, *supra*.

3. Compare to Rule XXI clause 5(a), which provides a point of order against certain tax and tariff measures not reported by the committee with jurisdiction over such matters (Committee on Ways and Means). *House Rules and Manual* § 1066 (2011).

4. In the 107th through the 112th Congresses, the House adopted orders construing the term "resolution" as "joint resolution." See 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(1)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(1)); 153 CONG. REC. 19, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 6, sec. 511(a)(1)); 151 CONG. REC. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3(a)(1)); 149 CONG. REC. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(1)); and 147 CONG. REC. 21, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 3(b)).

5. For examples of section 306 points of order raised in the Senate, see, *e.g.*, 129 CONG. REC. 6574, 6575, 6589–91, 98th Cong. 1st Sess., Mar. 22, 1983; and 122 CONG. REC. 19089–97, 94th Cong. 2d Sess., June 18, 1976.

6. 2 USC § 621 note.

7. For an example of a successful waiver of section 306 in the Senate, see 140 CONG. REC. 24010, 24069, 24070, 103d Cong. 2d Sess., Aug. 25, 1994.

8. See 141 CONG. REC. 13911, 13912, 104th Cong. 1st Sess., May 23, 1995 (H. Res. 155).

9. See § 16.3, *infra*.

The Committee on Rules has also reported special orders of business that "self-execute" amendments to the original text that remove matters within the jurisdiction of the Committee on the Budget in order to avoid violating section 306.[10]

Pursuant to the Statutory Pay-As-You-Go Act of 2010,[11] a designation regarding the budgetary effects under Stat-Paygo is not considered a matter within the jurisdiction of the Committee on the Budget for the purpose of section 306 enforcement.[12] This is to be contrasted with emergency designations made pursuant to section 251 of Gramm-Rudman-Hollings, which have been considered within the jurisdiction of the Committee on the Budget for that purpose.[13] Similarly, concurrent resolutions on the budget have occasionally provided for special treatment of amounts designated as emergencies.[14] Emergency designations contained in measures pursuant to such *ad hoc* provisions contained in concurrent resolutions on the budget have typically been viewed as falling within the jurisdiction of the Committee on the Budget.[15]

§ 16.1 An amendment to a general appropriation bill designating an appropriation as "emergency spending" within the meaning of section 314 of the Congressional Budget Act[1] was held to "deal with"[2] matter within the jurisdiction of the Committee on the

10. See 142 CONG. REC. 14609, 14610, 104th Cong. 2d Sess., June 19, 1996 (H. Res. 455).

11. Pub. L. No. 111–139, sec. 4(a)(4). See § 23, *infra*.

12. However, such a designation remains within the Committee on the Budget's jurisdiction for purposes of referral under Rule X.

13. For an example of a special order explicitly waiving section 306 for a bill containing such section 251 emergency designations, see 144 CONG. REC. 16341, 105th Cong. 2d Sess., July 21, 1998 (H. Res. 504). Section 314 of the Congressional Budget Act, as noted in Section 1, *supra*, and Section 26, *infra*, is textually linked to these emergency designations under section 251 of Gramm-Rudman-Hollings. For an example of an amendment containing such an emergency designation ruled out on a section 306 point of order, see § 16.1, *infra*.

14. See § 4, *supra*.

15. The blanket waiver contained in H. Res. 396 of the 108th Congress covered such unreferred budget matters. 149 CONG. REC. 24863, 24864, 108th Cong. 1st Sess., Oct. 16, 2003.

1. 2 USC § 645.

2. Although somewhat unusual statutory language, this phraseology is used in section 306 of the Congressional Budget Act.

Budget on a measure that had not been reported by that committee, in violation of section 306 of the Congressional Budget Act, and ruled out of order.

On Sept. 8, 1999,(3) an amendment containing an emergency designation in an appropriation bill was ruled out of order for violating section 306 of the Congressional Budget Act:

AMENDMENT OFFERED BY MR. FILNER

Mr. [Bob] FILNER [of California]. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. FILNER:
>
> In title I, in the item relating to ''VETERANS HEALTH ADMINISTRATION—MEDICAL CARE'', insert at the end the following:
>
> In addition, for ''Medical Care'', $1,100,000,000: *Provided*, That the Congress hereby designates the entire such amount as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985: *Provided further*, That such amount shall be available only to the extent of a specific dollar amount for such purpose that is included in an official budget request transmitted by the President to the Congress and that is designated as an emergency requirement pursuant to such section 251(b)(2)(A).

Mr. FILNER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore.(4) Is there objection to the request of the gentleman from California?

There was no objection.

Mr. [James] WALSH [of New York]. Mr. Chairman, I reserve a point of order against the gentleman's amendment. . . .

POINT OF ORDER

Mr. WALSH. Mr. Chairman, I insist on a point of order against the amendment, if I could explain further.

The CHAIRMAN pro tempore. The gentleman from New York (Mr. WALSH) may state his point of order.

Mr. WALSH. Mr. Chairman, we have had this debate, the gentleman from California (Mr. FILNER) and I, for the better part of the afternoon.

The issue here is the offset that he provides under the rule, and he is asking for an emergency declaration. We considered that process and ultimately rejected it.

What we did was we found real dollars within the budget to allocate for veterans health, and what we did was provide a $1.7 billion increase over the President's request.

As the gentleman has stipulated to and agreed to, and I think it is a unanimous agreement now, the President's request for veterans medical health was not only inadequate, it was embarrassing. They later came back and they suggested that, yes, they thought that the $1.7 billion level was the right level and supported it. We received a letter from the Vice President on that.

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3. 145 CONG. REC. 20928–30, 106th Cong. 1st Sess.

4. Edward Pease (IN).

We also received letters from the American Legion and from the Veterans of Foreign Wars who agreed that $1.7 billion was the right amount to fund veterans health care.

I looked back at the budgets of the last 5 years, including this budget. We have gone from $15.7 billion in the 1996 enacted level to $19 billion this year. That is a $3.5 billion increase in funding for veterans. So we have striven mightily, in spite of the lack of support there seems to be in the executive branch for the veterans medical care budget.

The Congress, both parties, have supported plussing up this budget, and we made hard choices, as we have heard in the debate today. NASA was cut a billion dollars. There are programs in HUD operating subsidies, modernization funds in public housing where we had to go to help to fund the veterans health care. People want more money for Section 8 vouchers, but the choices were difficult.

We cannot appropriate these funds because they are not available to us, Mr. Chairman. For that reason, I would restate and insist on the point of order against the amendment because it proposes to change existing law, constitutes legislation in an appropriations bill; therefore, violates clause 2, rule XXI and because it violates section 306 of the Budget Act that deals with matters in the jurisdiction of the Committee on the Budget.

The CHAIRMAN pro tempore. Does the gentleman from California (Mr. FILNER) seek to be heard on the point of order?

Mr. FILNER. Mr. Chairman, speaking on the point of order, Mr. Chairman, I say to my friend, the gentleman from New York (Mr. WALSH), I want to legislate on this appropriations bill. We were not allowed to do any legislation in our authorizing committee. The Chair just refused to allow motions from the minority side.

The gentleman says we have real dollars for our $1.7 billion. I am asking for real dollars here. We have it in our command. It is being given to people, special interests, in the utility industry. It is being given to special interests for multinational corporations. It is being given to those who make $200,000 or more a year. Why not give a billion to the veterans who made our country as great as it is?

So we have the real dollars, Mr. Chairman, and we should legislate on this appropriations bill, and I hope the Chair would find in our favor.

The CHAIRMAN pro tempore. The Chair finds that a proposal to designate an appropriation as "emergency spending" within the meaning of the budget-enforcement laws is fundamentally legislative in character. It does not merely make the appropriation. Instead, it characterizes the appropriation otherwise made. The resulting emergency designation alters the application of existing law with respect to that appropriation. Thus, the proposal is one to change existing law. On these premises and based on previous rulings of the Chair earlier today, the Chair holds that the amendment offered by the gentleman from California, by including a proposal to designate an appropriation as "emergency spending" within the meaning of the budget-enforcement laws, constitutes legislation in violation of clause 2(b) of rule XXI.[5]

The Chair also finds that a proposal to designate an appropriation as "emergency spending" within the meaning of the budget-enforcement laws is a matter within the jurisdiction of the Committee on the Budget under clause 1(e) of rule X.

On that premise the Chair holds that the amendment offered by the gentleman from California, because it relates to such a matter on a bill that was not referred[6] to that committee, also violates section 306 of the Congressional Budget Act of 1974.

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5. For more information on the prohibition against legislating on an appropriation bill, see generally Deschler's Precedents Ch. 26, *supra*. See also *House Rules and Manual* §§ 1052, *et seq.* (2011).

6. While it is true that a committee cannot report a measure (or be discharged from its consideration) if it has not been formally referred such a measure, the language of section 306 speaks only of a requirement to report or be discharged from consideration.

The point of order is sustained on each of the grounds stated. The amendment is not in order.

§ 16.2 An amendment directing that certain lease-purchase agreements be "scored" for budget purposes on an annual basis was held to "deal with" matter within the jurisdiction of the Committee on the Budget on a bill not reported by that committee, in violation of section 306 of the Congressional Budget Act.(1)

On July 19, 1999,(2) the following occurred:

AMENDMENT NO. 10 OFFERED BY MR. BEREUTER

Mr. [Douglas] BEREUTER [of Nebraska]. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

> Part B amendment No. 10 offered by Mr. BEREUTER:
> Page 35, after line 9, insert the following:
> **SEC. 211. LEASE-PURCHASE AGREEMENTS.**
> Whenever the Department of State enters into lease-purchase agreements involving property in foreign countries pursuant to section 1 of the Foreign Service Buildings Act (22 U.S.C. 292), budget authority shall be scored on an annual basis over the period of the lease in an amount equal to the annual lease payments.

Mr. [Saxby] CHAMBLISS [of Georgia]. Mr. Chairman, I reserve the right to raise a point of order on the amendment of the gentleman from Nebraska (Mr. BEREUTER).

The CHAIRMAN pro tempore.(3) The point of order is reserved.

Pursuant to House Resolution 247, the gentleman from Nebraska (Mr. BEREUTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Nebraska (Mr. BEREUTER). . . .

POINT OF ORDER

The CHAIRMAN pro tempore. Does the gentleman from Georgia (Mr. CHAMBLISS) insist on his point of order?

Mr. CHAMBLISS. I do, Mr. Chairman.

I object to the amendment under section 306 of the Congressional Budget Act.

Mr. Chairman, the amendment violates section 306 of the Congressional Budget Act of 1974. Section 306 prohibits the consideration of any amendment that is within the jurisdiction of the Committee on the Budget and which is offered to a bill that was neither reported or discharged from the Committee on the Budget.

The amendment of the gentleman from Nebraska modifies the budgetary treatment of certain leases entered into by the State Department. The budgetary treatment of such leases prescribed in the Balanced Budget Act and Emergency Deficit Control Act of 1985, which is, pursuant to clause 1 of House Rule X, within the jurisdiction of the Committee on the Budget.

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1. 2 USC § 637.

2. 145 CONG. REC. 16615, 16616, 106th Cong. 1st Sess.

3. Daniel Miller (FL).

Under current law and existing scoring procedures, the Federal Government is required to appropriate the full cost of any multi-year lease of office space in the fiscal year in which it enters into the lease agreement. This amendment permits the State Department to commit the Federal Government to a long-term lease agreement with an appropriation for only the first year of the cost of the lease. However, once the lease is agreed to, the Federal Government is saddled with a long-term financial commitment.

So I do object to the gentleman's amendment.

The CHAIRMAN pro tempore. Does the gentleman from Nebraska (Mr. BEREUTER) wish to be heard on the point of order?

Mr. BEREUTER. Yes, Mr. Chairman. It is my intention to attempt to amend the Budget Act to permit for lease-purchasing by the State Department for embassies and consulates and related facilities, but I do reluctantly, with great regret, acknowledge that a point of order does pertain against the amendment under the rule.

Mr. CHAMBLISS. Mr. Chairman, I would just say to the gentleman that we look forward to working with him to reconcile any concern he has.

The CHAIRMAN pro tempore. The point of order is sustained.

§ 16.3 While section 306 of the Congressional Budget Act[1] prohibits consideration of a concurrent resolution on the budget within the jurisdiction of the Committee on the Budget unless it has been reported by or discharged from that committee, adoption by the House of a special order of business reported from the Committee on Rules making in order consideration of an unreported concurrent resolution on the budget has the inevitable effect, under the precedents,[2] of "discharging" the Committee on the Budget consistent with the statute.

On Mar. 13, 1986,[3] a special order adopted by the House providing for consideration of an unreported concurrent resolution on the budget had the effect of discharging the Committee on the Budget from further consideration of that resolution, and need not have contained the term "discharge" or waived points of order under section 306 of the Congressional Budget Act:

The SPEAKER pro tempore.[4] Pursuant to House Resolution 397 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the concurrent resolution, House Concurrent Resolution 296.

POINT OF ORDER

Mr. [Hank] BROWN of Colorado. Mr. Speaker, I rise to make a point of order against consideration of House Concurrent Resolution 296.

The SPEAKER pro tempore. The gentleman will state his point of order, please.

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1. 2 USC § 637.

2. See Deschler's Precedents Ch. 21 §§ 20.1, *et seq.*, *supra*.

3. 132 CONG. REC. 4638, 4639, 99th Cong. 2d Sess.

4. Dale Kildee (MI).

Mr. BROWN of Colorado. Mr. Speaker, this resolution proposes a congressional budget for the U.S. Government for fiscal years 1987, 1988, and 1989. It fails to comply with section 306 of the Congressional Budget Act.

Section 306 of the Congressional Budget Act is very clear. It says:

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

Now, Mr. Speaker, section 308[5] was reaffirmed last year in the debt limit bill, the balanced budget, and Emergency Deficit Control Act. It is on our books as Public Law 99–177.

House Concurrent Resolution 296 clearly is legislation dealing with the congressional budget that must be handled by the Budget Committee. Since the committee has neither reported or been discharged from consideration of the resolution, bringing the resolution to the floor violates section 306.

The rule reported by the Rules Committee makes in order the consideration of House Concurrent Resolution 296, but it does not waive any point of order against the resolution for failing to comply with section 306.

Now, Mr. Speaker, some might argue that by adoption of the rule we have somehow waived section 306.

Let me refer this body and the Chair to the resolution itself and the rule that we just passed. It is very clear that there is no waiver within that resolution to section 306 of the Budget Act.

To hold contrary, to hold somehow that this rule does something that it does not say, is a clear violation of the rules of this House, and I would ask that my point of order be upheld.

The SPEAKER pro tempore (Mr. KILDEE). Does any other Member wish to speak on the point of order? If not, the Chair will rule.

The Chair, first of all, will reread for the House section 306. The section reads:

> "SEC. 306. No bill or resolution, and no amendment to any bill or resolution, dealing with any matter which is within the jurisdiction of the Committee on the Budget of either House shall be considered in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an amendment to such a bill or resolution.

The rule just adopted does discharge the Committee on the Budget. It has that inevitable effect under the precedents. The rule needs no waiver of section 306 because this procedure is in compliance with section 306 and within the authority of the Committee on Rules.

The Chair, therefore, overrules the point of order.

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5. As printed in the *Congressional Record*. The gentleman probably meant section 306 of the Budget Act given the context of the argument.

E. Budgetary Enforcement in the Absence of a Budget Resolution

§ 17. "Deeming" Resolutions

As noted earlier, a budget resolution takes the form of a concurrent resolution and as such must be adopted in identical form by both Houses of Congress in order to be effective. Adoption of a concurrent resolution on the budget by one House alone is not sufficient to render any of its provisions binding on either House. Without a budget resolution in place, many points of order under the Congressional Budget Act remain unenforceable.

Nevertheless, there have been numerous occasions in which Congress has found itself unable to agree to a concurrent resolution on the budget. In such circumstances, the House has typically adopted a resolution "deeming" the House-adopted budget resolution to have been adopted by Congress for purposes of enforcing Congressional Budget Act provisions. These "deemers" are orders of the House and therefore trigger the application of Congressional Budget Act points of order to proceedings in the House, particularly during the appropriations process. However, as mere orders of the House, such "deeming" resolutions have no application to Senate procedures, and the Senate may not give cognizance to House actions ostensibly taken pursuant to the Congressional Budget Act (such as the passage of reconciliation legislation) where a concurrent resolution on the budget has not been agreed to by both bodies.[1]

In 1985,[2] and again in 1990,[3] the House adopted temporary measures "deeming" a House-adopted concurrent resolution on the budget to have been adopted by Congress for purposes of enforcing certain Congressional Budget Act points of order in the House. Such measures ceased to be effective when Congress completed action on a budget for the relevant fiscal years. In both of these cases, Congress did eventually complete action on a concurrent resolution on a budget.

But in recent years, similar "deeming" resolutions have been adopted by the House in cases where Congress did not ultimately adopt a budget resolution. The first such resolution was adopted by the House in 1998,[4] after the failure of both Houses of Congress to agree on a budget resolution for fiscal year 1999. Since then, there have been at least six additional

1. See § 21.6, *infra*.

2. See § 17.6, *infra*.

3. See § 18.3, *infra*.

4. See 144 CONG. REC. 12991, 105th Cong. 2d Sess., June 19, 1998 (H. Res. 477), and 145 CONG. REC. 76, 106th Cong. 1st Sess., Jan. 6, 1999 (H. Res. 5, sec. 2(a)).

"deemers" without a subsequent concurrent resolution. Such "deeming" language has usually been contained in a separate section of a special order of business resolution making in order consideration of another matter, such as an appropriation bill.

The scope of such "deemers" has varied over time. Such provisions may simply establish section 302(a) allocations for committees of the House for purposes of enforcing points of order under title III (or portions thereof) of the Congressional Budget Act.(5) On other occasions, such provisions have "deemed" an entire House-adopted budget resolution (or conference report on a budget resolution) to have "full force and effect" as though adopted by Congress.(6) Additionally, such provisions may provide (or alter) additional budgetary enforcement mechanisms, such as extending special budget rules provided by separate orders contained in an opening-day resolution adopting the rules of the House,(7) carrying forward authorities from a previous budget resolution,(8) or rendering inapplicable provisions of the former so-called "Gephardt rule" implementing debt ceiling increase procedures.(9) In some instances, the authorities contained in such a "deemer" have been carried forward by a separate order contained in an opening-day resolution establishing the standing rules of the House.(10)

"Deeming" Resolutions in the Absence of a Budget Resolution

§ 17.1 The House has adopted a special order of business resolution reported from the Committee on Rules containing a separate section providing that, pending adoption of a concurrent resolution on the budget by Congress, the provisions of a House-adopted budget resolution (with certain modifications) shall have "force and effect" in the House as though adopted by Congress.

On Apr. 17, 2012,(1) the House adopted the following resolution:

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5. 144 Cong. Rec. 12991, 105th Cong. 2d Sess., June 19, 1998 (H. Res. 477). The House has also established *ad hoc* section 302 allocations to govern evaluations of certain Congressional Budget Act points of order during consideration of specific measures. See 142 Cong. Rec. 13637, 104th Cong. 2d Sess., June 11, 1996 (H. Res. 451); and 142 Cong. Rec. 14079, 104th Cong. 2d Sess., June 13, 1996 (H. Res. 453).

6. See §§ 17.1, 17.2, 17.4, 17.5, 17.6, 18.3, *infra*; and 152 Cong. Rec. 8561, 109th Cong. 2d Sess., May 18, 2006 (H. Res. 818).

7. See § 17.2, *infra*.

8. See § 17.3, *infra*.

9. See §§ 17.3, 17.4, and 29, *infra*.

10. See § 17.5 and 149 Cong. Rec. 10, 108th Cong. 1st Sess., Jan. 7, 2003 (H. Res. 5, sec. 3(a)(4)).

1. 158 Cong. Rec. H1860 [Daily Ed.], 112th Cong. 2d Sess.

PROVIDING FOR CONSIDERATION OF H.R. 4089, SPORTSMEN'S HERITAGE ACT OF 2012, AND FOR OTHER PURPOSES

Mr. [Robert] BISHOP of Utah. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 614 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 614 . . .

SEC. 2. (a) Pending the adoption of a concurrent resolution on the budget for fiscal year 2013, the provisions of House Concurrent Resolution 112, as adopted by the House, shall have force and effect in the House as though Congress has adopted such concurrent resolution (with the modifications specified in subsection (b)).[2]

(b) In section 201(b) of House Concurrent Resolution 112, as adopted by the House, the following amounts shall apply:

(1) $7,710,000,000 (in lieu of $8,200,000,000) for the period of fiscal years 2012 and 2013 with respect to the Committee on Agriculture; and

(2) $3,490,000,000 (in lieu of $3,000,000,000) for the period of fiscal years 2012 and 2013 with respect to the Committee on Financial Services.

§ 17.2 The House has adopted a special order of business resolution reported from the Committee on Rules containing a separate section providing that, pending adoption of a concurrent resolution on the budget by Congress, the provisions of a House-adopted budget resolution shall have "force and effect" in the House as though adopted by Congress, and further providing that the allocations printed in the committee report accompanying the special order shall be considered to be the allocations required under section 302(a) of the Congressional Budget Act.

On June 1, 2011,[1] the House adopted the following resolution:

PROVIDING FOR CONSIDERATION OF H.R. 2017, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2012

Mr. [Thomas] REED [of New York]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 287 and ask for its immediate consideration.

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2. *Parliamentarian's Note:* The House later adopted a resolution (H. Res. 643, providing for consideration of an appropriation bill) containing a separate section amending this section of H. Res. 614. The text of that amendment is as follows: "House Resolution 614 is amended in section 2(a) by inserting 'and the allocations of spending authority printed in Tables 11 and 12 of House Report 112–421 shall be considered for all purposes in the House to be the allocations under section 302(a) of the Congressional Budget Act of 1974' before the period." Absent such language specifically designating those allocations as meeting the requirements of the Congressional Budget Act, enforcement of budgetary points of order based on those allocations would not be possible. For an example of a similar "deeming" resolution that arguably failed to properly designate proposed committee allocations for Budget Act enforcement purposes, see 152 CONG. REC. 8651, 109th Cong. 2d Sess., May 18, 2006 (H. Res. 818).

1. 157 CONG. REC. H3816–7 [Daily Ed.], 112th Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 287

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2017) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2012, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. Points of order against provisions in the bill for failure to comply with clause 2 of rule XXI are waived except for section 536. During consideration of the bill for amendment, the chair of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. When the committee rises and reports the bill back to the House with a recommendation that the bill do pass, the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. (a) Pending the adoption of a concurrent resolution on the budget for fiscal year 2012, the provisions of House Concurrent Resolution 34, as adopted by the House, shall have force and effect (with the modification specified in subsection (c)) in the House as though Congress has adopted such concurrent resolution. The allocations printed in the report of the Committee on Rules accompanying this resolution shall be considered for all purposes in the House to be the allocations under section 302(a) of the Congressional Budget Act of 1974 for the concurrent resolution on the budget for fiscal year 2012.

(b) The chair of the Committee on the Budget shall adjust the allocations referred to in subsection (a) to accommodate the enactment of general or continuing appropriation Acts for fiscal year 2011 after the adoption of House Concurrent Resolution 34 but before the adoption of this resolution.

(c) For provisions making appropriations for fiscal year 2011, section 3(c) of House Resolution 5 shall have force and effect through September 30, 2011.

§ 17.3 The House has adopted a special order of business resolution reported from the Committee on Rules "self-executing" the adoption of a budget enforcement resolution that, in the absence of a concurrent resolution on the budget, provided for budgetary enforcement mechanisms in the House (including binding section 302(a) allocations), carried forward certain authorities from the previous fiscal year's concurrent resolution on the budget, and disabled the operation of the former so-called "Gephardt rule."[1]

1. See § 29, *infra*.

On July 1, 2010,[2] the House adopted a special order of business (H. Res. 1500) that "self-executed" the passage of a unique budget enforcement resolution.

PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 4899, SUPPLEMENTAL APPROPRIATIONS ACT, 2010

Mr. [James] McGOVERN [of Massachusetts]. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 1500 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1500

Resolved, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 4899) making emergency supplemental appropriations for disaster relief and summer jobs for the fiscal year ending September 30, 2010, and for other purposes, with the Senate amendments thereto, and to consider in the House, without intervention of any point of order except those arising under clause 10 of rule XXI, a motion offered by the chair of the Committee on Appropriations or his designee that the House concur in the Senate amendment to the text with each of the five House amendments printed in the report of the Committee on Rules accompanying this resolution. The Senate amendments and the motion shall be considered as read. The motion shall be debatable for one hour and 30 minutes as follows: 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations; then 30 minutes equally divided and controlled by Representative Lee of California or her designee and an opponent; and then 30 minutes equally divided and controlled by Representative McGovern of Massachusetts or his designee and an opponent. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question except that the question of adoption of the motion shall be divided among the five House amendments. The first portion of the divided question shall be considered as adopted. If the remaining portions of the divided question fail of adoption, then the House shall be considered to have rejected the motion and to have made no disposition of the Senate amendment to the text.

SEC. 2. Upon adoption of the motion specified in the first section of this resolution—

(a) the Clerk shall engross the action of the House under that section as a single amendment; and

(b) a motion that the House concur in the Senate amendment to the title shall be considered as adopted.

SEC. 3. The chair of the Committee on Appropriations may insert in the Congressional Record not later than July 3, 2010, such material as he may deem explanatory of the Senate amendments and the motion specified in the first section of this resolution.

SEC. 4. House Resolution 1493 is hereby adopted.

SEC. 5. Clause 10(a) of rule XXI is amended to read as follows:

"(a)(1) Except as provided in paragraphs (b) and (c), it shall not be in order to consider any bill, joint resolution, amendment, or conference report if the provisions of such measure affecting direct spending and revenues have the net effect of increasing the on-budget deficit or reducing the on-budget surplus for the period comprising either—

2. 156 CONG. REC. H5342–3, 5357–8 [Daily Ed.], 111th Cong. 2d Sess.

"(A) the current year, the budget year, and the four years following that budget year; or

"(B) the current year, the budget year, and the nine years following that budget year.

"(2) The effect of such measure on the deficit or surplus shall be determined on the basis of estimates made by the Committee on the Budget relative to baseline estimates supplied by the Congressional Budget Office consistent with section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 and consistent with sections 3(4), 3(8), and 4(c) of the Statutory Pay-As-You-Go Act of 2010.

"(3) For the purpose of this clause, the terms 'budget year,' 'current year,' and 'direct spending' have the meanings specified in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, except that the term 'direct spending' shall also include provisions in appropriation Acts that make outyear modifications to substantive law as described in section 3(4)(C) of the Statutory Pay-As-You-Go Act of 2010.".

The SPEAKER pro tempore (Mr. [Anthony] WEINER [of New York]). The gentleman from Massachusetts is recognized for 1 hour. . . .

Mr. MCGOVERN. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, the rule provides for consideration of the Senate amendments to H.R. 4899 and makes in order a motion by the chair of the Appropriations Committee to concur in the Senate amendments with the five amendments printed in the Rules Committee report.

The rule waives all points of order against the motion except those arising under clause 10 of rule 21. . . .

Finally, the rule amends the time periods in clause 10 of rule XXI to align with the Statutory Pay-As-You-Go Act of 2010. . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. Pursuant to section 4 of the resolution, House Resolution 1493 is hereby adopted.

The text of the resolution is as follows:

H. RES. 1493

Resolved,

(a) BUDGET ENFORCEMENT.—For the purposes of budget enforcement:

(1) BUDGET ALLOCATIONS.—The following allocations shall be the allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974 to the Committee on Appropriations and shall be enforceable under section 302(f)(1) of that Act:

(A) FISCAL YEAR 2010.—In addition to amounts allocated under the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13), the allocation for new discretionary budget authority to the Committee on Appropriations shall be increased up to $538,000,000 for program integrity initiatives listed in section 422(a) of S. Con. Res. 13. The outlay allocation for fiscal year 2010 and fiscal year 2011 shall be adjusted accordingly.

(B) FISCAL YEAR 2011.—

(i) New discretionary budget authority, $1,121,000,000,000.

(ii) Discretionary outlays, $1,314,000,000,000.

(iii) New mandatory budget authority, $765,584,000,000.

(iv) Mandatory outlays, $755,502,000,000.

(2) DISCRETIONARY SPENDING ENFORCEMENT PROVISIONS.—The provisions of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13) shall remain in force and effect in the House, except that the references in section 424 (point of order against advance appropriations) to fiscal years 2010 and 2011 shall be references to fiscal years 2011 and 2012, respectively.

(b) ADDITIONAL ENFORCEMENT PROVISIONS.—For the purposes of the Congressional Budget Act of 1974 or the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13)—

(1) section 421 of S. Con. Res. 13 shall no longer apply to the consideration of bills, joint resolutions, amendments, or conference reports;

(2) the chairman of the Committee on the Budget may exclude the effect of any "current policy adjustment" as provided in section 4(c) of the Statutory Pay-As-You-Go Act of 2010 from a determination of the budgetary effects of any provision in a bill, joint resolution, amendment, or conference report; and

(3) the terms "budget year", "current year", and "direct spending" have the meanings given those terms in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, except that the term "direct spending" shall include provisions in appropriation Acts that make outyear modifications to substantive law as described under section 3(4)(C) of the Statutory Pay-As-You-Go Act of 2010.

(c) SENSE OF THE HOUSE ON DEFICIT REDUCTION.—

(1) FINDINGS.—The House finds that—

(A) passage of the Statutory Pay-As-You-Go Act of 2010, passage of legislation to reform the defense acquisition system, and passage of health care reform legislation reducing the deficit represented valuable contributions to fiscal responsibility;

(B) strengthening the economy and creating jobs are critical to reducing the long-term deficit;

(C) fiscally responsible investments in education, including the retention of high-quality teachers in the classroom, help to lay the foundation for a stronger economy;

(D) the discretionary levels for 2011 included in this resolution represent a reduction below the President's comparable budgetary request, and further contribute to fiscal discipline; and

(E) defending our country requires necessary investments and reforms to strengthen our military—including providing sufficient resources to aggressively pursue implementation of GAO recommendations to achieve efficiencies, and evaluating defense plans to ensure weapons systems that were developed to counter Cold War-era threats are not redundant and applicable to 21st century threats.

(2) SENSE OF THE HOUSE ON DEFICIT REDUCTION.—It is the sense of the House that—

(A) by 2015 the Federal budget should be in primary balance—meaning that outlays in the Federal budget shall equal receipts during a fiscal year, not counting outlays for debt service payments;

(B) the debt-to-GDP ratio should be stabilized at an acceptable level once the economy recovers;

(C) not later than September 15, 2010, the chairs of committees should submit for printing in the Congressional Record findings that identify changes in law that help achieve deficit reduction by reducing waste, fraud, abuse, and mismanagement, promoting efficiency and reform of government, and controlling spending within Government programs those committees may authorize;

(D) prior to the adjournment of the 111th Congress, any recommendations made by the National Commission on Fiscal Responsibility and Reform and approved by the Senate should be brought to a vote in the House of Representatives; and

(E) any deficit reduction achieved by the enactment of such legislation should be used for deficit reduction only and should not be available to offset the costs of future legislation.

(d) RESERVE FUND FOR DEFICIT REDUCTION.—Upon enactment of legislation containing recommendations in the final report of the National Commission on Fiscal Responsibility and Reform, established by Executive Order 13531 on February 18, 2010, that decreases the deficit for either time period provided in clause 10 of rule XXI of the Rules of the House of Representatives, the chairman of the Committee on the Budget shall, for the purposes of the Statutory Pay-As-You-Go Act of 2010, exclude any net deficit reduction from his determination of the budgetary effects of such legislation, to ensure that the deficit reduction achieved by that legislation is used only for deficit reduction and is not available as an offset for any subsequent legislation.

(e) HOUSE RULE XXVIII.—Nothing in this resolution shall be construed to engage rule XXVIII of the Rules of the House of Representatives.

§ 17.4 The House has adopted a special order of business resolution reported from the Committee on Rules providing for consideration of a conference report on a concurrent resolution on the budget and containing a separate section providing that, upon adoption of said conference report by the House and until the adoption of said conference report by Congress, the provisions of the conference report (including the joint explanatory statement) shall have "force and effect" in the House and for purposes of title III of the Congressional Budget Act, said conference report shall be considered as adopted by Congress.(1)

On May 19, 2004,(2) the House adopted the following resolution:

Mr. [Doc] HASTINGS of Washington. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 649 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 649

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the concurrent resolution (S. Con. Res. 95) setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

1. An additional subsection of the resolution also disabled the operation of the former so-called "Gephardt rule." See § 29, *infra*.

2. 150 CONG. REC. 10105, 108th Cong. 2d Sess.

SEC. 2. (a) Upon adoption in the House of the conference report to accompany Senate Concurrent Resolution 95, and until a concurrent resolution on the budget for fiscal year 2005 has been adopted by the Congress—

(1) the provisions of the conference report and its joint explanatory statement shall have force and effect in the House; and

(2) for purposes of title III of the Congressional Budget Act of 1974, the conference report shall be considered adopted by the Congress.

(b) Nothing in this section may be construed to engage rule XXVII.

SEC. 3. The House being in possession of the official papers, the managers on the part of the House at the conference on the disagreeing votes of the two Houses on H.R. 2660 shall be, and they are hereby, discharged to the end that H.R. 2660 and its accompanying papers, be, and they are hereby, laid on the table.

§ 17.5 The House has adopted a special order of business resolution reported from the Committee on Rules containing a separate section providing that, pending the adoption of a concurrent resolution on the budget, a House-adopted budget resolution shall have "force and effect" as though adopted by Congress and authorizing the chairman of the Committee on the Budget to submit section 302(a) allocations to the *Congressional Record* as though made pursuant to the Congressional Budget Act.

On May 22, 2002,[1] the House adopted the following resolution:

Mr. [Pete] SESSIONS [of Texas]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 428 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 428

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 4775) making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. The amendments printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. All points of order against provisions in the bill, as amended, are waived except as follows: page 4, lines 18 through 23; page 57, line 6, through page 58, line 22; page 92, lines 3 through 5. During consideration of the bill for further amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. During consideration of the

1. 148 CONG. REC. 8675, 8676, 107th Cong. 2d Sess.

bill, points of order against amendments for failure to comply with clause 2(e) of rule XXI are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. (a) Pending the adoption of a concurrent resolution on the budget for fiscal year 2003, the provisions of House Concurrent Resolution 353, as adopted by the House, shall have force and effect in the House as though Congress has adopted such concurrent resolution.

(b) The chairman of the Committee on the Budget shall submit for printing in the Congressional Record—

(1) the allocations contemplated by section 302(a) of the Congressional Budget Act of 1974, which shall be considered to be such allocations under a concurrent resolution on the budget;

(2) "Accounts Identified for Advance Appropriations," which shall be considered to be the programs, projects, activities, or accounts referred to section 301(b) of House Concurrent Resolution 353; and

(3) an estimated unified surplus, which shall be considered to be the estimated unified surplus set forth in the report of the Committee on the Budget accompanying House Concurrent Resolution 353 referred to in section 211 of such concurrent resolution.

(c) The allocation referred to in section 231(d) of House Concurrent Resolution 353 shall be considered to be the corresponding allocation among those submitted by the chairman of the Committee on the Budget under subsection (b)(1).

§ 17.6 The House has adopted a resolution reported from the Committee on Rules providing that a House-adopted concurrent resolution on the budget shall be considered to have been adopted by Congress for purposes of the Congressional Budget Act, that allocations printed in the *Congressional Record* on a certain date shall be considered to be those required under section 302(a) of the Congressional Budget Act, and that such provisions shall cease to apply upon final adoption by Congress of a concurrent resolution on the budget.

On July 24, 1985,[1] the House adopted the following resolution:

Mr. [Butler] DERRICK [of South Carolina]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 231 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 231

Resolved, That for the purposes of the provisions of the Congressional Budget Act of 1974 (Public Law 93–344), as they apply to the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 152, revising the congressional budget for the United States Government for the fiscal year 1985 and setting forth the congressional budget for the United States Government for the fiscal years 1986,

1. 131 CONG. REC. 20181, 99th Cong. 1st Sess.

1987, and 1988, as adopted by the House on May 23, 1985. For the purposes of this resolution, the allocations of budget authority and new entitlement authority printed in the Congressional Record of July 23, 1985 by Representative Gray of Pennsylvania, shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974 (Public Law 93–344).

SEC. 2. This resolution shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for the applicable fiscal year or years.

The SPEAKER pro tempore.(2) The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

§ 18. Committee Allocations Pursuant to Section 302

As noted in Section 11, a key piece of the congressional budget framework is the allocation of specified amounts of budget authority to the committees of the House and the Senate. Such allocations form the basis for evaluating certain Congressional Budget Act points of order and are therefore crucial in keeping committees (and particularly subcommittees of the Committee on Appropriations) within their specified budgetary limits. When Congress fails to adopt a concurrent resolution on the budget, those limits are unenforceable.

However, the House has on many occasions adopted "deeming" resolutions that establish section 302(a) allocations in the absence of a final budget resolution. Such allocations may be established as part of a broader "deemer" providing that an entire House-adopted budget resolution be considered as having been adopted by Congress for Budget Act purposes,(1) or they may be established in a more limited context (to provide, for example, a binding allocation for a single committee or even a single measure).(2) Section 302(a) allocations have also been established by separate order contained in an opening-day resolution adopting the standing rules of the House.(3)

In cases where Congress has adopted a concurrent resolution on the budget via amendments between the Houses rather than through a conference committee, neither a conference report nor a joint statement of managers is produced. Because the latter is the statutorily-prescribed location for the section 302(a) allocations,(4) Congress must take additional steps to formally establish binding section 302(a) levels—often a unanimous-consent request

2. Kenneth Gray (IL).

1. See § 17, *supra*.

2. See § 18.3, *infra*.

3. See § 18.2, *infra*.

4. 2 USC § 633(a).

to consider allocations printed in the *Congressional Record* as meeting the requirements of section 302(a).[5]

Finally, where technical or other errors are found in existing allocations, the House has provided that corrected allocations be considered as meeting the requirements of section 302(a). This has been done both by special order of business resolution[6] and unanimous consent.[7]

Establishing Section 302(a) Allocations in the Absence of a Budget Resolution—By Special Order of Business

§ 18.1 The House has, on diverse occasions, used special orders of business to establish section 302(a) allocations as part of a temporary budgetary enforcement mechanism in the absence of a final concurrent resolution on the budget.

As documented above, "deeming" resolutions that provide temporary budget enforcement mechanisms in the absence of a final concurrent resolution on the budget have often provided either that the section 302(a) allocations printed in a specified document (such as a committee report) be considered as those required by section 302(a) of the Congressional Budget Act,[1] or specific authority (typically to the chairman of the Committee on the Budget) to establish binding section 302(a) allocations.[2]

Establishing Section 302(a) Allocations in the Absence of a Budget Resolution—By Separate Order

§ 18.2 The House has required, via a separate order contained in an opening-day resolution adopting the standing rules for a Congress,[1] the chairman of the Committee on the Budget to submit

5. See § 18.6, *infra*.
6. See § 18.7, *infra*.
7. See § 18.8, *infra*.
1. See, *e.g.*, § 17.2, *supra*.
2. See, *e.g.*, § 17.5, *supra*.
1. Resolutions adopting the rules of the House are usually considered on opening day of a new Congress and typically contain "separate orders" that function as rules of the House for the duration of that Congress. In this case, the requirement for the chairman of the Committee on the Budget to submit section 302(a) allocations into the *Congressional Record* was exercised on Feb. 25, 1999. 145 CONG. REC. 3117, 3118, 106th Cong. 1st Sess. This same authority has been included in other resolutions adopting the rules of the House at the outset of a Congress. See 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (for corresponding submission to the *Congressional*

binding section 302(a) allocations into the *Congressional Record* where the prior Congress had not completed action on a pertinent budget resolution.

On Jan. 6, 1999,[2] the House adopted an opening-day resolution establishing the standing rules for a Congress containing the following authority as a "separate order":

SEC. 2. SEPARATE ORDERS.

(a) BUDGET ENFORCEMENT.—(1) Pending the adoption by the Congress of a concurrent resolution on the budget for fiscal year 1999—

(A) the chairman of the Committee on the Budget, when elected, shall publish in the Congressional Record budget totals contemplated by section 301 of the Congressional Budget Act of 1974 and allocations contemplated by section 302(a) of that Act for each of the fiscal years 1999 through 2003;

(B) those totals and levels shall be effective in the House as though established under a concurrent resolution on the budget and sections 301 and 302 of that Act; and

(C) the publication of those totals and levels shall be considered as the completion of Congressional action on a concurrent resolution on the budget for fiscal year 1999.

Establishing Section 302(a) Allocations in the Absence of a Budget Resolution—For One Committee Only

§ 18.3 The House has adopted a special order of business resolution reported by the Committee on Rules containing a separate section declaring that the allocation of spending and credit authority to the Committee on Appropriations[1] contained in a House report be considered as meeting the requirements of section 302(a) for that

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Record, see 157 CONG. REC. H1520–1 [Daily Ed.], 112th Cong. 1st Sess., Mar. 2, 2011); 153 CONG. REC. 23, 24, 110th Cong. 1st Sess., Jan. 4, 2007 (for corresponding submission to the *Congressional Record*, see 153 CONG. REC. 3160, 3161, 110th Cong. 1st Sess., Feb. 6, 2007); and 149 CONG. REC. 10, 11, 108th Cong. 1st Sess., Jan. 7, 2003 (for corresponding submission to the *Congressional Record*, see 149 CONG. REC. 180, 181, 108th Cong. 1st Sess., Jan. 8, 2003). In the case of the submission in 2003, an additional special order of business authorized a specific Member (the presumptive chairman of the Committee on the Budget) to make the submission prior to his election as chairman. 149 CONG. REC. 172, 173, 108th Cong. 1st Sess., Jan. 8, 2003. For an example of a similar separate order "deeming" the allocations contained in the budget resolution conference report from the previous Congress (adopted by the House only) to be those contemplated by section 302(a) of the Congressional Budget Act, see 151 CONG. REC. 44, 109th Cong. 1st Sess., Jan. 4, 2005 (H. Res. 5, sec. 3).

2. 145 CONG. REC. 76, 106th Cong. 1st Sess.

1. For another example of a special order establishing a section 302(a) allocation for the Committee on Appropriations only (in the absence of a final budget resolution), see 144 CONG. REC. 12991, 105th Cong. 2d Sess., June 19, 1998 (H. Res. 477). For examples of special orders establishing an allocation to govern consideration of a particular bill reported by a subcommittee of the Committee on Appropriations, see 142 CONG. REC. 13637, 104th Cong. 2d Sess., June 11, 1996 (H. Res. 451); and 142 CONG. REC. 14079, 104th Cong. 2d Sess., June 13, 1996 (H. Res. 453).

committee until final adoption by both Houses of a concurrent resolution on the budget.

On June 19, 1990,[2] the House adopted the following resolution:

WAIVING CERTAIN POINTS OF ORDER DURING CONSIDERATION OF H.R. 5019, ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1991

Mr. [Butler] DERRICK [of South Carolina]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 413 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 413

Resolved, That during consideration of the bill (H.R. 5019) making appropriations for energy and water development for the fiscal year ending September 30, 1991, and for other purposes, all points of order against the following provisions in the bill for failure to comply with clause 2 of rule XXII are waived: beginning on page 4, line 1, through page 17, line 5; beginning on page 20, line 16, through page 22, line 10; beginning on page 24, line 1, through page 29, line 6; beginning on page 33, line 1, through line 12; beginning on page 38, line 3, through page 62, line 7; beginning on page 65, line 1, through page 68, line 11; and beginning on page 72, line 9, through page 74, line 19; and all points of order against the following provisions in the bill for failure to comply with clause 6 of rule XXII are waived: beginning on page 4, line 1, through page 11, line 5; beginning on page 14, line 1, through page 16, line 24; beginning on page 20, line 23, through page 21, line 8; beginning on page 25, line 1, through page 27, line 15; beginning on page 33, line 1, through line 12; beginning on page 53, line 1, through page 54, line 2; beginning on page 57, line 20, through page 58, line 11, and beginning on page 66, line 1, through page 68, line 11. It shall be in order to consider the amendments printed in section 2 of this resolution, and all points of order against the amendments for failure to comply with the provisions of clause 2 of rule XXI are hereby waived.

SEC. 2. (a) The amendment to be offered by Representative Skaggs of Colorado, or his designee:

On page 46, line 14, insert the following before the period: ": *Provided,* That no funds in this Act shall be available for the Plutonium Recovery Modification project until 30 days after the Secretary of Energy has provided to the Congress his review of the Department of Energy's modernization report".

(b) The amendment to be offered by Representative Scheuer of New York, or his designee:

On page 47, line 25, insert the following before the period: ": *Provided further,* That $1,300,000 of the funds appropriated under this heading shall be used to carry out the Reduced Enrichment in Research and Test Reactors Program".

SEC. 3. (a) For purposes of sections 302 and 311 of the Congressional Budget Act of 1974, as amended (Public Law 93–344, as amended by Public Law 99–177) as they apply to the Committee on Appropriations and consideration of general appropriation bills, amendments thereto or conference reports thereon, in the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 310, setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, as adopted by the House on May 1, 1990. For purposes

2. 136 CONG. REC. 14602, 101st Cong. 2d Sess.

of this resolution, the allocations of spending and credit responsibility to the Committee on Appropriations printed in the star print of H. Rept. 101–455 shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974, as amended.

(b) This section shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for fiscal year 1991.

Establishing Section 602(a)[1] *Allocations Pursuant to Section 603*

§ 18.4 Pursuant to the authority found in section 603[2] of the Congressional Budget Act, the chairman of the Committee on the Budget submitted a section 602(a) allocation for the Committee on Appropriations into the *Congressional Record.*

On Apr. 18, 1991,[3] the chairman of the Committee on the Budget submitted the following for publication in the *Congressional Record*:

COMMUNICATION FROM THE CHAIRMAN OF THE COMMITTEE ON THE BUDGET REGARDING THE ALLOCATION FOR THE APPROPRIATIONS COMMITTEE FOR FISCAL YEAR 1992 PURSUANT TO SECTION 603 OF THE CONGRESSIONAL BUDGET ACT

The SPEAKER pro tempore.[4] Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

Mr. [Leon] PANETTA [of California]. Mr. Speaker, section 603 of the Congressional Budget Act, as amended by the Omnibus Budget Reconciliation Act of 1990, authorizes the chairman of the Committee on the Budget to submit to the House a spending allocation for the Committee on Appropriations if the Congress has not completed action on the budget resolution by April 15.

Although the House has now passed the budget resolution for fiscal year 1992, the Senate has not yet taken up the measure ordered reported by the Senate Budget Committee. Therefore, in order to allow the Appropriations Committee to begin work on its fiscal year 1992 spending bills in a manner consistent with the statutory spending caps, I hereby submit the section 602(a) allocation for that committee:

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1. The Budget Enforcement Act of 1990 added a new title VI to the Congressional Budget Act. For the years in which such title was operative (1990–1998), the requirement to allocate budget authority and outlays to the legislative committees of the House was found in section 602. Section 603 authorized the chairman of the Committee on the Budget to publish a section 602(a) allocation for the Committee on Appropriations after April 15 if no concurrent resolution on the budget had been agreed to by that date, in order to allow the Committee on Appropriations to begin work on appropriation bills in the absence of a budget resolution. For parliamentary inquiries regarding the operation of section 603, see 142 CONG. REC. 9141, 9142, 104th Cong. 2d Sess., Apr. 25, 1996. For more on the history of the Budget Enforcement Act of 1990 and title VI of the Congressional Budget Act, see § 11, *supra*.
2. *Id.*
3. 137 CONG. REC. 8581, 102d Cong. 1st Sess.
4. James Bacchus (FL).

[In millions of dollars]

	New budget authority	Outlays
Mandatory programs	208,450	203,337
Discretionary programs	513,505	527,458
Total:	721,955	730,795

As required by the act, the allocation is consistent with the discretionary spending limits contained in the President's budget.

I am also attaching an explanation of these figures, prepared by the staff of the Committee on the Budget.

EXPLANATION OF ALLOCATION UNDER SECTION 603 OF THE CONGRESSIONAL BUDGET ACT

The allocation meets the requirements of the Congressional Budget Act and Balanced Budget and Emergency Deficit Control Act.

As required by Section 603, for all three categories of discretionary programs (defense, international, and domestic), the amount to be allocated is computed by starting with the caps as stated in the "preview report" prepared by the Office of Management and Budget (OMB) and included in Part Five of the Budget of the United States Government, Fiscal Year 1992.

To those amounts are added the special budget authority allowances described in Sections 251(b)(2)(E)(i) and (ii) of Balanced Budget and Emergency Deficit Control Act. These amounts will, by law, cause an upward adjustment of the caps by the end of this session of Congress. By including them, the allocation will be consistent with the figures that will be used for fiscal year 1992 sequester calculations. (Also, it should be noted that the special budget authority adjustment is explicitly allowed to be included in budget resolutions under Section 606(d)(1) of the Congressional Budget Act.)

The special budget authority allowance is a specified percent of the total end-of-session caps, for all three categories over all three years (fiscal years 1991 through 1993). The specified figure is 0.079 percent for the international category and 0.1 percent for the domestic category. The end-of-session caps to which these percents are applied are OMB's start-of-session caps plus adjustments for: (1) the $172 million in new budget authority requested by the President for the IRS "hold harmless increment"; (2) the $12,158 million in new budget authority for the IMF quota increase requested by the President for fiscal year 1992; and (3) enacted emergencies in H.R. 1281 and H.R. 1282.

The three items just listed cause an upward adjustment to the end-of-session caps; these "hold-harmless" are specified in Sections 251(b)(2)(A), (C), and (D), respectively, of the Balanced Budget and Emergency Deficit Control Act. While they are assumed for purposes of computing the caps against which the special budget authority allowance percents are to be applied, they are not directly included in this allocation because Section 606(d)(2) of the Congressional Budget Act hold harmless for these three items by providing that any such funding not be counted for purposes of the Congressional Budget Act.

This computation of the discretionary caps for purposes of the Congressional Budget Act was used by CBO in computing its current estimate of the maximum deficit amount and by both the House and Senate Budget Committees in computing the caps applicable to the fiscal year 1992 budget resolution.

As a matter of policy, H. Con. Res. 121 as adopted by the House provides $392 million less in discretionary new budget authority for the international category (and,

therefore, the total allocation) than the amount of the cap included in this allocation. The conference agreement on the budget resolution will establish the ultimate level of the total allocation.

For mandatory programs funded by the Appropriations Committee, the amount allocated equals CBO's current estimate of the fiscal year 1992 baseline level of those programs.

Establishing Section 302(a) Allocations Through Special Authority Provided in a Budget Resolution

§ 18.5 The House has adopted a conference report on a concurrent resolution on the budget containing a provision authorizing the chairman of the Committee on the Budget to file a report establishing binding section 302(a) allocations and considering such allocations to be those required to be in the joint explanatory statement accompanying the conference report on the budget resolution.

On June 23, 1987,[1] the House adopted a concurrent resolution on the budget containing the following provision:

CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 93, CONCURRENT RESOLUTION ON THE BUDGET—FISCAL YEAR 1988

Mr. [Thomas] FOLEY [of Washington] submitted the following conference report and statement on concurrent resolution (H. Con. Res. 93) setting forth the Congressional Budget for the U.S. Government for the fiscal years 1988, 1989, and 1990:

CONFERENCE REPORT (H. REPT. 100–175)

[To accompany H. Con. Res. 93]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. Con. Res. 93) setting forth the Congressional Budget for the United States Government for the fiscal years 1988, 1989, and 1990, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

In lieu of the matter to be inserted by the Senate amendment insert the following: . . .

SECTION 302(A) ALLOCATION IN THE HOUSE

SEC. 13. The Chairman of the Committee on the Budget of the House of Representatives may file, not later than July 1, 1987, a report in the House containing the allocations required to be made pursuant to section 302(a) of the Congressional Budget Act of 1974. The report shall be printed as, and considered to be, a report of the Committee on the Budget and such allocations made in that report shall be considered to be the

1. 133 CONG. REC. 16879, 16885, 100th Cong. 1st Sess.

allocations required to be in the joint explanatory statement accompanying this resolution.

On June 26, 1986,[2] the House adopted a concurrent resolution on the budget containing the following provision:

CONFERENCE REPORT ON S. CON. RES. 120, CONCURRENT RESOLUTION ON THE BUDGET, FISCAL YEAR 1987

Mr. [William] GRAY of Pennsylvania submitted the following conference report and statement on the Senate concurrent resolution (S. Con. Res. 120) setting forth the congressional budget for the U.S. Government for the fiscal years 1987, 1988, and 1989:

CONFERENCE REPORT (S. CON. RES. 120)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 120) setting forth the congressional budget for the United States Government for the fiscal years 1987, 1988, and 1989, having met, after full and free conference, have been unable to agree on a conference report because the conference decisions have changed certain budget figures outside the scope of the conference. As set forth in the accompanying Joint Explanatory Statement, the conferees do propose a congressional budget incorporated in a further amendment for the consideration of the two Houses. . . .

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the concurrent resolution (S. Con. Res. 120) setting forth the congressional budget for the United States Government for the fiscal years 1987, 1988, and 1989, report that the conferees have been unable to agree. This is a technical disagreement, necessitated by the fact that in some instances the conference decisions include figures which (for purely technical reasons) would fall outside the range between the corresponding House and Senate provisions. . . .

SECTION 302(a) ALLOCATIONS

SEC. 13. The Chairman of the Committee on the Budget of the House of Representatives may file, not later than July 9, 1986, a report in the House containing the allocations required to be made pursuant to section 302(a) of the Congressional Budget Act of 1974. The report shall be printed as, and considered to be, a report of the Committee on the Budget and such allocations made in that report shall be considered to be the allocations required to be in the joint explanatory statement accompanying this resolution.

Establishing Section 302(a) Allocations Subsequent to Adoption of a Budget Resolution

§ 18.6 The House has, by unanimous consent, agreed to the insertion of a table of section 302(a) allocations (reflecting modifications to

2. 132 CONG. REC. 15740, 15745, 99th Cong. 2d Sess.

the conference agreement for the budget resolution) representing additional amounts in a House amendment adopted after a conference report in disagreement was not acted upon,[1] into the *Congressional Record* by the chairman of the Committee on the Budget and to have such figures considered as meeting the requirements of section 302(a).

On June 4, 1979,[2] the following unanimous-consent requests were made in the House:

Mr. [Robert] GIAIMO [of Connecticut]. Mr. Speaker, I ask unanimous consent to print in the RECORD the tables showing the crosswalk allocations to the House and Senate committees under section 302(a) of the Congressional Budget Act, reflecting the agreements reached in conference on House Concurrent Resolution 107, the first budget resolution for fiscal year 1980, as modified by further amendment. In addition, I ask unanimous consent that these tables be considered as meeting the requirements of section 302(a) of the Budget Act.

The SPEAKER.[3] Is there objection to the request of the gentleman from Connecticut?

Mr. [John] ROUSSELOT [of California]. Mr. Speaker, reserving the right to object, will the distinguished chairman of the Committee on the Budget explain why this is necessary?

Mr. GIAIMO. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from Connecticut.

Mr. GIAIMO. Mr. Speaker, on May 21, 1979, the statement of managers on the conference report on House Concurrent Resolution 107, appeared in the RECORD. However, subsequent to that, action was taken which affected primarily the function 500—education, training, employment, and social services—allocation totals, specifically the addition of $350 million in budget authority. Since, procedurally speaking, in adopting the first concurrent resolution for fiscal year 1980, the House adopted an amendment and not a conference report, it is necessary to include at this time a revised allocation of the appropriate levels of new budget authority and outlays among the various committees. This allocation will guide the Congress in scorekeeping spending measures mostly affecting fiscal year 1980 as they are considered over the next few months.

It should be noted that within certain committees, an allocation for new entitlement authority has been included. For purposes of section 401(b)(2) and section 302 of the Budget Act, this amount represents the appropriate allocation of new budget authority,

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1. The conference report on the first budget resolution for fiscal year 1980 was filed in disagreement and differences between the Houses resolved through subsequent amendments between the Houses. Such amendments rendered the original section 302(a) allocations contained in the initial conference report obsolete. This unanimous-consent request established binding section 302(a) allocations based on the later compromise between the House and the Senate. For a similar unanimous-consent request regarding the second concurrent resolution on the budget for fiscal year 1980 (also adopted without recourse to a conference committee), see 126 CONG. REC. 2149, 2150, 96th Cong. 2d Sess., Feb. 6, 1980.
2. 125 CONG. REC. 13173, 13174, 96th Cong. 1st Sess.
3. Thomas O'Neill (MA).

as determined by the Budget Committee, to fund various new entitlement programs within the jurisdiction of a given committee over the next fiscal year.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, it is because this did not come back as a full conference report?

Mr. GIAIMO. If it had come back as a full conference report, the allocation would have been included in the conference report and this would have been taken care of then. But since, as we said, we did not come back with a full conference report, and since we have had a change after that in what was agreed to in the conference, as the gentleman will recall, whereby the Senate on its own added $350 million for educational programs, and we did the same here, it affected the allocation totals. This is the way in which we cure that and enable the committees of the House to proceed with their legislative entitlement and appropriating legislation under the allocation made to them, and it allows us to keep score properly under the Budget Act, as we are mandated to do.

Mr. ROUSSELOT. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

Mr. [James] CORMAN [of California]. Mr. Speaker, reserving the right to object, I would like to inquire of the chairman of the Committee on the Budget if he knows how much was allocated to the Committee on Ways and Means in function 500, if that is easily available?

Mr. GIAIMO. If the gentleman will yield, I am informed that it is $756 million.

Mr. CORMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Revising 302(a) Allocations—By Special Order of Business

§ 18.7 The House has adopted a special order of business resolution reported by the Committee on Rules containing a separate section "deeming" section 302(a) allocations reflected in a table of a House report to govern questions of order under the Congressional Budget Act.

On May 16, 2000,[1] the House adopted the following resolution:

PROVIDING FOR CONSIDERATION OF H.R. 4425, MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2001

Mr. [Thomas] REYNOLDS [of New York]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 502 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 502

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee

1. 146 CONG. REC. 7917, 106th Cong. 2d Sess.

of the Whole House on the state of the Union for consideration of the bill (H.R. 4425) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with clause 4(c) of rule XIII are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. After general debate the bill shall be considered for amendment under the five-minute rule. Points of order against provisions in the bill for failure to comply with clause 2 of rule XXI are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the *Congressional Record* designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendments the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. For purposes of enforcement of the Congressional Budget Act of 1974 in the House, the appropriate levels of total new budget authority and total budget outlays for fiscal years 2000 through 2005 prescribed by House Concurrent Resolution 290 pursuant to section 301(a)(1) of the Act shall be those reflected in the table entitled "Conference Report Fiscal Year 2001 Budget Resolution Total Spending and Revenues" on page 49 of House Report 106–577.

Revising 302(a) Allocations—By Unanimous Consent

§ 18.8 The House has agreed to a unanimous-consent request to insert a table containing revised section 302(a) allocations into the *Congressional Record* to correct errors made in the allocations contained in the joint statement of managers accompanying the concurrent resolution on the budget, and to have such revised allocations be considered as meeting the requirements contained in both the Congressional Budget Act and the most recent concurrent resolution on the budget.

On June 23, 1982,[1] the following unanimous-consent request was agreed to in the House:

1. 128 CONG. REC. 14950, 97th Cong. 2d Sess. For similar unanimous-consent requests to correct section 302(a) allocations subsequent to the adoption of a concurrent resolution on the budget, see 127 CONG. REC. 10916, 97th Cong. 1st Sess., May 28, 1981; and 124 CONG. REC. 14866, 14867, 95th Cong. 2d Sess., May 22, 1978. For an example of a unanimous-consent request to correct allocations contained in the joint statement

PERMISSION TO INSERT IN CONGRESSIONAL RECORD CORRECTED TABLES UNDER SECTION 302(a) OF CONGRESSIONAL BUDGET ACT AND SECTION 9 OF SENATE CONCURRENT RESOLUTION 92

Mr. [Leon] PANETTA [of California]. Mr. Speaker, I ask unanimous consent to insert in the RECORD tables showing the crosswalk allocations to the House committees under section 302(a) of the Congressional Budget Act and section 9 of Senate Concurrent Resolution 92, as corrected, and ask unanimous consent that these tables be considered as meeting the requirements of section 302(a) of the Budget Act and section 9 of Senate Concurrent Resolution 92.

Mr. Speaker, this has been cleared by the leadership on the minority side.

The SPEAKER pro tempore.(2) Is there objection to the request of the gentleman from California?

Mr. [Delbert] LATTA [of Ohio]. Mr. Speaker, reserving the right to object, and I shall not object, let me say that the gentleman has cleared this with our side. We have no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Authority to Revise Existing Section 302(a) Allocations to Reflect New Committee Organization

§ 18.9 The House adopted a resolution establishing the standing rules of the House on opening day of the 104th Congress containing separate authority for the chairman of the Committee on the Budget (when elected) to revise section 302(a) allocations to the committees of the House to reflect changes in the committee names and jurisdiction contemplated by such resolution.

On Jan. 4, 1995,(1) an opening-day resolution establishing the standing rules of the House for the 104th Congress, and containing the following provision, was adopted by the House:

Changes in Committee System

Sec. 202. . .

(c) The chairman of the Committee on the Budget, when elected, may revise (within the appropriate levels established in House Concurrent Resolution 218 of the One Hundred Third Congress) allocations of budget outlays, new budget authority, and entitlement authority among committees of the House in the One Hundred Fourth Congress to reflect changes in jurisdiction under clause 1 of rule X. He shall publish the revised allocations in the Congressional Record. Once published, the revised allocations shall be effective in the House as though made pursuant to sections 302(a) and 602(a) of the Congressional Budget Act of 1974.

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of managers during consideration of the conference report, see 122 CONG. REC. 13757, 13758, 94th Cong. 2d Sess., May 13, 1976.

2. Dennis Eckart (OH).

1. 141 CONG. REC. 464, 467, 104th Cong. 1st Sess.

F. Reconciliation

§ 19. Introduction.

Section 301(b)(2) of the Congressional Budget Act[1] provides for the optional inclusion of reconciliation directives in a budget resolution. Section 310 contains procedures for the reporting and consideration of reconciliation legislation.[2]

Reconciliation directives direct committees of the House and the Senate to recommend changes in existing law to achieve the spending and revenue levels contemplated by the concurrent resolution on the budget. In this way, existing law is "reconciled" with the non-binding budget priorities of the budget resolution containing the reconciliation directives.

The committees then submit these recommendations to the budget committees of their respective Houses. Section 310 of the Congressional Budget Act directs the budget committees to compile these recommendations, "without any substantive revision," into one bill for action in their respective Houses.[3] However, if only one committee of the House is directed to recommend changes to existing law, that committee reports legislation containing such recommendations directly to the House.[4]

Reconciliation directives have varied over time in the level of detail provided to the applicable committees. In some cases, such directives have specified the laws to be amended by reconciliation legislation,[5] though in most cases merely the total amount of deficit reduction required to be achieved has been specified. Reconciliation directives may call for multiple measures (rather than a single omnibus) to achieve the desired budgetary goals.[6] Reconciliation directives have been framed in terms of spending ceilings; as opposed to the more traditional method of indicating a specified total amount of budgetary savings to be achieved.[7]

Although there are no expedited procedures in the House for the consideration of reconciliation legislation (beyond the privilege afforded such measures by Rule XIII clause 5), the Senate proceeds with reconciliation legislation under the same expedited procedures as it does for consideration of

1. 2 USC § 632(b)(2). See also § 4, *supra*.

2. 2 USC § 641.

3. 2 USC § 641(b)(2).

4. 2 USC § 641(b)(1).

5. See § 20.3, *infra*.

6. See § 20.1, *infra*. For a Senate ruling that the Congressional Budget Act places no restriction on the number of reconciliation bills contemplated by reconciliation directives contained in a budget resolution, see 142 CONG. REC. 11941, 104th Cong. 2d Sess., May 21, 1996.

7. See § 20.2, *infra*.

budget resolutions.(8) Pursuant to Rule XIII clause 5(a)(2), reconciliation measures are filed from the floor as privileged.(9)

Section 310(d) provides that amendments to reconciliation bills must be budget neutral. Similarly, Rule XXI clause 7(10) provides that it is not in order in the House to consider a concurrent resolution on the budget containing reconciliation directives that would result in reconciliation legislation causing an increase in net direct spending.(11) Section 310(d)(5) of the Congressional Budget Act also gives the House Committee on Rules the ability to make in order amendments that achieve reconciliation goals if committees of the House fail to submit the required recommendations to the Committee on the Budget.(12)

Section 310 of the Congressional Budget Act has also been modified by subsequent budget enforcement statutes. Prior to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings),(13) the Congressional Budget Act permitted the second concurrent resolution on the budget, to initiate the reconciliation process as outlined in section 310. Gramm-Rudman-Hollings eliminated the requirement for a second concurrent resolution and added additional specific guidelines for the reconciliation process.(14) The Budget Enforcement Act of 1990(15) deleted the previous June 15 deadline for the completion of reconciliation legislation. The Budget Enforcement Act of 1997(16) clarified that committees, in meeting their reconciliation targets, may alternatively substitute revenue and spending changes by up to 20 percent of the sum of the absolute value of the reconciled changes as long as the result does not increase the deficit relative to that contemplated by the reconciliation directives.(17)

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8. For a discussion on the Senate procedures for the consideration of budget resolutions, see § 5, *supra*.

9. See *House Rules and Manual* § 853 (2011), and § 21.1, *infra*.

10. See *House Rules and Manual* § 1068b (2011), and § 5, *supra*.

11. Under a prior version of the rule, in effect during the 110th and 111th Congresses, reconciliation directives in a concurrent resolution on the budget could not require legislation that would either reduce a surplus or increase the deficit. *House Rules and Manual* § 1068b (2011).

12. See § 21.5, *infra*.

13. Pub. L. No. 99–177.

14. Gramm-Rudman-Hollings amended subsection (a) and added paragraph (1)(D) to subsection (a) along with new subsections (b) through (g). Before Gramm-Rudman-Hollings a point of order prevented the House from adjourning *sine die* before completion of the reconciliation process. See § 21.16, *infra*. After Gramm-Rudman-Hollings, a point of order now exists under section 310(f) against adjourning for more than three days in July before completing action on reconciliation legislation. 2 USC § 641(f).

15. Pub. L. No. 101–508.

16. Pub. L. No. 105–33.

17. 2 USC § 641(c)(1)(A). For a Senate ruling indicating that the reconciliation process may be used for revenue reduction, see 142 CONG. REC. 11940, 104th Cong. 2d Sess., May 21, 1996.

Congress has often completed consideration of reconciliation legislation through the use of conference committees to resolve differences between the House and the Senate. As noted above, reconciliation measures are typically quite complex, having been composed of diverse submissions from both House and Senate committees and compiled into a single omnibus measure. This complexity has resulted in lengthy and intricate conference appointments in order to ensure appropriate representation of House committees on the various portions of the measure.[18] This complexity has also been reflected in elaborate special orders of business that provide debate time for the numerous committees whose jurisdiction is represented in the underlying legislation.[19]

Conference reports on reconciliation legislation have been recommitted to conference.[20] The filing of a conference report on reconciliation legislation containing errors has been vacated by a special order providing for the refiling of a corrected report.[21] A special order of business has provided for the rejection of a conference report and the taking instead of alternate procedural steps to dispose of Senate amendments.[22]

Consideration in the Senate; the "Byrd Rule"

Section 313 of the Congressional Budget Act[1] provides a point of order in the Senate against consideration of "extraneous" provisions in a reconciliation bill. This provision of the Congressional Budget Act is popularly known as the "Byrd Rule," after the former Senator from West Virginia, Robert Byrd. Even though this point of order applies only to the Senate, it can be raised against provisions that originated in the House.

The definition of what constitutes an "extraneous" provision is found in section 313(b) of the Congressional Budget Act.[2] While the definition is extensive and contains numerous exceptions, the crux of the analysis is determining whether or not the provision in question has a budgetary impact.

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18. For an example of such a complex appointment of conferees, see Deschler-Brown Precedents Ch. 33 § 6.40, *supra*. Traditionally, "general" conferees (appointed for consideration of the entire measure) are appointed from the Committee on the Budget, while "limited" conferees are appointed from other committees of the House for the portions of the measure falling within their respective jurisdictions. For a statement by the chairman of the Committee on the Budget as to certain "rules" or "understandings" to govern conference proceedings on a complex reconciliation measure, see Deschler-Brown Precedents Ch. 33 § 5.16, *supra*. For a description of complicated signature sheets filed with a conference report on reconciliation legislation (reflecting the numerous "subconferences" held to address particular portions), see Deschler-Brown Precedents Ch. 33 § 18.14, *supra*.

19. See, *e.g.*, Deschler-Brown Precedents Ch. 33 § 21.8, *supra*.

20. Deschler-Brown Precedents Ch. 33 § 32.2, *supra*.

21. See § 21.13, *infra*.

22. Deschler-Brown Precedents Ch. 33 § 30.27, *supra*.

1. 2 USC § 644. This section was added by the Budget Enforcement Act of 1990 (Pub. L. No. 101–508, title XIII).

2. 2 USC § 644(b).

Provisions that do not have any budgetary impact (*i.e.*, do not produce any change in outlays or revenues) or whose budgetary impact is merely "incidental" to non-budgetary provisions will typically be considered extraneous.[3]

Under section 904(d) of the Congressional Budget Act,[4] an affirmative vote of three-fifths of the Senators duly chosen and sworn is required to sustain an appeal of the ruling of the Presiding Officer on a point of order under section 313 of the Congressional Budget Act.[5]

§ 20. Reconciliation Directives in Budget Resolutions

§ 20.1 Form of a conference report and joint explanatory statement to accompany a concurrent resolution on the budget containing reconciliation directives that were not only programmatic but also compartmentalized into three separate measures[1] to be recommended by the requisite committees by separate dates certain.

On June 7, 1996,[2] the following occurred:

Mr. [Wally] HERGER [of California] submitted the following conference report and statement on the concurrent resolution (H. Con. Res. 178) establishing the congressional budget for the United States Government for fiscal year 1997 and setting forth appropriate budgetary levels for fiscal years 1998, 1999, 2000, 2001, and 2002:

CONFERENCE REPORT (H. CON. RES. 178)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 178) establishing the congressional budget for the United States Government for fiscal year 1997 and setting forth appropriate budgetary levels for fiscal years 1998, 1999, 2000, 2001, and 2002, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1997.

The Congress determines and declares that the concurrent resolution on the budget for fiscal year 1997 is hereby established and that the appropriate budgetary levels for fiscal years 1998 through 2002 are hereby set forth.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this concurrent resolution is as follows: . . .

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3. See, *e.g.*, 141 CONG. REC. 30379, 104th Cong. 1st Sess., Oct. 27, 1995.

4. 2 USC § 621 note.

5. See 139 CONG. REC. 19763–67, 103d Cong. 1st Sess., Aug. 6, 1993. See also Deschler-Brown Precedents Ch. 33 §§ 19.24, 19.25, 25.26, *supra*.

1. This was the first instance of reconciliation directives contemplating multiple measures to achieve distinct budgetary goals.

2. 142 CONG. REC. 13433, 13437, 13438, 13458, 13459, 104th Cong. 2d Sess.

TITLE II—RECONCILIATION DIRECTIONS

SEC. 201. RECONCILIATION IN THE HOUSE OF REPRESENTATIVES.

(a) SUBMISSIONS.—

(1) WELFARE AND MEDICAID REFORM AND TAX RELIEF.—Not later than June 13, 1996, the House committees named in subsection (b) shall submit their recommendations to provide direct spending and revenues to the Committee on the Budget of the House of Representatives. After receiving those recommendations, the Committee on the Budget shall report to the House a reconciliation bill carrying out all such recommendations without any substantive revision.

(2) MEDICARE PRESERVATION.—Not later than July 18, 1996, the House committees named in subsection (c) shall submit their recommendations to provide direct spending to the Committee on the Budget of the House of Representatives. After receiving those recommendations, the Committee on the Budget shall report to the House a reconciliation bill carrying out all such recommendations without any substantive revision.

(3) TAX AND MISCELLANEOUS DIRECT SPENDING REFORMS.—Not later than September 6, 1996, the House committees named in subsection (d) shall submit their recommendations to provide direct spending, deficit reduction, and revenues to the Committee on the Budget of the House of Representatives. After receiving those recommendations, the Committee on the Budget shall report to the House a reconciliation bill carrying out all such recommendations without any substantive revision.

(b) INSTRUCTIONS FOR WELFARE AND MEDICAID REFORM AND TAX RELIEF.—

(1) COMMITTEE ON AGRICULTURE.—The House Committee on Agriculture shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $35,609,000,000 in outlays for fiscal year 1997, $36,625,000,000 in outlays for fiscal year 2002, and $216,316,000,000 in outlays in fiscal years 1997 through 2002.

(2) COMMITTEE ON COMMERCE.—The House Committee on Commerce shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $326,354,000,000 in outlays for fiscal year 1997, $473,718,000,000 in outlays for fiscal year 2002, and $2,395,231,000,000 in outlays in fiscal years 1997 through 2002.

(3) COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES.—The House Committee on Economic and Educational Opportunities shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $15,808,000,000 in outlays for fiscal year 1997, $19,670,000,000 in outlays for fiscal year 2002, and $105,331,000,000 in outlays in fiscal years 1997 through 2002.

(4) COMMITTEE ON WAYS AND MEANS.—(A) The House Committee on Ways and Means shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $381,199,000,000 in outlays for fiscal year 1997, $563,607,000,000 in outlays for fiscal year 2002, and $2,810,569,000,000 in outlays in fiscal years 1997 through 2002.

(B) The House Committee on Ways and Means shall report changes in laws within its jurisdiction sufficient to reduce revenues by not more than $122,400,000,000 for fiscal years 1997 through 2002.

(c) INSTRUCTIONS FOR MEDICARE PRESERVATION.—

(1) COMMITTEE ON COMMERCE.—The House Committee on Commerce shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $319,554,000,000 in outlays for fiscal year 1997, $420,915,000,000 in outlays for fiscal year 2002, and $2,237,231,000,000 in outlays in fiscal years 1997 through 2002.

(2) COMMITTEE ON WAYS AND MEANS.—The House Committee on Ways and Means shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $374,399,000,000 in outlays for fiscal year 1997, $510,804,000,000 in outlays for fiscal year 2002, and $2,652,569,000,000 in outlays in fiscal years 1997 through 2002.

(d) INSTRUCTIONS FOR TAX AND MISCELLANEOUS DIRECT SPENDING REFORMS.—

(1) COMMITTEE ON AGRICULTURE.—The House Committee on Agriculture shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $35,599,000,000 in outlays for fiscal year 1997, $36,614,000,000 in outlays for fiscal year 2002, and $216,251,000,000 in outlays in fiscal years 1997 through 2002.

(2) COMMITTEE ON BANKING AND FINANCIAL SERVICES.—(A) The House Committee on Banking and Financial Services shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: −$12,645,000,000 in outlays for fiscal year 1997, −$5,775,000,000 in outlays for fiscal year 2002, and −$41,639,000,000 in outlays in fiscal years 1997 through 2002.

(B) The House Committee on Banking and Financial Services shall report changes in laws within its jurisdiction that would reduce the deficit by: $0 in fiscal year 1997, $115,000,000 for fiscal year 2002, and $305,000,000 in fiscal years 1997 through 2002.

(3) Committee on commerce.—The House Committee on Commerce shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $318,054,000,000 in outlays for fiscal year 1997, $415,290,000,000 in outlays for fiscal year 2002, and $2,216,885,000,000 in outlays in fiscal years 1997 through 2002.

(4) Committee on economic and educational opportunities.—The House Committee on Economic and Educational Opportunities shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $15,025,000,000 in outlays for fiscal year 1997, $18,963,000,000 in outlays for fiscal year 2002, and $101,660,000,000 in outlays in fiscal years 1997 through 2002.

(5) Committee on government reform and oversight.—(A) The House Committee on Government Reform and Oversight shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $65,164,000,000 in outlays for fiscal year 1997, $82,594,000,000 in outlays for fiscal year 2002, and $442,230,000,000 in outlays in fiscal years 1997 through 2002.

(B) The House Committee on Government Reform and Oversight shall report changes in laws within its jurisdiction that would reduce the deficit by: $201,000,000 in fiscal year 1997, $590,000,000 for fiscal years 2002, and $2,837,000,000 in fiscal years 1997 through 2002.

(6) Committee on international relations.—The House Committee on International Relations shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $13,025,000,000 in outlays for fiscal year 1997, $10,311,000,000 in outlays for fiscal year 2002, and $67,953,000,000 in outlays in fiscal years 1997 through 2002.

(7) Committee on the judiciary.—The House Committee on the Judiciary shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $2,784,000,000 in outlays for fiscal year 1997, $4,586,000,000 in outlays for fiscal year 2002, and $26,482,000,000 in outlays in fiscal years 1997 through 2002.

(8) Committee on national security.—The House Committee on National Security shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $39,787,000,000 in outlays for fiscal year 1997, $49,774,000,000 in outlays for fiscal year 2002, and $271,815,000,000 in outlays in fiscal years 1997 through 2002.

(9) Committee on resources.—The House Committee on Resources shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $2,115,000,000 in outlays for fiscal year 1997, $2,048,000,000 in outlays for fiscal year 2002, and $11,652,000,000 in outlays in fiscal years 1997 through 2002.

(10) Committee on science.—The House Committee on Science shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $40,000,000 in outlays for fiscal year 1997, $46,000,000 in outlays for fiscal year 2002, and $242,000,000 in outlays in fiscal years 1997 through 2002.

(11) Committee on transportation and infrastructure.—The House Committee on Transportation and Infrastructure shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $18,315,000,000 in outlays for fiscal year 1997, $18,001,000,000 in outlays for fiscal year 2002, and $107,328,000,000 in outlays in fiscal years 1997 through 2002.

(12) Committee on veterans' affairs.—The House Committee on Veterans' Affairs shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $21,375,000,000 in outlays for fiscal year 1997, $22,217,000,000 in outlays for fiscal year 2002, and $130,468,000,000 in outlays in fiscal years 1997 through 2002.

(13) Committee on ways and means.—(A) The House Committee on Ways and Means shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee does not exceed: $372,342,000,000 in outlays for fiscal year 1997, $508,107,000,000 in outlays for fiscal year 2002, and $2,638,057,000,000 in outlays in fiscal years 1997 through 2002.

(B)(i) The House Committee on Ways and Means shall report changes in laws within its jurisdiction sufficient to reduce revenues by not more than $113,838,000,000 in fiscal years 1997 through 2002.

(ii) If a reconciliation bill referred to in subsection (a)(1) is enacted into law, then the revenue amount set forth in clause (i) shall be adjusted to reflect the revenue provisions of that Act.

(e) Definition.—For purposes of this section, the term ''direct spending'' has the meaning given to such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 202. RECONCILIATION IN THE SENATE.

(a) First Reconciliation Instructions.—Not later than June 21, 1996, the committees named in this subsection shall submit their recommendations to the Committee on the Budget of the Senate. After receiving those recommendations, the Committee on the Budget shall report to the

Senate a reconciliation bill carrying out all such recommendations without any substantive revision.

(1) Committee on agriculture, nutrition, and forestry.—The Senate Committee on Agriculture, Nutrition, and Forestry shall report changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $1,974,000,000 in fiscal year 1997, $26,169,000,000 for the period of fiscal years 1997 through 2002, and $5,967,000,000 in fiscal year 2002.

(2) Committee on finance.—(A) The Senate Committee on Finance shall report changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $260,000,000 in fiscal year 1997, $98,321,000,000 for the period of fiscal years 1997 through 2002, and $36,578,000,000 in fiscal year 2002.

(B) The Committee on Finance shall report changes in laws within its jurisdiction necessary to reduce revenues by not more than $122,400,000,000 for the period of fiscal years 1997 through 2002.

(b) Second Reconciliation Instructions.—No later than July 24, 1996, the Committee on Finance shall report to the Senate a reconciliation bill proposing changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $6,800,000,000 in fiscal year 1997, $158,000,000,000 for the period of fiscal years 1997 through 2002, and $52,803,000,000 in fiscal year 2002.

(c) Third Reconciliation Instructions.—No later than September 18, 1996, the committees named in this subsection shall submit their recommendations to the Committee on the Budget of the Senate. After receiving those recommendations, the Committee on the Budget shall report to the Senate a reconciliation bill carrying out all such recommendations without any substantive revision.

(1) Committee on agriculture, nutrition, and forestry.—The Senate Committee on Agriculture, Nutrition, and Forestry shall report changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $10,000,000 in fiscal year 1997, $65,000,000 for the period of fiscal years 1997 through 2002, and $11,000,000 in fiscal year 2002.

(2) Committee on armed services.—The Senate Committee on Armed Services shall report changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $79,000,000 in fiscal year 1997, $649,000,000 for the period of fiscal years 1997 through 2002, and $166,000,000 in fiscal year 2002.

(3) Committee on banking, housing, and urban affairs.—The Senate Committee on Banking, Housing, and Urban Affairs shall report changes in laws within its jurisdiction that reduce the deficit by $3,628,000,000 in fiscal year 1997, $3,605,000,000 for the period of fiscal years 1997 through 2002, and $462,000,000 in fiscal year 2002.

(4) Committee on commerce, science, and transportation.—The Senate Committee on Commerce, Science, and Transportation shall report changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $19,396,000,000 for the period of fiscal years 1997 through 2002, and $5,649,000,000 in fiscal year 2002.

(5) Committee on energy and natural resources.—The Senate Committee on Energy and . . .

Reconciliation

Under sections 301(b) and 310(a) of the Budget Act, the budget resolution may include reconciliation instructions directing the authorizing committees to make changes in mandatory spending and revenues. The purpose of reconciliation instructions, as set forth in section 310(a) of the Budget Act, is to effectuate the provisions and requirements of a concurrent resolution on the budget.

INTERVALS

House Resolution. The House resolution provides reconciliation instructions for the appropriate authorization committees to achieve specified aggregate targets for fiscal year 1997, fiscal year 2002, and the 6-year total for fiscal years 1997 through 2002. In addition the Committees on Banking and Financial Services and Government Reform and Oversight have deficit reduction targets for the same intervals.

Senate Amendment. The Senate amendment provides reconciliation instructions for its committees to achieve savings from a baseline for fiscal year 1997 and the 6-year total for fiscal years 1997 through 2002 (except for the tax relief bill, which is reconciled for fiscal year 2002, and the 6-year total of 1997 through 2002).

Conference Agreement. The conference agreement provides reconciliation instructions that will produce changes in mandatory spending for fiscal year 1997, fiscal year 2002, and

the 6-year total for fiscal years 1997 through 2002. The agreement provides instructions that will produce changes in revenues for the 6-year total for fiscal years 1997 through 2002.

DEADLINES, SUBJECT MATTER, AND COMMITTEES RECONCILED

House Resolution. The House budget resolution establishes a process for considering three separate reconciliation bills. On three specified dates, the appropriate House authorizing committees are instructed to submit their reconciliation recommendations to the House Committee on the Budget. The House Committee on the Budget will report, without substantive change, three separate reconciliation bills. Each of these bills will be fully privileged in the House as a reconciliation bill as defined in section 310 of the Congressional Budget Act.

The deadlines, subject matter, and list of instructed committees are summarized below:

— *May 24—Welfare and Medicaid Reform*. Committees reconciled: Agriculture, Commerce, Economic and Educational Opportunities, and Ways and Means.

— *June 14—Medicare Preservation*. Committees reconciled: Commerce and Ways and Means.

— *July 12—Tax Relief and Miscellaneous and Financial Services Direct Spending Reforms*. Committees reconciled: Banking and Financial Services, Commerce, Economic and Educational Opportunities, Government Reform and Oversight, International Relations, Judiciary, National Security, Resources, Science, Transportation and Infrastructure, Veterans' Affairs, and Ways and Means.

Although the House resolution does not include contingency provisions comparable to the Senate amendment, the House retains its prerogative to allow floor consideration of subsequent reconciliation bills if one or more of the reconciliation bills are vetoed.

Senate Amendment. Section 105 of the Senate amendment establishes a three-step interdependent reconciliation process. The first step of this process involves reform of the welfare and Medicaid programs, and the Agriculture and Finance Committees are instructed to report their recommended changes in law to the Senate Committee on the Budget by June 14, 1996. If this first reconciliation bill is enacted into law, then the following committees are instructed to report their recommended changes in law to the Senate Committee on the Budget by July 12, 1996: Agriculture, Nutrition, and Forestry; Armed Services; Banking, Housing, and Urban Affairs; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Governmental Affairs; Judiciary; Labor and Human Resources; and Veterans' Affairs. Finally, if both the first and second bills are enacted into law, the Finance Committee is instructed to report to the Senate by September 18, 1996, changes in law regarding reductions in revenue.

Conference Agreement. The conference includes instructions for considering three separate reconciliation bills. The submission deadlines, subject matter, and reconciled committees for the House are as follows:

— *June 13, 1996—Welfare and Medicaid Reform and Tax Relief*. House committees reconciled: Agriculture, Commerce, Economic and Educational Opportunities, and Ways and Means.

— *July 18, 1996—Medicare Preservation*. House committees reconciled: Commerce and Ways and Means.

— *September 6, 1996—Tax and Miscellaneous Direct Spending Reforms*. House committees reconciled: Agriculture, Banking and Financial Services, Commerce, Economic and Educational Opportunities, Government Reform and Oversight, International Relations, Judiciary, National Security, Resources, Science, Transportation and Infrastructure, Veterans' Affairs, and Ways and Means. The amount reconciled in this third reconciliation bill will reflect the full amount of any tax changes reconciled pursuant to this budget resolution conference report. The amount reconciled in the third reconciliation bill shall be adjusted to reflect any amount of revenue reduction enacted pursuant to this budget resolution conference report.

The House conferees note that the multi-reconciliation process provides maximum flexibility to achieve the changes in spending and the tax relief assumed in this conference report. For example, any of the spending or revenue changes assumed in the first bill could—if not enacted—be achieved in the third bill. Moreover, the reconciled committees are permitted to exceed the savings assumed in each of the reconciliation bills. Nevertheless, the process still requires reconciled committees ultimately to meet their targets whether incrementally through the separate reconciliation bills or solely through the third bill.

The submission deadlines, assumed subject matter, and reconciled committees for the Senate are as follows:

— *June 21, 1996—First Reconciliation Instruction: Assumed Welfare and Medicaid Reform and Miscellaneous Tax Relief*. Senate committees reconciled: Agriculture and Finance.

— *July 24, 1996—Second Reconciliation Instruction: Assumed Medicare Reform.* Senate committee reconciled: Finance.

— *September 18, 1996—Third Reconciliation Instruction: Assumed Tax Relief and Miscellaneous Direct Spending Reforms.* Senate committees reconciled: Agriculture, Nutrition, and Forestry; Armed Services; Banking, Housing, and Urban Affairs; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Governmental Affairs; Judiciary; Labor and Human Resources; and Veterans' Affairs.

The Senate conferees note that the Budget Act and the precedents of the Senate permit a concurrent resolution on the budget that includes reconciliation instructions which result in more than one reconciliation bill, and which includes a reconciliation instruction that standing alone could increase the deficit.

Section 310 of the Budget Act provides that reconciliation instructions may appropriately be included in a budget resolution. The Budget Act is silent as to the number of reconciliation bills which may result from any such instructions. Moreover, there is clear precedent for providing for more than one reconciliation bill. This is not the first time a budget resolution has done so.

The budget resolution for fiscal year 1994 (House Concurrent Resolution 64) which implemented President Clinton's first budget, provided for two reconciliation bills: an omnibus reconciliation bill and a debt limit bill. The omnibus bill considered as a result of that budget resolution contained many provisions which arguably did not contribute in any way to ''deficit reduction''—notably the substantial increase in spending in the Food Stamp Program and the Federal purchase of all childhood vaccines.

The budget resolution for fiscal year 1983 (Senate Concurrent Resolution 92) provided for an omnibus reconciliation bill and a tax reconciliation bill. The omnibus bill (Public Law 97–253) resulted from instructions that required Senate committees to report their recommended changes by July 20, 1982. A second set of instructions directed the Committee on Finance to report additional changes by July 12, 1982. These additional changes became the Senate's amendment to a nonreconciliation tax bill which originated in the House (the Tax Equity and Fiscal Responsibility Act [TEFRA], Public Law 97–248). Notwithstanding the fact that TEFRA was not considered on the floor of the Senate as a reconciliation bill, this was clearly an example of a reconciliation instruction directed at producing a separate reconciliation bill.

Section 310(a)(2) provides that a budget resolution may specify the total amount by which revenues are to be changed. It is important to note that section 310 dictates neither the magnitude nor direction of such changes. Thus nothing in the Budget Act prohibits reconciliation instructions from reducing revenues. The precedents confirm this authority. This is not the first time a budget resolution has contained among its reconciliation instructions an instruction for an increase in the deficit. Again in House Concurrent Resolution 64, the budget resolution for fiscal year 1994, the House Agriculture Committee was reconciled for outlay increases for fiscal years 1994 through 1998. This instruction permitted the House Agriculture Committee to successfully bring through the conference on the reconciliation bill language which substantially expanded spending in the Food Stamp Program. More recently, in last year's budget resolution (House Concurrent Resolution 67), the Finance Committee was reconciled for revenue reduction.

The first use of reconciliation was for legislation that reduced revenues. In 1975 the applicable budget resolution (House Concurrent Resolution 466) provided an instruction to both Ways and Means and Finance to report legislation decreasing revenues.

Notwithstanding the fact that the authors of the 1974 Budget Act were neutral as to the policy objectives of reconciliation, since 1975 reconciliation and reconciliation legislation has been used to reduce the deficit. The Senate conferees note that while this resolution includes a reconciliation instruction to reduce revenues, the sum of the instructions would not only reduce the deficit but would result in a balanced budget by 2002.

The Senate conferees also note that the three-bill approach to reconciliation contained in this resolution provides for a more thorough and orderly consideration of the issues involved. It provides for extensive consideration on the Senate floor of the proposal for balancing the budget by the year 2002 as embodied by this budget resolution. Rather than having just 20 hours of debate on a single bill and 10 hours of debate on a conference report, this three-step process would permit 60 hours of debate on the bills and 30 hours of debate on the conference reports. In addition, in separating the proposal to balance the budget into manageable issues, Senators are permitted to address their specific concerns to the issues contained in each bill, rather than forcing Senators to vote on an ''all-or-nothing proposition.'' Furthermore, the Senate conferees note that section 313 of the Budget Act, known as the ''Byrd Rule,'' provides great protection to the minority against extraneous matter being placed in any reconciliation bill and is reinforced by a 60-vote margin required to waive its restrictions.

Separate tables for the House and Senate summarize the levels or amounts reconciled to each of the appropriate committees are provided below: . . .

ELECTIVE OMNIBUS BILL

House Resolution. Section 4(a)(1)(4) of the House resolution provides the chairman with the discretion to designate an additional submission deadline for an omnibus reconciliation bill. The authority to include such a procedure is set forth in section 301(b)(4) of the Budget Act, which provides that the budget resolution may ''set forth such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act.'' This omnibus bill would be fully privileged as a reconciliation bill as defined in section 310 of the Budget Act.

Although the House resolution provides for the possibility of an omnibus reconciliation bill, each authorizing committee is still required to meet its reconciliation targets as if each of the reconciliation bills had been moved separately. Committees may submit recommendations previously vetoed and revise their submissions so long as they meet each of their separate targets.

Senate Amendment. The Senate amendment does not contain a comparable provision.

Conference Agreement. The House recedes to the Senate amendment.

BUDGET ENFORCEMENT

Under the Budget Act, the aggregate spending and revenue levels set forth in the concurrent budget resolution and the allocations in the accompanying report are enforced through points of order that may be raised on the House and Senate floor during the consideration of such legislation. Since the Constitution reserves to the Congress the power to revise its own rules, and the Budget Act specifies that the concurrent budget resolution may include ''such other matters, and require such other procedures, relating to the budget, as may be appropriate to carry out the purposes of this Act,'' the House and Senate budget resolutions include changes in congressional budgetary procedures.

§ 20.2 Form of a conference report to accompany a concurrent resolution on the budget containing reconciliation directives that instructed committees to report reconciliation legislation to achieve certain spending limits rather than certain amounts of budgetary savings.[1]

On June 26, 1995,[2] the following occurred:

CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 67

Mr. [John] KASICH [of Ohio] submitted the following conference report and statement on the bill (H. Con. Res. 67), setting forth the congressional budget for the United States Government for the fiscal years 1996, 1997, 1998, 1999, 2000, 2001, and 2002, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows: . . .

SEC. 105. RECONCILIATION.

(a) RECONCILIATION OF SPENDING REDUCTIONS.—

(1) SENATE COMMITTEES.—Not later than September 22, 1995, the committees named in this subsection shall submit their recommendations to the Committee on the Budget of the Senate. After receiving those recommendations, the Committee on the Budget shall report to the Senate a reconciliation bill carrying out all such recommendations without any substantive revision.

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1. *Parliamentarian's Note:* This approach differed from the traditional formulation of reconciliation directives. Typically, such directives require committees to recommend legislative changes that would result in a specified amount of savings over a defined period. That approach is consistent with the language in section 310(a) of the Congressional Budget Act, which speaks of a "change of such total amount" by reconciliation legislation. Here, each committee was allocated a total level of direct spending and instructed to recommend legislative changes that would not exceed those total amounts.
2. 141 CONG. REC. 17178, 17183, 17184, 104th Cong. 1st Sess.

(A) COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY.—The Senate Committee on Agriculture, Nutrition, and Forestry shall report changes in laws within its jurisdiction that provide direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to reduce outlays $2,503,000,000 in fiscal year 1996, $29,059,000,000 for the period of fiscal years 1996 through 2000, and $48,402,000,000 for the period of fiscal years 1996 through 2002.

(B) COMMITTEE ON ARMED SERVICES.—The Senate Committee on Armed Services shall report changes in laws within its jurisdiction that provide direct spending to reduce outlays $1,571,000,000 in fiscal year 1996, $1,888,000,000 for the period of fiscal years 1996 through 2000, and $2,199,000,000 for the period of fiscal years 1996 through 2002.

(C) COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS.—The Senate Committee on Banking, Housing, and Urban Affairs shall report changes in laws within its jurisdiction that provide direct spending to reduce outlays $481,000,000 in fiscal year 1996, $1,698,000,000 for the period of fiscal years 1996 through 2000, and $2,391,000,000 for the period of fiscal years 1996 through 2002. . . .

(2) HOUSE COMMITTEES.—

(A) GENERAL RULES.—(i) Not later than September 22, 1995, the House committees named in clauses (i) through (xii) of subparagraph (B) shall submit their recommendations to the House Committee on the Budget. After receiving those recommendations, the House Committee on the Budget shall report to the House a reconciliation bill carrying out all such recommendations without any substantive revision.

(ii) Each committee named in clauses (i) through (xi) of subparagraph (B) shall report changes in laws within its jurisdiction that provide direct spending such that the total level of direct spending for that committee for—

(I) fiscal year 1996,

(II) the 5-year period beginning with fiscal year 1996 and ending with fiscal year 2000, and

(III) the 7-year period beginning with fiscal year 1996 and ending with fiscal year 2002,

does not exceed the total level of direct spending in that period in the clause applicable to that committee.

(iii) Each committee named in clauses (i)(II), (iv)(II), (v)(II), and (vi)(II) of subparagraph (B) shall report changes in laws within its jurisdiction as set forth in the clause applicable to that committee.

(iv) The Committee on Ways and Means shall carry out subparagraph (B)(xii).

(B) COMMITTEE AMOUNTS.—(i)(I) The House Committee on Agriculture: $10,506,000,000 in outlays in fiscal year 1996, $44,741,000,000 in outlays in fiscal years 1996 through 2000, and $59,232,000,000 in outlays in fiscal years 1996 through 2002.

(II) In addition to the changes in law reported pursuant to subclause (I), the House Committee on Agriculture shall report changes in laws within its jurisdiction that provide direct spending (other than that defined within subparagraph (A) or (B) of section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) such that the total level of direct spending (as so defined) for that committee does not exceed: $26,748,000,000 in outlays in fiscal year 1996, $133,246,000,000 in outlays in fiscal years 1996 through 2000, and $192,270,000,000 in outlays in fiscal years 1996 through 2002.

(ii) The House Committee on Banking and Financial Services: −$13,087,000,000 in outlays in fiscal year 1996, −$50,061,000,000 in outlays in fiscal years 1996 through 2000, and −$65,112,000,000 in outlays in fiscal years 1996 through 2002.

(iii) The House Committee on Commerce: $285,537,000,000 in outlays in fiscal year 1996, $1,592,240,000,000 in outlays in fiscal years 1996 through 2000, and $2,361,708,000,000 in outlays in fiscal years 1996 through 2002.

(iv)(I) The House Committee on Economic and Educational Opportunities: $16,026,000,000 in outlays in fiscal year 1996, $77,346,000,000 in outlays in fiscal years 1996 through 2000, and $110,936,000,000 in outlays in fiscal years 1996 through 2002. . . .

(aa) fiscal year 1996,

(bb) the 5-year period beginning with fiscal year 1996 and ending with fiscal year 2000, and

(cc) the 7-year period beginning with fiscal year 1996 and ending with fiscal year 2002,

does not exceed the following level in that period: $349,172,000,000 in outlays in fiscal year 1996, $2,010,751,000,000 in outlays in fiscal years 1996 through 2000, and $3,002,706,000,000 in outlays in fiscal years 1996 through 2002.

(II) The House Committee on Ways and Means shall report changes in laws within its jurisdiction such that the total level of revenues for that committee for fiscal year 2000 is not less than $1,304,215,000,000 and for fiscal years 1996 through 2002 is not less than $17,938,254,000,000.

(III) The House Committee on Ways and Means shall report changes in laws to increase the statutory limit on the public debt to not more than $5,500,000,000,000.

(C) DEFINITION.—For purposes of this paragraph, the term ''direct spending'' has the meaning given to such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) Reconciliation of Revenue Reductions in the Senate.—

(1) Certification.—In the Senate, upon the certification pursuant to section 205(a) of this resolution, the Senate Committee on Finance shall submit its recommendations pursuant to paragraph (2) to the Senate Committee on the Budget. After receiving those recommendations, the Committee on the Budget shall add these recommendations to the recommendations submitted pursuant to subsection (a) and report a reconciliation bill carrying out all such recommendations without any substantive revision.

(2) Committee on finance.—Not later than five days after the certification made pursuant to section 205(a), the Senate Committee on Finance shall report changes in laws within its jurisdiction necessary to reduce revenues by not more than $50,000,000,000 in fiscal year 2002 and $245,000,000,000 for the period of fiscal years 1996 through 2002.

§ 20.3 Form of a conference report and joint explanatory statement to accompany a concurrent resolution on the budget (rejected by the House)[1] containing reconciliation directives that included not only recommended levels of savings to be achieved by reconciliation legislation but also programmatic detail regarding the method of achieving such savings.

On Oct. 4, 1990,[2] the following occurred:

Mr. PANETTA submitted the following conference report and statement on the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, 1995: . . .

RECONCILIATION

Sec. 4. (a) Not later than October 12, 1990, the committees named in subsections (b) and (c) of this section shall submit their recommendations to the Committees on the Budget of their respective Houses. After receiving those recommendations, the Committees on the Budget shall report to the House and Senate a reconciliation bill or resolution or both carrying out all such recommendations without any substantive revision.

HOUSE COMMITTEES

(b)(1) The House Committee on Agriculture shall report (A) changes in laws within its jurisdiction which provide spending authority as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974, sufficient to reduce outlays, (B) changes in laws within its jurisdiction which provide spending authority other than as defined in section 401(c)(2)(C) of the Act, sufficient to reduce outlays, or (C) any combination thereof, as follows: $1,409,000,000 in outlays in fiscal year 1991, $2,023,000,000 in outlays in fiscal year 1992, $2,827,000,000 in outlays in fiscal year 1993, $3,432,000,000 in outlays in fiscal year 1994, and $3,936,000,000 in outlays in fiscal year 1995. . . .

(12)(A) The House Committee on Ways and Means shall report changes in laws within its jurisdiction relating to medicare provider payments sufficient to reduce outlays as follows: $3,100,000,000 in outlays in fiscal year 1991, $5,200,000,000 in outlays in fiscal year 1992, $6,300,000,000 in outlays in fiscal year 1993, $7,000,000,000 in outlays in fiscal year 1994, and $8,400,000,000 in outlays in fiscal year 1995.

(B) The House Committee on Ways and Means shall report changes in laws within its jurisdiction relating to medicare beneficiaries and medicare beneficiary payments sufficient to reduce outlays as follows: $1,100,000,000 in outlays in fiscal year 1991, $3,300,000,000 in outlays in fiscal

1. Following rejection, this conference report was recommitted to the conference by special order and a new conference report filed and adopted. 136 Cong. Rec. 27919, 101st Cong. 2d Sess., Oct. 6, 1990 (H. Res. 496). For the text of the new conference report (containing the same form of reconciliation directives indicated here), see 136 Cong. Rec. 27958–67, 101st Cong. 2d Sess., Oct. 7, 1990 (H. Con. Res. 310). For more on these proceedings, see Deschler-Brown Precedents Ch. 33 §§ 28.3, 31.4, 31.5, *supra*.
2. 136 Cong. Rec. 27603, 27604, 101st Cong. 2d Sess.

year 1992, $5,200,000,000 in outlays in fiscal year 1993, $7,300,000,000 in outlays in fiscal year 1994, and $9,100,000,000 in outlays in fiscal year 1995.

(C) The House Committee on Ways and Means shall report changes in laws within its jurisdiction relating to other medicare program matters sufficient to reduce outlays as follows: $0 in outlays in fiscal year 1991, $400,000,000 in outlays in fiscal year 1992, $500,000,000 in outlays in fiscal year 1993, $500,000,000 in outlays in fiscal year 1994, and $600,000,000 in outlays in fiscal year 1995.

(D) The House Committee on Ways and Means shall report changes in laws within its jurisdiction which provide spending authority as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 (other than laws relating to medicare), sufficient to reduce outlays as follows: $0 in outlays in fiscal year 1991, $1,143,000,000 in outlays in fiscal year 1992, $1,178,000,000 in outlays in fiscal year 1993, $1,150,000,000 in outlays in fiscal year 1994, and $1,200,000,000 in outlays in fiscal year 1995.

(E) The House Committee on Ways and Means shall report changes in laws within its jurisdiction which provide spending authority other than as defined in section 401(c)(2)(C) of the Congressional Budget Act of 1974 sufficient to reduce outlays as follows: $120,000,000 in outlays in fiscal year 1991, $702,000,000 in outlays in fiscal year 1992, $692,000,000 in outlays in fiscal year 1993, $698,000,000 in outlays in fiscal year 1994, and $720,000,000 in outlays in fiscal year 1995.

(F) The House Committee on Ways and Means shall report changes in laws within its jurisdiction sufficient to increase revenues as follows: $14,225,000,000 in fiscal year 1991, $25,635,000,000 in fiscal year 1992, $26,040,000,000 in fiscal year 1993, $31,450,000,000 in fiscal year 1994, and $31,450,000,000 in fiscal year 1995.

(G) The House Committee on Ways and Means shall report changes in law within its jurisdiction which provides for an increase in the permanent statutory limit on the public debt by an amount not to exceed $1,900,000,000,000.

—Submission of Recommendations

§ 20.4 Where reconciliation directives in a first concurrent resolution on the budget[1] adopted by both Houses for the ensuing fiscal year direct certain House committees to submit recommendations for reductions in spending authority and increases in revenues to the Committee on the Budget by a date certain, the House may, by unanimous consent, extend the date for submission of such recommendations.[2]

On July 21, 1983,[3] the following occurred:

PERMISSION TO CHANGE DATE FOR HOUSE COMMITTEES TO SUBMIT LEGISLATION

Mr. [James] JONES of Oklahoma. Mr. Speaker, I ask unanimous consent that the date for the House committees to submit their legislation pursuant to section 3 of House Concurrent Resolution 91 be changed to September 23.

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1. The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a second annual budget resolution.

2. *Parliamentarian's Note:* The Senate had previously agreed by unanimous consent to the same extension for its committees. 129 CONG. REC. 19739, 98th Cong. 1st Sess., July 19, 1983. Although the term "shall submit" is used, the date set in a concurrent resolution on the budget for submission of reconciliation directives by legislative committees to the budget committees is technically not a mandatory date because the concurrent resolution does not include a parliamentary enforcement mechanism. In this case, H.R. 4169 (the Omnibus Budget Reconciliation Act of 1983) was not reported from the House Committee on the Budget until Oct. 20, 1983, almost a full month after the submission deadline (which was not extended beyond Sept. 23).

3. 129 CONG. REC. 20223, 20224, 98th Cong. 1st Sess.

The SPEAKER.[4] Is there objection to the request of the gentleman from Oklahoma?
There was no objection.

—Motion to Recommit

§ 20.5 Form of a motion to recommit a bill with instructions that the Committee on Post Office and Civil Service promptly report to the Committee on the Budget changes in law sufficient to reduce budget authority and outlays in accordance with the reconciliation directives in the most recent concurrent resolution on the budget.

On Aug. 3, 1982,[1] the following occurred:

MOTION TO RECOMMIT OFFERED BY MR. DERWINSKI

Mr. [Edward] DERWINSKI [of Illinois]. Mr. Speaker, I offer a motion to recommit with instructions, which I believe is covered under the rule.

The SPEAKER.[2] The gentleman is opposed to the bill?

Mr. DERWINSKI. I am in its present form, Mr. Speaker.

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

The Clerk read as follows:

> Mr. DERWINSKI moves to recommit the bill, H.R. 6862, to the Committee on Post Office and Civil Service with instructions that the Committee report changes in laws within the jurisdiction of that committee sufficient to reduce budget authority and outlays in accordance with the provisions of the first concurrent resolution on the budget for fiscal year 1983 (S. Con. Res. 92) and submit such recommendations promptly to the House Committee on the Budget pursuant to the provisions of the first concurrent resolution on the budget for fiscal year 1983 (S. Con. Res. 92), the Congressional Budget Act of 1974 (P.L. 93–344), and the Rules of the House.

The SPEAKER. The gentleman from Illinois (Mr. DERWINSKI) is recognized for 5 minutes in support of his motion to recommit.

§ 21. House Consideration of Reconciliation Bills

—Filed as Privileged

§ 21.1 Pursuant to former Rule XI clause 4(a)[1] the Committee on the Budget files from the floor as privileged the report on a reconciliation bill, which under section 310(b)(2) of the Congressional

4. Thomas O'Neill (MA).
1. 128 CONG. REC. 18967, 18968, 97th Cong. 2d Sess.
2. Thomas O'Neill (MA).
1. Now Rule XIII clause 5(a), *House Rules and Manual* § 853 (2011).

Budget Act[2] the Committee is required to report when more than one House committee has been directed to submit reconciliation recommendations.

On Oct. 26, 1987,[3] the following privileged report was filed:

REPORT ON H.R. 3545, OMNIBUS BUDGET RECONCILIATION ACT OF 1987

Mr. [Thomas] FOLEY [of Washington], from the Committee on the Budget, submitted a privileged report (Rept. No. 100–391) on the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the first concurrent resolution on the budget for fiscal year 1988, which was referred to the Union Calendar and ordered to be printed.

—Considered by Unanimous Consent

§ 21.2 By unanimous consent, the House commenced consideration of an omnibus reconciliation bill reported as privileged pursuant to section 310(b)(2) of the Congressional Budget Act.[1]

On Oct. 24, 1995,[2] the following occurred:

Mr. [Gerald] SOLOMON [of New York]. Mr. Speaker, I ask unanimous consent that it be in order at any time for the Speaker, pursuant to clause 1(b) of rule XXIII, to declare the House resolved into the Committee of the Whole House on the State of the Union for consideration of the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996; that the first reading of the bill be dispensed with; that all points of order against consideration of the bill be waived; that general debate be confined to the bill and the text of H.R. 2517; that general debate be limited to 3 hours equally divided and controlled by the chairman of the Committee on the Budget and Representative GEPHARDT, or his designee; that after general debate the Committee of the Whole rise without motion; and that no further consideration of the bill be in order except pursuant to a subsequent order of the House.

The SPEAKER pro tempore.[3] Is there objection to the request of the gentleman from New York?

There was no objection.

In that same budget cycle, on Oct. 26, 1995,[4] a special order providing separately for: (1) consideration of a concurrent resolution expressing the sense of Congress on a budgetary issue; and (2) completion of consideration of an omnibus budget reconciliation bill begun under the order of the House of Oct. 24, 1995, was considered in the House:

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 245 and ask for its immediate consideration.

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2. 2 USC § 641(b)(2); Rule XIII clause 5(a), *House Rules and Manual* § 853 (2011).

3. 133 CONG. REC. 29195, 100th Cong. 1st Sess.

1. 2 USC § 641(b)(2); Rule XIII clause 5(a), *House Rules and Manual* § 853 (2011).

2. 141 CONG. REC. 29156, 104th Cong. 1st Sess.

3. Gilbert W. Gutknecht (MN).

4. 141 CONG. REC. 29463, 104th Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 245

Resolved, That at any time after the adoption of this resolution it shall be in order to consider in the House the concurrent resolution (H. Con. Res. 109) expressing the sense of the Congress regarding the need for reform of the social security earnings limit, if called up by the majority leader or his designee. The concurrent resolution shall be debatable for twenty minutes equally divided and controlled by the majority leader and the minority leader or their designees. The previous question shall be considered as ordered on the concurrent resolution to final adoption without intervening motion.

SEC. 2. At any time after the adoption of this resolution, the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for further consideration of the bill (H.R. 2491) to provide for reconciliation pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996. All time for general debate under the terms of the order of the House of October 24, 1995, shall be considered as expired. Further general debate shall be confined to the bill and amendments specified in this resolution and shall not exceed three hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. After general debate the bill shall be considered for amendment under the five-minute rule. An amendment in the nature of a substitute consisting of the text of H.R. 2517, modified by the amendments printed in the report of the Committee on Rules accompanying this resolution, shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule. The bill, as amended, shall be considered as read. All points of order against provisions in the bill, as amended, are waived. No further amendment shall be in order except the further amendment in the nature of a substitute consisting of the text of H.R. 2530, which may be offered only by the minority leader or his designee, shall be considered as read, shall be debatable for one hour equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment. All points of order against the further amendment in the nature of a substitute are waived. After a motion that the Committee rise has been rejected on a day, the Chair may entertain another such motion on that day only if offered by the chairman of the Committee on the Budget or the majority leader or a designee of either. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendment as may have been adopted. The previous question shall be considered as ordered on the bill, as amended, and any amendment thereto to final passage without intervening motion except one motion to recommit with or without instructions. The motion to recommit may include instructions only if offered by the minority leader or his designee. The yeas and nays shall be considered as ordered on the question of passage of the bill and on any conference report thereon. Clause 5(c) of rule XXI shall not apply to the bill, amendments thereof, or conference reports thereon.

The SPEAKER pro tempore. The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

§ 21.3 By unanimous consent, the House considered a bill consisting of the texts of four House-passed bills, with the previous question considered as ordered on the bill to final passage without intervening motion (precluding the motion to recommit).

On Aug. 10, 1982,(1) the following occurred:

PROVIDING FOR RECONCILIATION PURSUANT TO FIRST CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1983

Mr. [James] JONES of Oklahoma. Mr. Speaker, I ask unanimous consent for the immediate consideration in the House of a bill which I send to the desk, consisting of the texts of the bills H.R. 6892, 6812, 6862, and 6782(2) as passed by the House, and that the previous question be considered as ordered on said bill to final passage without intervening motion.

The Clerk read the title of the bill.

The SPEAKER.(3) Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

—Considered Under Special Orders of Business

§ 21.4 The House has adopted a special order of business, as amended, providing for the consideration of a "spending" budget reconciliation bill(1) (reported as privileged pursuant to section 310(b)(2) of the Congressional Budget Act),(2) waiving all points of order against consideration in the House, making in order consideration of a Senate companion measure, and authorizing motions to amend such measure with the House-passed text.

On Nov. 17, 2005,(3) the following special order was adopted by the House:

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1. 128 CONG. REC. 20216, 97th Cong. 2d Sess.

Parliamentarian's Note: Four committees of the House that had received reconciliation directives reported measures carrying out those directives directly to the House, rather than submitting such recommendations to the Committee on the Budget. Those four measures had each passed the House individually. The unanimous-consent request here combined the texts of those four measures into a single "omnibus" reconciliation bill for House consideration.

2. This was considered a compilation of reconciliation bills.

3. Thomas O'Neill (MA).

1. The term "spending reconciliation bill" refers to legislation designed to accomplish a change in the amount of new budget authority, new entitlement authority, and new credit authority pursuant to the reconciliation directives of the concurrent resolution on the budget. See 2 USC § 641(a)(1). This is to be contrasted with a "revenue reconciliation bill" which refers to reconciliation legislation designed to achieve a certain level of revenues (see 2 USC § 641(a)(2)) or a "debt reconciliation bill" which refers to reconciliation legislation effectuating a change to the statutory limit on the public debt (see 2 USC § 641(a)(3)).

2. 2 USC § 641(b)(2).

3. 151 CONG. REC. 26581, 109th Cong. 1st Sess. For other examples of reconciliation legislation considered pursuant to special orders of business, see, *e.g.*, 127 CONG. REC. 14065, 14078, 14079, 14081–84, 97th Cong. 1st Sess., June 25, 1981; and 126 CONG. REC. 21184–94, 96th Cong. 2d Sess., Sept. 4, 1980.

PROVIDING FOR CONSIDERATION OF H.R. 4241, DEFICIT REDUCTION ACT OF 2005

Mr. [Adam] PUTNAM [of Florida]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 560 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 560

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 4241) to provide for reconciliation pursuant to section 201(a) of the concurrent resolution on the budget for fiscal year 2006. The bill shall be considered as read. The amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. All points of order against provisions in the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) two hours of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget; and (2) one motion to recommit with or without instructions.

SEC. 2. During consideration of H.R. 4241 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

SEC. 3. After passage of H.R. 4241, it shall be in order to take from the Speaker's table S. 1932 and to consider the Senate bill in the House. All points of order against the Senate bill and against its consideration are waived. It shall be in order to move to strike all after the enacting clause of the Senate bill and to insert in lieu thereof the provisions of H.R. 4241 as passed by the House. All points of order against that motion are waived.

—Rules Committee Recommending Further Changes

§ 21.5 Where section 310(b)(2) of the Congressional Budget Act[1] required the Committee on the Budget to report to the House, without any substantive revision, recommendations from committees to achieve budgetary savings as mandated by a concurrent resolution on the budget, the Committee on Rules[2] reported a "modified closed" rule self-executing adoption of a group of amendments both inserting additional savings provisions not recommended by committees and striking out other "extraneous" provisions not achieving budgetary savings.

On Sept. 24, 1986,[3] the following occurred:

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1. 2 USC § 641(b)(2).

2. Pursuant to section 310(d)(5) of the Congressional Budget Act, the Committee on Rules in the House is authorized to make in order amendments to achieve the goals of reconciliation directives contained in a concurrent resolution on the budget when the committees to which such directives were given fail to submit their recommendations to the Committee on the Budget.

3. 132 CONG. REC. 25883, 25884, 99th Cong. 2d Sess.

PROVIDING FOR CONSIDERATION OF H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. [Butler] DERRICK [of South Carolina]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 558 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 558

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, and the first reading of the bill shall be dispensed with. All points of order against the bill and against its consideration are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed 3 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the bill shall be considered as having been read for amendment under the 5-minute rule. The first group of amendments printed in the report of the Committee on Rules on this resolution shall be considered as having been adopted in the House and in the Committee of the Whole, subject to amendments made in order by the following sentence. No other amendment to the bill shall be in order except the second group of amendments printed in the report of the Committee on Rules on this resolution, said amendments shall be considered only in the order listed, and if offered by the Member indicated or his designee, in said report, said amendments shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, each of said amendments shall be debatable for not to exceed the time indicated in the report of the Committee on Rules on this resolution, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto, and all points of order against said amendments are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, which may not contain instructions. If section 3003 of the bill (incorporating the text of H.R. 1), as inserted by the first group of amendments printed in the report of the Committee on Rules on this resolution, is not stricken during the consideration of the bill, the clerk shall, in the engrossment of the bill H.R. 5300, strike section 3003 and insert in lieu thereof a new section 3003 containing the actual text of the bill H.R. 1 as passed by the House, with appropriate correction of section numbers, punctuation marks, and cross references.

The SPEAKER pro tempore (Mr. NATCHER).[4] The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. [Delbert] LATTA], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 558 is a modified closed rule providing for consideration of one of the most imperative pieces of budget related legislation that we must consider before the adjournment of this Congress: H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

4. William Natcher (KY).

This rule provides for 3 hours of general debate on the reconciliation bill and waives all points of order against consideration of the bill and against the bill. Finally, the rule provides for the disposition of some nine separate amendments either by operation of the rule or by making in order amendments by specific Members on specific issues.

All of the amendments made in order under this rule are printed in the report on the rule. The first group of amendments so listed includes those amendments which shall be considered to be adopted upon adoption of the rule. Three of these amendments add language to the text of H.R. 5300, and four amendments strike certain narrow provisions in H.R. 5300.

Included in the three amendments which add provisions to the bill upon adoption of the rule are the Budget Committee perfecting amendment and a Ways and Means Committee substitute. Together, Mr. Speaker, these two amendments represent the results of successful bipartisan House and Senate efforts to put together a package of additional savings to ensure that this reconciliation bill will achieve sufficient savings to meet the fiscal year 1987 Gramm-Rudman-Hollings deficit target. Together, these provisions will achieve more than $15 billion in fiscal year 1987 deficit reduction when scored against the Gramm-Rudman-Hollings baseline. These provisions are the heart of this reconciliation bill.

The third amendment adding language to the bill is a technical amendment requested by the Ways and Means Committee. This amendment refines the provisions dealing with State health insurance risk pools.

Mr. Speaker, in contrast with the amendments I have just discussed, which add all of the new package of savings to the reconciliation bill, this first group of amendments also includes amendments which strike language in the bill. At the outset, Mr. Speaker, I would note that each of the matters stricken from the reconciliation bill by operation of this rule address narrow issues, are provisions which would not reduce the deficit, and are all in fact extraneous to the reconciliation process.

The matters stricken upon adoption of this rule include the following:

Provisions in the Agriculture Committee title granting the Department of Agriculture authority to reduce the frequency of inspections in meat processing plants;

Provisions in the Merchant Marine and Fisheries Committee title dealing with the national defense reserve fleet;

Provisions in the Public Works Committee title calling for an Army Corps of Engineers study for a hydroelectric dam project in California; and

Provisions in the Public Works Committee title which have the effect of moving several transportation-related trust funds off budget.

Again, Mr. Speaker, I would note that in the case of each matter stricken by operation of this rule, the issues were extraneous to reconciliation, and subject to significant controversy and/or claims of jurisdiction by more than one committee of the House of Representatives.

The fourth amendment which strikes provisions upon adoption of the rule has been the source of some controversy over the last couple years. The provisions in question have the effect of taking the highway trust fund, the airport and airway trust fund and the inland waterways trust fund out of the unified budget. Put another way, Mr. Speaker, these trust funds are moved off budget by these provisions.

As the record of debate on this issue will detail, Mr. Speaker, this Member appreciates the concerns expressed by our colleagues who oversee these trust funds. However, the removal of these items from the budget or their exemption from Gramm-Rudman-Hollings serves only to undermine our overall budget balancing objectives. Following the recommendations of the chairman of the Committee on the Budget, Mr. Speaker, the Rules Committee opted to delete these provisions by operation of the rule.

In addition to the seven amendments I have just discussed, which are all deemed to be adopted upon adoption of this rule, Mr. Speaker, this rule also makes in order a second group of two amendments which are made in order during consideration of the bill for amendment.

The first of these two amendments is an amendment by Representative RODINO, of New Jersey, the distinguished chairman of the Committee on the Judiciary. The Rodino amendment is not amendable and is debatable for up to 30 minutes, equally divided by Mr. RODINO and a Member opposed thereto. The Rodino amendment would strike provisions in the Merchant Marine and Fisheries Committee title of the bill which amend the Ship Mortgage Act. Since the provisions may have the effect of amending the Bankruptcy Code, which is within the jurisdiction of the Judiciary Committee, this amendment was made in order.

The other amendment in this second group is an amendment by Representative WYLIE, the ranking minority member on the Committee on Banking, Finance and Urban Affairs, or his designee. The Wylie amendment is not amendable and is debatable for up to 30 minutes, equally divided by the proponent of the amendment and a member opposed thereto. The Wylie amendment would strike from the bill the text of H.R. 1, the Housing Act of 1986, which was passed by this Chamber earlier this year. Mr. Speaker, the housing bill is brought into reconciliation as part of the Budget Committee perfecting amendment which is adopted upon adoption of this rule. Because of the controversy over adding an authorization measure of this size to reconciliation, this amendment is made in order so the membership of the House can have an up-or-down vote on the propriety of including a housing authorization bill in reconciliation.

Finally, Mr. Speaker, the rule provides that after the bill has been considered for amendment and it is reported back to the House, no intervening motion to final passage, other than a motion to recommit, without instructions, shall be in order.

—Considered Before Adoption of a Budget Resolution by both Houses

§ 21.6 The House has adopted a special order of business resolution reported from the Committee on Rules making in order consideration of a bill reported from the Committee on the Budget pursuant to reconciliation directives contained in a House-adopted concurrent resolution on the budget prior to final congressional adoption of a budget resolution.[1]

1. *Parliamentarian's Note:* Congress would not ultimately complete action on a concurrent resolution on the budget for fiscal year 2013. See § 17.1, *supra*. Because a final budget had not been adopted by both Houses of Congress, the procedures for reconciliation legislation of section 310 of the Congressional Budget Act were not triggered, nor did the bill responding to the reconciliation directives in the House-adopted budget resolution qualify as privileged for consideration under Rule XIII clause 5 (*House Rules and Manual* § 853 (2011)). Instead, the Committee on the Budget reported a bill responding to such directives as if Congress had adopted a final budget, and the Committee on Rules made in order its consideration by special order. For more on the sequestration issues surrounding the reconciliation legislation at issue here, see § 26, *infra*.

On May 10, 2012,(2) the House adopted the following resolution:

H. RES. 648

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the bill (H.R. 5652) to provide for reconciliation pursuant to section 201 of the concurrent resolution on the budget for fiscal year 2013. All points of order against consideration of the bill are waived. An amendment in the nature of a substitute consisting of the text of Rules Committee Print 112–21 shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions in the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto, to final passage without intervening motion except: (1) two hours of debate equally divided and controlled by the chair and ranking minority member of the Committee on the Budget; and (2) one motion to recommit with or without instructions.

§ 21.7 The House has adopted a special order of business resolution reported from the Committee on Rules discharging several committees from consideration of an unreported bill providing spending savings contemplated by the reconciliation directives contained in a House-adopted concurrent resolution on the budget prior to final congressional adoption of a budget resolution.(1)

On Apr. 12, 1984,(2) the following occurred:

PROVIDING FOR THE CONSIDERATION OF H.R. 5394, OMNIBUS BUDGET RECONCILIATION ACT OF 1984

Mr. [Butler] DERRICK [of South Carolina]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 483 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 483

Resolved, That at any time after the adoption of this resolution, the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5394) to provide for reconciliation pursuant to section 2 of the first concurrent resolution on the budget for fiscal year 1985, as passed the House of Representatives, and the first reading of the bill shall be dispensed with. All points of order against the

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2. 158 CONG. REC. H2573 [Daily Ed.], 112th Cong. 2d Sess.

1. *Parliamentarian's Note:* Because the budget resolution containing these reconciliation directives had not yet been adopted by both Houses of Congress, such directives did not trigger the reconciliation procedures of section 310 of the Congressional Budget Act, nor did the bill responding to such directives qualify as privileged for consideration under Rule XI clause 4 (now Rule XIII clause 5, *House Rules and Manual* § 853 (2011)). Instead, House committees took up such bill as if reconciliation directives had been adopted by Congress and the Committee on Rules made in order its consideration by special order.

2. 130 CONG. REC. 9386, 9387, 98th Cong. 2d Sess.

consideration of the bill are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed six hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the bill shall be considered as having been read for amendment under the five-minute rule. No amendment to the bill shall be in order except the following: (1) an amendment to insert a new section in title III consisting of the text of section 1006 as recommended by the Committee on Ways and Means now printed in italic on page 993, line 19 through page 996, line 10 of H. Rept. 98–432, part 2, on H.R. 4170, and to insert a corresponding reference in the table of contents to title III of H.R. 5394, said amendment shall not be subject to amendment or to a demand for a division of the question in the House or in Committee of the Whole, and said amendment shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto, and (2) an amendment printed in the Congressional Record of April 10, 1984, by, and if offered by, Representative Pepper of Florida which shall not be subject to amendment but shall be debatable for not to exceed thirty minutes, to be equally divided and controlled by Mr. Pepper and a Member opposed thereto. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore.[3] The gentleman from South Carolina (Mr. DERRICK) is recognized for 1 hour.

Mr. DERRICK. . . .

The rule makes in order only two amendments, which themselves shall not be amendable:

First, an amendment to insert a new section in title III of the bill, consisting of the text of section 1006 of H.R. 4170 as reported by the Committee on Ways and Means and printed in italic in House Report 98–432, part 2, and to insert a corresponding reference to the table of contents of title III. This amendment is not subject to a division of the question in the House or in the Committee of the Whole, but it shall be debatable for 1 hour with the time equally divided between the proponent of the amendment and a Member opposed thereto.

This amendment contains the freeze on physician fees for medicare inpatient services and the mandatory assignment for physicians which were originally reported by the Committee on Ways and Means as an amendment to H.R. 4170, the Tax Reform Act of 1983. The amendment was not offered when the tax bill was considered since all the medicare provisions were removed from the bill and included instead in the reconciliation bill.

Since the amendment is not subject to a demand for the division of the question, either both the fee freeze and mandatory assignment will be added to the bill or neither will be.

Second, an amendment printed in the Congressional Record of April 10, 1984, by, and if offered by, Representative PEPPER of Florida. This amendment shall be debatable for 30 minutes, with the time equally divided and controlled by Representative PEPPER and a Member opposed to the amendment.

This amendment provides that physicians' claims for medicare reimbursement should be paid no more than 30 days after the approval of a claim. . . .

3. Brian Donnelly (MA).

Under normal circumstances no further House action would occur until the Senate acted on a budget resolution and the House and Senate agreed on the final form of a resolution. At that point any reconciliation instructions in the resolution would become binding, and House committees would submit recommendations for achieving savings to the House Budget Committee. The Budget Committee would then package the recommendations—without substantive change—and report a reconciliation bill to the House for consideration. . . .

In this situation we cannot wait for the regular process to run its course. It is imperative that we act now. Because of the need for prompt action the Budget Committee began last week to work with reconciled committees to put together a bill which satisfied the reconciliation directives contained in House Concurrent Resolution 280. These committees responded by providing the Budget Committee with legislative provisions to achieve the directed savings. Some of these provisions had been included in legislation previously reported by the various committees; some had been in earlier stages of committee consideration.

When the provisions from the reconciled committees had been assembled, Chairman JONES of the Budget Committee introduced the reconciliation package as H.R. 5394.

Subject to Rule XXI Clause 4

§ 21.8 The prohibition in Rule XXI clause 4[1] against legislative committees reporting bills containing provisions constituting appropriations applies to the Committee on the Budget in reporting reconciliation legislation to the House, even if the Committee on the Budget is in compliance with the requirement of section 310(b)(2) of the Congressional Budget Act to report the recommendations of other committees "without any substantive revision."

On Oct. 24, 1985,[2] a provision in an omnibus reconciliation bill making a direct appropriation was ruled out of order by the chair of the Committee of the Whole:

The CHAIRMAN.[3] When the Committee of the Whole rose on Wednesday, October 23, 1985, all time for general debate had expired.

Pursuant to the rule, the bill is considered as having been read for amendment under the 5-minute rule, an amendment to strike lines 8 through 10 on page 15 and insert in lieu thereof the following: "Which become available during fiscal year 1986, the Secretary shall, to the extent approved in appropriations acts, reserve authority to enter into obligations aggregating," shall be considered as having been adopted.

The text of the bill, as amended by an amendment considered as having been adopted pursuant to House Resolution 296, is as follows:

1. *Parliamentarian's Note:* Current Rule XXI clause 4 (formerly Rule XXI clause 5(a)) is the prohibition on reporting measures containing appropriations by a committee other than the Committee on Appropriations. *House Rules and Manual* § 1065 (2011).
2. 131 CONG. REC. 28745, 28791, 28812, 99th Cong. 1st Sess.
3. Eligio de la Garza (TX).

H.R. 3500

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Omnibus Budget Reconciliation Act of 1985''. . . .

SEC. 4110. RESCISSION.

Except as otherwise provided in this section, all funds appropriated to the Energy Security Reserve are hereby rescinded. Funds so rescinded shall include all funds appropriated to the Energy Security Reserve by the Department of the Interior and Related Agencies Appropriations Act, 1980 (Public Law 96–126) and subsequently made available to carry out title I, part B, of the Energy Security Act by Public Laws 96–304 and 96–514, and shall be deposited in the general fund of the Treasury. This rescission shall not apply to—

(1) $500,000,000 for cost-shared clean coal technology projects for the construction and operation of facilities to demonstrate the feasibility for future commercial application of such technology;

(2) $500,000,000, which is hereby appropriated to the Secretary of Energy for carrying out part B of title 1 of the Energy Security Act, as amended by this subtitle; and

(3) such amounts as may be necessary to make payments for projects or modules for which obligations were entered into under title I of the Energy Security Act before July 31, 1985. . . .

The CHAIRMAN. No amendments to the bill are in order except the following amendments which shall not be subject to amendment:

First, a motion, if offered by Representative FAZIO to strike subtitle B of title VIII, which shall be debatable for 30 minutes to be equally divided and controlled by Representative FAZIO and a Member opposed thereto;

Second, an amendment printed in the CONGRESSIONAL RECORD of October 17, 1985, by, and if offered by, Representative LATTA, as modified by the unanimous-consent order of the House of today, which shall be debatable for 1 hour, to be equally divided and controlled by Representative LATTA and a Member opposed thereto; and

Third, an amendment printed in the CONGRESSIONAL RECORD of October 17, 1985, by, and if offered by, Representative FLORIO, which shall be debatable for 30 minutes, to be equally divided and controlled by Representative FLORIO and a Member opposed thereto.

PARLIAMENTARY INQUIRY

Mr. [Sidney] YATES [of Illinois]. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. YATES. Mr. Chairman, is it in order at this point to make a point of order to the pending bill?

The CHAIRMAN. It is in order.

POINT OF ORDER

Mr. YATES. Mr. Chairman, I make a point of order against section 4110 of the bill, beginning on page 379, line 20 through page 380, line 17. This section contains the following language: "$500,000,000, which is hereby appropriated to the Secretary of Energy for carrying out Part B of title I of the Energy Security Act, as amended by this subtitle;".

Mr. Chairman, this language is clearly an appropriation, and since this bill was reported by a committee not having jurisdiction to report appropriations, the section is in violation of clause 5(a) of rule XXI of the House of Representatives.

The rule states that "No bill or joint resolution carrying appropriations shall be reported by any committee not having jurisdiction to report appropriations, * * *". The

language in question was a recommendation of the Committee on Energy and Commerce, which was included in this omnibus reconciliation bill by the Committee on the Budget, without change, pursuant to reconciliation procedures. Since neither committee has jurisdiction to report appropriations, in my opinion, the language violates rule XXI, clause 5(a).

I make this point of order.

The CHAIRMAN. The Chair will entertain the gentleman's point of order.

Does anyone desire to be heard on the point of order?

If not, the Chair will sustain the gentleman's point of order.

Mr. YATES. I thank the Chair.

The CHAIRMAN. The section is stricken.

Subject to Rule XXI Clause 5

§ 21.9 The prohibition in Rule XXI clause 5[1] against the reporting of certain tax and tariff legislation by committees other than the Committee on Ways and Means applies to the Committee on the Budget in reporting reconciliation legislation to the House, even if the Committee on the Budget is in compliance with the requirement of section 310(b)(2) to report the recommendations of other committees "without any substantive revision."

On Oct. 24, 1985,[2] the following occurred:

SEC. 3113. INDEBTEDNESS OF STUDENT LOAN MARKETING ASSOCIATION.

Section 439(h)(1) of the Act is amended by adding at the end thereof the following new sentence: "To the extent that the average outstanding amount of the obligations owned by the Association pursuant to the authority contained in subsection (d)(1)(B) of this section and as to which the income is exempt from taxation under the Internal Revenue Code of 1954 does not exceed the average stockholders' equity of the Association, the interest on obligations issued under this paragraph shall not be deemed to be interest on indebtedness incurred or continued to purchase or carry obligations for purposes of section 265 of the Internal Revenue Code of 1954." . . .

POINT OF ORDER

Mr. [Daniel] ROSTENKOWSKI [of Illinois]. Mr. Chairman, I raise a point of order against section 3113 of H.R. 3500.

I raise a point of order against section 3113 of H.R. 3500 on the grounds that it is in violation of clause 5(b) of House rule 21 which prohibits legislation carrying a tax or tariff measure from being reported by any committee not having jurisdiction to report tax or tariff measures.

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1. *Parliamentarian's Note:* Former Rule XXI clause 5(b) (now clause 5(a)) is the prohibition on reporting certain tax or tariff measures by a committee other than the Committee on Ways and Means. *House Rules and Manual* § 1066 (2011). While H. Res. 296 waived former Rule XXI clause 5(b) points of order against a subtitle of the bill (ERISA) recommended from the Committee on Education and Labor, it left this section unprotected.
2. 131 CONG. REC. 28776, 28826, 28827, 99th Cong. 1st Sess.

Mr. Chairman, section 3113 of H.R. 3500 attempts to exclude certain interest on the Student Loan Marketing Association from application of Internal Revenue Code section 265. Code section 265 denies an income tax deduction for certain expenses and interest incurred to purchase tax-exempt obligations. Section 3113 of H.R. 3500 deems certain interest of the Student Loan Marketing Association not to come under code section 265.

The allowance or denial of an interest deduction against income taxes is clearly within the jurisdiction of the Committee on Ways and Means.

Mr. Chairman, it is clear that section 3113 is a tax measure and, as such, violates clause 5(b) of rule 21.

The CHAIRMAN.[3] Is there any Member who desires to be heard on the point of order?

The Chair sustains the point of order.

That section is stricken from the bill.

§ 21.10 A section of a reconciliation bill reported from the Committee on the Budget, directly amending the Internal Revenue Code of 1986 to allow tax deductibility of contributions to a multiemployer pension constitutes a tax in violation of former Rule XXI clause 5(b)[1] since not reported from the Committee on Ways and Means.

On Oct. 4, 1989,[2] the following occurred:

CHAPTER 3—AMENDMENTS RELATING TO THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987 (INCLUDING THE PENSION PROTECTION ACT)

SEC. 3131. AMENDMENTS RELATING TO THE PENSION PROTECTION ACT AND FULL FUNDING LIMITATIONS PROVIDED IN THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987.

(a) AMENDMENT RELATED TO SECTION 9203.—Section 202(a)(2) of ERISA is amended by striking the comma.

(b) AMENDMENTS RELATED TO SECTION 9301.—

(1)(A) Subparagraph (C) of section 412(c)(7) of the 1986 Code is amended—

(i) in the heading, by striking "FOR PARAGRAPH (6)(B)"; and

(ii) by inserting after "paragraph (6)(B)" the following: "and in the case of a multiemployer plan". . . .

SEC. 3156. TERMINATION FEE.

(a) IN GENERAL.—Part 5 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following new section:

"TERMINATION FEE

"SEC. 516. (a) IN GENERAL.—At the time of filing a notice of intent to terminate a single-employer plan under a standard termination under section 4041(b), the employer maintaining such plan shall pay to the Pension Benefit Guaranty Corporation a fee in the amount determined under subsection (b).

"(b) AMOUNT OF FEE.—The amount of the fee under subsection (a) shall be equal to $200, multiplied by the number of participants in the plan immediately before the filing of the notice of intent to terminate.

"(c) CREDITING OF FEES.—Fees collected under this section shall be deposited as offsetting receipts in the applicable fund established under section 4005.".

(b) CONFORMING AMENDMENT.—The table of sections for part 5 of subtitle B of title I of such Act is amended by adding at the end thereof the following new item:

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3. Eligio de la Garza (TX).
1. Former Rule XXI clause 5(b) can now be found at Rule XXI clause 5(a)(1). *House Rules and Manual* § 1066 (2011).
2. 135 CONG. REC. 21790, 21797, 23261, 23262, 101st Cong. 1st Sess.

"Sec. 516. Termination fee.".

(c) EFFECTIVE DATE.—Section 516 of the Employee Retirement Income Security Act of 1974, as added by subsection (b), shall apply with respect to notices of intent to terminate filed after July 13, 1989. . . .

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Mr. Chairman, I make a point of order against section 3156 of the bill.

The CHAIRMAN.(3) The gentleman will state his point of order.

Mr. FRENZEL. Mr. Chairman, I make a point of order against section 3156 on the grounds that it is a tax measure which is in violation of paragraph b, clause 5 of House rule 21.

Mr. Chairman, section 3156 of the bill provides that an employer who terminates a pension plan in a standard termination must pay a $200 per-participant fee to the Pension Benefit Guaranty Corporation [PBGC], the Federal insurance agency established to insure defined benefit pension plans against insolvency.

The authors of this provision argue that the charge is a deferred premium to reflect the fact that ongoing the fact that ongoing insurance premiums are too low. This catch-up fee, they argue, merely imposes on employers the true cost of the risk they imposed on the system before exiting.

This fee is in no way a user fee in return for ongoing insurance. When an employer makes a standard plan termination, the plan must be fully funded and assets used to purchase annuities. The plan benefits are no longer insured by the PBGC. The employer poses no further risk on the system, and receives no further protection from it.

By paying this one-time fee, employers would pay neither for ongoing risk nor for the past risk they imposed. Rather, they would pay a fee to finance the continuing risk imposed by the employers who remain in the system. This is a tax, an amount paid by a class of taxpayers for no benefit, past or future, but rather to finance a broader—and in this case, totally different—class of beneficiaries.

Mr. Chairman, this provision is clearly a tax and I urge the Chair to sustain my point of order.

□ 1630

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Mr. [Charles Arthur] HAYES of Illinois. Mr. Chairman, I wish to be heard on the point of order raised by my colleague, the gentleman from Minnesota [Mr. FRENZEL].

The CHAIRMAN. The Chair will recognize the gentleman.

Mr. HAYES of Illinois. Mr. Chairman, section 3156 provides that single-employer pension plans terminating in a standard termination must pay a final premium of $200 per participant. This represents a deferred premium, not a tax.

Pension plans are covered under the termination insurance system established under title IV of ERISA and administered by the Pension Benefit Guaranty Corporation. The insurance program is funded entirely by premiums paid by covered plans, not by general revenues or taxes.

Each covered plan pays an annual per-participant premium. When ERISA was first enacted, this premium was set at $1. Over the years, the premium has been substantially

3. Nicholas Mavroules (MA).

increased, but has never adequately reflected the true cost of the insurance protection received by participants in defined benefits plans. Congress has deliberately kept the actual premium charged artificially low in order to encourage employers to continue their defined benefit plans.

The $200 termination premium, paid by the plan, is merely a continuation or extension of the premium to recapture a portion of this premium subsidy. Even at $200, the termination premium continues to be substantially less than the benefits the plan and its participants have received while covered under the insurance system.

Despite the fact that neither the annual premiums themselves nor this new termination premium are taxes, there is no dispute that setting of PBGC premiums is within the joint jurisdiction of the Committee on Education and Labor and the Committee on Ways and Means. This has been true since ERISA was enacted because the statute specifically provides for consideration of any resolution to raise premiums by both committees. In light of the past history regarding treatment of premium increases under title IV, we fully expect that members of both committees will be conferees on this provision.

Mr. Chairman, I do not believe that a statutory grant of joint jurisdiction transforms the premium paid by covered plans to fund the termination insurance program into a tax.

I urge you not to sustain the gentleman's point of order.

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Mr. FRENZEL. May I be heard further, Mr. Chairman?

The CHAIRMAN. The Chair will hear the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, the argumentation in support of this fee as a premium would make more sense if it were absorbing any risk or buying any protection. It obviously does not, for those who are terminating their plan, and it buys protection for others. It, therefore, has to be considered a tax and not a premium.

The CHAIRMAN. Does the gentleman from Illinois [Mr. HAYES] wish to be heard further on the point of order?

Mr. HAYES of Illinois. No. Mr. Chairman, I have completed my presentation.

The CHAIRMAN (Mr. MAVROULES) The Chair is prepared to rule.

The gentleman from Minnesota [Mr. FRENZEL] makes a point of order against section 3156 of H.R. 3299 on the ground that it carries a tax measure in a bill reported by a committee—the Committee on the Budget—not having jurisdiction to report tax measures, in violation of clause 5(b), rule XXI.

Section 3156 of the bill would impose certain fees incident to terminations of employee benefit plans under the Employee Retirement Income Security Act of 1974 [ERISA]. Funds so received would be deposited as offsetting receipts in the applicable fund established under section 4005 of ERISA. Amounts in that fund are available for expenditure for various purposes specified in section 4005(b)(2).

The basis of the point of order is that the payers of the fees in question would not merely be providing recompense for some Government activity that they occasion. Rather, the revenues gathered by such fees would be applied to more general Government activity of broader benefit. As was stated in argument on the point of order, a terminating plan poses no further risk on the Pension Benefit Guaranty Corporation; thus the only risk financed by the termination fee would be the continuing risk posed by the plans remaining in the system.

The Chair believes that such a provision is properly characterized as a tax within the meaning of clause 5(B), rule XXI. Accordingly, the point of order is sustained against section 3156 and that section is stricken from the bill.

POINT OF ORDER

Mr. FRENZEL. Mr. Chairman, I have a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. FRENZEL. Mr. Chairman, I make a point of order against section 3131(B) on the grounds that it is a tax measure which is in violation of paragraph b, clause 5 of House Rule 21.

Mr. Chairman, section 3131 of the bill exempts multiemployer pension plans from the full funding limits of the Internal Revenue Code section 412(c)(7).

This provision directly amends the Internal Revenue Code to allow the deductibility of contributions to a multiemployer pension plan in excess of the full funding limit. I would argue that this provision which provides a specific exemption from the full funding limitations for multiemployer pension plans is a tax because a deduction would be allowed for amounts which are not deductible under current law.

I urge the Chair to sustain my point or order.

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Mr. HAYES of Illinois. Mr. Chairman, I wish to be heard on the point of order raised by my colleague, the gentleman from Minnesota [Mr. FRENZEL].

The CHAIRMAN. The Chair will hear the gentleman.

Mr. HAYES of Illinois. Mr. Chairman, section 3131(b) contains parallel amendments to both title I of ERISA and the Internal Revenue Code relating to the full funding limitation governing pension plans. The gentleman from Minnesota is seeking to strike the portion of that subsection that amends the Code on the ground that this is a tax and within the exclusive jurisdiction of the Committee on Ways and Means.

Mr. Chairman, as we know, ERISA is a unique statute. Many of its requirements are implemented through parallel provisions in both title I and the Internal Revenue Code. The provision at issue here is a provision that has been subject to this parallel treatment under ERISA since its enactment. When the section was amended most recently in the 1987 Budget Reconciliation Act, parallel changes were made and members of both the Committee on Ways and Means and the Committee on Education and Labor were appointed conferees on those provisions. . . .

I urge you not to sustain the gentleman's point of order.

The CHAIRMAN (Mr. MAVROULES). Are there other Members who wish to be heard on the point of order?

If not, the Chair is prepared to rule.

The gentleman from Minnesota [Mr. FRENZEL] makes a point of order against section 3131(b)(1)(A) of H.R. 3299 on the ground that it carries a tax measure in a bill reported by a committee—the Committee on the Budget—not having jurisdiction to report tax measures, in violation of clause 5(b), rule XXI.

For the reasons stated by the gentleman from Minnesota [Mr. FRENZEL], the provision in section 3131(b)(1)(A) constitutes a tax in that it directly relates to deductibility under the Internal Revenue Code.

The point of order is sustained and section 3131(b)(1)(A) is stricken from the bill.

Conference Reports on Reconciliation Bills —Appointment of Conferees

§ 21.11 By unanimous consent, the House has authorized the Speaker to appoint an additional conferee on an Omnibus Budget Reconciliation Act, and in exercising such authority, the Speaker appointed a conferee from one legislative committee solely for consideration of one portion of the Senate amendment.(1)

On July 15, 1981,(2) the following occurred:

Mr. [Leon Edward] PANETTA [of California]. Mr. Speaker, I ask unanimous consent that the Speaker be permitted to appoint an additional conferee on the bill (H.R. 3982) to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

This is because of an error that was committed in the names that were forwarded. Four members were presented for the Science and Technology Committee, and we need an additional conferee.

The SPEAKER.(3) Is there objection to the request of the gentleman from California? The Chair hears none, and appoints Mr. DYMALLY from the Committee on Science and Technology solely for consideration of sections 1101–1112 of the Senate amendment.

—Consideration of Conference Reports

§ 21.12 The House has adopted a special order of business resolution reported from the Committee on Rules making in order consideration of a conference report on a reconciliation measure and waiving all points of order against such conference report.

On Dec. 21, 1987,(1) the following occurred:

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 8 o'clock and 1 minute p.m.

CONFERENCE REPORT ON H.R. 3545, BUDGET RECONCILIATION ACT OF 1987

Mr. [Butler Carson] DERRICK [Jr., of South Carolina]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 341 and ask for its immediate consideration.

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1. At the time of this precedent, unanimous consent was required for the Speaker to appoint the additional conferee because the Speaker lacked unilateral authority to do so. Such authority, however, was made part of the standing rules at the beginning of the 103d Congress (139 CONG. REC. 49, 103d Cong. 1st Sess., Jan. 5, 1993 (H. Res. 5)). This authority is now found in Rule I clause 11. *House Rules and Manual* § 637 (2011).
2. 127 CONG. REC. 15921, 97th Cong. 1st Sess.
3. Thomas O'Neill (MA).
1. 133 CONG. REC. 36759, 36760, 100th Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. Res. 341

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 3545) to provide for reconciliation pursuant to section 4 of the concurrent resolution on the budget for fiscal year 1988, and all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

The SPEAKER.[2] The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTA], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 341 is a rule providing for the consideration of the conference report on H.R. 3545, the Reconciliation Act of 1987. The rule waives all points of order against the conference report and provides that the conference report shall be considered as having been read. . . .

—Re-filing of Conference Report

§ 21.13 The House has adopted a special order of business vacating the filing of a conference report on reconciliation legislation, authorizing conferees to file a corrected conference report, printing the correction in a separate section of the special order, and providing for the consideration of the conference report.[1]

On Nov. 17, 1995,[2] the following occurred:

Mr. [David] DREIER [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 272 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 272

Resolved, That the proceedings of the legislative day of November 15, 1995, by which the conference report to accompany the bill (H.R. 2491) to provide for reconciliation

2. James C. Wright, Jr. (TX).

1. The House chose this unusual method of correcting an error in the conference report (vacating the initial filing and authorizing a new filing) over more traditional methods, such as adopting a concurrent resolution correcting the enrollment of the bill or recommitting the conference report to the conference. Both of these alternatives would have engendered some delay by requiring additional legislation actions—Senate action in the case of a concurrent resolution correcting the enrollment, or the signing and filing of a new conference report in case of recommital.

2. 141 CONG. REC. 33741, 33742, 104th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 33 § 26.18, *supra*.

pursuant to section 105 of the concurrent resolution on the budget for fiscal year 1996 was presented to the House and ordered printed, are hereby vacated, to the end that the managers on the part of the House may immediately present the conference report in the form actually ordered reported to the House as a product of the meeting and signatures of the committee of conference and actually to be presented in the Senate, in pertinent corrected part as depicted in section 3 of this resolution. The existing signatures of the committee of conference shall remain valid as authorizing the presentation of the conference report to the House in corrected form.

SEC. 2. Upon adoption of this resolution it shall be in order to consider the conference report presented to the House pursuant to the first section of this resolution. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The conference report shall be debatable for two hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget. After such debate the previous question shall be considered as ordered on the conference report to final adoption without intervening motion except one motion to recommit, which may not contain instructions and on which the previous question shall be considered as ordered. After disposition of the conference report, no further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

SEC. 3. The correction described in section 2 of this resolution is to insert between subtitles J and L of title XII a subtitle K (as depicted in the table of contents) as follows:

"Subtitle K—Miscellaneous

"SEC. 13101. FOOD STAMP ELIGIBILITY.

''Section 6(f) of the Food Stamp Act of 1977 (7 U.S.C. 2015(f)) is amended by striking the third sentence and inserting the following: 'The State agency shall, at its option, consider either all income and financial resources of the individual rendered ineligible to participate in the food stamp program under this subsection, or such income, less a pro rata share, and the financial resources of the ineligible individual, to determine the eligibility and the value of the allotment of the household of which such individual is a member.'

"SEC. 13102. REDUCTION IN BLOCK GRANTS FOR SOCIAL SERVICES.

''Section 2003(c) of the Social Security Act (42 U.S.C. 1397b) is amended—

''(1) by striking 'and' at the end of paragraph (4); and

''(2) by striking paragraph (5) and inserting the following:

'(5) $2,800,000,000 for each of the fiscal years 1990 through 1996; and

'(6) $2,240,000,000 for each fiscal year after fiscal year 1996.' ''.

The SPEAKER pro tempore.[3] The gentleman from California [Mr. DREIER] is recognized for 1 hour.

Mr. DREIER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to my good friend, the gentleman from Woodland Hills, CA [Mr. BEILENSON], pending which I yield myself such time as I may consume. . . .

Mr. DREIER. Mr. Speaker, due to a technical error committed during the filing of the conference report on H.R. 2491, this rule vacates the proceedings by which the conference report on H.R. 2491, the Seven-Year Balanced Budget Act, was filed. The rule authorizes the managers to immediately refile the report in the form actually signed and ordered reported, with the corrected part printed in section 3 of the rule. The rule further provides that the existing signatures of the conferees shall remain valid as authorizing the presentation of the conference report to the House in its corrected form.

The rule then provides for the consideration of the newly filed conference report to accompany H.R. 2491. The rule waives all points of order against the conference report and

3. Ray LaHood (IL).

against its consideration. The rule provides for two hours of debate equally divided and controlled by the chairman and ranking member of the Budget Committee.

The rule provides for one motion to recommit the conference report which may not contain instructions. Finally, the rule provides that following disposition of the conference report, no further action on the bill is in order except by subsequent order of the House.

Mr. Speaker, this is it. We are beginning, over the next 3 hours, the debate on the most important change in decades. . . .

Mr. [Anthony] BEILENSON [of California]. Mr. Speaker, I yield myself such time as I may consume. I thank the gentleman from California [Mr. DREIER] for yielding me the customary half hour of debate time.

Mr. Speaker, we strongly oppose this rule and the legislation it makes in order, the conference report on the 1995 Budget Reconciliation Act.

By waiving all points of order against the conference report and against its consideration, this rule enables the Republican leadership to bring this measure to the floor without worrying about whether or not it violates any of our standing House rules. One rule that this legislation most certainly violates is the 3-day layover rule, the rule designed to give Members 3 days to review legislation before having to vote on it. It is the layover that protects the very basic right of Members to have a sufficient opportunity to evaluate legislation before voting on it.

It is also very likely the conference report violates the rule against exceeding the scope of the conference, preventing conferees from inserting legislation in the conference report that was not passed by either the House or the Senate. . . .

We also object to this rule's denial of a motion to recommit with instructions. As our Republican friends always and vigorously argued when they were in the minority, that motion to recommit is virtually meaningless if it cannot be used to amend a measure. Disallowing instructions on a motion to recommit tramples on one of the most important rights the minority party has under the rules of the House of Representatives.

Post-Passage Matters

§ 21.14 The House has passed a joint resolution, considered by unanimous consent, waiving the statutory requirement of printing on parchment[1] for certain bills (including reconciliation legislation) for the remainder of a session of Congress, and authorizing enrollment in such form as certified by the Committee on House Administration[2] to be truly enrolled.

On Oct. 8, 1986,[3] the House considered by unanimous consent a joint resolution waiving the printing on parchment requirement for certain bills.

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1. Enrolled bills and resolutions are to be printed on parchment or other paper of suitable quality as determined by the Joint Committee on Printing. 1 USC §§ 106, 107. Printing on parchment is more time-consuming than other methods and Congress has occasionally authorized certified "hand enrollments" to expedite the presentation of legislation to the President. See 158 CONG. REC. H7521 [Daily Ed.], 112th Cong. 2d Sess., Jan. 1, 2013 (H. Con. Res. 147), and Deschler's Precedents Ch. 24 § 14, *supra*.

2. See also 147 CONG. REC. 28, 107th Cong. 1st Sess., Jan. 3, 2001 (H. Res. 5, sec. 2(b)) for updated changes in the standing rules on preparation of enrolled bills.

3. 132 CONG. REC. 29714, 99th Cong. 2d Sess.

H.J. RES. 749

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That the requirement of sections 106 and 107 of title I, United States Code, that the enrollment of the following bills and joint resolutions be printed on parchment be waived during the remainder of the second session of the Ninety-ninth Congress, and that the enrollment of said bills and joint resolutions be in such form as may be certified by the Committee on House Administration to be truly enrolled: H.R. 2005; H.R. 3838; H.R. 5300; H.R. 5484; and H.J. Res. 738, or any other measure continuing appropriations.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

§ 21.15 By unanimous consent, the House has considered a concurrent resolution directing the Clerk to make certain corrections to the enrollment of a reconciliation bill.

On July 31, 1981,[1] the following occurred:

Mr. [James] JONES of Oklahoma. Mr. Speaker, I ask unanimous consent for immediate consideration in the House of the concurrent resolution (H. Con. Res. 167) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 3982, to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore.[2] Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 167

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 3982), to provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for fiscal year 1982, the Clerk of the House of Representatives shall make the corrections specified in the succeeding sections of this concurrent resolution. . . .

(c)(1) If the Secretary determines under subsection (b) that there is an agreement between a profitable railroad in the Region (as defined in section 102 of the Regional Rail Reorganization Act of 1973) which received a loan under section 211(a) of such Act and a prospective purchaser for the sale of such railroad, the Secretary shall limit the interest of the United States in any debt of such a railroad to an interest which attaches to such debt in the event of bankruptcy, substantial sale, or liquidation of the assets of the railroad. The Secretary shall substitute for the evidence of such debt contingency notes conforming to the limited terms set forth in this subsection. . . .

SEC. 13. In section 1199A, strike out "July 31, 1981" and insert in lieu thereof "August 4, 1981".

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1. 127 CONG. REC. 18981, 18983, 18985, 97th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 33 § 17.5, *supra*.

2. David E. Bonior (MI).

The concurrent resolution was agreed to.
A motion to reconsider was laid on the table.

310(f) Points of Order

§ 21.16 Section 310(f) of the Congressional Budget Act formerly[1] prohibited the consideration of a resolution providing for an adjournment *sine die* of either House before completion of the second budget resolution[2] and any required reconciliation legislation, and such a prohibition was ruled to apply to an adjournment resolution ostensibly conditioned on the completion of the required legislative actions (sustained by tabling of appeal).

On Oct. 1, 1980,[3] the following occurred:

PROVIDING FOR SINE DIE ADJOURNMENT OF THE CONGRESS AFTER COMPLETION OF SECOND CONCURRENT RESOLUTION ON THE BUDGET

Mr. [Kenneth] KRAMER [of Colorado]. Mr. Speaker, I send a privileged concurrent resolution to the desk and ask for its immediate consideration.

The SPEAKER.[4] The Clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

CONCURRENT RESOLUTION

Providing for the sine die adjournment of the Congress after completion of the second concurrent resolution on the budget and any required reconciliation legislation

Resolved by the House of Representatives (the Senate concurring), That when the two Houses of Congress adjourn on October 2, 1980, they shall stand adjourned sine die, unless Congress has not completed action on the second concurrent resolution on the budget respecting the fiscal year beginning on October 1, 1980, and any reconciliation legislation which may be required in accordance with the Congressional Budget Act of 1974, in which event the two Houses shall adjourn sine die in accordance with section 2 of this resolution.

SEC. 2. In the event such second concurrent resolution on the budget has not been adopted by the Congress in accordance with section 310(b) of the Congressional Budget Act of 1974 by October 2, 1980, the Speaker of the House of Representatives and the

1. *Parliamentarian's Note:* This section of the Congressional Budget Act was rewritten by Gramm-Rudman-Hollings in 1985 to prohibit instead the adjourning for more than three calendar days in July without completing any required reconciliation legislation. Nevertheless, the general principle encapsulated by this precedent remains sound. The point of order prevents consideration of an adjournment resolution prior to the completion of the required legislative actions.
2. The revisions to the Congressional Budget Act made by Gramm-Rudman-Hollings eliminated the requirement of a second annual budget resolution.
3. 126 CONG. REC. 28575, 28576, 96th Cong. 2d Sess. See also Deschler-Brown-Johnson Precedents Ch. 40 § 11.2, *supra*.
4. Thomas O'Neill (MA).

President pro tempore of the Senate shall notify the Members of the House and Senate, respectively, that they shall remain assembled until Congress has completed action on such second concurrent resolution on the budget and, if required, reconciliation legislation, at which time, the two Houses shall adjourn sine die.

Mr. [Thomas] FOLEY [of Washington]. Mr. Speaker, I reserve a point of order against the concurrent resolution.

The SPEAKER. The Chair will state that the concurrent resolution is not debatable.

POINT OF ORDER

Mr. FOLEY. Mr. Speaker, I make a point of order against the concurrent resolution that the Budget Act requires the adoption of the second budget resolution prior to the the [sic] sine die adjournment of the House, and the resolution is contrary to the Budget Act.

Mr. KRAMER. Mr. Speaker, may I be heard on the point of order?

The SPEAKER. The Chair will hear the gentleman on the point of order.

Mr. KRAMER. Mr. Speaker, the intent of section 310(f) of the Budget Act was obviously to act as a forcing mechanism to insure completion of the congressional budget process before adjournment. The language prohibiting consideration of an adjournment sine die resolution prior to the completion of the budget resolution was designed to provide a specific mechanism in recognition of the procedures of the House to assure budget completion before adjournment.

A careful reading of this resolution will show that it is not inconsistent with section 310(f) of the Budget Act but is in fact designed to fulfill the intent of section 310(f). It is in effect a restatement of the requirements of the Budget Act with respect to completion of the Budget Act before adjournment and, therefore, cannot be said to be in contradiction of those requirements.

Since the intent of the Budget Act, as expressed in section 310(f) is to force completion of the budget prior to adjournment sine die, we might logically conclude that the framers of that resolution did not intend that the language that was included to require all matters to be reported by the Budget Committee before they may be considered by the House and to require final action on the budget prior to consideration of the adjournment sine die resolution would be used to delay completion of the budget beyond the date specified in the act. Yet this is what happened.

The intent of the act is to require action on the budget in timely fashion, and it has been subverted by the failure to report the budget resolution in timely fashion. The literal terms of the Budget Act have already been violated by the failure of Congress to act on the budget by the date specified in the act.

Mr. Speaker, this resolution is literally consistent with the requirements of the Budget Act by requiring completion of the budget prior to adjournment sine die, and in fact the resolution is a complement to the Budget Act providing a sure means of fulfilling the terms of the act.

Mr. FOLEY. Mr. Speaker, may I be heard further on the point of order?

The SPEAKER. The Chair will hear the gentleman.

Mr. FOLEY. Mr. Speaker, section 310(f) of the Budget Act prohibits the consideration of a resolution of adjournment until the adoption of the second budget resolution. The resolution is clearly inside the scope of the prohibition of the Budget Act, and it is, therefore, out of order.

Mr. Speaker, I renew my point of order.

□ 1320

The SPEAKER. Section 310(f) of the Congressional Budget Act provides:

Congress may not adjourn until action is completed.—It shall not be in order in either the House of Representatives or the Senate to consider any resolution providing for the adjournment sine die of either House unless action has been completed on the concurrent resolution on the budget required to be reported under subsection (a) for the fiscal year beginning on October 1 of such year, and, if a reconciliation bill or resolution, or both, is required to be reported under subsection (c) for such fiscal year, unless the Congress has completed action on that bill or resolution, or both.

In the opinion of the Chair, the point of order is well taken. Since the provision of the Budget Act—which is a rule of the House—prohibits the consideration of a sine die resolution at this time, the Chair does not recognize the gentleman for that purpose.

Mr. KRAMER. Mr. Speaker, I appeal the ruling of the Chair.

The SPEAKER. Does the gentleman insist upon his appeal?

Mr. KRAMER. I insist upon my appeal, Mr. Speaker.

Mr. FOLEY. Mr. Speaker, I move to lay the motion to appeal the ruling of the Chair on the table.

The SPEAKER. The question is on the motion offered by the gentleman from Washington (Mr. FOLEY).

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

Mr. KRAMER. 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. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 382, nays 11, not voting 39, as follows: . . .

So the motion was agreed to.

§ 21.17 By unanimous consent, the House waived the prohibitions contained in sections 309 and 310(f) of the Congressional Budget Act,(1) which would have precluded consideration in the House of a concurrent resolution adjourning for more than three days in July before the House had completed initial consideration of all general appropriation bills and any required reconciliation legislation.

On June 19, 1986,(2) the following occurred:

Mr. [Butler] DERRICK [of South Carolina]. Mr. Speaker, for the purpose of a unanimous-consent request, I yield such time as he may consume to the distinguished majority leader, the gentleman from Texas [Mr. WRIGHT].

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1. 2 USC §§ 640, 641(f). For more on section 309 of the Congressional Budget Act, see §§ 5.19, 5.20, *supra*.

2. 132 CONG. REC. 14644, 99th Cong. 2d Sess.

MAKING IN ORDER CONSIDERATION OF ANY RESOLUTION PROVIDING FOR A CERTAIN ADJOURNMENT

Mr. [James] WRIGHT. Mr. Speaker, I ask unanimous consent that it be in order to consider any resolution providing for an adjournment period of more than 3 calendar days during the month of July, notwithstanding any provision of Public Law 99–177.

The SPEAKER pro tempore.[3] Is there objection to the request of the gentleman from Texas?

There was no objection.

§ 21.18 The House by unanimous consent considered (and adopted) a Senate concurrent resolution providing for the adjournment of both Houses for the July 4th recess, implicitly waiving sections 309 and 310(f) of the Congressional Budget Act.[1]

On July 1, 1999,[2] the following occurred:

PROVIDING FOR CONDITIONAL ADJOURNMENT OF THE SENATE AND HOUSE

Mr. [Thomas] REYNOLDS [of New York]. Mr. Speaker, I ask unanimous consent to call up from the Speaker's table the Senate concurrent resolution (S. Con. Res. 43) providing for conditional adjournment or recess of the Senate and a conditional adjournment of the House of Representatives, and ask unanimous consent for its immediate consideration.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 43

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, July 1, 1999, Friday,

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3. Thomas Carper (DE).

1. 2 USC §§ 640, 641(f).

Parliamentarian's Note: As noted above, sections 309 and 310(f) of the Congressional Budget Act prohibit the consideration of a concurrent resolution providing for an adjournment of more than three calendar days in July if the House has not completed action on all appropriation bills and any required reconciliation legislation. By adopting the Senate adjournment resolution by unanimous consent, these sections of the Congressional Budget Act were implicitly waived. The House, also by unanimous consent, tabled the House resolution making in order consideration of an adjournment resolution in July—a procedural step rendered moot by the adoption of the Senate adjournment resolution. Finally, section 105 of the concurrent resolution on the budget for fiscal year 2000 ostensibly set a deadline of July 16, 1999, for the House Committee on Ways and Means to report reconciliation legislation. Although this date had not yet arrived at the time of the adoption of this adjournment resolution, that procedural provision of the budget resolution operated independently of the requirements of section 310(f)—hence the need to proceed by unanimous consent on the otherwise privileged Senate adjournment resolution.

2. 145 CONG. REC. 15106, 106th Cong. 1st Sess.

July 2, 1999, or Saturday, July 3, 1999, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, July 12, 1999, or until such time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Thursday, July 1, 1999, or Friday, July 2, 1999, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 12:30 p.m. on Monday, July 12, 1999, for morning-hour debate, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it. . . .

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

The SPEAKER.[3] Without objection, House Resolution 236 is laid on the table.

3. Dennis Hastert (IL).

G. Pay-As-You-Go Procedures

§ 22. Introduction

There have been several pay-as-you-go procedures for budget enforcement applicable in the House, provided by statute or by standing rule of the House. Although these procedures share common elements, they have varied in terms of applicability and enforcement mechanisms.

The Budget Enforcement Act of 1990

The Budget Enforcement Act of 1990(1) created a pay-as-you-go procedure that applied to direct spending only.(2) An annual scorecard, maintained by the Office of Management and Budget, tracked spending and revenue legislation by Congress, and if such scorecard showed a net debit at the end of a congressional session (due to spending increases or a reduction in revenues), an automatic sequestration process was triggered. The PAYGO procedure did not require each bill to be deficit-neutral, but instead enforced budget neutrality in the aggregate.

This budget neutrality goal was enforced by sequestration (automatic canceling of budget authority).(3) If deficit targets were not met, the sequestration process required across-the-board cuts to be made in certain non-exempt categories to reach the target. Spending designated as emergency spending did not count towards the PAYGO scorecard.

This PAYGO mechanism was extended several times, but finally expired in 2002. The remaining balance on the PAYGO scorecard was, by law,(4) reduced to zero, thus avoiding sequesters of funds for the subsequent fiscal years.

House PAYGO Rule

The House maintained its own pay-as-you-go rule applicable to House proceedings during the 110th and the 111th Congresses.(1) In 2011, the rule

1. Pub. L. No. 101–508.

2. Section 252 of the Budget Enforcement Act of 1990 comprised the PAYGO procedure. Discretionary spending was separately constrained by spending caps contained in section 251. A "firewall" was established between the two kinds of spending, such that savings in one area could not be used to offset spending in the other.

3. See § 26, *infra*.

4. Pub. L. No. 107–312; 2 USC § 902 note.

1. See former Rule XXI clause 10, *House Rules and Manual*, § 1068e (2009). Significant revisions were made to the PAYGO rule at the beginning of the 111th Congress, including a new method of evaluating amounts designated as emergencies and the procedural flexibility to consider multiple measures linked together in the engrossment to

was replaced by a cut-as-you-go point of order (see below).[2] The former rule required budget neutrality over six- and 11-year time periods for each bill, joint resolution, amendment,[3] or conference report.[4] Any such measures that increased spending or decreased revenues were required to be offset by decreased spending or increased revenues. Thus, unlike the prior statutory PAYGO system, the House PAYGO rule required budget neutrality on a measure-by-measure basis.

In terms of spending analysis, the House PAYGO rule was concerned solely with direct spending and did not apply to discretionary spending.[5] The budgetary effect of each measure was determined on the basis of estimates provided by the Committee on the Budget relative to baseline estimates supplied by the Congressional Budget Office. Amendments to measures were also required to be PAYGO-compliant under the former House PAYGO rule. Amendments were evaluated on their marginal budgetary effect on the pending legislation.[6]

The Committee on Rules reported special orders of business that waived the PAYGO rule.[7] Special orders of business also "self-executed" the adoption of amendments that cured PAYGO violations in the underlying legislation.[8]

After the revisions of the 111th Congress, amounts in a measure designated as emergencies did not count for purposes of PAYGO determinations. However, amounts in amendments could not be designated as emergencies under the rule. If a bill, joint resolution, amendment made in order as original text by a special order of business, conference report, or an

offset one another for PAYGO purposes. For an example of a special order of business resolution providing for the linking, in the engrossment, of two separate measures, see 155 CONG. REC. H4310 [Daily Ed.], 111th Cong. 1st Sess., Apr. 1, 2009 (H. Res. 307).

2. *House Rules and Manual* §§ 1068f, 1068j (2011).

3. Including an amendment contained in a motion to recommit. See § 24.4, *infra*.

4. For the requirement of budget neutrality for reconciliation directives in a concurrent resolution on the budget (Rule XXI clause 7, *House Rules and Manual* § 1068b (2011)), see § 5, *supra*.

5. See § 24.3, *infra*.

6. For an example of an amendment modified on the floor to cure a potential PAYGO violation, see 155 CONG. REC. 12005, 111th Cong. 1st Sess., May 7, 2009.

7. See 153 CONG. REC. 9378, 9404, 9405, 9407, 110th Cong. 1st Sess., Apr. 19, 2007 (H. Res. 317). Where such waivers have been provided, no PAYGO point of order will lie. 154 CONG. REC. 12316, 12318, 12319, 110th Cong. 2d Sess., June 12, 2008. For an example of a special order of business that waived PAYGO for the bill but not amendments thereto, see 154 CONG. REC. 15225, 110th Cong. 2d Sess., July 16, 2008 (H. Res. 1343). For parliamentary inquiries on the effect of suspension procedures on House PAYGO, see 153 CONG. REC. 36251, 110th Cong. 1st Sess., Dec. 12, 2007.

8. 155 CONG. REC. H12069–70, 111th Cong. 1st Sess., Oct. 29, 2009 (H. Res. 875).

amendment between Houses included a provision that expressly designated it as an emergency (under the rule), the Chair was required to put to the House the question of consideration.[9] The question of consideration was automatic and did not require action from the floor for the question to be put before the body. In this way, the House could decide whether or not to proceed to consider the measure, notwithstanding the presence of emergency designations.

House CUTGO Rule

In the 112th Congress, the House replaced its pay-as-you-go rule with a cut-as-you-go rule (CUTGO).[1] The rule provides that it shall not be in order to consider a bill or joint resolution, or amendment thereto,[2] or conference report if its provisions have the net effect of increasing direct spending over 6- and 11-year periods. Like the former PAYGO rule, an amendment under CUTGO is evaluated on the basis of its marginal effect on the bill (and not against a "baseline" of existing law). Unlike the former PAYGO rule, CUTGO does not take revenues into consideration. Thus, an increase in spending may not be offset by an increase in revenues.

The rule applies to direct spending only, not discretionary spending, and direct spending is specifically defined by reference to section 250 of Gramm-Rudman-Hollings.[3] The CUTGO rule maintains the same measure-by-measure approach of budget neutrality as the former House PAYGO rule. The Chair is authoritatively guided by estimates from the Committee on the Budget with respect to the net effect of a measure on direct spending.[4]

Rule XXI clause 7[5] also provides a point of order against concurrent resolutions on the budget containing reconciliation directives that are not CUTGO compliant. Specifically, it shall not be in order to consider a concurrent resolution on the budget, or an amendment thereto, or a conference report thereon that contains reconciliation directives under section 310 of the

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9. See § 24.2, *infra*. For an example of a unanimous-consent request to waive this requirement, see § 23.2, *infra*. For more on the question of consideration, see Deschler-Brown Precedents Ch. 29 § 5, *supra*.

1. *House Rules and Manual* § 1068f (2011). In addition, the 112th Congress established a separate point of order (in the opening-day resolution adopting the standing rules of the House) against consideration of a measure increasing mandatory spending above a certain threshold over certain periods. See 157 CONG. REC. H9 [Daily Ed.], Jan. 5, 2011 (H. Res. 5, sec. 3(g)). *House Rules and Manual* § 1068h (2011).

2. An amendment is evaluated on the basis of its marginal effect on the measure proposed to be amended. For an example of a CUTGO point of order raised against an amendment contained in a motion to recommit, see § 25.3, *infra*.

3. 2 USC § 900.

4. Pursuant to Rule XXIX clause 4, such estimates may be provided by the chairman of such committee. *House Rules and Manual* § 1105d (2011).

5. *House Rules and Manual* § 1068b (2011).

Congressional Budget Act[6] that specify changes in law that would cause an increase in net direct spending for the period of the concurrent resolution on the budget.[7]

Stat-Paygo

In 2010, the Statutory Pay-As-You-Go Act was enacted.[1] This Act mirrored the original PAYGO procedure of the Budget Enforcement Act of 1990 by providing a running PAYGO scorecard followed by enforcement through end-of-session sequestration. Thus, like the previous PAYGO procedure, the PAYGO scorecard is used to determine budget neutrality in the aggregate, (*i.e.*, over the course of a congressional session) rather than on a measure-by-measure basis. As with the prior PAYGO statute, Stat-Paygo applies only to direct spending, not discretionary spending.

With respect to the types of measures to which Stat-Paygo is applicable, the act defines "PAYGO legislation" or "PAYGO Act" as a bill or joint resolution.[2] This definition has also been interpreted to cover amendments between the Houses.[3]

Amounts considered as emergencies are not counted on the PAYGO scorecard under Stat-Paygo.[4] Estimates of the budgetary effects of a given piece of legislation are to be provided by the Congressional Budget Office, at the request of the chairman of the Committee on the Budget, and printed in the *Congressional Record*. If such an estimate is not provided, the Office of Management and Budget is authorized to estimate the budgetary effect of the legislation. Like the former House PAYGO rule, measures containing amounts designated as emergencies under Stat-Paygo require the Chair to put an automatic question of consideration prior to consideration of that measure.[5]

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6. 2 USC § 641.

7. Prior to the 112th Congress, this clause merely required budget neutrality for reconciliation directives, rather than prohibiting reconciliation directives that would cause an increase in net direct spending.

1. Pub. L. No. 111–139; 2 USC §§ 931–939.

2. 2 USC § 932(7).

3. See *Parliamentarian's Note* at § 23.1, *infra*.

4. 2 USC § 933(g). That section also provides the definition of an emergency under the Act.

5. When the question of consideration was required to be put pursuant to both House PAYGO and Stat-Paygo, the two questions merged such that the Chair was required to put only a single question of consideration before the House. See 156 CONG. REC. H5939 [Daily Ed.], 111th Cong. 2d Sess., July 22, 2010. For an example of a unanimous-consent request specifically obviating the question of consideration under Stat-Paygo, see § 23.2, *infra*. A motion to suspend the rules also waives this requirement. See § 23.3, *infra*.

Section 306 of the Congressional Budget Act[6] does not apply to directed scorekeeping language included in a bill pursuant to Stat-Paygo. While such language does trigger the jurisdiction of the Committee on the Budget, Stat-Paygo provides a specific exception to section 306.[7]

§ 23. Statutory Pay-As-You-Go Act

§ 23.1 Under section 4(g)(2) of the Statutory Pay-As-You-Go Act of 2010[1] and under former Rule XXI clause 10(c)(3),[2] the Speaker put the question of consideration with respect to a measure containing the relevant emergency designations pending its consideration.

On May 28, 2010,[3] where a measure contained an emergency designation under section 4(g)(1) of the Statutory Pay-As-You-Go Act of 2010 and an emergency designation for purposes of pay-as-you-go principles under former Rule XXI clause 10(c), the Speaker put a unified question of consideration with respect thereto pending its consideration. The question of consideration required under section 4(g)(2) of the Statutory Pay-As-You-Go Act of 2010 applies to emergency designations contained in a House amendment to a Senate amendment.[4]

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6. 2 USC § 637. See § 16, *supra*.

7. Pub. L. No. 111–139, sec. 4(a)(4). See § 16, *supra*. This principle is illustrated by a special order of business that provided a germaneness waiver for the directed scorekeeping language (because such language triggers the jurisdiction of the Committee on the Budget and would thus not be germane) but not a waiver of section 306 of the Congressional Budget Act (because such language is specifically excepted from section 306). See 156 CONG. REC. H3347–8, [Daily Ed.], 111th Cong. 2d Sess., May 12, 2010 (H. Res. 1344).

1. 2 USC § 933(g)(2).

2. Rule XXI clause 10 was modified in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).

3. 156 CONG. REC. H4130 [Daily Ed.], 111th Cong. 2d Sess.

4. *Parliamentarian's Note:* Although former Rule XXI clause 10(c) specifically applies to designations within amendments between the Houses, section 4(g)(2) of the Statutory Pay-As-You-Go Act of 2010 is less clear. Under section 4(g), the question of consideration is required whenever a "PAYGO Act" includes an emergency designation. Under section 3(7) of that Act, however, a "PAYGO Act" is defined as a "bill or joint resolution." The Parliamentarian decided that section 4(g) should be understood to apply to a designation contained in a PAYGO bill and a proposal to insert such a designation into a PAYGO bill. This interpretation is consistent with the order of the House of Apr. 15, 2010, that specifically disabled questions of consideration for a motion that the House concur in a Senate amendment containing an emergency designation under section 4(g) of the Act. See § 23.2, *infra*.

The SPEAKER pro tempore.[5] The Clerk will designate the motion.

The text of the motion is as follows:

Mr. Levin moves that the House concur in the Senate amendment to H.R. 4213 with the amendment printed in part A of House Report 111–497, as modified by the amendment printed in part B of House Report 111–497 and the further amendment in section 2 of House Resolution 1403.

The SPEAKER pro tempore. The House amendment to the Senate amendment to the bill H.R. 4213 contains:

an emergency designation for the purposes of pay-as-you-go principles under clause 10(c) of rule XXI; and

an emergency designation pursuant to section 4(g)(1) of the Statutory Pay-As-You-Go Act of 2010.

Accordingly, the Chair must put the question of consideration under clause 10(c)(3) of rule XXI and under section 47(g)(2) [sic] of the Statutory Pay-As-You-Go Act of 2010.

The question is, Will the House now consider the motion to concur in the Senate amendment with an amendment?

The question of consideration was decided in the affirmative.

§ 23.2 The House has agreed to a unanimous-consent request textually obviating the question of consideration required by Statutory Pay-As-You-Go Act of 2010[1] on a motion to concur in a Senate amendment to a House amendment.

On Apr. 15, 2010,[2] the House agreed to a unanimous-consent request that specifically obviated the requirement to put the question of consideration on a bill with emergency designations.

MAKING IN ORDER CONSIDERATION OF SENATE AMENDMENT TO H.R. 4851, CONTINUING EXTENSION ACT OF 2010

Mr. [Sander] LEVIN [of Michigan]. Mr. Speaker, I ask unanimous consent that it be in order at any time to take from the Speaker's table the bill (H.R. 4851) to provide a temporary extension of certain programs, and for other purposes, with the Senate amendment thereto, and to consider in the House, without intervention of any point of order or question of consideration, a motion offered by the chairman of the Committee on Ways and Means or his designee that the House concur in the Senate amendment; that the Senate amendment be considered as read; that the motion be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Ways and Means; and that the previous question be considered as ordered on the motion to final adoption without intervening motion.

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5. David Obey (WI).

1. 2 USC §§ 931–939.

2. 156 CONG. REC. H2615 [Daily Ed.], 111th Cong. 2d Sess.

Parliamentarian's Note: Because the Senate amendment contained an emergency designation for purposes of both Stat-Paygo as well as the former House PAYGO rule (former Rule XXI clause 10, *House Rules and Manual* § 1068e (2009)), the order disabled the automatic question of consideration under both procedures.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

§ 23.3 The House suspended the rules and passed a bill that included a provision designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010.(1)

On Feb. 25, 2010,(2) the following occurred:

TEMPORARY EXTENSION ACT OF 2010

Mr. [James] MCDERMOTT [of Washington]. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4691) to provide a temporary extension of certain programs, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Temporary Extension Act of 2010''. . . .

SEC. 11. DETERMINATION OF BUDGETARY EFFECTS.

(a) IN GENERAL.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—This Act, with the exception of section 5, is designated as an emergency for purposes of pay-as-you-go principles. In the Senate, this Act is designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(c) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—This Act, with the exception of section 5, is designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

The SPEAKER pro tempore.(3) Pursuant to the rule, the gentleman from Washington (Mr. MCDERMOTT) and the gentleman from California (Mr. HERGER) each will control 20 minutes.

The Chair recognizes Mr. MCDERMOTT.

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1. 2 USC § 933(g).

Parliamentarian's Note: Ordinarily an emergency designation of this type requires that the Speaker put the question of consideration on the measure. See 2 USC § 933(g)(2). But a motion to suspend the rules obviates that requirement.

2. 156 CONG. REC. H901, 903 [Daily Ed.], 111th Cong. 2d Sess.

3. Michael Capuano (MA).

§ 24. House PAYGO Rule

§ 24.1 Where the Speaker fails to put the question of consideration for legislation containing emergency designations as required by the Statutory Pay-As-You-Go Act[1] and the (former) House PAYGO rule,[2] subsequent action on the measure renders such proceedings moot and the omission is simply noted by the Speaker.[3]

On July 1, 2010,[4] the following occurred:

RESTORATION OF EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 2010

Mr. LEVIN. Mr. Speaker, pursuant to H. Res. 1495, I call up the bill (H.R. 5618) to continue Federal unemployment programs, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore.[5] Pursuant to House Resolution 1495, the amendment printed in House Report 111–519 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H. R. 5618

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Restoration of Emergency Unemployment Compensation Act of 2010''. . . .

SEC. 6. BUDGETARY PROVISIONS.

(a) STATUTORY PAYGO.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled 'Budgetary Effects of PAYGO Legislation' for this Act, submitted for printing in the *Congressional Record* by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

(b) EMERGENCY DESIGNATIONS.—Sections 2 and 3—

(1) are designated as an emergency requirement pursuant to section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g));

(2) in the House of Representatives, are designated as an emergency for purposes of pay-as-you-go principles; and

(3) in the Senate, are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010. . . .

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1. 2 USC §§ 931–39.

2. *House Rules and Manual* §§ 1068f, 1068j (2011)

3. *Parliamentarian's Note:* The House's subsequent actions (ultimately passing the bill in question) rendered moot the threshold question of consideration. The Chair's statement regarding the omission of the question of consideration was itself incomplete, as it failed to note that Stat-Paygo (in addition to the House PAYGO rule) also required the question of consideration to be put before the House.

4. 156 CONG. REC. H5321, H5330 [Daily Ed.], 111th Cong. 2d Sess.

5. John Salazar (CO).

So the bill was passed.
The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Under clause 10(c)(3) of rule XXI, the presiding officer was supposed to have put the question of consideration on H.R. 5618 but omitted to do so. That omission has been overtaken by the subsequent actions on the bill.

§ 24.2 Under former Rule XXI clause 10(c)(3),[1] when a measure contained an "emergency designation for pay-as-you-go principles," the Speaker put the question of consideration with respect to the measure pending the House's resolving into the Committee of the Whole for its consideration.

On Jan. 27, 2009,[2] the following occurred:

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The SPEAKER pro tempore (Mr. [Tim] HOLDEN [of Pennsylvania]). Pending any declaration of the House into the Committee of the Whole pursuant to House Resolution 88 for the consideration of the bill, H.R. 1—which contains an emergency designation for purposes of pay-as-you-go principles—the Chair must put the question of consideration under clause 10(c)(3) of rule XXI.

The question is, "Will the House now consider the bill?"

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

RECORDED VOTE

Mr. [Michael] MICHAUD [of Maine]. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 199, not voting 10, as follows:

[Roll No. 38]

§ 24.3 Former Rule XXI clause 10,[1] which prohibited consideration of measures if the net effect of its provisions affecting direct spending and revenues increased the deficit or reduced the surplus over certain time periods, did not apply to spending provided

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1. Former Rule XXI clause 10 was replaced with a cut-as-you-go point of order in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).

2. 155 CONG. REC. 1671, 1672, 111th Cong. 1st Sess.

1. Former Rule XXI clause 10 was replaced with a cut-as-you-go point of order in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).

by appropriation acts, which were excluded from the most pertinent definition of "direct spending" (in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985).(2)

On May 15, 2008,(3) the following occurred:

SUPPLEMENTAL APPROPRIATIONS ACT, 2008

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, pursuant to House Resolution 1197, I call from the Speaker's table the bill (H.R. 2642) making appropriations for military construction, the Department of Veterans Affairs, and related agencies for the fiscal year ending September 30, 2008, and for other purposes, and with a Senate amendment thereto, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. TIERNEY).(4) The Clerk will designate the Senate amendment.

The text of the Senate amendment is as follows:

Senate amendment: . . .

MOTION OFFERED BY MR. OBEY

Mr. OBEY. Mr. Speaker, I offer the motion at the desk.

The SPEAKER pro tempore. The Clerk will designate the motion.

The text of the motion is as follows:

Motion offered by Mr. OBEY:

Mr. OBEY moves that the House concur in the Senate amendment with three House amendments. . . .

POINT OF ORDER

Mr. [Paul] RYAN of Wisconsin. Mr. Speaker, I make a point of order against consideration of the measure.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. RYAN of Wisconsin. Mr. Speaker, I make a point of order that the measure causes an increase in the deficit over a 6- and 11-year period and therefore violates clause 10 of House rule XXI, the PAYGO point of order.

Mr. Speaker, there is undeniably net direct spending included in this bill. Hence it increases the deficit. Simply by putting new entitlement spending on an appropriation bill in order to evade PAYGO would constitute a blatant loophole in the PAYGO point of order. If PAYGO is designed to prevent increases in the deficit, this measure should not be considered here today.

I therefore urge that my point of order be sustained.

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2. Pub. L. No. 99–177. At the time of this ruling, Rule XXI clause 10 contained no definition of direct spending. When the rule was changed at the beginning of the 112th Congress to the CUTGO rule, a definition of direct spending was provided by specific reference to section 250 of Gramm-Rudman-Hollings (2 USC § 900).

3. 154 CONG. REC. 9199, 9206, 9228, 9229, 110th Cong. 2d Sess.

4. John F. Tierney (MA).

The SPEAKER pro tempore. Does any other Member wish to be heard?

Mr. OBEY. Mr. Speaker, the gentleman may be reciting the PAYGO rule as he wishes it were, but that's not the way it is.

The legislation before the House fully complies with the PAYGO rule. That rule deals with direct spending and revenues.

As to revenues, the revenue effects of this package reduce the deficit, rather than increasing it. As to spending, none of the spending in this package falls into the direct spending category, which is basically defined as spending outside the appropriations process.

Even though not technically required to do so, the Medicaid provisions and the expansion of veterans' education benefits fully meet the PAYGO standard. Both sets of provisions contain offsets to ensure that they do not increase the deficit over the 5- and 10-year periods used by the PAYGO rule.

The rest of the bill consists mostly of emergency appropriations for defense and other security-related needs, largely for things requested by the President. And the other major spending item, relating to extended unemployment compensation benefits, is temporary in nature and responds to current hardships created by the economic downturn.

So I believe that we ought to abide by the House rules as they are, not as some Members wish they were.

The SPEAKER pro tempore. The gentleman from Wisconsin makes a point of order that the motion violates clause 10 of rule XXI by increasing a deficit.

Clause 10 of rule XXI provides a point of order against a measure if the provisions of such measure affecting direct spending or revenues have the net effect of increasing a deficit or reducing a surplus. Clause 10 of rule XXI further provides that the effect of the measure on the deficit or surplus is determined by the Committee on the Budget relative to certain estimates supplied by the Congressional Budget Office.

The gentleman from Wisconsin has asserted that the motion contains direct spending that causes an increase in a deficit. As a threshold matter, the Chair must determine if provisions in the measure affect "direct spending."

In reviewing the text of clause 10 of rule XXI, the Chair finds no definition of the term "direct spending." Because clause 10 of rule XXI is a budget enforcement mechanism, the Chair finds it prudent to look to other budget enforcement schemes for guidance in defining this term. In a review of relevant budget enforcement statutes, the Chair finds a definition of the term "direct spending" in section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985, hereafter section 250. The definition in section 250 provides, in pertinent part, that "direct spending" means budget authority provided by law other than appropriation Acts.

The underlying bill, H.R. 2642, is a general appropriation bill. This measure constitutes an "appropriation Act" within the meaning of section 250. The motion proposes amendments that would make emergency supplemental appropriations for the fiscal year 2008. Accordingly, the budget authority portended by the motion does not constitute "direct spending" for purposes of section 250, and by extension, the Chair finds that the motion does not affect direct spending for purposes of clause 10 of rule XXI.

Pursuant to clause 10 of rule XXI, the Committee on the Budget is required to provide estimates to the Chair on the effect of the measure on the deficit. In consonance with the Chair's findings, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions of the pending motion affecting revenues and direct spending would not increase a deficit.

Accordingly, the point of order is overruled.

§ 24.4 A motion to recommit a bill with instructions to report "forthwith" an amendment containing revenue provisions the net effect of which would increase the deficit for a relevant period of fiscal years, as authoritatively estimated by the Committee on the Budget, was held to violate former Rule XXI clause 10[(1)] and ruled out of order (sustained by tabling of appeal).[(2)]

On Dec. 12, 2007,[(3)] the following occurred:

MOTION TO RECOMMIT OFFERED BY MR. MC CRERY

Mr. [James] MCCRERY [of Louisiana]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore.[(4)] Is the gentleman opposed to the bill?

Mr. MCCRERY. I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. McCrery moves to recommit the bill H.R. 4351 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tax Increase Prevention Act of 2007".

SEC. 2. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.

(a) IN GENERAL.—Paragraph (1) of section 55(d) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended—

(1) by striking "($62,550 in the case of taxable years beginning in 2006)" in subparagraph (A) and inserting "($66,250 in the case of taxable years beginning in 2007)", and

(2) by striking "($42,500 in the case of taxable years beginning in 2006)" in subparagraph (B) and inserting "($44,350 in the case of taxable years beginning in 2007)".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 3. EXTENSION OF ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE PERSONAL CREDITS.

(a) IN GENERAL.—Paragraph (2) of section 26(a) of the Internal Revenue Code of 1986 (relating to special rule for taxable years 2000 through 2006) is amended—

(1) by striking "or 2006" and inserting "2006, or 2007", and

(2) by striking "2006" in the heading thereof and inserting "2007".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

Mr. MCCRERY (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

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1. Former Rule XXI clause 10 was replaced with a cut-as-you-go point of order in the 112th Congress. See *House Rules and Manual* §§ 1068f, 1068j (2011).
2. See also 155 CONG. REC. H14405–6 [Daily Ed.], 111th Cong. 1st Sess., Dec. 9, 2009; and 155 CONG. REC. H9570 [Daily Ed.], 111th Cong. 1st Sess., Dec. 3, 2009.
3. 153 CONG. REC. 34064–66, 110th Cong. 1st Sess.
4. Steve Israel (NY).

There was no objection.

POINT OF ORDER

Mr. [Richard] NEAL of Massachusetts. Mr. Speaker, I make a point of order that the motion to recommit violates clause 10 of rule XXI because the provisions of the measure have the net effect of increasing the deficit over the requisite time period. The cost of 1 year of AMT relief is $50 billion, and the motion contains no provisions to pay for that relief.

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

Mr. McCRERY. Mr. Speaker, I do not believe it is the intent of clause 10 of rule XXI to require tax increases to pay for preventing scheduled tax increases. That is precisely what we are debating on this point of order.

If the Chair determines that this motion violates rule XXI and the House sustains this ruling, then the House is endorsing more than $3 trillion of tax increases over the next 10 years.

PAYGO, as a budget enforcement law between 1990 and 2002, as the majority leader referred to, required automatic spending reductions across the government when budget targets were not met. Rule XXI, should it apply to this motion, is a very, very different PAYGO. It would prevent any Member from offering an amendment that prevents a tax increase without another tax increase. I would understand, and even strongly support, an interpretation of rule XXI that had the effect of requiring spending reductions to offset increases in spending.

Further, while I would not necessarily endorse it, I could understand a PAYGO interpretation that requires a spending cut or tax increase to offset any reduction in current tax rates, or an increase in any current tax deductions or credits; but that is not what we're dealing with here today, Mr. Speaker. Today, with my motion, we are simply maintaining the Federal Government's current take, so to speak, from the people.

Current individual tax rates and policies have largely been in place as they are since 2003 and have led to sustained increases in revenue to the Federal Government. In fact, the annualized increases over the last 3 years have been 14.6 percent, 11.7 percent and 6.7 percent.

Even if my motion passes and is eventually enacted, we will again see increased revenue, it is projected, to the Federal Government next year. Those who wish to apply PAYGO to my motion, those who wish to object to my motion, are advocating very clearly that they want to lock in not only the largest revenue take in history, but also the largest tax increase in history. These tax increases will lead the government to collect more than 20 percent of GDP from its citizens by the end of the decade, and far higher in the years that follow. These tax increases will be of such a dramatic magnitude that they threaten to bring our economy to its knees and render it uncompetitive in the global marketplace.

The motion I have offered contains no new spending, no new tax cuts. Instead, it simply prevents a tax increase. That, I submit, is not what rule XXI was designed to prevent. And I urge the speaker to reject the point of order.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

Mr. NEAL of Massachusetts. Mr. Speaker, I insist on my point of order.

The SPEAKER pro tempore. The gentleman from Massachusetts makes a point of order that the amendment proposed in the motion violates clause 10 of rule XXI by increasing the deficit.

Pursuant to clause 10 of rule XXI, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions in the amendment affecting revenues would increase the deficit for a relevant period.

Accordingly, the point of order is sustained and the motion is not in order.

Mr. MCCRERY. Since that was an awfully quick ruling, Mr. Speaker, I most respectfully do appeal the ruling of the Chair because this may be the only opportunity we have to veer from this tax increase interpretation so that we can clear a bill that the Senate will pass and the President will sign.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. NEAL OF MASSACHUSETTS

Mr. NEAL of Massachusetts. Mr. Speaker, I move to table the motion to appeal.

The SPEAKER pro tempore. The question is on the motion to table.

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

Mr. MCCRERY. 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.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to table will be followed by a 5-minute vote on the passage of the bill, if ordered, and if arising without further debate or proceedings in recommittal.

The vote was taken by electronic device, and there were—yeas 225, nays 191, not voting 15, as follows:

[Roll No. 1152] . . .

So the motion to table was agreed to.

§ 25. House CUTGO Rule

§ 25.1 A point of order pursuant to Rule XXI clause 10[1] must be made prior to the consideration of a measure, and is untimely pending the question of engrossment and third reading of such measure.

On Mar. 30, 2011,[2] immediately following the rejection of an amendment contained in a motion to recommit (but before the question on engrossment and third reading was put), a Member rose for the following point of order:

POINT OF ORDER

Mr. [Anthony] WEINER [of New York]. Mr. Speaker, I rise to a point of order.

1. *House Rules and Manual* § 1068f (2011).
2. 157 CONG. REC. H2079, H2080 [Daily Ed.], 112th Cong. 1st Sess.

The SPEAKER pro tempore.[3] The gentleman will state his point of order.

Mr. WEINER. Mr. Speaker, I make a point of order against consideration of this bill because the legislation violates clause 10 of rule XXI which states that it is not in order to consider a bill if it has the effect of increasing spending for the current year and a 5-year window. CBO estimates this bill will cost $500 million over 5 years without an offset in the bill.

□ 1630

As you can see, Mr. Speaker, "We are setting PAYGO aside and instituting Cut-As-You-Go, which means if there is any spending called for in any new way or authorization, that there has to be some cutting somewhere." ERIC CANTOR.

Further, the Speaker said:

"Very simply under the Cut-Go rule, if it is your intention to create a new government program, you must also terminate or reduce spending on an existing government program of equal or greater size—in the same bill."

I would point out, Mr. Speaker, as we already know, on January 5, there was a violation of the rules where Members failed to take the oath when they were not in the room.

On February 9: Failed to offer a proper constitutionality statement with legislation that was offered.

On March 3: Failed to require a three-fifths majority for the passage of a bill that raised tax rates.

On March 17, we failed to make legislation available for 72 hours.

And now we are failing to include an offset for a new government program required under these rules under Cut-Go.

In order for these rules to be taken seriously, we can't simply say, Because it's a favorite program of the Speaker, we're going to waive the rules. The rules are there for a reason. We voted on those rules, and they were made an important part of the change of hands in this House. When you have statements like this by the Speaker, they should be taken seriously. There is no argument that the funds in this bill are simply not paid for, and I insist on my point of order.

The SPEAKER pro tempore. The Chair is not aware of any point of order against the pending measure that would be timely or cognizable at this time.

§ 25.2 A motion to recommit a bill with instructions to report "forthwith" an amendment containing provisions the net effect of which would increase direct spending over a relevant period of time, as authoritatively estimated by the chairman of the Committee on the Budget pursuant to Rule XXIX clause 4,[1] was held to violate Rule XXI clause 10[2] and ruled out of order (sustained by tabling of appeal).

On Mar. 3, 2011,[3] the following proceedings took place:

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3. Candice Miller (MI).

1. *House Rules and Manual* § 1105d (2011).

2. *House Rules and Manual* § 1068f (2011).

3. 157 CONG. REC. H1549–551 [Daily Ed.], 112th Cong. 1st Sess.

MOTION TO RECOMMIT

Mr. [Jerry] McNERNEY [of California]. Madam Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore.(4) Is the gentleman opposed to the bill?

Mr. McNERNEY. I am opposed in its current form.

Mr. [David] CAMP [of Michigan]. Madam Speaker, I reserve a point of order.

The SPEAKER pro tempore. A point of order is reserved.

The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. McNerney moves to recommit the bill H.R. 4 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:
>
> Add at the end of the bill the following new sections:
>
> **SEC. 5. NONREFUNDABLE PERSONAL CREDIT FOR TAXPAYERS SUBJECT TO A TAX INCREASE UNDER THE SMALL BUSINESS PAPERWORK MANDATE ELIMINATION ACT OF 2011.**
>
> (a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25D the following new section:
>
> **''SEC. 25E. CREDIT FOR TAXPAYERS SUBJECT TO A TAX INCREASE UNDER THE SMALL BUSINESS PAPERWORK MANDATE ELIMINATION ACT OF 2011.**
>
> ''(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the excess (if any) of—
>
> ''(1) the regular tax liability of the taxpayer for the taxable year, over
>
> ''(2) the regular tax liability of the taxpayer for the taxable year, determined by applying section 36B(f)(2) (as in effect on the day before the date of the enactment of this section) in lieu of section 36(b)(f)(2) (as in effect on the day after the date of the enactment of this section).
>
> ''(b) CARRYFORWARD OF UNUSED CREDIT.—
>
> ''(1) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.
>
> ''(2) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.''.
>
> (b) CONFORMING AMENDMENTS.—
>
> (1) Section 24(b)(3)(B) of such Code is amended by inserting ''25E,'' after ''25D,''.
>
> (2) Section 25(e)(1)(C) of such Code is amended by inserting ''25E,'' after ''25D,'' both places it appears.
>
> (3) Section 25A(i)(5)(B) of such Code is amended by inserting ''25E,'' after ''25D,''.
>
> (4) Section 25B(g)(2) of such Code is amended by inserting ''25E,'' after ''25D,''.
>
> (5) Sections 25D(c)(1)(B) and 25D(c)(2)(A) of such Code are both amended by inserting ''and section 25E'' after ''this section''.
>
> (6) Section 26(a)(1) of such Code is amended by inserting '''25E,'' after ''25D,''.
>
> (7) Section 30(c)(2)(B)(ii) of such Code is amended by inserting ''25E,'' after ''25D,''.
>
> (8) Section 30B(g)(2)(B)(ii) of such Code is amended by inserting ''25E,'' after ''25D,''.
>
> (9) Section 30D(c)(2)(B)(ii) of such Code is amended by striking ''sections 23 and 25D'' and inserting ''sections 23, 25D, and 25E''.
>
> (10) Sections 1400C(d) of such Code is amended by inserting ''25E,'' after ''25D,'' both places it appears.
>
> (c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25D the following new item:

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4. Jo Ann Emerson (MO).

"Sec. 25E. Credit for taxpayers subject to a tax increase under the Small Business Paperwork Mandate Elimination Act of 2011.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

SEC. 6. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by inserting after clause (iii) the following new clause:

''(iv) in the case of a major integrated oil company (as defined in section 167(h)(5)), the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2014.

SEC. 7. MAJOR INTEGRATED OIL COMPANIES INELIGIBLE FOR LAST-IN, FIRST-OUT METHOD OF INVENTORY.

(a) IN GENERAL.—Section 471 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) MAJOR INTEGRATED OIL COMPANIES INELIGIBLE FOR LAST-IN, FIRST-OUT METHOD.—In the case of a major integrated oil company (as defined in section 167(h)(5)(B))—

''(1) the last-in, first-out method of determining inventories shall in no event be treated as clearly reflecting income, and

''(2) sections 472 and 473 shall not apply.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year beginning after December 31, 2014—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) if the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 is positive, such amount shall be taken into account over a period of 8 years beginning with such first taxable year. . . .

POINT OF ORDER

Mr. CAMP. Madam Speaker, I insist on my point of order.

I make a point of order against the motion because it violates clause 10 of rule XXI, as it has the net effect of increasing mandatory spending within the time period set forth in the rule.

I ask for a ruling of the Chair.

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order? The Chair recognizes the gentleman from California. . . .

The SPEAKER pro tempore. The Chair has heard enough and is prepared to rule at this time.

Mr. [Anthony] WEINER [of New York]. Madam Chair, point of order.

The SPEAKER pro tempore. Does the gentleman from New York have a point of order?

Mr. WEINER. Madam Speaker, Members should have an opportunity to be heard on the point of order. Just because one person you might feel didn't address it doesn't mean all of us should be prejudiced in our opportunity to speak.

The SPEAKER pro tempore. Argument is at the discretion of the Chair, to edify her judgment.

The Chair finds that it is time to now rule on the point of order.

The gentleman from Michigan makes a point of order that the motion offered by the gentleman from California violates clause 10 of rule XXI by proposing an increase in mandatory spending over a relevant period of time.

Pursuant to clause 10 of rule XXI and clause 4 of rule XXIX, the Chair is authoritatively guided by estimates from the chair of the Committee on the Budget that the net effect of the provisions in the amendment would increase mandatory spending over a relevant period as compared to the bill.

Accordingly, the point of order is sustained and the motion is not in order.

Mr. [Sander] LEVIN [of Michigan]. Madam Speaker, I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE

Mr. CAMP. Madam Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. The question is on the motion to table.

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

Mr. CAMP. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, this 15-minute vote on the motion to table will be followed by a 5-minute vote on passage of the bill, if arising without further proceedings in recommittal.

The vote was taken by electronic device, and there were—yeas 243, nays 181, not voting 8, as follows:

[Roll No. 161]

§ 25.3 An amendment containing provisions the net effect of which would increase direct spending over a relevant period of time, as authoritatively estimated by the chairman of the Committee on the Budget pursuant to Rule XXIX clause 4,(1) was held to violate Rule XXI clause 10(2) and ruled out of order.(3)

On Jan. 26, 2011,(4) the following proceedings occurred:

AMENDMENT NO. 5 OFFERED BY MR. POLIS

Mr. [Jared] POLIS [of Colorado]. Mr. Chairman, I have an amendment at the desk.

The CHAIR.(5) The Clerk will designate the amendment.

The text of the amendment is as follows:

> Strike all after the enacting clause and insert the following:
>
> **SECTION 1. VOLUNTARY FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS.**
>
> (a) IN GENERAL.—Section 6096 of the Internal Revenue Code of 1986 is amended to read as follows:

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1. *House Rules and Manual* § 1105d (2011).
2. *House Rules and Manual* § 1068f (2011).
3. See also 157 CONG. REC. H1746–7 [Daily Ed.], 112th Cong. 1st Sess., Mar. 11, 2011; and 157 CONG. REC. H1695, 1696 [Daily Ed.], 112th Cong. 1st Sess., Mar. 10, 2011.
4. 157 CONG. REC. H494–H496 [Daily Ed.], 112th Cong. 1st Sess.
5. Steven LaTourrette (OH).

"SEC. 6096. VOLUNTARY DESIGNATION BY INDIVIDUALS.

''(a) GENERAL RULE.—Every taxpayer who makes a return of the tax imposed by chapter 1 for any taxable year may designate an amount shall be paid over to the Presidential Election Campaign Fund in accordance with the provisions of section 9006(a). The amount designated under the preceding sentence—

''(1) may not be less than $1, and

''(2) shall be in addition to any payment of tax for the taxable year.

''(b) MANNER AND TIME OF DESIGNATION.—Any designation under subsection (a) for any taxable year—

''(1) shall be made at the time of filing the return of the tax imposed by chapter 1 for such taxable year and in such manner as the Secretary may by regulation prescribe, except that such designation shall be made either on the first page of the return or on the page bearing the taxpayer's signature, and

''(2) shall be accompanied by a payment of the amount so designated.

''(c) TREATMENT OF AMOUNTS DESIGNATED.—For purposes of this title, the amount designated by any taxpayer under subsection (a) shall be treated as a contribution made by such taxpayer to the United States on the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if later, the date the return is filed.''.

(b) CLERICAL AMENDMENT.—The item relating to section 6096 in the table of sections for part VIII of subchapter A of chapter 61 of such Code is amended to read as follows:

''Sec. 6096. Voluntary designation by individuals.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Mr. [Peter] ROSKAM [of Illinois]. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIR. A point of order is reserved.

The gentleman from Colorado is recognized for 5 minutes. . . .

POINT OF ORDER

Mr. ROSKAM. Mr. Chairman, I must insist on the point of order. I raise a point of order against the amendment because it violates clause 10 of rule XXI, known as the CutGo rule. The amendment proposed increased mandatory spending without an equal or great reduction in existing mandatory spending relative to the underlying bill in violation of the rule. . . .

The CHAIR. Does any other Member wish to be heard on the point of order?

The Chair is prepared to rule.

The gentleman from Illinois makes a point of order that the amendment offered by the gentleman from Colorado violates clause 10 of rule XXI by proposing an increase in mandatory spending over a relevant period of time.

Pursuant to clause 10 of rule XXI and clause 4 of rule XXIX, the Chair is authoritatively guided by estimates from the chair of the Committee on the Budget that the net effect of the provisions in the amendment would increase mandatory spending over a relevant period as compared to the bill.

Accordingly, the point of order is sustained, and the amendment is not in order.

H. Canceling Budget Authority

§ 26. Introduction and Sequestration Generally

The Impoundment Control Act of 1974

Impoundment refers to a decision by the executive not to spend money that has been appropriated by Congress. Although this authority was unquestioned for many years, perceived abuses of this practice led to the enactment of title X of the Congressional Budget and Impoundment Control Act of 1974. Title X of the Congressional Budget and Impoundment Control Act of 1974 relates to impoundment control of budget authority.(1) The Act gives the President the ability to propose an impoundment of appropriated funds subject to congressional approval.(2)

Sections 1012 and 1013 of the Impoundment Control Act specify two types of impoundments: rescissions and deferrals.(3) A rescission is the permanent cancellation of budget authority. A deferral temporarily delays the spending. These proposals must be approved by Congress before they can take effect. Absent such approval, the proposed cancellation of budget authority does not occur and the money must be spent as originally prescribed.

Rescissions Generally

Congress may propose rescissions (permanent cancellation) of previously-enacted budget authority as part of the regular legislative process, often reported in annual appropriation bills. Such rescissions may reflect a change in budget priorities or a desire to offset spending in one area by canceling budget authority in another. Striking a rescission from a measure (thus allowing the money to be spent) causes the net total budget authority to increase.(1) Rescissions of appropriations contained in appropriation acts are

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1. 2 USC §§ 681–688; *House Rules and Manual* § 1130(6A) (2011). Because the Impoundment Control Act addressed both executive and legislative actions, an amendment adding a sense of Congress regarding the repeal of such Act is not germane to a concurrent resolution on the budget. Deschler-Brown Precedents Ch. 28 § 4.89, *supra*. For a further discussion of germaneness issues under the Impoundment Control Act, see Deschler-Brown Precedents Ch. 28 § 15.41, *supra*.

2. The executive branch has no inherent power to impound appropriated funds, unless authorized by Congress. In lieu of congressional authorization, the President must spend all appropriated funds. See *Kennedy v. Matthews*, 413 F. Supp. 1240 (D.D.C. 1976); see also *Train v. City of New York*, 420 U.S. 35 (1975).

3. 2 USC § 682; *House Rules and Manual* § 1130(6A) (2011).

1. See §§ 10.3, 11.11, *supra*.

exempted from the Rule XXI clause 2[2] prohibition against provisions "changing existing law" (*i.e.*, legislating in an appropriation bill).[3] However, this exception does not extend to amendments or to rescissions of contract authority provided by law other than an appropriation act.[4]

When proposing a rescission under the Impoundment Control Act, the President must transmit to Congress a special message. According to the Act, that message must specify the proposed amount of budget authority to be rescinded or reserved and the reasons why the budget authority should be rescinded or canceled. Under the Act, Congress has 45 calendar days of continuous session[5] after which Congress receives the President's message to complete action on a rescission bill containing in whole or in part the budget authority contained in the President's message.[6] If Congress does not approve of the rescission bill, the President must release the funds.

Deferrals Generally

To defer budget authority, the President must submit a special message to Congress setting forth the amount, the affected government account, the period of time for the deferral, and the reasons for the deferral.[1] Previously, Congress could reject the proposal by one-House veto,[2] but this provision of the Impoundment Act was declared unconstitutional in *City of New Haven, Conn.* v. *United States*, 809 F.2d 900 (D.C. Cir. 1987). Today Congress may disapprove a deferral only through the enactment of a law.

In one instance a President has taken a predecessor's request for rescissions and converted the rescissions into deferrals.[3]

Sequestration Procedures

Sequestration is an automatic spending reduction process usually achieved by across-the-board cuts of budget authority. This post-enactment

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2. See Deschler's Precedents Ch. 26, *supra*.

3. *House Rules and Manual* §§ 1038, 1043, 1052 (2011). See also Pub. L. No. 99–177, sec. 228(a) (Gramm-Rudman-Hollings). See § 27.1, *infra*.

4. *House Rules and Manual* § 1052 (2011).

5. Continuity of a session of Congress (defined at 2 USC § 682(5)) is broken only by adjournments *sine die*. Days in which either House is not in session because of an adjournment of more than three days are not counted towards the 45-day period.

6. While section 1017 of the Impoundment Control Act (2 USC § 688) affords privileged status to bills approving such rescissions within the 45-day period, nothing in the Act precludes consideration in the House of such bills after the expiration of that 45-day period. Such bills would merely lack privileged status for consideration and would have to be considered pursuant to the regular rules of the House. For an example of a bill considered in this manner, see 121 CONG. REC. 8484, 8485, 94th Cong. 1st Sess., Mar. 25, 1975, and Deschler-Brown Precedents Ch. 33 § 22.3, *supra*.

1. 2 USC § 684(a); *House Rules and Manual* § 1130(6A) (2011).

2. For consideration of such resolutions in the House, see § 28.1, *infra*.

3. See § 27.3, *infra*.

procedure occurs outside of the legislative process. A presidential order is issued that permanently cancels budgetary authority. This order's purpose is to achieve a required amount of outlay savings. There have been several procedures (some no longer applicable) that have given the President this cancellation authority.

—Under Gramm-Rudman-Hollings

Section 251 of Gramm-Rudman-Hollings established certain discretionary spending limits.[1] These limits applied to new budget authority and outlays provided in annual appropriation acts. Any breach would trigger an automatic sequestration.[2]

Section 254 of Gramm-Rudman-Hollings[3] required the Office of Management and Budget to issue a final sequestration report 15 days after Congress adjourns a session, if the session's enacted discretionary appropriations exceeded the discretionary spending limits. Although this section initially expired in 2002, it was reinstated by the enactment of the Budget Control Act of 2011.[4]

Sections 255 and 256 of Gramm-Rudman-Hollings[5] list exemptions from the across-the-board cuts of budget authority, including Social Security benefits, net interest, and veterans' affairs programs.

—Bowsher v. Synar

The U.S. Supreme Court held in *Bowsher* v. *Synar*, 478 U.S. 714 (1986), that the automatic sequestration process contemplated in Gramm-Rudman-Hollings was unconstitutional. The Court's holding was rooted in the constitutional principle of separation-of-powers. The sequestration process of section 251 established a mechanism whereby the Comptroller General, an official removable by Congress, would determine necessary budget cuts for a given fiscal year and the President would issue a sequestration order to implement such cuts. The Court held that the power vested in the Comptroller General was an executive power. Therefore, section 251 of Gramm-Rudman-Hollings was found unconstitutional because it reserved for Congress, via the Comptroller General, the power to execute laws.

Following the Court's decision, Congress relied on the fallback procedures contained in section 274 of Gramm-Rudman-Hollings.[1] That section provided for the creation of a Temporary Joint Committee on Deficit Reduction,

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1. 2 USC § 901.

2. 2 USC § 902. For the referral of sequestration messages under Gramm-Rudman-Hollings, see Deschler-Brown-Johnson Precedents Ch. 35 §§ 3.1, 3.8, *supra*.

3. 2 USC § 904.

4. Pub. L. No. 112–25.

5. 2 USC §§ 905, 906.

1. The *Bowsher* decision gave Congress 60 days to enact corrective legislation in response to the decision. Such corrective legislation was entitled to expedited procedures under

composed of all members of the House and Senate Budget Committees. Such joint committee, pursuant to the statute, was tasked with receiving the same budgetary reports from the Congressional Budget Office and the Office of Management and Budget as would have been provided to the Comptroller General, and propounding a joint resolution embodying those reports. The joint resolution implemented the cuts declared null and void by the Court.

—Under the Budget Enforcement Act of 1990 and the Budget Enforcement Act of 1997

Under the Budget Enforcement Act of 1990,[1] adjustable limits were established on discretionary spending for fiscal years 1991–1995. These limits were revised by the Budget Enforcement Act of 1997[2] which extended the pay-as-you-go process (enforced by sequestration) through fiscal year 2002.[3] Section 253 of Gramm-Rudman-Hollings had reinforced certain deficit targets, but the Budget Enforcement Act of 1990 eliminated deficit targets as a factor in budget enforcement. At the end of the fiscal year, the Office of Management and Budget was required to issue a final sequestration report for that fiscal year, and the majority leader of either House was authorized (within a specified time period) to introduce a joint resolution directing the President to modify his most recent sequestration order or to provide an alternative to reduce the deficit for such a fiscal year.[4] As noted, this pay-as-you-go procedure, and its enforcement by sequestration, expired in 2002.

—Under Stat-Paygo

Under the Statutory Pay-As-You-Go Act of 2010,[1] any reduction in revenues must be offset by cuts to direct spending programs or revenue increases. Similarly, any increase in direct spending must be fully offset by cuts to other programs or by increases in revenues. The budgetary effects of direct spending and revenue legislation are carried on PAYGO scorecards covering 5- and 10-year periods. At the end of a congressional session, if Congress has enacted bills that result in a net debit, the President must

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section 258 of Gramm-Rudman-Hollings. For the announcement by the Speaker of the creation of the joint committee on deficit reduction, see 132 CONG. REC. 16316, 99th Cong. 2d Sess., July 14, 1986. For House passage of the joint resolution enacting fiscal year 1986 cuts, see 132 CONG. REC. 16881, 16882, 16887, 16888, 99th Cong. 2d Sess., July 17, 1986 (H. J. Res. 672).

1. Pub. L. No. 101–508.

2. Pub. L. No. 105–33.

3. See § 22, *supra*.

4. 2 USC § 907b.

1. Pub. L. No. 111–139; 2 USC §§ 931–939.

issue a sequestration order.[2] Certain mandatory programs are exempt from such orders.

—Under the Budget Control Act of 2011

The Budget Control Act of 2011[1] created a process to reduce spending by $1.2 trillion over fiscal years 2013–2021, by amending section 251 of Gramm-Rudman-Hollings.[2] The Budget Control Act of 2011 enforces discretionary spending caps through a sequestration process[3] occurring 15 days after Congress adjourns at the end of the session (exempting any military personnel accounts from sequestration provided that the savings are achieved through across-the-board reductions in the remainder of the Department of Defense budget).

The Act also provides for adjustments to discretionary spending limits for emergency appropriations, appropriations for combating terrorism, and for major disasters. The Act also established a point of order under section 314(f) of the Congressional Budget Act[4] against any bill, joint resolution, amendment, motion, or conference report that would cause discretionary spending caps to be exceeded.

Title IV of the Budget Control Act of 2011 established a bipartisan Joint Select Committee on Deficit Reduction. The committee was charged with proposing legislation that would result in at least $1.5 trillion in savings over a 10-year period, such legislation qualifying for expedited procedures in the House and the Senate. However, the committee failed to report an agreement by the required deadline, triggering alternative automatic spending reductions of at least $1.2 trillion over the fiscal year 2013–2021 period starting 15 days after adjournment *sine die* of the 112th Congress. Spending reductions would be achieved by sequestration orders and would be divided equally between security and nonsecurity spending.

A unique directive contained in the House-adopted budget resolution for fiscal year 2013 instructed the Committee on the Budget to report legislation to replace the mandated sequester with an alternate method of achieving those budgetary savings.[5] Although Congress did not complete action

2. 2 USC § 934.

1. Pub. L. No. 112–25.

2. 2 USC § 901.

3. For parliamentary inquiries in the Senate regarding the inapplicability of Gramm-Rudman-Hollings congressional sequestration procedures ostensibly “revived” by the BCA of 2011, see 158 CONG. REC. S5923–24 [Daily Ed.], 112th Cong. 2d Sess., Aug. 2, 2012.

4. 2 USC § 645(f).

5. 158 CONG. REC. H1768 [Daily Ed.], 112th Cong. 2d Sess., Mar. 29, 2012 (H. Con. Res. 112, sec. 202).

on a concurrent resolution for fiscal year 2013, the Committee on the Budget nevertheless reported a bill to replace the sequester, which the House considered under a special order reported by the Committee on Rules.[6] While the bill did pass the House, it was not acted upon by the Senate.

Line Item Vetoes

The Line Item Veto Act was enacted by Congress in 1996 to provide the President with increased flexibility in canceling certain kinds of spending authority. The Act added a new part C to title X of the Congressional Budget Act[1] and established enhanced presidential rescission authority over certain categories of spending and revenue legislation.

Cancellation of budget authority was initiated by transmittal to Congress of a presidential message within five days of the enactment of the law providing such budget authority. The Act provided for congressional review of the cancellation within a period of 30 calendar days with expedited House consideration of bills disapproving the cancellation. Cancellations were effective unless disapproved by law.[2]

In *Clinton* v. *New York*, 524 U.S. 417 (1998),[3] the U.S. Supreme Court held that the cancellation procedures of the Line Item Veto Act violated the presentment clause of article I, section 7 of the U.S. Constitution.[4] Consequently, the procedures contained in that Act are no longer operative. Although proposals for modified line item veto procedures have been passed by the House, Congress has not enacted any new line item veto authorities.

6. See § 21.6, *supra*.

1. *House Rules and Manual* § 1130(6B) (2011); 2 USC §§ 691–91f.

2. An instance of Presidential use of the line item veto (and Congress's reaction thereto) can be found in the following citations: on Nov. 7, 1997, a form of notice was given to discharge a bill disapproving cancellations of discretionary budget authority transmitted by the President (143 CONG. REC. 25156, 105th Cong. 1st Sess.). The disapproval bill was considered under suspension of the rules on Nov. 8, 1997 (143 CONG. REC. 25259, 25268, 105th Cong. 1st Sess.). The bill was presented to the President on Nov. 10, 1997, and the President issued a veto on Nov. 13, 1997. The House then voted to override the veto (the Senate joining later in the month) on Feb. 5, 1998 (143 CONG. REC. 899, 902, 903, 105th Cong. 2d Sess.). The override was successful and the bill became law on Feb. 25, 1998.

3. According to the Court, by giving the president the ability to cancel discrete items of budget authority (even if subject to congressional disapproval), the Act effectively gave the president unilateral authority to amend or repeal existing laws. Such authority violates the presentment clause of the U.S. Constitution, which lays out the specific procedures that must be followed by the legislative and executive branches in enacting legislation. Key to the court's decision was the constitutional prescription that bills must be either approved or rejected by the president *in toto*; the president cannot approve of only part of a bill.

4. *House Rules and Manual* § 104 (2011).

§ 27. Rescissions

Rescission Exception to Rule XXI Clause 2

§ 27.1 The rescission exception to the Rule XXI clause 2[1] prohibition against changing existing law in any general appropriation bill, allowing the Committee on Appropriations to report bills containing rescissions of appropriations in appropriation acts, does not extend to the rescission of contract authority provided by laws other than appropriation acts.

On Sept. 22, 1993,[2] the following occurred:

Mr. [Bob] CARR of Michigan. Mr. Chairman, I ask unanimous consent that the bill through page 20, line 3, be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN.[3] Is there objection to the request of the gentleman from Michigan?

There was no objection.

The text of the bill from page 17, line 22 through page 20, line 3 is as follows:

(RESCISSION)

(HIGHWAY TRUST FUND)

Of the amounts made available for Federal-aid highways pursuant to provisions of the Surface Transportation Assistance Act of 1982, $1,596,386 are rescinded.

(RESCISSION)

(HIGHWAY TRUST FUND)

Of the amounts made available for Federal-aid highways pursuant to provisions of the Surface Transportation and Uniform Relocation Assistance Act of 1987, $54,014,000 are rescinded.

(RESCISSION)

(HIGHWAY TRUST FUND)

Of the funds made available for the functional replacement of publicly-owned facilities located within the proposed right-of-way of Interstate Route 170 in Public Law 96–131, $200,000 are rescinded.

(RESCISSION)

(HIGHWAY TRUST FUND)

Of the funds made available under this heading in Public Law 100–71, $364,180 are rescinded.

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1. *House Rules and Manual* § 1038 (2011).

2. 139 CONG. REC. 22136–38, 103d Cong. 1st Sess.

3. Frederick Boucher (VA).

(RESCISSION)

(HIGHWAY TRUST FUND)

Of the authority made available for the intersection safety demonstration project in Public Law 100–457, $3,059,960 are rescinded.

(RESCISSION)

(HIGHWAY TRUST FUND)

Of the authority made available for bridges on Federal dams pursuant to 23 U.S.C. 320, $9,478,139 are rescinded. . . .

The CHAIRMAN. Are there any points of order against the provisions contained in that section of the bill?

POINTS OF ORDER

Mr. [Norman] MINETA [of California]. Mr. Chairman, based on the section of the bill contained in the unanimous-consent request by the distinguished chairman of the subcommittee, I have three points of order.

The CHAIRMAN. The gentleman will state his points of order.

Mr. MINETA. Mr. Chairman, I make a point of order on page 17, line 22, rescission, highway trust fund; a point of order on page 18, line 1, rescission, highway trust fund; and page 18, line 22, rescission, highway trust fund.

Mr. Chairman, I raise a point of order against these provisions. These provisions violate clause 2 of rule XXI because they would rescind their respective amounts in trust fund contract authority, not general fund appropriations, for the costs of designing and constructing certain facilities that are enumerated in the bill.

□ 1710

As I have said, a similar point in all of these, these are highway trust fund contract authority. While they are a form of direct spending, we are authorizing and rescinding highway trust fund contract authority, and that is not within the jurisdiction of the Committee on Appropriations. Thus I am asking for inclusion of the rescission provision as it relates to these three points of order and feel that this is legislation in an appropriations bill and would be subject to the point of order.

The CHAIRMAN. The Chair is going to ask if other Members desire to be heard on the point of order.

Does the gentleman from Michigan [Mr. CARR] seek recognition?

Mr. CARR of Michigan. Yes, Mr. Chairman. I wish to be heard on the point of order. . . .

The first point of order, occurring on page 17, the paragraph the gentleman wishes to strike, would rescind slightly more than $1.5 million of funds made available in the Surface Transportation Act of 1982. Now I would like the Members of the House to listen to this. This is a rescission of funds available in a 1982 Surface Transportation Act. The two projects involved here have been completed, and the money is just siting there. This is the important matter that the gentleman from North Carolina [Mr. PRICE] spoke to so eloquently a few moments ago.

In the first point of order we seek to recover funds in this bill that are just sitting in the pipeline.

Again, this is the point that the gentleman from North Carolina so eloquently addressed. Prior authorization bills created funding priority for special projects. Now, in the main, a lot of those projects are being completed or pursued. But in our investigation, in our hearings, with the help of the General Accounting Office, we have discovered some dead demo money. This is money that is in the pipeline that is not going anywhere, it cannot go anywhere. The first point of order that the gentleman from California made, on page 17, this is $1.5 million made available in the Surface Transportation Act of 1982, all the way back to 1982. It involves two projects. The two projects that are mentioned, one in California, one in Pennsylvania, have been completed. They are done, they are finished. These funds cannot flow to those projects. They are completed.

But the money, $1.5 million, is locked up because it cannot be spent for any other purpose, by definition of the authorization act.

So, in our bill we sought to recover some of that money, get it to work, get it to where it is needed, get it to where people have the need for jobs.

And so I would ask for the Chair to rule on the point or order. We believe that we ought to be able to recover this money, put it to work, and not rest on the technicalities of the rules of the House, however nice they might be. They simply are not working for the customers and owners of this Government.

On the second point of order, Mr. Chairman, I would like to say that the paragraph would rescind $54 million of funding provided in the Surface Transportation and Uniform Relocation Assistance Act of 1987. We are not talking about ISTEA, we are talking about ISTEA's predecessors. We took this action because these projects either had no obligations or obligations of less than 25 percent since the enactment of more than 5 years ago. The authority for the basic highway program available is usually 4 years; these have gone 5 years. The projects cannot get any more than 25 percent of their funding obligated within 5 years. We think that money should be reprioritized, put it on projects that can go today instead of being stuck, in dead demo money. We would ask the Chair to rule on that.

On the third point of order, we basically concede a point of order as a technical violation of the House rules, but before getting off my feet, I want to let the Members know that the first $10 million of authority for the bridges on Federal dams program was provided for in the 1946 Highway Act. Subsequent acts have increased the total to $65 million. The Federal Highway Administration indicates that all valid requirements for this program have been satisfied. Indeed, earlier this year when the FHWA financial officials were asked for candidate programs that were no longer needed and could be cleaned up where residual authority could be returned, they cited this program. We would really ask that the chairman of the Public Works and Transportation Committee not insist on his point of order, particularly on this one. This is a dead money that is struck in the pipelines; it is not working for the people. . . .

Mr. MINETA. If I may be heard further, Mr. Chairman, I understand what our very fine friend from Michigan is saying, and I recognize, yes, there are provisions from 1982 and 1987 legislation, and they are legitimate points, and I know he has strong feelings about it.

However, it seems to me what we are talking about here really does not go to the question that is being raised by the Chair, because I acknowledge that there is a certain legitimacy about what he is mentioning. The only issue, the only issue before the Chair right now is whether or not this provision is in violation of the House rules. The fact is that for the reasons I have stated, the provisions that I have outlined here are in violation

of rule XXI, that these are authorizing or rescinding highway trust fund contract authority, and that this is not within the jurisdiction of the Committee on Appropriations, and so therefore I insist on my point of order.

□ 1720

The CHAIRMAN. The Chair is ready to rule.

Under clause 2(b) of rule XXI, the Appropriations Committee may only recommend rescissions of appropriations that were contained in prior appropriations acts, but not rescissions of contract authority that is contained in other laws.

Therefore, each of the points of order raised are sustained.

Offsetting Proposals to Restore Rescinded Funds

§ 27.2 Instance where the House insisted on disagreement to a Senate amendment rescinding revenue sharing funds, having previously adopted a motion decreasing appropriations in another Senate amendment (foreign assistance funds), the net effect of which was to allow the Senate to recede from disagreement on the rescission without violating section 311 of the Congressional Budget Act.(1)

On July 2, 1980,(2) the following occurred:

So the preferential motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore.(3) The Clerk will again designate the next amendment in disagreement.

The amendment is as follows:

Senate amendment No. 118; Page 32, after line 25, insert:

DEPARTMENT OF THE TREASURY

PAYMENT TO STATE AND LOCAL GOVERNMENT FISCAL ASSISTANCE TRUST FUND

(RESCISSION)

Of the funds appropriated under this head in the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1980, $143,035,000 are rescinded: *Provided,* That the total amount rescinded shall be taken from funds allocated to State governments pursuant to 31 U.S.C. 1226.

MOTION OFFERED BY MR. WHITTEN

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I offer a motion.

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1. 2 USC § 642.

2. 126 CONG. REC. 18363, 18364, 96th Cong. 2d Sess.

3. Paul Simon (IL).

The Clerk read as follows:

> Mr WHITTEN moves that the House insist on its disagreement to the amendment of the Senate Numbered 118.

Mr. WHITTEN. Mr. Speaker, I yield myself such time as I may consume.

This is a matter at this time, of insisting that the House maintain its position against the rescission by the other body. The rescission would cut out funds for revenue sharing retroactively, which have not only been planned on but have been committed by Congress. This proposition insists on the House position which would defer the rescissions by the Senate and restore the revenue money for the remainder of this fiscal year.

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Speaker, will the gentleman yield?

Mr. WHITTEN. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, in view of the actions of this body in the last hour which has made room available in the budget ceiling, I favor the motion of the gentleman from Mississippi. . . .

Now, however, with the adoption of the amendment by the gentleman from Massachusetts (Mr. O'NEILL), it appears we will have room available in the budget ceiling and I am pleased to support the chairman's motion.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. WHITTEN).

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

Mr. [Lester] WOLFF [of New York]. Mr. Speaker, I demand a recorded vote.

The SPEAKER pro tempore. Does the gentleman from New York request the yeas and nays?

Mr. WOLFF. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were refused.

So the motion was agreed to.[4]

Converting Rescissions to Deferrals

§ 27.3 The President has by message withdrawn rescissions of budget authority originally proposed by his predecessor in office and has converted them to deferrals of budget authority pending his review and possible resubmission as rescissions.

On Feb. 17, 1981,[1] the following occurred:

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4. *Parliamentarian's Note:* Although mere disagreement with the Senate's proposed rescission would not have violated any provision of the Congressional Budget Act (the rescission being effective only upon the Senate's receding from such disagreement), the House nevertheless chose to obviate any possible points of order in the Senate by offsetting the funds proposed to be spent following rejection of the Senate amendment containing the rescission of such funds.

1. 127 CONG. REC. 2219, 97th Cong. 1st Sess. See also 127 CONG. REC. 2170, 97th Cong. 1st Sess., Feb. 16, 1981.

FIFTH SPECIAL MESSAGE FOR FISCAL YEAR 1981 UNDER IMPOUNDMENT AND CONTROL ACT OF 1974—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 97–19)

The SPEAKER pro tempore[2] laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed.

(For message, see proceedings of the Senate of Monday, February 16, 1981.)

To the Congress of the United States:

I hereby withdraw the 33 rescission proposals transmitted to the Congress by the Carter Administration on January 15, 1981 totalling $1,142.4 million and temporarily convert them to deferrals. A list of the withdrawn rescission proposals is attached.

The conversion to temporary deferrals will provide my Administration with the opportunity to review and revise these proposals within the context of my overall plan to curtail the growth of government and reduce Federal spending.

In addition, I am reporting four other new deferrals totalling $8.0 million and a revision to a previously transmitted deferral increasing the amount deferred by $51.1 million. These four new items involve programs in the Departments of the Interior and Transportation and the International Communication Agency. The revision to the existing deferral involves the Department of the Treasury.

The details of the deferrals are contained in the attached reports.

RONALD REAGAN.
THE WHITE HOUSE, *February 13, 1981.*

§ 28. Deferrals

Congressional Disapproval of Presidential Deferrals

§ 28.1 By unanimous consent, the House has agreed to consider multiple impoundment resolutions, disapproving presidential deferrals of budget authority, reported from the Committee on Appropriations and otherwise privileged under the Impoundment Control Act.[1]

On July 29, 1982,[2] the following occurred:

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2. Thomas Foley (WA).

1. *House Rules and Manual* § 1130(6A) (2011).

Parliamentarian's Note: Although privileged for consideration in the Committee of the Whole, these resolutions were nevertheless considered in the House in order to allow the operation of the previous question to terminate debate (a motion not available in the Committee of the Whole).

2. 128 CONG. REC. 18642–44, 97th Cong. 2d Sess.

RESOLUTIONS DISAPPROVING DEFERRAL OF CERTAIN BUDGET AUTHORITIES

Mr. [John] MURTHA [of Pennsylvania]. Mr. Speaker, on behalf of Chairman YATES of the Subcommittee on Interior of the Committee on Appropriations, I call up the resolution (H. Res. 474) to disapprove the historic preservation fund deferral, and ask unanimous consent for its immediate consideration in the House, and the House Resolutions 475, 476, 479, 493, and 494, disapproving the deferral of certain budget authorities, may also be considered in the House and ask for their immediate consideration.(3)

The SPEAKER.(4) Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Clerk will report the first resolution.

The Clerk read the resoluting [sic] as follows:

H. RES. 474

Resolved, That the House of Representatives hereby disapproves the proposed deferral of budget authority in the amount of $781,000 for historic preservation fund, Department of the Interior (deferral numbered D82–240), as transmitted by the President to the Congress on March 18, 1982, under section 1013 of the Impoundment Control Act of 1974.

The SPEAKER. Under the rule, the gentleman from Pennsylvania (Mr. MURTHA) is recognized for 1 hour. . . .

Mr. [Joseph] McDade [of Pennsylvania]. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

RESOLUTION DISAPPROVING DEFERRAL OF BUDGET AUTHORITY (LAND AND WATER CONSERVATION FUND)

Mr. MURTHA. Mr. Speaker, I call up House Resolution 475, recommending that the House of Representatives express its disapproval of proposed deferral D82–239, and I ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 475

Resolved, That the House of Representatives hereby disapproves the proposed deferral of budget authority in the amount of $2,821,000 for Land and Water Conservation Fund, Department of the Interior (deferral number D82–239), as transmitted by the President to the Congress on March 18, 1982, under section 1013 of the Impoundment Control Act of 1974.

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3. As the proceedings here indicate, unanimous consent was separately granted to consider each of these disapproval resolutions individually.

4. Thomas O'Neill (MA).

Mr. MURTHA (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The Speaker. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The resolution was agreed to.

RESOLUTION DISAPPROVING DEFERRAL OF BUDGET AUTHORITY (URBAN PARK AND RECREATION)

Mr. MURTHA. Mr. Speaker, I call up House Resolution 476, recommending that the House of Representatives express its disapproval of proposed deferral D82–238, and I ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 476

Resolved, That the House of Representatives hereby disapproves the proposed deferral of budget authority in the amount of $858,000 for Urban Park and Recreation Grants, Department of the Interior (deferral number D82–238), as transmitted by the President to the Congress on March 18, 1982, under section 1013 of the Impoundment Control Act of 1974.

The SPEAKER. The Chair recognizes the gentleman from Pennsylvania (Mr. MURTHA). . . .

Mr. MURTHA. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

RESOLUTION DISAPPROVING DEFERRAL OF BUDGET AUTHORITY (STRATEGIC PETROLEUM RESERVE)

Mr. MURTHA. Mr. Speaker, I call up House Resolution 479, recommending that the House of Representatives express its disapproval of proposed deferral D82–10A, and I ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 479

Resolved, That the House of Representatives hereby disapproves the proposed deferral of budget authority in the amount of $52,860,000 for strategic petroleum reserve, Department of Energy, to delay phase III development of the reserve during fiscal year 1982 (deferral number D82–10A), as transmitted by the President to the Congress on February 8, 1982, under section 1013 of the Impoundment Control Act of 1974.

The resolution was agreed to.

RESOLUTION DISAPPROVING DEFERRAL OF BUDGET AUTHORITY (U.S. FISH AND WILDLIFE RESERVE)

Mr. MURTHA. Mr. Speaker, I call up House Resolution 493, recommending that the House of Representatives express its disapproval of proposed deferral D82–247 and, I ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 493

Resolved, That the House of Representatives hereby disapproves the proposed deferral of budget authority in the amount of $400,000 for land acquisition, United States Fish and Wildlife Service, Department of the Interior, during fiscal year 1982 (deferral number D82–247), as transmitted by the President to the Congress on June 2, 1982, under section 1013 of the Impoundment Control Act of 1974.

Mr. MURTHA (during the reading). Mr. Speaker, I ask unanimous consent the resolution be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The resolution was agreed to.

RESOLUTION DISAPPROVING DEFERRAL OF BUDGET AUTHORITY (CONSTRUCTION AND ANADROMOUS FISH)

Mr. MURTHA. Mr. Speaker, I call up House Resolution 494, recommending that the House of Representatives express its disapproval of proposed deferral D82–246, and I ask unanimous consent for its immediate consideration.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER. The Clerk will report the resolution.

The Clerk read the resolution as follows:

H. RES. 494

Resolved, That the House of Representatives hereby disapproves the proposed deferral of budget authority in the amount of $600,000 for construction and anadromous fish, Department of the Interior (deferral number D82–246), as transmitted by the President to the Congress on June 2, 1982, under section 1013 of the Impoundment Control Act of 1974.

Mr. MURTHA (during the reading). Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD..

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Chair recognizes the gentleman from Pennsylvania (Mr. MURTHA). . . .

Mr. MURTHA. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

On Mar. 12, 1975,[4] the following occurred:

Mr. [Joseph] EVINS of Tennessee. Mr. Speaker, I call up House Resolution 241 and ask unanimous consent that it be considered in the House and that House Resolutions 242, 243, 244, 245, and 246,[5] disapproving the deferrals of certain budget authorities, may also be considered in the House.

The SPEAKER.[6] Is there objection to the request of the gentleman from Tennessee?

There was no objection.

PROVIDING FOR DISAPPROVAL OF PROPOSED DEFERRAL D75–81 TRANSMITTED UNDER SECTION 1013 OF THE IMPOUNDMENT CONTROL ACT OF 1974

The Clerk read the resolution as follows:

H. RES. 241

Resolved, That the House of Representatives expresses its disapproval of proposed deferral D75–81, as set forth in the message of October 31, 1974, which was transmitted to the Congress by the President under section 1013 of the Impoundment Control Act of 1974.

The SPEAKER. The Chair recognizes the gentleman from Tennessee (Mr. EVINS). . . .

Mr. EVINS of Tennessee. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

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4. 121 CONG. REC. 6344, 6345, 94th Cong. 1st Sess.

5. As with the previous precedent, these additional disapproval resolutions were each considered separately by unanimous consent following the adoption of H. Res. 241.

6. Carl Albert (OK).

I. The Debt Limit

§ 29. The Debt Limit

The relationship between the budget process and the public debt limit has evolved over the years. Federal law fixes a limit on the public debt.(1) Bills or joint resolutions periodically have changed that public debt limit,(2) and Congress has both temporarily and permanently raised the debt limit.(3)

Debt limit legislation has served as the vehicle for other types of budget related matters, including deficit reduction(4) and has been included in reconciliation acts.(5) Debt limit legislation has been vetoed by the President.(6)

Former Rule XXVIII,(7) popularly known as the "Gephardt rule" used to provide a mechanism for a joint resolution establishing the public debt limit to be automatically generated upon the adoption of the concurrent resolution of the budget.(8) The rule has been repealed and reinstated on several occasions(9) and was most recently repealed in the 112th Congress.(10)

The Congressional Budget Act also contains provisions relating to the public debt limit. Section 301(a)(5) requires the budget resolution to set

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1. 31 USC § 3101.

2. See, *e.g.*, 136 CONG. REC. 22177, 101st Cong. 2d Sess., Aug. 3, 1990 (H.R. 5350).

3. In 1983, an introduced bill providing a temporary increase in the public debt was converted by committee substitute into a permanent debt ceiling so that the ceiling would no longer drop to an artificial one on a set date but would remain the same until altered by further legislation (Pub. L. No. 98–34). Furthermore, in 1990, a waiver of the Rule XXI clause 5(a) (now clause 4) prohibition against appropriating on a legislative bill was required for a bill increasing the statutory limit on the public debt to reflect the effect of such an increase on the permanent appropriation to pay interest on the public debt. 136 CONG. REC. 20704, 101st Cong. 2d Sess., July 31, 1990. See also Deschler's Precedents Ch. 25 § 4, *supra*.

4. Most notably, legislation to increase the debt limit was the vehicle for the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings), Pub. L. No. 99–177; the Statutory Pay-As-You-Go Act of 2010, Pub. L. No. 111–139; and the Budget Control Act of 2011, Pub. L. No. 112–25.

5. See the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509; Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101–508; Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66; and the Balanced Budget Act of 1997, Pub. L. No. 105–33.

6. See § 29.6, *infra*.

7. *House Rules and Manual* § 1104 (2011).

8. See *House Rules and Manual* § 1104 (2009).

9. Rules for concurrent resolutions on the budget have also disabled the former so-called "Gephardt rule." See § 5, *supra*.

10. *House Rules and Manual* § 1104 (2011).

forth the appropriate level for the public debt.[11] Reconciliation directives relating to changes in the public debt may be included in the concurrent resolution on the budget under section 310(a)(3) of the Congressional Budget Act.[12]

Further, Rule XVIII clause 10(c)(1)[13] prohibits the consideration of an amendment to the budget resolution that proposes to change the level of public debt. The exception in clause 10(c)(2) allows such amendments only to the extent necessary to maintain mathematical consistency with other amendments changing figures within the concurrent resolution on the budget.

The Budget Control Act of 2011,[14] enacted in the 112th Congress, provided for a three-stage increase in the public debt limit. The first increase occurred automatically upon presidential certification that the debt subject to limit was within $100 billion of the limit provided by law.[15] The second and third increases (also initiated by presidential certification) were subject to a congressional disapproval mechanism providing expedited procedures in both Houses for consideration of joint resolutions to disapprove of such increases.[16] If such increases were formally disapproved of by Congress utilizing this mechanism, the public debt limit would not be increased, and the budgetary savings necessary to remain under the existing limit would be achieved through a sequestration process.[17]

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11. 2 USC § 632(a)(5). See § 4, *supra*.

12. 2 USC § 641(a)(3).

13. *House Rules and Manual* § 990 (2011).

14. Pub. L. No. 112–25.

15. The President made this initial submission on Aug. 2, 2011. See 157 CONG. REC. H5893 [Daily Ed.], 112th Cong. 1st Sess., Aug. 5, 2011 (H. Doc. No. 112–48).

16. The second increase was triggered by the same presidential certification of Aug. 2, 2011. The joint resolution to disapprove such increase (H. J. Res. 77) was passed by the House on Sept. 14, 2011, but not acted upon by the Senate. 157 CONG. REC. H6156–68 [Daily Ed.], 112th Cong. 1st Sess. The Senate rejected a motion to proceed to consider its companion measure (S. J. Res. 25) on Sept. 8, 2011. 157 CONG. REC. S5466 [Daily Ed.], 112th Cong. 1st Sess. The third increase was triggered by the presidential certification of Jan. 12, 2012. See 158 CONG. REC. H7 [Daily Ed.], 112th Cong. 2d Sess., Jan. 13, 2012 (H. Doc. No. 112–81). The joint resolution to disapprove this increase (H. J. Res. 98) was passed by the House on Jan. 18, 2012. 158 CONG. REC. H54–69 [Daily Ed.], 112th Cong. 2d Sess. A motion to proceed to consider this measure in the Senate was rejected. 158 CONG. REC. S83–95 [Daily Ed.], 112th Cong. 2d Sess., Jan. 26, 2012.

17. The Budget Control Act also provided that the third increase to the public debt limit could itself be increased above the prescribed $1.2 trillion amount, contingent upon certain specified events. If the deficit reduction plan proposed by the Joint Committee on Deficit Reduction established by the Budget Control Act were passed by Congress, then

The Former So-Called "Gephardt Rule"

The former so-called "Gephardt rule" was first made part of the standing rules of the House in the 96th Congress.[1] It was repealed for the 107th Congress, reinstated in the 108th Congress, and repealed again in the 112th Congress.[2] This former rule of the House provided a mechanism for a joint resolution establishing the public debt limit to be automatically generated and passed upon adoption by Congress of a concurrent resolution on the budget. The vote by which such budget was adopted in the House would be considered to be the vote by which such joint resolution passed the House.[3] The purpose of the rule was to connect debt limit legislation to the congressional budget process, to avoid additional votes on setting the debt limit, and to synchronize the limit of public debt in statute with the amount of debt contemplated by the annual budget resolution.

In the years in which the former so-called "Gephardt rule" was operative, the House had occasionally chosen to render the rule inapplicable to the budget process for that fiscal year. This was done by simple resolution of the House—either in the special order providing for consideration of the House concurrent resolution on the budget,[4] or in the special order for consideration of a conference report on the budget.[5] Resolutions "deeming" a

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the debt limit would be raised by an amount equal to the proposed savings (between $1.2 trillion and $1.5 trillion). Alternatively, the debt limit would be raised by $1.5 trillion in the event that a balanced budget constitutional amendment were passed by Congress and sent to the states for ratification. Neither of these contingencies in fact occurred.

1. The "Gephardt rule" was originally House Rule XLIX. Following the extensive recodification of the House rules at the beginning of the 106th Congress (1999), this rule was moved to Rule XXIII. When it was reinstated following a temporary repeal in the 107th Congress (2001), it was moved to Rule XXVII. Finally, in the 110th Congress, it was moved to Rule XXVIII. The rule was repealed in the 112th Congress (2011). See *House Rules and Manual* § 1104 (2011).

2. *House Rules and Manual* § 1104 (2011).

3. *House Rules and Manual* § 1104 (2009).

4. See 146 CONG. REC. 3442, 106th Cong. 2d Sess., Mar. 23, 2000 (H. Res. 446); 145 CONG. REC. 5671, 106th Cong. 1st Sess., Mar. 25, 1999 (H. Res. 131); 144 CONG. REC. 11098, 105th Cong. 2d Sess., June 3, 1998 (H. Res. 455); 143 CONG. REC. 8904, 105th Cong 1st Sess., May 20, 1997 (H. Res. 152); 142 CONG. REC. 11477, 104th Cong. 2d Sess., May 16, 1996 (H. Res. 435); and 141 CONG. REC. 13275, 13276, 104th Cong. 1st Sess., May 17, 1995 (H. Res. 149). See also § 5, *supra*.

5. See 140 CONG. REC. 9411, 103d Cong. 2d Sess., May 5, 1994 (H. Res. 418); 137 CONG. REC. 11856, 102d Cong. 1st Sess., May 22, 1991 (H. Res. 157); 136 CONG. REC. 27919, 101st Cong. 2d Sess., Oct. 6, 1990 (H. Res. 496); 136 CONG. REC. 27590, 101st Cong. 2d Sess., Oct. 4, 1990 (H. Res. 488); and 134 CONG. REC. 12529, 100th Cong. 2d Sess., May 26, 1988 (H. Res. 461).

House-adopted budget resolution to be effective for all Budget Act purposes have also contained provisions explicitly disengaging the "Gephardt rule" with respect to such "deemers."(6)

§ 29.1 To a bill providing a temporary extension of government borrowing authority by superseding for a temporary period the statutory ceiling on the public debt, an amendment accomplishing the same purpose by permanently raising the statutory ceiling was held germane since both were based on projections of borrowing under which an increase in the debt ceiling would provide a necessarily temporary extension of such authority and where the methods utilized were sufficiently similar as a direct or indirect amendment to the same existing law.(1)

On May 13, 1987,(2) the following occurred:

Mr. [Daniel] ROSTENKOWSKI [of Illinois]. Madam Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN.(3) Pursuant to House Resolution 165, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 2360 is as follows:

H.R. 2360

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) during the period beginning on the date of the enactment of this Act and ending on July 17, 1987 the public debt limit set forth in subsection (b) of section 3101 of title 31, United States Code, shall be equal to $2,320,000,000,000.

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6. See 156 CONG. REC. H5342–3, 5357–8 [Daily Ed.], 111th Cong. 2d Sess., July 1, 2010 (H. Res. 1493); 152 CONG. REC. 8651, 109th Cong. 2d Sess., May 18, 2006 (H. Res. 818); and 150 CONG. REC. 10105, 108th Cong. 2d Sess., May 19, 2004 (H. Res. 649). See also § 17, *supra*.

1. *Parliamentarian's Note:* The Chair was also prepared to distinguish this situation from that presented on May 18, 1983 (129 CONG. REC. 12726–28, 12731, 98th Cong. 1st Sess.), where the rule waived the germaneness point of order against the Committee on Ways and Means substitute. In that case the bill only amended an existing temporary provision of law to increase the public debt limit, while the committee amendment changed both permanent law to increase the public debt limit and repealed a temporary increase. As both the form of the bill and amendment here are similar—unlike the 1983 precedent—and the substantive law had been changed to remove the distinction between temporary and permanent limitations on the debt, no germaneness waiver was required to permit consideration of the Rostenkowski amendment.

2. 133 CONG. REC. 12344, 12345, 100th Cong. 1st Sess. See also Deschler-Brown Precedents Ch. 28 §§ 5.7, 46.7, *supra*.

3. Patricia Schroeder (CO).

(b) Effective on and after the date of the enactment of this Act, section 8201 of the Omnibus Budget Reconciliation Act of 1986 is hereby repealed.

The CHAIRMAN. No amendments to the bill are in order except an amendment printed in section 2 of House Resolution 165, by, and if offered by, Representative ROSTENKOWSKI, or his designee, said amendment is considered as having been read, is not subject to amendment, but is debatable for not to exceed 30 minutes, equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

AMENDMENT OFFERED BY MR. ROSTENKOWSKI

Mr. ROSTENKOWSKI. Madam Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

> Amendment offered by Mr. ROSTENKOWSKI: Strike out subsection (a) of the first section of the bill and insert the following: "That (a) subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '$2,578,000,000,000'.".
>
> Amend the title to read as follows: "A bill to increase the statutory limit on the public debt.".

POINT OF ORDER

Mr. [Connie] MACK [of Florida]. Madam Chairman, I have a point of order on the Rostenkowski amendment.

The CHAIRMAN pro tempore. The gentleman will state his point of order.

Mr. MACK. Madam Chairman, I make a point of order against the amendment on the grounds that it violates clause 7 of the rule XVI, the germaneness rule, and ask to be heard on my point of order.

Madam Chairman, subsection (a) of H.R. 2360, the reported bill, makes a temporary and indirect change in the permanent public debt limit through July 17, 1987.

The amendment offered by the gentleman from Illinois [Mr. ROSTENKOWSKI] makes a permanent and direct change in existing law. It directly amends title 31, section 3101 of the United States Code. The base does not.

Let me cite three precedents in support of my position:

Procedure in the House, 97th Congress, chapter 28, section 19.1:

> To a bill proposing a temporary change in law, an amendment making permanent changes in that law is not germane.

Chapter 28, section 19.3:

> To a bill reported from the Committee on Ways and Means providing for a temporary increase in the public debt ceiling for the current fiscal year not directly amending the Second Liberty Bond Act, an amendment proposing permanent changes in that Act and also affecting budget and appropriations procedures was held not germane.

Chapter 28, section 19.4:

> To a proposition authorizing appropriations for one fiscal year, an amendment making permanent changes in law is not germane.

The CHAIRMAN pro tempore. Does the gentleman from Illinois wish to be heard on the point of order?

Mr. ROSTENKOWSKI. I do, Madam Chairman.

The CHAIRMAN pro tempore. The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized.

Mr. ROSTENKOWSKI. Madam Chairman, in 1983 the rule providing for the consideration of H.R. 2990, to increase the public debt limit, provided for a waiver of clause 7 of rule XVI, the germaneness rule, against an amendment in the nature of a substitute recommended by the Committee on Ways and Means. The germaneness waiver was necessary because the committee amendment to repeal the temporary debt limit and to make the entire ceiling permanent was not germane to the original bill which only provided for an increase in the temporary debt limit.

With the enactment of H.R. 2990 into law in 1983, the distinction between the temporary and permanent public debt limit was eliminated. It was only with the passage of the 1986 Budget Reconciliation Act that we again temporarily increased the public debt limit.

I would argue that the committee amendment to the bill before us is germane because, first of all, the fundamental purpose[4] of the committee amendment is consistent with that of the bill, namely a temporary increase in the public debt. The bill before us provides debt authority, which is estimated to be sufficient until July 17, 1987. The committee amendment provides debt authority until October 1, 1988. Both the bill and the amendment provide debt authority, which eventually will prove to be insufficient and, therefore, both are temporary in nature. In addition, the bill has the effect of amending the same section of the United States Code as the committee amendment. Finally, I would argue that the amendment is germane because it passes the common sense test of not introducing a subject matter which is "different from that under consideration."

The issue before us is how long to increase the public debt. The amendment gives the House two choices on these issues. I urge the Chair to rule the amendment germane.

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The CHAIRMAN (Mrs. SCHROEDER). If there are no further speakers on the germaneness issue, the Chair is ready to rule.

The gentleman from Florida [Mr. MACK] makes a point of order that the amendment offered by the gentleman from Illinois [Mr. ROSTENKOWSKI] is not germane. The amendment would directly amend existing law by striking the existing dollar limitation in section 3101 of title 31 of the United States Code and inserting a new dollar figure, with the intention to increase the Government's borrowing authority for an unspecified but necessarily temporary period of time.

However, the bill, H.R. 2360, in subsection (a), refers to, and in the opinion of the Chair, is tantamount to, a change in the same provision of the law as the amendment.

Both the bill and the amendment are based upon estimates of sufficiency of the total amount of borrowing authority over different periods of time. For this reason, the Chair believes the amendment to be closely related to the fundamental purpose of the bill, and to accomplish that purpose by amending the same section of law referenced in the bill.

Therefore, the Chair overrules the point of order.

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4. For a description of the fundamental purpose test of germaneness, see Deschler-Brown Precedents Ch. 28 § 5, *supra*.

Consideration of Debt Limit Legislation—By Special Order

§ 29.2 The House has adopted a special order of business resolution for consideration of a bill increasing the temporary limit on the public debt, waiving certain points of order against such bill and non-germane amendment, and providing for a "modified closed in part" amendment process.

On Feb. 25, 1976,(1) the following occurred:

Mr. [Bernice] SISK [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1053 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1053

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 2(1)(6) of rule XI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11893) to increase the temporary debt limit until July 31, 1976, and all points of order against said bill for failure to comply with the provisions of clause 5, rule XXI are hereby waived. After general debate which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment recommended by the Committee on Ways and Means now printed on page 2, line 3 through line 9 notwithstanding the provisions of clause 7, rule XVI, and no amendment to said committee amendment nor any amendment to said bill changing said committee amendment in the Committee of the Whole or in the House shall be in order except amendments offered by direction of the Committee on Ways and Means, but said amendments shall not be subject to amendment. It shall also be in order to consider, any rule of the House to the contrary notwithstanding, an amendment printed in the CONGRESSIONAL RECORD of February 24, 1976, by Representative Stark, and no amendment to said amendment nor any amendment to the bill changing said amendment in the Committee of the Whole or the House shall be in order except amendments offered by direction of the Committee on Ways and Means, but said amendments shall not be subject to amendment. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER.(2) The gentleman from California will be recognized for 1 hour.

Mr. SISK. . . .

In addition to the increase in the temporary debt limit, H.R. 11893 contains a committee amendment increasing from $10 to $12 billion the amount of Federal long-term debt which may be issued at an interest rate greater than 4¼ percent. The maturity rate for these Treasury notes is also increased from 7 to 10 years.

1. 122 CONG. REC. 4279, 94th Cong. 2d Sess.

2. Carl Albert (OK).

The rule provides for 2 hours of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means. It is a modified open rule. Section 1 of the bill deals with the amount and duration of the increase to the temporary debt limit and is open to amendment. The Ways and Means Committee amendment adding section 3 to the bill is closed to amendment except amendments offered by direction of the Committee on Ways and Means.

The committee amendment, that is, section 3, increases the amount of Treasury notes which may be issued at greater than 4¼ percent interest, and increases the maturity date on notes issued by the Treasury from the present 7 to 10 years.

House Resolution 1053 waives germaneness points of order under rule XVI, clause 7, with respect to this committee amendment. The waiver is necessary since the amendment would cause a permanent change in law whereas the bill provides only a temporary amendment to that law.

The rule also waives points of order pursuant to paragraph 6, clause 2(1) of rule XI, the 3-day layover rule. This waiver is necessary in order to consider the bill today since it was not reported from the Committee on Ways and Means until Monday, February 23, 1976.

The rule also provides a waiver of clause 5, rule XXI, which prohibits an appropriation in a legislative bill. Existing law provides for payment of interest expenses on the public debt. An increase in the amount of the debt will obviously cause an increase in interest expenses. The waiver is thus necessary and is traditionally granted with respect to public debt extension bills.

House Resolution 1023 also makes in order an amendment to H.R. 11893 by the gentleman from California (Mr. STARK) as printed on page 4157 of the CONGRESSIONAL RECORD of February 24, 1976. The gentleman's statement explaining his amendment appears on page 4113 of yesterday's RECORD. Essentially, the amendment establishes a minimum interest rate of 4 percent, computed monthly, on series E bonds. Bonds must be held a minimum of 60 days to collect any interest. All points of order are waived against this amendment, and it may only be amended by direction of the Committee on Ways and Means.

§ 29.3 The House has adopted a special order of business resolution for consideration of a bill increasing the temporary limit on the public debt, waiving certain points of order against such bill, and providing for an "open" amendment process under the five-minute rule.

On June 24, 1975,[1] the following occurred:

Mr. [Bernice] SISK [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 562 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 562

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 2(1)(6) of rule XI to the contrary notwithstanding, that the House resolve itself

1. 121 CONG. REC. 20540, 94th Cong. 1st Sess.

into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8030) to increase the temporary debt limitation until November 15, 1975, and all points of order against said bill for failure to comply with clause 5, rule XXI, are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore.(2) The gentleman from California (Mr. SISK) is recognized for 1 hour.

§ 29.4 The House has adopted a "closed" special order of business resolution waiving all points of order against consideration in the House of a bill increasing the public debt limit reported from the Committee on Ways and Means.

On Aug. 14, 1986,(1) the following occurred:

PUBLIC DEBT LIMIT INCREASE

Mr. [Claude] PEPPER [of Florida]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 534 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 534

Resolved, That upon the adoption of this resolution it shall be in order to consider the bill (H.R. 5395) to increase the statutory limit on the public debt in the House, all points of order against the bill and against its consideration are hereby waived, debate on the bill shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, and the previous question shall be considered as ordered on the bill to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore.(2) The gentleman from Florida [Mr. PEPPER] is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the able gentleman from Mississippi [Mr. LOTT], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 534 provides for expeditious consideration in the House of H.R. 5395, to increase the statutory limit on the public debt. One hour of debate will be equally divided and controlled by the chairman of the Committee on Ways and Means and the ranking minority member. The rule waives all points of order against the bill and against its consideration. The rule provides one motion to recommit.

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2. John McFall (CA).

1. 132 CONG. REC. 21691, 21692, 99th Cong. 2d Sess.

2. John Murtha (PA).

Consideration of Debt Limit Legislation—By Unanimous Consent

§ 29.5 The House has, by unanimous consent, and prior to any action by the Senate, authorized the Majority Leader to offer a motion to consider a House-originated bill raising the public debt limit when such bill arrives from the Senate in amended form, and to disagree with any Senate amendments thereto, and further making in order (upon adoption of such motion) consideration of a bill consisting of the text and title of the original House-passed debt limit bill.[1]

On Aug. 15, 1986,[2] the following occurred:

PROVIDING CONDITIONS FOR CONSIDERATION OF H.R. 5395, PUBLIC DEBT LIMIT INCREASE

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I ask unanimous consent that at any time after the House receives from the Senate H.R. 5395 with any Senate amendment thereto; First, it shall be in order to consider a motion in the House, without intervening motion, if offered by the majority leader or his designee to take said bill from the Speaker's table, with the Senate amendment or amendments thereto, and to disagree to said amendment or amendments, with debate on said motion to continue not to exceed 1 hour, and with the previous question considered ordered thereon without intervening motion; and second, and upon the adoption of said motion, it shall be in order to consider in the House a bill containing the text and title of H.R. 5395 if offered by the majority leader or his designee with debate on said bill to continue not to exceed 1 hour, and with the previous question considered ordered thereon to final passage without intervening motion.

The SPEAKER pro tempore[3]. Is there objection to the request of the gentleman from Texas?

Mr. [Robert] MICHEL [of Illinois]. Mr. Speaker, reserving the right to object, and I shall not object, because this has been agreed upon by the two sides, but it might be deserving of clarification to the Members to give you a little bit of an insight as to what we may or may not expect from the other body. . . .

The SPEAKER pro tempore (Mr. FOLEY). Is there objection to the unanimous-consent request offered by the majority leader?

The Chair hears none.

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1. This unanimous-consent request preceded Senate action on the House's debt limit bill and was designed, by preemptively disagreeing to any possible Senate amendments, to signal the House's unwillingness to consider anything other than the House debt limit bill in its original form. By further making in order consideration of a bill containing the text of the original House bill, the unanimous-consent request permitted the House to send to the Senate an identical "clean" debt limit bill for further Senate consideration.
2. 132 CONG. REC. 22092, 22093, 99th Cong. 2d Sess.
3. Thomas Foley (WA).

Referral of Veto Message

§ 29.6 The House has referred the veto message accompanying a bill to temporarily increase the public debt limit to the Committee on Ways and Means.

On Dec. 7, 1995,(1) the following veto message of a bill to temporarily increase the public debt limit was referred to the Committee on Ways and Means:

REFERRAL OF VETO MESSAGE ON H.R. 2586, TEMPORARY INCREASE IN PUBLIC DEBT LIMIT, TO COMMITTEE ON WAYS AND MEANS

Mr. [William] ARCHER [of Texas]. Mr. Speaker, I ask unanimous consent that the veto message on the bill (H.R. 2586) to provide for a temporary increase in the public debt limit, and for other purposes, be referred to the Committee on Ways and Means.

The SPEAKER pro tempore.(2) Is there objection to the request of the gentleman from Texas?

There was no objection.

The Former So-Called "Gephardt Rule"

§ 29.7 In response to parliamentary inquiries regarding operation of former Rule XXVII (the former so-called "Gephardt rule")(1) during the pendency of a conference report on the concurrent resolution on the budget, the Speaker affirmed that upon adoption of the conference report by both Houses, the Clerk of the House would prepare a joint resolution adjusting the public debt limit; such joint resolution would be deemed passed by the House; no separate vote on passage of such joint resolution was contemplated by the rule; and the vote on adoption of the conference report in the House would be considered the vote on passage of such joint resolution.

On May 17, 2007,(2) the following occurred:

PARLIAMENTARY INQUIRIES

Mr. [Paul] RYAN of Wisconsin. Mr. Speaker, given the stated concerns about borrowing by the majority, I have a parliamentary inquiry.

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1. 141 CONG. REC. 35741, 104th Cong. 1st Sess.

2. Mark Foley (FL).

1. Former Rule XXVII (then former Rule XXVIII) was abolished in the 112th Congress. See *House Rules and Manual* § 1104 (2011). For additional information on the former rule, see *House Rules and Manual* § 1104 (2009).

2. 153 CONG. REC. 13129, 110th Cong. 1st Sess.

The SPEAKER pro tempore (Mr. [Earl] POMEROY [of North Dakota]). The gentleman may state his inquiry.

Mr. RYAN of Wisconsin. Mr. Speaker, it's my understanding that pursuant to rule XXVII of the rules of the House, upon adoption of the conference report by both the House and the Senate, the Clerk of the House will be instructed to prepare a joint resolution adjusting the public debt limit; is that correct?

The SPEAKER pro tempore. That is correct.

Mr. RYAN of Wisconsin. Further inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. RYAN of Wisconsin. Am I further correct, that by operation of rule XXVII, upon adoption of this conference report by both the House and the Senate, this joint resolution adjusting the debt limit will be considered as passed by the House and transmitted to the Senate?

The SPEAKER pro tempore. The gentleman is correct.

Mr. RYAN of Wisconsin. Further inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman may state his inquiry.

Mr. RYAN of Wisconsin. Will there be a separate vote in the House on passing this joint resolution adjusting upwards the debt limit?

The SPEAKER pro tempore. Not by operation of rule XXVII.

Mr. RYAN of Wisconsin. Further inquiry, Mr. Speaker.

The SPEAKER pro tempore. The gentleman will state his inquiry.

Mr. RYAN of Wisconsin. Mr. Speaker, by operation of this rule, will the vote by which the conference report is passed by the House be considered the vote on passage of the joint resolution adjusting the debt limit?

The SPEAKER pro tempore. That is correct. . . .

On June 11, 2007,(3) the following occurred:

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore.(4) The Chair desires to announce that pursuant to rule XXVII, as a result of the adoption by the House and the Senate of the conference report on Senate Concurrent Resolution 21, the joint resolution (H.J. Res. 43), increasing the statutory limit on the public debt, has been engrossed and is deemed to have passed the House on May 17, 2007.

3. 153 CONG. REC. 15330, 110th Cong. 1st Sess.

4. Sheila Jackson-Lee (TX).

J. Additional Budget Controls

§ 30. Unfunded Mandates

Part B of title IV of the Congressional Budget Act was added by the Unfunded Mandates Reform Act of 1995 (UMRA).(1) The Act established points of order against certain legislation alleged to carry Federal mandates and procedures to preclude the consideration of a rule or an order waiving such points of order in the House.(2)

The Act defines "Federal intergovernmental mandates" as an enforceable duty on State, local, or tribal government or a reduction in the authorization of appropriations for Federal financial assistance provided to those governments for compliance with such duty; or a provision which compels State and local spending for participation in an entitlement program under which at least $500 million is provided to the States locally.(3)

The Act defines "Federal private sector mandates" as an enforceable duty on the private sector or a reduction in the authorization of appropriations for Federal financial assistance, provided to the private sector for compliance with such a duty.(4)

Section 425 of the Act establishes a point of order against consideration of a bill,(5) joint resolution,(6) amendment,(7) motion,(8) or conference report(9) containing unfunded intergovernmental but not private sector mandates.(10) Section 426(a) establishes a point of order against consideration of any rule or order that waives the application of section 425.(11)

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1. 2 USC §§ 658–658g.

2. For a statement by the offeror of the amendment establishing this point of order during consideration of the bill in the House, see Deschler-Brown Precedents Ch. 31 § 1.57, *supra*.

3. 2 USC § 658(5). The Act does not apply to conditions of Federal assistance, duties stemming from participation in voluntary Federal programs, national security and other exclusions. 2 USC § 658a. Although the Act lays out definitions of an unfunded mandate, there is no parliamentary mechanism for the Chair to evaluate whether a provision constitutes an unfunded mandate. Instead, the House chooses to proceed (or not) on legislation containing possible unfunded mandates via the question of consideration (see below).

4. 2 USC § 658(7).

5. See § 30.3, *infra*.

6. See § 30.4, *infra*.

7. See § 30.6, *infra*.

8. Such as a motion to recommit. See § 30.7, *infra*.

9. See § 30.5, *infra*.

10. 2 USC § 658d.

11. 2 USC § 658e(a).

In order for a point of order brought under section 426(b)(2)[12] of the Congressional Budget Act to be cognizable by the Chair, the proponent must identify the specific language in the text of a special order (usually a waiver of "all" points of order against consideration) that waives section 425 of the Act. When a point of order is raised on this basis, the special order itself is subject to the question of consideration. The identification of specific text is required for section 426 points of order.[13] A "hereby" special order implicitly waives section 425 by precluding the opportunity to raise the point of order, and is thus subject to section 426.[14]

Points of order under sections 425 or 426 are disposed of by the House by the question of consideration.[15] Pursuant to the Act, the Member raising the point of order and a Member opposed are each allocated 10 minutes, after which the Chair puts the question of consideration as follows: "Will the House now consider the [measure]?" In this manner, the House chooses whether or not to proceed on a measure allegedly containing an unfunded mandate.

There is no point of order for private sector mandates.

Under the Act, the Congressional Budget Office must provide an authorizing committee with a detailed cost-estimate for each bill reported by such committee containing mandates that have the requisite annual aggregate impact on the public sector or on the private sector.[16] The committee must publish this estimate in the committee report prior to consideration of the measure.[17]

An unfunded mandates point of order must be raised prior to the House resolving into the Committee of the Whole to consider the measure.[18]

Cost Estimates

§ 30.1 In response to parliamentary inquiries, the Speaker advised that section 424 of the Congressional Budget Act[1] provides for estimates of unfunded mandates by the Congressional Budget Office,

12. 2 USC § 658e(b)(2).

13. See § 30.8, *infra*.

14. See § 30.9, *infra*.

15. 2 USC § 658e(b). See also Deschler-Brown Precedents Ch. 29 § 5, *supra*.

16. See § 30.1, *infra*.

17. See sections 423 and 424 of the Budget Act; 2 USC §§ 658(b)–(c); *House Rules and Manual* § 1127 (2011). These sections provide no point of order to enforce this requirement in the House. If the CBO estimate is not available prior to the filing of the report, section 423(f) directs the committee to publish in the *Congressional Record* such estimate as soon as it is received. See § 30.2, *infra*.

18. See § 30.10, *infra*.

1. 2 USC § 658c.

and the Speaker further advised that questions about the content of a Congressional Budget Office estimate are properly addressed by debate.

On June 8, 2006,(2) the following occurred:

COMMUNICATIONS OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT OF 2006

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 850 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 850

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5252) to promote the deployment of broadband networks and services. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. Notwithstanding clause 11 of rule XVIII, no amendment to the bill shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1115

UNFUNDED MANDATE POINT OF ORDER

Ms. [Tammy] BALDWIN [of Wisconsin]. Mr. Speaker, I make a point of order.

Mr. Speaker, pursuant to section 426 of the Congressional Budget Act of 1974, I make a point of order against consideration of the rule, H. Res. 850. Page 1, line 7, through page 2, line 1, states: “All points of order against consideration of the bill are waived.”

The rule makes in order H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act of 2006, which contains a large unfunded mandate on State and local governments in violation of section 425 of the Budget Act. Section 426 of the Budget Act specifically states that the Committee on Rules may not waive section 425; and, therefore, this rule violates section 426.

2. 152 CONG. REC. 10453, 10454, 10457, 10458, 109th Cong. 2d Sess.

The SPEAKER pro tempore.[3] The gentlewoman from Wisconsin makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974. In accordance with section 426(b)(2) of the Act, the gentlewoman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

Under section 426(b)(4) of the Act, the gentlewoman from Wisconsin (Ms. BALDWIN) and the gentleman from Florida (Mr. LINCOLN DIAZ-BALART) each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate the Chair will put the question of consideration, to wit: Will the House now consider the resolution? . . .

PARLIAMENTARY INQUIRY

Mr. [Edward] MARKEY [of Massachusetts]. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman from Massachusetts may state his inquiry.

Mr. MARKEY. Mr. Speaker, under the rules, is it the Congressional Budget Office that determines whether or not an item is an unfunded mandate or not?

The SPEAKER pro tempore. Section 424 of the Congressional Budget Act does provide for estimates by the Congressional Budget Office of unfunded mandates.

Mr. MARKEY. And in this instance, has the CBO not determined that there is an unfunded mandate that could be upwards of 500 million to 1.5 billion on cities and towns over the next 5 years?

The SPEAKER pro tempore. The issue of the estimate may be addressed in debate. The point of order was made against the resolution for waiving any point of order under the Congressional Budget Act, as provided by section 426 of such Act. . . .

All time having expired, pursuant to section 426(b)(3) of the Congressional Budget Act of 1974, the question is: Will the House now consider the resolution? . . .

So the question of consideration was decided in the affirmative.

§ 30.2 If a committee has been unable to include in its report on a measure the cost estimates from the Congressional Budget Office relating to any intergovernmental and private sector mandates contained in the reported measure, the committee is directed under section 423(f)(2) of the Congressional Budget Act[1] to submit the estimate for publication in the *Congressional Record* once received.

On Mar. 18, 1996,[2] the following was inserted into the *Congressional Record*:

CBO UNFUNDED MANDATE REPORT ON H.R. 2202, IMMIGRATION IN THE NATIONAL INTEREST ACT OF 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 15, 1996.

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3. John Boozman (AR).

1. 2 USC § 658b(f)(2).

2. 142 CONG. REC. 5101, 104th Cong. 2d Sess.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: The Committee on the Judiciary has received further costs estimates from the Congressional Budget Office relating to intergovernmental and private sector mandates cost estimates for the "Immigration in the National Interest Act of 1995" (H.R. 2202). I am placing this letter in the CONGRESSIONAL RECORD so that all members may have the benefit of this information.

Sincerely,

HENRY J. HYDE,
Chairman.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 13, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed intergovernmental and private sector mandates cost estimates for H.R. 2202, the Immigration in the National Interest Act of 1995. CBO provided a federal cost estimate for this bill on March 4, 1996.

This bill would impose both intergovernmental and private sector mandates, as defined in Public Law 104–4.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE ESTIMATED COST OF INTERGOVERNMENTAL MANDATES

1. Bill number: H.R. 2202.

2. Bill title: Immigration in the National Interest Act of 1995.

3. Bill status: As ordered reported by the House Committee on the Judiciary on October 24, 1995.

4. Bill purpose: H.R. 2202 would make many changes and additions to federal laws relating to immigration. A number of provisions in the bill, particularly those in titles V and VI, could have a significant impact on state and local governments. Provisions in these two titles would restrict the number of legal entrants to the United States in the future and limit the eligibility of many aliens for public benefits. Title VI would also authorize state and local governments to implement measures to minimize or recoup costs associated with providing certain benefits to legal and non-legal aliens. Other titles contain provisions that would affect the hiring procedures of some state, local, and tribal governments and preempt state and local privacy rules relating to non-legal aliens who use public services.

5. Intergovernmental mandates contained in the bill: H.R. 2202 would require that state and local governments:

Deny eligibility in most state and local means-tested benefit programs to non-legal aliens, including those "permanently residing under color of law" (PRUCOL). (PRUCOLs are aliens whose status is usually transitional or involves an indefinite stay of deportation)[.] . . .

Points of Order Under Section 425

§ 30.3 Section 425 of the Congressional Budget Act[(1)] prescribes a point of order against consideration of certain measures that would increase the unfunded annual costs of Federal intergovernmental mandates by greater than $50 million (adjusted for inflation).

On May 10, 2000,[(2)] a point of order was brought against a bill:

UNFUNDED MANDATE POINT OF ORDER

Mr. [John] CONYERS [of Michigan]. Mr. Speaker, I have a point of order that I would like to make about the bill that is pending.

The SPEAKER pro tempore (Mr. [John] SUNUNU [of New Hampshire]). Since the Chair is about to declare the House resolved into Committee of the Whole, the gentleman is recognized to state his point of order.

Mr. CONYERS. Mr. Speaker, pursuant to section 425 of the Congressional Budget and Impoundment Control Act of 1974, I make a point of order against the consideration of the bill, H.R. 3709, the Internet Nondiscrimination Act of 2000. Section 425 states that a point of order lies against legislation which imposes an unfunded mandate in excess of $50 million annually against State or local governments. Page 2, lines 24 and 25 of H.R. 3709 contains a violation of section 425. Therefore, I make a point of order that this measure may not be considered pursuant to section 425.

The SPEAKER pro tempore. The gentleman from Michigan makes a point of order that the bill violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language of the bill on which he predicates the point of order.

Under section 426(b)(4) of the Act, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate, the Chair will put the question of consideration, to wit: Will the House now consider the bill in Committee of the Whole?

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1. 2 USC § 658d.

2. 146 CONG. REC. 7483–85, 106th Cong. 2d Sess. For additional examples of section 425 points of order raised against bills, see, *e.g.*, 146 CONG. REC. 3230, 3234–36, 106th Cong. 2d Sess., Mar. 22, 2000; and 143 CONG. REC. 7006–12, 105th Cong. 1st Sess., May 1, 1997.

The gentleman from Michigan (Mr. CONYERS) is recognized for 10 minutes and the gentleman from Pennsylvania (Mr. GEKAS) will also be recognized for 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

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

Mr. [George] GEKAS [of Pennsylvania]. . . .

For that reason, we have already adopted the rule, we ought to proceed with the debate on the bill, and the Members will decide by voting on the bill finally whether or not unfunded mandates has anything to do with their final decision on the vote.

Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I urge Members to vote "no" on any effort to disregard this point of order and proceed with the consideration of the bill before us. I urge that the point of order be supported.

Mr. Speaker, I yield back the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield back the balance of my time

The SPEAKER pro tempore (Mr. SUNUNU). The question is, Will the House now consider the bill in the Committee of the Whole?

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

Mr. CONYERS. 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.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 271, nays 129, not voting 34, as follows:

[Roll No. 154] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Against Joint Resolutions

§ 30.4 Section 425 of the Congressional Budget Act[1] prescribes a point of order against consideration of an otherwise statutorily privileged joint resolution that would increase the unfunded annual costs of Federal intergovernmental mandates by greater than $50 million (adjusted for inflation).

On May 8, 2002,[2] a point of order was brought against a privileged joint resolution:

Mr. [Billy] TAUZIN [of Louisiana]. Madam Speaker, pursuant to section 115(e)(4) of the Nuclear Waste Policy Act of 1982, I call up the joint resolution (H.J. Res. 87) approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982.

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1. 2 USC § 658d.
2. 148 CONG. REC. 7145, 7146, 7148, 7170, 107th Cong. 2d Sess.

The SPEAKER pro tempore.[3] The Clerk will report the joint resolution.

The Clerk read the joint resolution, as follows:

H.J. RES. 87

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State of Nevada on April 8, 2002.

UNFUNDED MANDATES POINT OF ORDER

Mr. [James] GIBBONS [of Nevada]. Madam Speaker, I rise to make a point of order against consideration of H.J. Res. 87.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. GIBBONS. Madam Speaker, pursuant to section 425 of the Congressional Budget Act and Impoundment Control Act of 1974, I make a point of order against consideration of H.J. Res. 87.

Section 425 states that a point of order lies against legislation which either imposes an unfunded mandate in excess of $58 million against State and local governments or when the committee chairman does not publish, prior to floor consideration, a CBO cost mandate of any unfunded mandate in excess of $58 million against State and local entities.

H.J. Res. 87 will in effect set the Nuclear Waste Policy Act as amended in 1987 into action. The bill reads in part, "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that there hereby is approved the site at Yucca Mountain, Nevada for a repository."

In other words, Madam Speaker, passage of this resolution will green-light the Yucca Mountain project, thus allowing for shipment of high level nuclear waste beginning in the year 2010 and continuing for the next 38 years. Thus, passage of H.J. Res. 87 clearly places an unfunded mandate on our taxpayers.

The SPEAKER pro tempore. The gentleman from Nevada (Mr. GIBBONS) makes a point of order that the joint resolution violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language in the joint resolution on which he predicates the point of order.

Under section 426(b)(4) of the Act, the gentleman from Nevada (Mr. GIBBONS) and a Member opposed each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate the Chair will put the question of consideration, to wit: "Will the House now consider the joint resolution?"

The gentleman from Nevada (Mr. GIBBONS) will be recognized for 10 minutes and the gentleman from Louisiana (Mr. TAUZIN) will be recognized for 10 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

Mr. GIBBONS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, passage of H.J. Res. 87 will undoubtedly put a process in place that will exceed the $58 million threshold outlined in section 425 of the act. Instead of looking

3. Judy Biggert (IL).

at what the CBO score tells us, let us look at what it does not tell us. What the CBO is unable to tell us is how much it will cost our local community to implement the Nuclear Waste Management Act, as far as preparing our State and local governments for the enormous cost of safety monitoring these tens of thousands of high level nuclear waste shipments that are going to occur throughout our community. . . .

The SPEAKER pro tempore. Is the gentleman from Louisiana (Mr. TAUZIN) opposed to the point of order?

Mr. TAUZIN. Yes, Madam Speaker, I am.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana for 10 minutes.

Mr. TAUZIN. Madam Speaker, I yield myself such time as I may consume. I rise in strong opposition to this effort to block consideration of this very bipartisan consideration. . . .

When my committee filed its report on House Joint Resolution 87, it included a cost estimate from the Congressional Budget Office. This is it here. And the Congressional Budget Office report literally satisfies one of the requirements under the Unfunded Mandate Reform Act. This CBO cost estimate thoroughly reviewed the budget impacts of this resolution, and it did not identify any new mandates in this resolution that would fall under the Unfunded Mandates Reform Act.

The CBO cost estimate, in fact, further clarified that even if some minor costs of State and local governments did fall under the Unfunded Mandates Reform Act, these costs would not exceed the thresholds established under UMRA.

Let me quote from the CBO estimate directly: "H.J. Res. 87 could increase the costs that Nevada and some local governments would incur to comply with certain existing Federal requirements. The Unfunded Mandate Reform Act, UMRA, is unclear about whether such costs would count as new mandates under UMRA. In any event, CBO estimates that the annual direct costs incurred by State and local governments over the next 5 years would total significantly less than the threshold established in the law ($58 million in 2002, adjusted annually for inflation)."

□ 1215

In other words, CBO is saying we are not sure we even count those costs; but if we did, they do not meet the threshold of the Unfunded Mandates Reform Act. . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Against Conference Reports

§ 30.5 Section 425 of the Congressional Budget Act[1] prescribes a point of order against consideration of a conference report that would increase the unfunded annual costs of Federal intergovernmental mandates by greater than $50 million (adjusted for inflation).

On June 4, 1998,[2] a point of order was raised against a conference report after the conference report had been called up pursuant to a special order of business.

1. 2 USC § 658d.
2. 144 CONG. REC. 11086, 105th Cong. 2d Sess.

CONFERENCE REPORT ON S. 1150, AGRICULTURAL RESEARCH, EXTENSION, AND EDUCATION REFORM ACT OF 1998

Mr. [Robert] SMITH of Oregon. Mr. Speaker, pursuant to previous order of the House, I call up the conference report on the Senate bill (S. 1150) to ensure that federally funded agricultural research, extension, and education address high-priority concerns with national or multistate significance, to reform, extend, and eliminate certain agricultural research programs, and for other purposes.

The Clerk read the title of the Senate bill.

UNFUNDED MANDATES POINT OF ORDER

Mr. [Gerald] SOLOMON [of New York]. Mr. Speaker, I rise to a point of order under section 425 of the Congressional Budget Act regarding unfunded intergovernmental mandates on every single senior citizen homeowner in America.

The SPEAKER pro tempore.[3] The gentleman will state his point of order.

Mr. SOLOMON. Mr. Speaker, this does increase property taxes on senior citizens, and everybody ought to be listening.

Pursuant to section 426 of the Congressional Budget Act, the language on which this point of order is premised is contained in section 502 of the subtitle A of title V, "Reductions in Payments for Administrative Costs for Food Stamps," of the conference report.

(For section 502, see CONGRESSIONAL RECORD of April 22, 1998, page 6426.)

The SPEAKER pro tempore. The gentleman from New York makes a point of order that the conference report violates section 425(a) of the Congressional Budget Act of 1974, and according to section 426 (b)(2) of the Act, the gentleman must specify the precise language of his objection in the conference report on which he predicates this point of order.

Having met this threshold burden, the gentleman from New York (Mr. SOLOMON) and a Member opposed each will control 10 minutes of debate. Pursuant to section 426 (b)(3) of the Act and after debate, the Chair will put the question of consideration, to wit: Will the House now consider the conference report?

Will the gentleman from Oregon (Mr. SMITH) claim the 10 minutes in opposition?

Mr. SMITH of Oregon. Mr. Speaker, I am in opposition.

The SPEAKER pro tempore. The gentleman from Oregon (Mr. SMITH) will be recognized for 10 minutes in opposition, and the gentleman from New York (Mr. SOLOMON) is recognized for 10 minutes.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I might consume. . . .

Mr. Speaker, I mentioned CBO had scored this legislation as exceeding the unfunded mandate threshold in the law, which is $50 million. In fact, those costs on the States are much, much higher, in the hundreds of millions of dollars in administrative costs to our individual States and each one of our counties and cities and towns and villages that we represent. And that is according to the National Governors Association, my colleagues.

Overall, this represents a cost shift from the Federal Government to the States as high in my State of New York as $280 million, $280 million, of which local governments are going to have to pay 25 percent of that cost. That is what we are leveling on our senior citizens. What that means, Mr. Speaker, is a "yes" vote for this unfunded mandate is

3. John Sununu (NH).

a vote to increase property taxes on every single one of our homeowners that own a home in America. . . .

Mr. Speaker, I reserve the balance of my time in order to let other people speak as strongly as I have.

—*Against Amendments*

§ 30.6 After a Member has satisfied the threshold burden of section 426(b)(2) of the Congressional Budget Act[1] by reciting language in an amendment allegedly constituting an unfunded intergovernmental mandate, the Member raising the point of order and an opponent each control 10 minutes of debate on the question of consideration.

On May 23, 1996,[2] a point of order was raised against an amendment:

The SPEAKER pro tempore.[3] It is now in order to consider the amendment printed in part 1 of House Report 104–490.

AMENDMENT OFFERED BY MR. RIGGS

Mr. [Frank] RIGGS [of California]. Mr. Speaker, I offer an amendment.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. RIGGS: Add at the end the following:

SEC. 3. MINIMUM WAGE INCREASE.

(a) SHORT TITLE.—This section may be cited as the ''Minimum Wage Increase Act of 1996''.

(b) AMENDMENT.—Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) is amended to read as follows:

''(1) except as otherwise provided in this section, not less than $4.25 an hour during the period ending on June 30, 1996, not less than $4.75 an hour during the year beginning on July 1, 1996, and not less than $5.15 an hour after the expiration of such year;''.

POINT OF ORDER

Mr. [Rob] PORTMAN [of Ohio]. Mr. Speaker, I rise to a point of order against this amendment.

The SPEAKER pro tempore (Mr. WALKER). The gentleman will state his point of order.

Mr. PORTMAN. Mr. Speaker, pursuant to section 425(a) of the Congressional Budget Act, it is not in order for the House to consider any amendment that would increase the direct costs of Federal intergovernmental mandates in excess of $50 million annually. The precise language in the amendment before us on which this is based is "Paragraph 1 of section 6(a) of the Fair Labor Standards Act of 1938 is amended to read as follows: Not less than $4.75 an hour during the year beginning July 1, 1996, and not less than $5.15 an hour after the expiration of such year."

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1. 2 USC § 658e(b)(2).

2. 142 CONG. REC. 12283, 12284, 12287, 104th Cong. 2d Sess.

3. Robert Walker (PA).

It is upon this basis and the impact this amendment would have on State and local government as estimated by the Congressional Budget Office that I raise this point of order, and ask for a ruling from the Chair.

The SPEAKER pro tempore. The gentleman from Ohio makes a point of order that the amendment violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the act, the gentleman has met his threshold burden to identify the specific language in the amendment on which he predicates the point of order.

Under section 426(b)(4) of the act, the gentleman from Ohio and a Member opposed each will control 10 minutes of debate on the point of order.

Pursuant to section 426(b)(3) of the act, after debate on the point of order the Chair will put the question of consideration, to wit: "Will the House now consider the amendment?"

The gentleman from Ohio [Mr. PORTMAN] is recognized for 10 minutes. Is there a Member seeking recognition in opposition?

Mr. [David] BONIOR [of Michigan]. Mr. Speaker, I seek time in opposition.

The SPEAKER pro tempore. The gentleman from Michigan will be recognized for 10 minutes.

PARLIAMENTARY INQUIRY

Mr. BONIOR. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BONIOR. Mr. Speaker, as you correctly stated, I do seek control of the 10 minutes of time noted. I also would ask the Speaker if it would be in order for me to yield 5 minutes of that time to the gentleman from California [Mr. RIGGS], and ask unanimous consent that he be allowed to partition his 5 minutes as he deems fit?

The SPEAKER pro tempore. The gentleman may do that by unanimous consent.

Mr. BONIOR. Mr. Speaker, I ask unanimous consent that the gentleman from California [Mr. RIGGS] be given 5 minutes of my 10 minutes, and that he be allowed to yield that time as he so desires.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Ohio [Mr. PORTMAN].

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. BONIOR. . . .

Mr. Speaker, I reserve the balance of my time. . . .

The SPEAKER pro tempore. The question is, Will the House now consider the amendment offered by the gentleman from California [Mr. RIGGS]?

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

Mr. [William] CLAY [of Missouri]. 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.

The Sergeant at Arms will notify absent Members. The vote was taken by electronic device, and there were—yeas 267, nays 161, not voting 5, as follows:

[Roll No. 191] . . .

Mr. ROGERS changed his vote from "nay" to "yea."
So the question of consideration was decided in the affirmative.
The result of the vote was announced as above recorded.

—Against a Motion to Recommit

§ 30.7 Where the House has decided not to consider one motion to recommit with instructions as a disposition of a point of order arising under section 425 of the Congressional Budget Act,(1) one valid motion to recommit remains in order.

On Mar. 28, 1996,(2) a point of order was raised against a motion to recommit a bill and the question of consideration was decided in the negative.

UNFUNDED MANDATE POINT OF ORDER

Mr. ARCHER. Mr. Speaker, I urge my second point of order that the motion to recommit with instructions constitutes an unfunded governmental mandate under section 425 of the Congressional Budget Act. Section 425 prohibits consideration of a measure containing unfunded intergovernmental mandates whose total unfunded direct costs exceeds $50 million annually. The precise language in question is the text of the instructions that amends the Fair Labor Standards Act to increase the minimum wage. . . .

The SPEAKER pro tempore. The gentleman from Texas makes a point of order that the motion violates section 425 of the Congressional Budget Act of 1974. In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language of the motion. Under section 426(b)(4) of the Act, the gentleman from Texas [Mr. ARCHER] and a Member opposed will each control 10 minutes of debate on the point of order.

Pursuant to section 426(b)(3) of the Act, after debate on the point of order, the Chair will put the question of consideration, to wit: Will the House now consider the motion?

Mr. BONIOR. Mr. Speaker, I seek time in opposition to the point of order.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. BONIOR] will control 10 minutes.

The Chair recognizes the gentleman from Texas [Mr. ARCHER]. . . .

PARLIAMENTARY INQUIRY

Mr. ARCHER. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman will state it.

Mr. ARCHER. Would the Speaker please explain to the House how this vote will be framed and what a "yes" or "no" vote will mean, because this is the first time that we have had a test of the unfunded mandate legislation?

The SPEAKER pro tempore. The question will be put by the Chair, to wit, will the House now consider the motion to recommit? So an "aye" vote would mean that the

1. 2 USC § 658e.
2. 142 CONG. REC. 6932, 6933, 6937, 6938, 104th Cong. 2d Sess.

House should indeed consider the motion to recommit. A "no" vote would mean that the House would not consider the motion to recommit.

Mr. ARCHER. Mr. Speaker, would it be fair to say that a "no" vote then would sustain the point of order?

The SPEAKER pro tempore. Yes.

Mr. BONIOR. Mr. Speaker, that is not a point of order. Mr. Speaker, may I be heard?

The SPEAKER pro tempore. The statute provides that on this point of order the House shall decide that question and not a ruling from the Chair on whether to consider the motion. It would not be a prerogative of the Chair to make that judgment.

Mr. CLINGER. Mr. Speaker, I would indicate that I think a "yes" vote on this matter would in effect be saying that we would allow an unfunded mandate to be passed through, or open the door to passing through, an unfunded mandate to the States.

Those who would want to sustain the unfunded mandate legislation, and this is our first look at this thing, the first time we have had to consider this procedure, those who want to sustain that should vote "no" on this measure. . . .

□ 1537

Mr. GILMAN changed his vote from "no" to "aye."

So the question of consideration was decided in the negative.

The result of the vote was announced as above recorded. . . .

MOTION TO RECOMMIT OFFERED BY MR. ORTON

Mr. ORTON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is the gentleman opposed to the bill?

Mr. ORTON. I am in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit. . . .

Points of Order Under Section 426

§ 30.8 Pursuant to section 426(b)(2) of the Congressional Budget Act,(1) in order to be cognizable by the Speaker, a point of order under section 426 of the Act must specify the precise language(2) upon which it is premised.

On Jan. 28, 2009,(3) the following took place:

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 1, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Ms. [Louise] SLAUGHTER [of New York]. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 92 and ask for its immediate consideration.

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1. 2 USC § 658e(b)(2).

2. *Parliamentarian's Note:* Section 426 of the Unfunded Mandates Reform Act prohibits the consideration of any rule or order waiving the application of section 425 (prohibiting consideration of measures, including amendments, containing unfunded mandates). Because the rule here did not waive points of order against consideration of the *bill* (merely against provisions therein), the rule's near-blanket waiver for *amendments* was the correct basis on which to raise the unfunded mandates point of order.

3. 155 CONG. REC. 1796, 1798, 111th Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 92

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the State of the Union for further consideration of the bill (H.R. 1) making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes. Further general debate shall be confined to the bill and amendments specified in this resolution and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations. The amendment printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived. Notwithstanding clause 11 of rule XVIII, no further amendment to the bill, as amended, shall be in order except those printed in part B of the report of the Committee on Rules. Each such further amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such further amendments are waived except those arising under clause 9 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Sec. 2. The chair of the Committee on Appropriations shall insert in the CONGRESSIONAL RECORD not later than February 4, 2009, such material as he may deem explanatory of appropriations measures for the fiscal year 2009.

Sec. 3. The chair of the Committee on Ways and Means may file, on behalf of the Committee, a supplemental report to accompany H.R. 598.

POINT OF ORDER

Mr. [Cliff] STEARNS [of Florida]. Madam Speaker, I rise to make a point of order against consideration of the rule.

The SPEAKER pro tempore.[4] The gentleman will state his point of order.

Mr. STEARNS. Madam Speaker, I raise a point of order against consideration of the rule because the rule contains a waiver of all points of order against the provisions in the bill and amendments made in order by the rule and, therefore, it is in violation of section 426 of the Congressional Budget Act.

The SPEAKER pro tempore. The gentleman from Florida makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden to identify the specific language consisting of the waiver against amendments in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

4. Ellen Tauscher (CA).

The gentleman from Florida and a Member opposed, the gentlewoman from New York (Ms. SLAUGHTER), each will control 10 minutes of debate on the question of consideration.

After that debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?

The Chair recognizes the gentleman from Florida. . . .

The SPEAKER pro tempore. All time for debate has expired. The question is, Will the House now consider the resolution?

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

On June 26, 2001,[5] a point of order was brought against a pending rule considered as a special order of business.

UNFUNDED MANDATE POINT OF ORDER

Mr. [James] MORAN of Virginia. Mr. Speaker, pursuant to section 426 of the Congressional Budget and Impoundment Control Act of 1974, I make a point of order against consideration of the rule (H. Res. 178) because it contains an unfunded Federal mandate.

Section 426 of the Budget Act specifically states that the Rules Committee may not waive this point of order.

In the rule of H. Res. 178, and I quote: "All points of order against consideration of the bill are waived." Therefore, I make a point of order that this bill may not be considered pursuant to section 426.

The SPEAKER pro tempore.[6] The gentleman from Virginia makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974. According to section 426(b)(2) of the act, the gentleman must specify language in the resolution that has that effect. Having met this threshold burden to identify the specific language of the resolution under section 426(b)(2), the gentleman from Virginia (Mr. MORAN) and a Member opposed will each control 10 minutes of debate on the question of consideration under section 426(b)(4).

Following the debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?

The gentleman from Virginia (Mr. MORAN) is recognized for 10 minutes.

Mr. MORAN of Virginia. Mr. Speaker, I raise a point of order because section 343 of this appropriations act directs the local transit authority to change the name of its transit station at Ronald Reagan Washington National Airport with local funds. The cost to comply with this provision is estimated to be $405,476; but the principle being violated is far more costly. . . .

Mr. [Thomas] REYNOLDS [of New York]. Mr. Speaker, I rise in opposition to the point of order.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from New York is recognized for 10 minutes.

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5. 147 CONG. REC. 11906, 11907, 11909, 11910, 107th Cong. 1st Sess. For additional examples of points of order raised under this section, see, *e.g.*, 155 CONG. REC. 1796–98, 111th Cong. 1st Sess., Jan. 28, 2009; 154 CONG. REC. 9050–52, 110th Cong. 2d Sess., May 14, 2008; 153 CONG. REC. 28302, 28304–306, 110th Cong. 1st Sess., Oct. 25, 2007; and 144 CONG. REC. 11852–54, 105th Cong. 2d Sess., June 10, 1998.

6. Michael Simpson (ID).

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I would like to take this opportunity to put to rest fears that this provision would violate the Unfunded Mandates Reform Act. While a review by the Congressional Budget Office determined the requirement to rename the station to be an intergovernmental mandate under the Unfunded Mandates Reform Act, renaming the station falls well below the 2001 threshold of $56 million. In fact, this project is estimated to cost approximately $500,000. I submit CBO's findings for the RECORD. . . .

Mr. Speaker, I reserve the balance of my time. . . .

The SPEAKER pro tempore (Mr. SIMPSON). All time for debate has expired. The question is, Will the House now consider the resolution?

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

Mr. MORAN of Virginia. 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.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 219, nays 202, not voting 12, as follows:

[Roll No. 190] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Against "Hereby" Special Order

§ 30.9 A "hereby" special order,[1] although not explicitly waiving section 425 of the Congressional Budget Act, nevertheless waives the application of section 425 of the Budget Act by precluding the opportunity for raising a point of order under section 425.[2]

On Feb. 1, 2006,[3] a point of order was raised against consideration of a rule:

RELATING TO CONSIDERATION OF S. 1932, DEFICIT REDUCTION ACT OF 2005

Mr. [Adam] PUTNAM [of Florida]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 653 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 653

Resolved, That the House hereby concurs in the Senate amendment to the House amendment to the bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

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1. A "hereby" special order of business resolution, reported from the Committee on Rules, provides that by adoption of the resolution, the House "hereby" takes a legislative action. In this case, by the adoption of H. Res. 653, the House "hereby" concurred in a Senate amendment.

2. 2 USC § 658d.

3. 152 CONG. REC. 549, 550, 552, 553, 109th Cong. 2d Sess.

UNFUNDED MANDATE POINT OF ORDER

Mr. [James] McDERMOTT [of Washington]. Mr. Speaker, pursuant to section 426 of the Congressional Budget Act of 1974, I make a point of order against consideration of this rule, H. Res. 653. Section 425 of that same act states that a point of order lies against legislation which imposes an unfunded mandate in excess of specified amounts against State or local governments. Section 426 of the Budget Act specifically states that a rule may not waive the application of section 425.

H. Res. 653 states that the House hereby concurs in the Senate amendment to the bill S. 1932 to provide for reconciliation. This self-executing rule effectively waives the application of section 425 to provisions in the underlying bill on child support enforcement which the Congressional Budget Office informs us impose an intergovernmental mandate as defined by the Unfunded Mandates Reform Act.

Therefore, I make a point of order that the rule may not be considered pursuant to section 426.

The SPEAKER pro tempore.[4] The gentleman from Washington makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of that Act, the gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

Under section 426(b)(4) of the Act, the gentleman from Washington (Mr. McDERMOTT) and the gentleman from Florida (Mr. PUTNAM) each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate, the Chair will put the question of consideration. [sic] to wit: Will the House now consider the resolution?

The Chair recognizes the gentleman from Washington (Mr. McDERMOTT) for 10 minutes. . . .

The SPEAKER pro tempore (Mr. SIMPSON).[5] The question is: Will the House now consider the resolution?

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

Mr. McDERMOTT. 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 226, nays 201, not voting 6, as follows:

[Roll No. 2] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Timeliness

§ 30.10 Where all points of order against consideration of a bill have been waived by unanimous consent and the House has already embarked on consideration, a point of order against consideration of

4. Ray LaHood (IL).
5. Michael Simpson (ID).

the bill under section 425 of the Congressional Budget Act[1] as allegedly containing an unfunded mandate comes too late.

On July 18, 1996,[2] an untimely point of order was attempted against a bill after consideration of that bill had begun:

So the resolution was agreed to.
The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

WELFARE AND MEDICAID REFORM ACT OF 1996

The SPEAKER pro tempore [Mr. KOLBE].[3] Pursuant to House Resolution 482 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3734.

□ 1047

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3734) to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997, with Ms. GREENE of Utah in the chair.

The Clerk read the title of the bill.

POINT OF ORDER

Mr. [William] ORTON [of Utah]. Madam Chairman, I rise to make a point of order against consideration of H.R. 3724.

The CHAIRMAN.[4] The gentleman will state his point of order.

Mr. ORTON. Madam Chairman, section 425 of the Congressional Budget Act prohibits us from considering legislation which would create an unfunded mandate upon the States. The Congressional Budget Office has ruled that H.R. 3734 falls $12.9 billion short in funding necessary to fund the work requirements of the bill. Also the National Governors Association has stated: We are concerned that the bill restricts State flexibility and will create additional unfunded costs.

This bill clearly creates an unfunded mandate, violates section 425 of the Congressional Budget Act, and I would further point out that section 426 of the Congressional Budget Act prohibits this House from considering a rule which would waive section 425. So that in any event we would have a vote and a determination as to whether or not a bill does in fact create an unfunded mandate.

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1. 2 USC § 658d.
2. 142 CONG. REC. 17668, 104th Cong. 2d Sess. For the initial unanimous-consent request waiving all points of order against consideration of the bill, see 142 CONG. REC. 17602, 17603, 104th Cong. 2d Sess., July 17, 1996.
3. James Kolbe (AZ).
4. Enid Greene (UT).

The CHAIRMAN. The Chair would respond to the gentleman's point of order as follows. Points of order against consideration of the bill H.R. 3734 were waived by unanimous consent on July 17, 1996. Further, a point of order against consideration of House Resolution 482 would not be timely after adoption of that resolution.

The gentleman's points are not in order.

Mr. ORTON. I thank the Chairman. I think it is clear to the House and the country that in fact we are violating the first bill we passed in this Congress with the adoption of this bill.

Debate

§ 30.11 Debate on the point of order under section 426 of the Congressional Budget Act[1] should be confined to the question of considering the underlying measure.

On May 14, 2008,[2] the following occurred:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 2419, FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Mr. [Dennis] CARDOZA [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1189 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1189

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2419) to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The previous question shall be considered as ordered on the conference report without intervening motion except (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture and (2) one motion to recommit.

□ 1045

UNFUNDED MANDATE POINT OF ORDER

Mr. [Jeff] FLAKE [of Arizona]. Mr. Speaker, I raise a point of order against H. Res. 1189 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution contains a waiver of all points of order against consideration of the conference report which includes a waiver of section 425 of the Congressional Budget Act which causes a violation of section 426(a).

The SPEAKER pro tempore.[3] The gentleman from Arizona makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

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1. 2 USC § 658e.

2. 154 CONG. REC. 9050–52, 110th Cong. 2d Sess.

3. Ed Pastor (AZ).

The gentleman from Arizona and a Member opposed, the gentleman from California (Mr. CARDOZA), each will control 10 minutes of debate on the question of consideration.

After that debate, the Chair will put the question of consideration, to wit: "Will the House now consider the resolution?"

The Chair recognizes the gentleman from Arizona. . . .

Mr. FLAKE . . .

I should mention there are other problems with this and other reasons why this rule should not go forward. We are waiving PAYGO rules. Now one thing the majority said when they came into power is we will not waive PAYGO. We are going to live by PAYGO. When we give money out, we have to make sure that that many money is in the Treasury or we won't do it.

This waives PAYGO because there is simply no way you can be in compliance with PAYGO and pass a $300 billion farm bill. And in this case, the writers of the legislation did something very creative. They actually went baseline shopping. What PAYGO says is that you have to take the current baseline, the most current baseline of spending, and total up your spending in the bill based on that current baseline.

Instead, what the authors of this legislation did was said, oh, let's go to last year's baseline because we spent less money then and it means we can spend more money in this legislation. Baseline shopping. It is as if I were to say, I don't want to pay so much in taxes this year. So I am going to use last year's wages that I was paid, and I am going to report that instead. Now if I did that, I would be thrown in jail. But we are allowed to do this here. We are allowed to say, we will take whatever baseline we want as long as it allows us to spend more money in the legislation. And then when the bill comes to the floor, we will just waive the rule that required us to be honest in terms of bringing legislation that complies with PAYGO.

I would love an explanation from the Rules Committee as to why PAYGO was waived in this regard. . . .

Mr. FLAKE. I will gladly yield to my colleague from California on the Rules Committee for a question.

Did we waive the PAYGO rules in this rule?

Mr. CARDOZA. We have accommodated the Senate PAYGO rules as we have moved forward. And it is my opinion that this is a technical situation because we started this bill and passed this bill off the floor in 2007.

Mr. FLAKE. Reading from the House rules after the beginning of a new calendar year—

Mr. CARDOZA. Mr. Speaker, I raise a point of order.

I believe we are supposed to be talking about the unfunded mandates in this bill. If the gentleman would like to talk about the PAYGO rules, we should talk about this when we bring up the rule which that is germane to.

The SPEAKER pro tempore. The gentleman should confine his remarks to the question of order. . . .

The SPEAKER pro tempore. The question is, Will the House now consider the resolution?

The question of consideration was decided in the affirmative.

§ 30.12 Any member of the committee managing the consideration of a bill who controls time in support of the question of its consideration under section 426(b)(4) of the Congressional Budget Act[1]

1. 2 USC § 658e(b)(4).

constitutes a "manager" for the purpose of determining the right to close that debate.

On May 1, 1997,[2] a point of order was raised against an amendment in the nature of a substitute made in order as original text:

HOUSING OPPORTUNITY AND RESPONSIBILITY ACT OF 1997

The SPEAKER pro tempore.[3] Pursuant to House Resolution 133 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2.

□ 1210

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2) to repeal the United States Housing Act of 1937, deregulate the public housing program and the program for rental housing assistance for low-income families, and increase community control over such programs, and for other purposes, with Mr. GOODLATTE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, April 30, 1997, all time for general debate had expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered under the 5-minute rule by titles and each title shall be considered read.

Before consideration of any other amendment, it shall be in order to consider the amendment printed in the CONGRESSIONAL RECORD on April 29, 1997, if offered by the gentleman from New York [Mr. LAZIO] or his designee. That amendment shall be considered read, shall be debatable for 10 minutes, equally divided and controlled by the proponent and an opponent, shall not be subject to an amendment, and shall not be subject to a demand for division of the question.

If that amendment is adopted, the bill, as amended, shall be considered as an original bill for the purpose of further amendment. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall not be less than 15 minutes.

UNFUNDED MANDATE POINT OF ORDER

Mr. [Melvin] WATT of North Carolina. Mr. Chairman, pursuant to section 425 of the Congressional Budget Act and Impoundment Control Act of 1974, I make a point of order against consideration of the committee amendment to the bill, H.R. 2.

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2. 143 CONG. REC. 7006–12, 105th Cong. 1st Sess.

3. Robert Goodlatte (VA).

Section 425 states that a point of order lies against legislation which either imposes an unfunded mandate in excess of $50 million annually against State or local governments, or does not publish prior to floor consideration a CBO estimate of any unfunded mandates in excess of $50 million annually for State and local entities or in excess of $100 million annually for the private sector.

Sections 105 and 106, on pages 25 through 49 of H.R. 2, contain violations of section 425 of the Congressional Budget and Impoundment Control Act. Therefore, I make a point of order that this measure may not be considered pursuant to section 425.

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] makes a point of order that the amendment in the nature of a substitute violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the act, the gentleman has met his threshold burden to identify the specific language in the amendment on which he predicates the point of order.

The text of section 105 and section 106 of the amendment, on pages 25 through 49 of the reported bill, is as follows:. . . .

Under section 426(b)(4) of the act, the gentleman from North Carolina [Mr. WATT] and a Member opposed to the point of order each will control 10 minutes of debate on the point of order.[sic]

Pursuant to section 426(b)(3) of the act, after debate on the point of order, the Chair will put the question of consideration, to wit: “Will the Committee now consider the amendment?”

The gentleman from North Carolina [Mr. WATT] is recognized for 10 minutes, and the gentleman from Iowa [Mr. LEACH] who is opposed, will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

□ 1215

Mr. WATT of North Carolina. Mr. Chairman, my colleagues, especially those on the Republican side, have made a significant point that many of us agree on a bipartisan basis is a valid point; that we should not continuously pass along to State and local governments and entities of State and local governments mandates which mandate that they take certain action without passing along to them the funds to pay for those mandates.

This bill, sections 105 and 106, in combination, pass such a mandate along. Sections 105 and 106, in combination, according to the Congressional Budget Office, impose an unfunded mandate of approximately $65 million.

Section 105, according to the Congressional Budget Office, would require local governments to expend an additional $35 million annually. Section 106 would require local governments and public housing agencies to expend an additional $35 million annually.

These provisions, in combination, should not be passed along to our local housing authorities because we are not funding them. And if we are going to be in compliance with the spirit and letter of the resolutions and rules that we set up to govern ourselves, this bill should not be considered without these provisions being stricken out of the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. [James] LEACH [of Iowa]. Mr. Chairman, I yield myself such time as I may consume. . . .

The CBO states, and I quote directly, “The bill would impose several new requirements on PHA’s. These requirements, which are conditions of receiving assistance from HUD

and, thus, are not mandates under the Unfunded Mandates Reform Act of 1995, include establishing and enforcing work requirements and self-sufficiency agreements with residents of public housing.''

In further clarification, CBO has informed me today that while H.R. 2 does contain several intergovernmental mandates as defined by the Unfunded Mandates Reform Act, in other parts of the bill, CBO has determined that the cost of those mandates is insignificant and would not exceed the threshold established under the law.

The bill contains other provisions that would have significant budgetary impacts on public housing agencies, such as the one the gentleman from North Carolina is concerned about, but these provisions are conditions of receiving Federal financial assistance and, therefore, would not be considered mandates under the Unfunded Mandates Reform Act of 1995. . . .

Mr. LEACH. Mr. Chairman, I would like to ask how much time the two sides have remaining.

The CHAIRMAN. The gentleman from Iowa has 4 minutes remaining, and the gentleman from North Carolina has 4 minutes remaining.

The gentleman from Iowa has the right to close.

Mr. WATT of North Carolina. Mr. Chairman, let me take issue with that. Why does the gentleman from Iowa have the right to close? It is my point of order.

The CHAIRMAN. That has been established by precedent. The manager of the bill has the right to close.

Mr. WATT of North Carolina. He is not managing the bill. The gentleman from New York [Mr. LAZIO] is managing the bill.

The CHAIRMAN. The chairman of the committee is at this point in time managing the bill.

Mr. [Barney] FRANK of Massachusetts. If the gentleman from North Carolina will yield, maybe it is because he is representing the President on this issue.

The CHAIRMAN. No, that is not correct.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume. . . .

Mr. LEACH. Mr. Chairman, I yield myself the balance of my time. . . .

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time on this question has expired.

Pursuant to section 426(b)(3) of the Act, the question is, Will the Committee now consider the amendment in the nature of a substitute recommended by the Committee on Banking and Financial Services?

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LEACH. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 237, noes 183, not voting 13, as follows:

[Roll No. 99] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

Motions to Strike

§ 30.13 Pursuant to former Rule XVIII clause 11,(1) a Member offered a motion to strike an unfunded mandate from the portion of a bill then open to amendment in the Committee of the Whole, such motion not having been precluded by the specific terms of a special order.

On Apr. 21, 2005,(2) the following occurred:

SEC. 1502. FUELS SAFE HARBOR.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act, or methyl tertiary butyl ether (hereafter in this section referred to as ''MTBE''), used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed a defective product by virtue of the fact that it is, or contains, such a renewable fuel or MTBE, if it does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the ''Administrator'') under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act. If the safe harbor provided by this section does not apply, the existence of a claim of defective product shall be determined under otherwise applicable law. Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events, public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

(b) EFFECTIVE DATE.—This section shall be effective as of September 5, 2003, and shall apply with respect to all claims filed on or after that date. . . .

ENERGY POLICY ACT OF 2005

The SPEAKER pro tempore.(3) Pursuant to House Resolution 219 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6.

□ 1018

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6) to ensure jobs for

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1. The clause was repealed in the 112th Congress. See 157 CONG. REC. H8 [Daily Ed.], Jan. 5, 2011 (H. Res. 5, sec. 2(e)(5)). *House Rules and Manual* § 991 (2011). The rule provided that an amendment in the Committee of the Whole proposing only to strike an unfunded mandate from a portion of the bill could be precluded only by the "specific terms of a special order of business." In the years prior to the repeal of this rule, special orders of business would routinely specifically preclude this motion. See, *e.g.*, 156 CONG. REC. H6462–3 [Daily Ed.], 111th Cong. 2d Sess., July 30, 2010 (H. Res. 1574).
2. 151 CONG. REC. 7211, 7331, 7349, 7352, 109th Cong. 1st Sess.
3. Candice Miller (MI).

our future with secure, affordable, and reliable energy, with Mr. BONILLA (Acting Chairman) in the chair.

The Clerk read the title of the bill.

The Acting CHAIRMAN.[4] When the Committee of the Whole rose on Wednesday April 20, 2005, amendment No. 14 printed in House report 109–49 offered by the gentlewoman from California (Ms. SOLIS) had been disposed of.

REQUEST TO OFFER AMENDMENT

Mrs. [Lois] CAPPS [of California]. Mr. Chairman, pursuant to clause 11 of rule XVIII, I offer an amendment that will strike an unfunded mandate in section 1502.

The Acting CHAIRMAN. The Chair will respond momentarily.

PARLIAMENTARY INQUIRY

Mr. [Joe] BARTON of Texas. Parliamentary inquiry, Mr. Chairman.

The Acting CHAIRMAN. The gentleman from Texas is recognized.

Mr. BARTON of Texas. My parliamentary inquiry is that that is not an amendment that we knew and precleared under the Committee on Rules.

The Acting CHAIRMAN. Will the gentleman withhold his parliamentary inquiry?

Mr. BARTON of Texas. I will be happy to, Mr. Chairman.

The Acting CHAIRMAN. Will the gentlewoman consider withholding her motion at this time and perhaps bringing it up a little later?

Mrs. CAPPS. Mr. Chairman, could we discuss this, please?

The Acting CHAIRMAN. Bringing up the motion at a later time would be perfectly acceptable and would give the Chair an opportunity to evaluate the situation.

Mrs. CAPPS. Mr. Chairman, I am willing to withhold the amendment without prejudice to give us time for discussion.

The Acting CHAIRMAN. The amendment is withheld without prejudice.

It is now in order to consider amendment No. 15 printed in House report 109–49. . . .

LIMITATION OF DEBATE ON MOTION TO STRIKE OFFERED BY MRS. CAPPS

Mr. [Ralph] HALL [of Texas]. Mr. Chairman, I ask unanimous consent that debate on the motion to strike offered by the gentlewoman from California (Mrs. CAPPS) be limited to 30 minutes equally divided and controlled by Mrs. CAPPS and an opponent.

The Acting CHAIRMAN (Mr. PUTNAM).[5] Is there objection to the request of the gentleman from Texas?

Mrs. CAPPS. Reserving the right to object, Mr. Chairman, it is my understanding that the amendment will be recognized after the Grijalva amendment and before the Inslee amendment; am I correct?

Mr. HALL. Mr. Chairman, will the gentlewoman yield?

Mrs. CAPPS. I yield to the gentleman from Texas.

Mr. HALL. That is our understanding, Mr. Chairman.

Mrs. CAPPS. Mr. Chairman, I withdraw my reservation of objection.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Texas?

4. Henry Bonilla (CA).

5. Adam Putnam (FL).

There was no objection. . . .

AMENDMENT OFFERED BY MRS. CAPPS

Mrs. CAPPS. Mr. Chairman, I offer an amendment to strike an unfunded mandate.
The Clerk read as follows:

Amendment offered by Mrs. CAPPS:
In title XV, in section 1502, strike ", or methytertiary butyl ether (hereinafter in this section referred to as 'MTBE')" and strike "or MTBE" in each place it appears.

The Acting CHAIRMAN. Pursuant to the order of the Committee of today, the gentlewoman from California (Mrs. CAPPS) and the gentleman from Texas (Mr. BARTON) each will control 15 minutes.

The Chair recognizes the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Chairman, I yield myself 1½ minutes, and appreciate the opportunity to bring this amendment to strike an unfunded mandate to the floor for debate.

Intervening Motions

§ 30.14 A Member who voted on the prevailing side of an affirmative vote on a question of consideration arising from an unfunded mandates point of order qualifies to offer a motion to reconsider such vote.

On June 28, 2000,[1] the following occurred:

MOTION TO RECONSIDER THE VOTE: OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. [Barney] FRANK of Massachusetts. Mr. Speaker, I move to reconsider the vote.

The SPEAKER pro tempore (Mr. LATOURETTE).[2] Did the gentleman from Massachusetts vote on the prevailing side?

Mr. FRANK of Massachusetts. Yes, I did, Mr. Speaker.

MOTION TO TABLE OFFERED BY MR. GOSS

Mr. [Porter] GOSS [of Florida]. Mr. Speaker, I move to lay on the table the motion to reconsider.

The SPEAKER pro tempore. The question is on the motion to table offered by the gentleman from Florida (Mr. GOSS).

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

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Speaker, I demand a recorded vote.

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1. 146 CONG. REC. 12653, 106th Cong. 2d Sess. See also 146 CONG. REC. 12650–53, 106th Cong. 2d Sess., June 28, 2000.

2. Steven LaTourette (OH).

§ 31. Earmarks

Rule XXI clause 9(e),[1] defines a "congressional earmark" as "a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process."[2]

The House requires disclosure of these earmarks or a disclaimer that a measure contains no such earmarks. A point of order may be raised under Rule XXI clause 9(a)[3] against consideration of reported and unreported bills and joint resolutions, "manager's" amendments to bills or joint resolutions (offered at the outset of consideration), or conference reports that do not contain the requisite disclosures. These disclosure requirements, depending on the measure, must be made in the committee report, printed in the *Congressional Record*, or contained in the joint explanatory statement of managers. The point of order is not applicable to motions to dispose of Senate amendments.[4]

Rule XXI clause 9(b)[5] provides a similar disclosure requirement for conference reports on annual appropriation bills. That paragraph requires the joint explanatory statement of managers to include an earmark statement listing the congressional earmarks, tax, and tariff benefits contained in the conference report of either House (or a statement that the proposition contains no such earmarks or tax or tariff benefits). Such a requirement was designed to disclose any earmarks originating in conference ("air-dropped") and not subject to prior consideration by either House.

It is important to note that the rule does not contemplate the Chair making any determination that a particular provision does or does not constitute an earmark, a limited tax benefit, or a limited tariff benefit. Rather, the Chair merely determines whether or not the required disclosure statement has been published as required and does not rule on the sufficiency of such a statement.[6]

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1. *House Rules and Manual* § 1068d (2011). The clause was added in the 110th Congress. A similar point of order operated during part of the 109th Congress. See 152 CONG. REC. 18316, 109th Cong. 2d Sess., Sept. 14, 2006 (H. Res. 1000).
2. Rule XXI clause 9(f) defines "limited tax benefit" and Rule XXI clause 9(g) defines "limited tariff benefit." *House Rules and Manual* § 1068d (2011).
3. *House Rules and Manual* § 1068d (2011).
4. See § 31.4, *infra*.
5. *House Rules and Manual* § 1068d (2011).
6. See § 31.2, *infra*.

Rule XXI clause 9(c)[7] provides a point of order against a special order of business reported from the Committee on Rules waiving the application of either clause 9(a) or 9(b) of Rule XXI.[8] That point of order is disposed of by the question of consideration. A special order "self-executing" the adoption of an amendment does not in so doing waive the application of Rule XXI clause 9(a) and thus is not subject to clause 9(c).[9]

In addition to the earmark disclosure requirements of Rule XXI clause 9, the House also added earmark disclosures as an element of the Code of Official Conduct (Rule XXIII).[10] Rule XXIII clause 17[11] requires any Member who requests a congressional earmark, limited tax or limited tariff benefit in a measure to submit to the chairman and ranking minority member of the committee of jurisdiction a written statement containing the following: (1) the name of the requesting Member; (2) identification of the intended recipient of the congressional earmark (or potential beneficiary of a tax or tariff benefit); (3) the purpose of the earmark, tax or tariff benefit; and (4) a certification that the Member (or spouse) has no financial interest in such congressional earmark, tax, or tariff benefit. Committees of the House are required by clause 17(b) to maintain publicly-accessible files on all such requests.

Disclosure Requirements

§ 31.1 A point of order does not lie under Rule XXI clause 9[1] against an unreported bill where the chairman of the committee of initial referral has caused to be printed in the *Congressional Record* a statement that the bill contains no congressional earmarks, limited tax benefits, or limited tariff benefits (sustained by tabling of appeal).

On Jan. 31, 2007,[2] the following occurred:

POINT OF ORDER

Mr. [Patrick] McHENRY [of North Carolina]. Mr. Speaker, I rise to make a point of order.

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7. *House Rules and Manual* § 1068d (2011).
8. See § 31.5, *infra*.
9. See § 31.6, *infra*.
10. *House Rules and Manual* § 1095 (2011).
11. *Id.*
1. *House Rules and Manual* § 1068d (2011).
2. 153 CONG. REC. 2737, 2738, 110th Cong. 1st Sess.

The SPEAKER pro tempore (Mr. DEFAZIO).[3] The gentleman will state his point of order.

Mr. McHENRY. Under the new House rules, there is an anti-earmark rule that governs the House, which the rule governing this bill does not waive that rule of the House; and sections of this legislation actually go forward and violate that anti-earmark legislation. Therefore, I rise to make a point of order against H.J. Res. 20, as title I, section 101(a)(2), violates rule XXI, clause 9, of the House rules, stating, "There shall be no Member-directed earmarks," which this legislation does possess.

The SPEAKER pro tempore. Does any Member wish to be heard?

The Chair recognizes the gentleman from Wisconsin.

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I would simply note that on page 2543 of the CONGRESSIONAL RECORD there is listed the following statement:

Under clause 9(a) of rule XXI, lists or statements on congressional earmarks, limited tax benefits or limited tariff benefits are submitted as follows offered by myself: H.J. Res. 20 making further continuing appropriations for fiscal year 2007, and for other purposes, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Mr. McHENRY. Will the gentleman yield?

Mr. OBEY. No.

Mr. McHENRY. The gentleman will not yield for the question.

The SPEAKER pro tempore. On a point of order there is no yielding. The chair will hear each Member in turn. Does the gentleman from North Carolina wish to be heard on his point of order?

Mr. McHENRY. Yes. I wish to speak further.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. McHENRY. Mr. Speaker, the gentleman is stating, simply because legislation states that there are no earmarks, that you can contain thousands of earmarks after that statement. It defies logic and defies reason.

And, furthermore, your section explaining that there shall be no congressional earmarks is further on in the legislation. Therefore, it is not operational over the violation that I am stating in section 101. Therefore, under the legislation here, it is not operational. Therefore, it is a very crafty way, and I have got to compliment the gentleman for putting together a very crafty piece of legislation to try to slip this by. But under these House rules, this is a clear violation of the anti-earmarking provision that is very important to the rules of debate, even when the minority is not able to offer any amendments, even when the minority has no other means of removing congressional earmarks.

The SPEAKER pro tempore. The gentleman will restrict himself to the point of order.

Mr. OBEY. Mr. Speaker, I ask for a ruling from the Chair.

The SPEAKER pro tempore. Under clause 9(a) of rule XXI, it is not in order to consider an unreported bill or joint resolution unless the chairman of each committee of initial referral has caused to be printed in the CONGRESSIONAL RECORD a list of congressional earmarks, limited tax benefits, or limited tariff benefits contained in the measure, or a statement that the measure contains no such earmarks or benefits.

Under clause 9(c) of rule XXI, a point of order under clause 9(a) of rule XXI may be based only on the failure of the submission to the CONGRESSIONAL RECORD to include such a list or statement.

3. Peter DeFazio (OR).

The Chair has examined the CONGRESSIONAL RECORD and finds that it contains the statement contemplated by clause 9(a) of rule XXI.

Accordingly, the point of order is overruled.

Mr. MCHENRY. Mr. Speaker, I appeal the ruling of the Chair.

MOTION TO TABLE OFFERED BY MR. OBEY

Mr. OBEY. Mr. Speaker, I move to table the appeal.

The SPEAKER pro tempore. The question is on the motion to table.

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

Mr. MCHENRY. Division. I ask for a division vote, Mr. Speaker.[4]

Mr. OBEY. Mr. Speaker, I ask for the yeas and nays.

Mr. MCHENRY. Wait a second, Mr. Speaker. I asked for a division vote.

The SPEAKER pro tempore. Under the Constitution, the yeas and nays have precedence over a request for a division.

The yeas and nays are requested. Those favoring a vote by the yeas and nays will rise. A sufficient number having risen, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 226, nays 184, not voting 25, as follows:

[Roll No. 70]

Cognizability

§ 31.2 Under Rule XXI clause 9(a),[1] a point of order against consideration of a reported bill may be based only on the failure of the committee report to contain either a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill, or a statement that the bill contains no such earmarks or benefits and the Chair does not rule on the accuracy or sufficiency of such lists or statements.

On May 10, 2007,[2] the following occurred:

POINT OF ORDER

Mr. [Lynn] WESTMORELAND [of Tennessee]. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore.[3] The gentleman will state his point of order.

Mr. WESTMORELAND. I make a point of order under clause 9(a) of rule XXI regarding the earmarks in this bill, H.R. 2082. The list of earmarks in this bill fails to meet the requirements of clause 9(a) in that the list is deficient. One of the earmarks listed was included in the bill even though it failed to meet the requirement that the requesting Member notify in writing the chairman and ranking minority member of the committee.

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4. See Deschler-Brown Precedents Ch. 30 § 14.1, *supra*.

1. *House Rules and Manual* § 1068d (2011).

2. 153 CONG. REC. 12190, 12191, 110th Cong. 1st Sess.

3. John Tierney (MA).

The SPEAKER pro tempore. Under clause 9(a) of rule XXI, the Chair is constrained to ask a threshold question relating to the cognizability of the point of order.

Is the gentleman from Georgia alleging the absence of an entry in the report of the Permanent Select Committee on Intelligence in compliance with clause 9(a) of rule XXI?

Mr. WESTMORELAND. Mr. Speaker, I am saying that under clause 9(a) of rule XXI, that the list is deficient and did not include a notice to the ranking minority member on the committee of the earmark.

The SPEAKER pro tempore. The Chair finds the entry on pages 50 and 51 of the Report of the Permanent Select Committee on Intelligence constitutes compliance with clause 9(a) of rule XXI.

The point of order is overruled.

§ 31.3 In response to a parliamentary inquiry, the Speaker advised that pursuant to Rule XXI clause 9(d),[1] a point of order raised under clause 9(a) of that rule[2] may be based only on the failure of proper publication of either a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the measure or a statement that a measure contains no such earmarks or benefits and may not be based on the content of the list.

On May 10, 2007,[3] in response to a parliamentary inquiry, the Speaker advised that Rule XXI clause 9(d)[4] does not require the Chair to evaluate the content of a statement published pursuant to clause 9(a) of that rule:[5]

PARLIAMENTARY INQUIRIES

Mr. [Lynn] WESTMORELAND [of Tennessee]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore.[6] The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Is the Chair saying that the mere existence of a list is sufficient, even though it includes an earmark where the requesting Member failed to notify the ranking minority member of his request, as required under clause 17 of rule XXIII?

The SPEAKER pro tempore. The Chair cannot render advisory opinions or respond on hypothetical premises.

Mr. WESTMORELAND. Mr. Chairman, further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Is the Chair saying that the mere existence of a list is sufficient, even though the list fails to include an earmark contained in the bill?

The SPEAKER pro tempore. Again, the Chair does not purport to issue such an advisory opinion.

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1. *House Rules and Manual* § 1068d (2011).

2. *Id.*

3. 153 CONG. REC. 12191, 110th Cong. 1st Sess.

4. *House Rules and Manual* § 1068d (2011).

5. *Id.*

6. John Tierney (MA).

Mr. WESTMORELAND. Mr. Speaker, I don't believe this is a hypothetical situation, but I want to make further parliamentary inquiry, if I could.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Is the Chair saying that the mere existence of a list is sufficient, even though it includes an earmark where the requesting Member failed to certify he has no financial interest in the earmark?

The SPEAKER pro tempore. The Chair's response must remain the same.

Mr. WESTMORELAND. Finally, one last parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Finally, is the Chair saying that the mere printing of a list of earmarks, or a statement that the bill contains no earmarks, is sufficient to render the point of order against the bill as not recognized by the Chair?

The SPEAKER pro tempore. The Chair can affirm that clause 9 of rule XXI contemplates that the presence of earmarks and limited tax and tariff benefits be disclosed or disclaimed. Complying statements, listing such provisions or disclaiming their presence, must appear either in the report of a committee or conference committee or in a submission to the CONGRESSIONAL RECORD.

Paragraph (a) of clause 9 establishes a point of order. Paragraph (c) of clause 9 requires that such a point of order be predicated only on the absence of a complying statement.

Clause 9 of rule XXI does not contemplate a question of order relating to the content of the statement offered in compliance with the rule. Argument concerning the adequacy of a list or the probity of a disclaimer is a matter that may be addressed by debate on the merits of the measure or by other means collateral to the review of the Chair.

Mr. WESTMORELAND. Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. So, Mr. Speaker, is it my understanding, from your last comments, that even though the rule specifically state that these procedures should be followed, and that they were not followed in this particular instance, that you are going to rule that the list, even though deficient not containing all the earmarks, just the mere fact that there was a list presented, no matter how accurate, that that will stand?

The SPEAKER pro tempore. The Chair would not deign to say what the gentleman understands, but the Chair's statement speaks for itself.

Applicability to Amendments Between the Houses

§ 31.4 Rule XXI clause 9(a)[1] does not apply to a motion to dispose of a Senate amendment and a point of order on this basis was overruled (sustained by tabling of appeal).

On Sept. 25, 2007,[2] a point of order was overruled as Rule XXI clause 9(a) does not apply to amendments between the Houses:

PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 976, CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007

Mr. [James] MCGOVERN [of Massachusetts]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 675 and ask for its immediate consideration.

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1. *House Rules and Manual* § 1068d (2011).
2. 153 CONG. REC. 25434, 25435, 110th Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 675

Resolved, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 976) to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes, with Senate amendments thereto, and to consider in the House, without intervention of any point of order except those arising under clause 10 of rule XXI, a single motion offered by the chairman of the Committee on Energy and Commerce or his designee that the House concur in each of the Senate amendments with the respective amendment printed in the report of the Committee on Rules accompanying this resolution. The Senate amendments and the motion shall be considered as read. The motion shall be debatable for one hour equally divided among and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce and the chairman and ranking minority member of the Committee on Ways and Means. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

POINT OF ORDER

Mr. [Mike] ROGERS of Michigan. Mr. Speaker, point of order.

The SPEAKER pro tempore (Mr. HOLDEN).[3] The gentleman will state his point of order.

Mr. ROGERS of Michigan. Mr. Speaker, I rise for a point of order against consideration of the resolution because it violates clause 9(b) of House rule XXI for failure to disclose a taxpayer-funded earmark contained in the bill.

Section 618 of the Democrats' SCHIP bill contains an undisclosed earmark directing taxpayer funding to a facility located in Memphis, Tennessee, specifically in the district of the gentleman from Tennessee.

Under House rules, all earmarks are supposed to be disclosed, and the Member requesting the earmark is required to certify that he has no financial interest in this earmark.

The earmark contained in this bill has not been disclosed anywhere. In fact, at the Rules Committee last night, my friends in the Democratic leadership certified this bill as "earmark-free," despite the fact that this bill includes an earmark for the gentleman from Tennessee.

The requirements of full disclosure and certification that there is no financial interest have not been met here.

This earmark was not in the House-adopted bill, H.R. 976. It was not in the Senate amendment to H.R. 976. I would point out it was in the House-adopted H.R. 3192, but it was never disclosed there either. . . .

POINT OF ORDER

Mr. MCGOVERN. Mr. Speaker, will the gentleman please state his point of order?

The SPEAKER pro tempore. The gentleman from Michigan must confine his remarks to his point of order.

Mr. ROGERS of Michigan. Mr. Speaker, my point of order is that this bill is in violation of 9(b) of House rule XXI for failure to disclose a taxpayer-funded earmark contained in the bill.

3. Tim Holden (PA).

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

The gentleman from Michigan makes a point of order under clause 9(b) of rule XXI that the resolution waives the application of clause 9(a) of rule XXI. It is correct that clause 9(b) of rule XXI provides a point of order against a rule that waives the application of the clause 9(a) point of order.

In pertinent part, clause 9(a) of rule XXI provides a point of order against a bill, a joint resolution, or a so-called "manager's amendment" thereto unless certain information on congressional earmarks, limited tax benefits and limited tariff benefits is disclosed. But this point of order does not lie against an amendment between the Houses.

House Resolution 675 makes in order a motion to concur in Senate amendments with amendment. Because clause 9(a) of rule XXI does not apply to amendments between the Houses, House Resolution 675 has no tendency to waive its application. The point of order is overruled.

Mr. ROGERS of Michigan. I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE BY MR. MCGOVERN

Mr. MCGOVERN. Mr. Speaker, I move to table the appeal of the ruling of the Chair.

The SPEAKER pro tempore. The question is on the motion to table.

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

RECORDED VOTE

Mr. ROGERS of Michigan. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 190, not voting 18, as follows:

[Roll No. 902] . . .

Points of Order Under Rule XXI Clause 9(c)

§ 31.5 Rule XXI clause 9(c)[1] prescribes a point of order against consideration of a rule that waives the application of Rule XXI clause 9(a)[2] (disclosure of earmarks in a conference report).

On May 14, 2008,[3] the Speaker stated that a point of order could be raised against a rule waiving earmark disclosure requirements and would be decided by a question of consideration:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 2419, FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Mr. [Dennis] CARDOZA [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1189 and ask for its immediate consideration.

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1. *House Rules and Manual* § 1068d (2011). This point of order was originally found in Rule XXI clause 9(b) prior to the 111th Congress.

2. *Id.*

3. 154 CONG. REC. 9050, 9052, 9054, 9055, 110th Cong. 2d Sess.

The Clerk read the resolution, as follows:

H. RES. 1189

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2419) to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The previous question shall be considered as ordered on the conference report without intervening motion except (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture and (2) one motion to recommit. . . .

POINT OF ORDER

Mr. [Jeff] FLAKE [of Arizona]. Mr. Speaker, I raise a point of order against H. Res. 1189 under clause 9 of rule XXI, because the resolution contains a waiver of all points of order against the conference report and its consideration.

The SPEAKER pro tempore.[4] The gentleman from Arizona makes a point of order that the resolution violates clause 9(b) of rule XXI.

Under clause 9(b) of rule XXI, the gentleman from Arizona and the gentleman from California each will control 10 minutes of debate on the question of consideration.

Following the debate, the Chair will put the question of consideration as follows: "Will the House now consider the resolution?" . . .

The SPEAKER pro tempore. The question is, Will the House now consider the resolution?

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

Mr. FLAKE. 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 228, nays 189, not voting 16, as follows:

[Roll No. 309] . . .

So the question of consideration was decided in the affirmative.

Applicability to Special Orders "Self-Executing" Amendments

§ 31.6 Rule XXI clause 9(c)[1] does not apply to a special order "self-executing" an amendment alleged to contain earmarks, limited tax benefits, or limited tariff benefits (and lacking the required disclosures) because such a rule has no tendency to waive the applicability of Rule XXI clause 9(a)[2] within the meaning of Rule XXI clause 9(c).[3]

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4. Edward Pastor (AZ).

1. *House Rules and Manual* § 1068d (2011). As noted, prior to the 111th Congress, this point of order was found in Rule XXI clause 9(b).

2. *Id.*

3. *Id.*

The applicability of the earmark rule to amendments is limited to those offered at the outset of consideration by a committee member designated in the report (and not to other amendments offered at other stages of the amendment process). By confining the point of order to those amendments offered at the outset of consideration, the rule targets "manager's amendments."[4] Thus, on Sept. 27, 2007,[5] the following point of order was overruled:

POINT OF ORDER

Mr. [David] DREIER [of California]. Point of order, Mr. Speaker.

Mr. Speaker, I raise a point of order against consideration of the rule.

The SPEAKER pro tempore.[6] The gentleman will state his point of order.

Mr. DREIER. I raise a point of order against consideration of the resolution because it violates clause 9(b) of House rule XXI, which states that it shall not be in order to consider a rule or order that waives the application of clause 9(a) of House rule XXI, the earmark disclosure rule.

The rule waives the application of the earmark disclosure rule against the amendment printed in part A of the committee report. The amendment is self-executed by the rule and, therefore, evades the application of clause 9.

I doubt that the self-executed amendment contains any earmarks; however, there is no statement in accordance with rule 9 that it does not.

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

Mr. DREIER. I look forward to your ruling, Mr. Speaker.

The SPEAKER pro tempore. The Chair is prepared to rule.

The gentleman from California makes a point of order that the resolution waives the application of clause 9(a) of rule XXI. It is correct that 9(b) of rule XXI provides a point of order against a rule that waives the application of the clause 9(a) point of order.

Clause 9(a) of rule XXI provides a point of order against a bill or joint resolution, a conference report on a bill or joint resolution or a so-called "manager's amendment" to a bill or joint resolution, unless certain information on congressional earmarks, limited tax benefits and limited tariff benefits is disclosed. But this point of order does not lie against an amendment that has been "self-executed" by a special order of business resolution.

House Resolution 683 "self-executes" the amendment recommended by the Committee on Financial Services modified by the amendment printed in part A of the Rules Committee report. Because clause 9(a) of rule XXI does not apply to such amendment, House Resolution 683 has no tendency to waive its application, and the point of order is overruled.

Timeliness

§ 31.7 A point of order against a bill under Rule XXI clause 9[1] is untimely after consideration has begun.

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4. See 153 Cong. Rec. 8, 110th Cong. 1st Sess., Jan. 4, 2007.

5. 153 Cong. Rec. 25723, 110th Cong. 1st Sess.

6. Earl Blumenauer (OR).

1. *House Rules and Manual* § 1068d (2011).

On Mar. 23, 2007,(2) after debate had begun on H.R. 1591, the following point of order was raised:

U.S. TROOP READINESS, VETERANS' HEALTH, AND IRAQ ACCOUNTABILITY ACT, 2007

The SPEAKER pro tempore.(3) Pursuant to section 2 of House Resolution 261, proceedings will now resume on the bill (H.R. 1591) making emergency supplemental appropriations for the fiscal year ending September 30, 2007, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. When proceedings were postponed on Thursday, March 22, 2007, the gentleman from Wisconsin (Mr. Obey) had 59 ½ minutes remaining and the gentleman from California (Mr. Lewis) had 51 minutes remaining.

Who yields time?

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I yield myself 10 minutes. . . .

PARLIAMENTARY INQUIRY

Mr. [Patrick] MCHENRY [of North Carolina]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MCHENRY. Mr. Speaker, how is it in order to continue to consider H.R. 1591 when rule XXI, clause 9 of the House clearly states that, and I quote, "it shall not be in order to consider a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks, limited tax benefits and limited tariff benefits in the bill or in the report, and the name of any Member, Delegate or Resident Commissioner who submitted a request to the committee for each respective item included in such list, or a statement that the proposition contains no congressional earmarks, limited tax benefits or tariff benefits"?

The SPEAKER pro tempore. No Member rose to a point of order at the appropriate point in time.

POINT OF ORDER

Mr. MCHENRY. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. MCHENRY. Mr. Speaker, is there a list of congressional earmarks with this?

The SPEAKER pro tempore. Is the gentleman stating a point of order?

Mr. MCHENRY. Point of order. House rule XXI, clause 9 states, and if I shall repeat, or if the gentleman would, if the Speaker would look at House rule XXI, clause 9, is there not cause for action?

The SPEAKER pro tempore. The gentleman's point of order is not timely.

PARLIAMENTARY INQUIRIES

Mr. MCHENRY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

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2. 153 CONG. REC. 7415, 7420, 110th Cong. 1st Sess.

3. Michael Capuano (MA).

Mr. McHENRY. Mr. Speaker, at what time would it be timely for consideration?

The SPEAKER pro tempore. It would be timely at the outset of consideration of the matter. . . .

Debate

§ 31.8 Debate on the point of order under Rule XXI clause 9(b)[1] should be confined to the question of considering the underlying measure.

On May 14, 2008,[2] the Chair reminded Members to confine remarks to the subject of the point of order:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 2419, FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Mr. [Dennis] CARDOZA [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1189 and ask for its immediate consideration. . . .

Mr. [Jeff] FLAKE [of Arizona]. Mr. Speaker, I raise a point of order against H. Res. 1189 under clause 9 of rule XXI, because the resolution contains a waiver of all points of order against the conference report and its consideration.

The SPEAKER pro tempore.[3] The gentleman from Arizona makes a point of order that the resolution violates clause 9(b) of rule XXI.

Under clause 9(b) of rule XXI, the gentleman from Arizona and the gentleman from California each will control 10 minutes of debate on the question of consideration.

Following the debate, the Chair will put the question of consideration as follows: “Will the House now consider theresolution?”

The Chair recognizes the gentleman from Arizona.

Mr. FLAKE. Mr. Speaker, this second point of order, and I will be calling for a vote on this one, is raised because of earmarks that have been airdropped into the legislation. . . .

Mr. FLAKE. Reclaiming my time, I thank the gentleman for the clarification. I still would point out we have a $3.8 billion permanent disaster title added to the bill; and still, in addition to that, we are funding these kinds of programs directly and specifically.

The gentleman can argue that it is not an earmark. I think that a casual or a tortured reading of this would both say this is an earmark when you are naming a specific entity to receive a specific amount of money and when it wasn’t in the House bill, that is an earmark. So there is a good reason for this point of order.

The gentleman said, and let me go back to the PAYGO issue. The gentleman mentioned that this rule he thinks is in compliance with PAYGO. Let me read what this conference report says and see if anybody can decipher this.

Mr. CARDOZA. Mr. Speaker, the gentleman raised a point of order with regard to earmarks, not with regard to the issue of PAYGO. That will be discussed in the rule itself. It will be germane to that later discussion.

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1. *House Rules and Manual* § 1068d (2011).

2. 154 CONG. REC. 9050, 9052, 9053, 110th Cong. 2d Sess.

3. Edward Pastor (AZ).

The SPEAKER pro tempore. If the gentleman may confine his remarks to the question of order.

Correcting Incomplete Reports

§ 31.9 The House, by unanimous consent, permitted a committee to file a supplemental report on a bill to correct numerous substantive omissions in the report, including a statement of congressional earmarks, limited tax benefits, and limited tariff benefits required by Rule XXI clause 9.[1]

On July 10, 2008,[2] the following occurred:

PERMISSION FOR PERMANENT SELECT COMMITTEE ON INTELLIGENCE TO FILE SUPPLEMENTAL REPORT ON H.R. 5959, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2009

Mr. [Silvestre] REYES [of Texas]. Madam Speaker, I ask unanimous consent that the House Permanent Select Committee on Intelligence be allowed to file a supplemental report to accompany H.R. 5959.

The SPEAKER pro tempore.[3] Is there objection to the request of the gentleman from Texas?

There was no objection.

1. *House Rules and Manual* § 1068d (2011).
2. 154 CONG. REC. 14596, 110th Cong. 2d Sess.
3. Ellen Tauscher (CA).

Adjournment
presidential budget message received during, §§ 3.1, 3.3
section 309 points of order, restrictions under, §§ 5.19, 5.20
section 310(f) points of order, restrictions under, §§ 21.16–21.18

Allocations
adjustment authority, in general, §§ 4, 11
adjustment authority, triggered by special order, § 4.2
breach of section 302(a) allocation, increase in new budget authority causing, § 11.1
breach of section 302(b) allocation, failure to trigger adjustment authority causing, §§ 11.14, 11.15
breach of section 302(b) allocation, improper offset causing, §§ 11.7–11.9
breach of section 302(b) allocation, increase in new budget authority causing, § 11.3
breach of section 302(b) allocation, Senate amendment providing new budget authority causing, § 11.21
breach of section 302(b) allocation, relationship to "rise and report" point of order, § 11.23
breach of special allocation, § 11.4
breach of section 302(b) allocation, striking rescission causing, § 11.11
"deeming " resolutions, § 17
establishing, authority provided by concurrent resolution on the budget, § 18.5
establishing, authority provided by "deeming" special order in the absence of a concurrent resolution on the budget, §§ 17.2, 17.5, 17.6, 18.1, 18.3
establishing, authority provided by optional component of concurrent resolution on the budget, § 4
establishing, authority provided by separate order, § 18.2
establishing, authority provided by special order "self-executing" adoption of budget enforcement resolution, § 17.3
establishing, authority provided by unanimous consent, subsequent to adoption of concurrent resolution on the budget, § 18.6
former section 602(a) allocations, in general, §§ 11, 18.4
former section 603, authority to revise allocations pursuant to, § 18.4
joint statement of managers accompanying conference report on concurrent resolution, Congressional Budget Act requirement for inclusion of allocations in, § 18
motion to commit bill with instructions to report "forthwith" an amendment exceeding section 302(a) allocation, violates section 302(f), § 11.17
motion to concur in Senate amendment exceeding section 302(a) allocation, violates section 302(f), § 11.19
motion to concur in Senate amendment, with further House amendment exceeding section 302(b) allocation, violates section 302(f), § 11.20
motion to recommit, applicability of section 302(c) to, §§ 11.24, 11.25
motion to recommit with instructions to report "forthwith" an amendment exceeding section 302(a) allocation, violates 302(f), § 11.18
motion to recommit with instructions to report "forthwith" an amendment exceeding section 302(b) allocation, violates 302(f), § 11.16
optional components of concurrent resolutions on the budget, authority to adjust allocations contained in, § 4

reserve funds, relationship to, § 4
revising, authority provided by former section 603, § 18.4
revising, authority provided by separate order to reflect new committee organization, § 18.9
revising, authority provided by special order, § 18.7
revising, authority provided by unanimous consent, § 18.6
"rise and report" point of order for section 302(b) allocation breach, § 11.23
section 302(a) allocations, in general, § 11
section 302(b) allocations, in general, § 11
section 302(c) points of order, applicability to amendments, § 11.26
section 302(c) points of order, effect of waiver, § 11.26
section 302(c) points of order, in general, § 11
section 302(c) point of order, precursor, § 4
section 302(f) point of order, in general, § 11, see **Section 302**
section 308 committee reports, comparison of new budget authority contained in measure to existing allocations, § 7
section 401(b)(2) referrals due to allocation breach, § 11, see **Section 302** and **Section 401(b)(2) referrals**
suballocations, requirement for dividing section 302(a) allocations, § 11

Amendments

allocation adjustment authority, amendments triggering, §§ 11.14, 11.15
amendment guidelines, concurrent resolution on the budget, § 5.5
amendment process, concurrent resolution on the budget, in general, § 5
authorizations, amendments providing do not engage section 303(a), § 9
baseline for evaluation, marginal effect of amendment on bill, section 303(a), § 9.10
Committee on Rules, authority to recommend amendments to achieve goals of reconciliation directives, §§ 19, 21.5
directed scorekeeping provisions, amendment containing, relationship to section 306 points of order, § 16.2
earmark point of order, applicability to amendments between Houses, § 31.4
"emergency spending," amendment designated as, relationship to section 306 points of order, § 16.1
expanding entitlement eligibility, applicability to section 303(a) points of order, § 9.7
former section 602, amendment causing allocation breach by striking contingency, § 11.10
germaneness, amendment permanently raising the debt ceiling to a bill provided a temporary increase, § 29.1
House CUTGO rule, applicability to amendments, § 25.3
House PAYGO, "self-executed" amendments curing violations, § 22
increasing or decreasing revenues, amendment providing violates section 303(a), §§ 9.5, 9.6
"mathematical consistency," amendments to concurrent resolutions on the budget to achieve, §§ 5.9, 5.10
motion to concur in Senate amendments, applicability to section 302(f) points of order, §§ 11.19, 11.20
offsetting allocation breaches, §§ 11.6–11.9
parliamentary inquiries regarding amendments made pursuant to section 305(a), § 5.8

public debt level in concurrent resolution on the budget, restrictions on amendments changing, §§ 5, 29
recede and concur in Senate amendment, unanimous consent obtained despite section 302(f) violation, § 11.21
restoring provisions proposed to be cut, amendment providing violates section 303(a), § 9.9
Rule XVIII clause 10 prohibition of consideration of amendments to concurrent resolution on the budget changing level of public debt, § 26
Rule XXI clause 9(c) point of order, inapplicability to special orders "self-executing" amendments allegedly containing earmarks, § 31.6
section 303, applicability to, §§ 9.1, 9.4, 9.5
section 315, relationship to, § 15
special order structuring amendment process for concurrent resolution on the budget, in general, §§ 5, 5.2
striking rescission by amendment, held to provide new budget authority, § 11.11
unanimous consent to submit amendments to concurrent resolution on the budget, § 5.6
unfunded mandate point of order, applicability to amendments, § 30.6
waiver by unanimous consent, against motion to concur in Senate amendment in violation of section 311, § 10.7
waiving all points of order against amendments made in order by special order, § 8.1

Appropriations process
"emergency" amounts, appropriations designated as, §§ 1, 4, 11
in general, §§ 1, 6
section 307, relationship to, § 6
section 307, revisions by the Balanced Budget and Emergency Deficit Control Act of 1985, § 6
section 309, relationship to, § 6
section 401(b)(2) referrals, relationship to, § 6
timeline of congressional budget process, relationship to, § 2

Authorizations
appropriations, distinguished from, § 1
former section 402(a), restrictions on authorization measures pursuant to, § 14
in general, § 1
section 303(a), mere authorizations do not violate, §§ 9.2, 9.3
section 401(a), mere authorizations do not violate, § 12.2

Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings)
Bowsher v. Synar decision, effect of ruling, § 26
direct spending, definition used in House PAYGO analysis, § 24.3
emergency designations, relationship to section 306, § 16
"Fazio exception," codification of, § 10
in general, § 1
layover requirements for concurrent resolutions on the budget, changes to, § 5
section 302(c) points of order, creation of, § 11
section 302(f) points of order, creation of, § 11
section 310(f), revisions to, § 19
section 311, revisions to, § 10
section 401, revisions to, § 12
section 402(a), revisions to, § 14
sequestration, in general, § 26

Baselines
amendment, proper baseline for evaluation, section 303(a), § 9.10

Borrowing authority
definition, § 1
Budget Act, see **Congressional Budget and Impoundment Control Act of 1974**
Budget and Accounting Act of 1921
in general, § 1
Budget authority
definition, § 1
Budget, Committee on the, see **Committee on the Budget**
Budget, concurrent resolution on, see **Concurrent resolutions on the budget**
Budget Control Act of 2011 (BCA of 2011)
discretionary spending caps, in general, § 1
"emergencies," treatment of funds designated as, in general, § 4
in general, §§ 1, 11
public debt limit, relationship to, § 29
revisions to section 314 of Congressional Budget Act, in general, § 11
revisions to section 314 of Congressional Budget Act relating to section 302(f) of Congressional Budget Act, § 11
sequestration under, § 26
Budget Enforcement Act of 1990 (BEA of 1990)
"emergencies," treatment of funds designated as, in general, § 4
former section 602, in general, § 11
former section 606(d)(2), in general, § 11
in general, §§ 1, 11
pay-as-you-go procedure, creation of, §§ 1, 22
section 306, revisions to, § 16
section 310, revisions to, § 19
section 401(a), revisions to, § 12
sequestration under, § 26
Budget Enforcement Act of 1997 (BEA of 1997)
Budget Enforcement Act of 1990, revisions to, § 10
"emergencies," treatment of funds designated as, in general, § 4
in general, §§ 1, 5, 15
section 302(c), revisions to, § 11
section 310, revisions to, § 19
section 312(a), revisions to, § 7
section 314, creation of, § 11
section 401, revisions to, § 14
section 401(b), revisions to, § 13
section 401(b)(2) referral procedure, revisions to, § 11
sequestration under, § 26
Budgetary enforcement, in absence of concurrent resolution on the budget,
budget enforcement resolution, special order providing "self-executed" adoption of, § 17.3
committee allocations pursuant to section 302, § 18
"deeming " resolutions, in general, § 17
Canceling budget authority
deferrals, see **Deferrals**
rescissions, see **Rescissions**
sequestration, see **Sequestration**
Committees, role of
Committee on the Budget, in general, § 7, see **Committee on the Budget**
estimates as to budgetary effect of legislation, Committee on the Budget provides authoritative guidance on pursuant to section 312(a), § 7
in general, § 7
jurisdiction with regard to budget matters, § 7
Rule XXIX clause 4, authoritative guidance from Committee on the Budget regarding budgetary impact provided by chairman, §§ 7, 9.12, 10, 11, 22

section 301(h), Committee on the Budget required to consult with legislative committees on concurrent resolution on the budget pursuant to, § 7
section 308, requirements for committee reports pursuant to, § 7
section 312(a), budgetary estimates provided by Committee on the Budget pursuant to, § 7
views and estimates, House committees' required submission of, § 7

Committee on the Budget see also **Committees, role of**
authoritative guidance as to budgetary estimates, §§ 7, 11
chairman, authority provided by concurrent resolution on the budget to establish section 302(a) allocations, § 18.5
chairman, authority provided by former section 603 to establish section 602 allocations, § 18.4
chairman, authority provided by separate order on opening day to establish section 302(a) allocations, § 18.2
chairman, authority provided by special order to establish section 302(a) allocations, § 17.5
chairman, estimates as to budgetary levels pursuant to Rule XXIX clause 4 may be provided by, § 7
chairman, objection to unanimous-consent request to alter procedures for consideration of concurrent resolution on the budget made by, § 5.7
concurrent resolution on the budget, responsibilities regarding formulation, in general, §§ 4, 7
directed scorekeeping provisions, relationship of section 306 to, § 16.2
discharge of unreported concurrent resolution on the budget by special order, relationship to section 306, § 16.3
"emergency" designations, jurisdiction over, § 16
"emergency" designations, relationship of section 306 to, § 16.1
estimates as to budgetary levels provided by, §§ 7, 11
in general, §§ 1, 7
membership, § 7
reconciliation legislation, report filed from the floor as privileged, § 21.1
reconciliation legislation, requirement to accept legislative committee submissions and compile into omnibus measure, § 19
section 301, requirements in general, § 7
section 301(h), legislative committee consultation on concurrent resolution on the budget pursuant to, § 7
section 301(e), reports and hearings on concurrent resolution on the budget required by, § 4
section 302(a) allocations, chairman of Committee on the Budget authorized to establish, §§ 17.5, 18.2, 18.4, 18.5
section 302(a) allocations, chairman of Committee on the Budget authorized by separate order to revise, § 18.9
section 303(a) points of order, estimates of budgetary levels provided by Committee on the Budget not dispositive under, § 9.11
section 306, restrictions on measures dealing with matter within the jurisdiction of Committee on the Budget pursuant to, § 16
section 308, in general, § 7
section 312(a), budgetary estimates provided by Committee on the Budget pursuant to, § 7
term limits, in general, § 7
unfunded mandates, provision of cost estimates regarding, § 30.2

Committee on Rules, see **Special orders**
- authority to make in order amendments achieving goals of reconciliation directives, § 21.5
- authority to recommend emergency waivers of former section 402(a), § 14
- authority to waive Congressional Budget Act points of order, § 8
- consideration of concurrent resolutions on the budget by special order reported from, § 5
- “deeming” resolutions in the absence of a concurrent resolution on the budget reported from, § 17
- jurisdiction, § 7
- membership, relationship to that of Committee on the Budget, § 7
- referral of concurrent resolutions on the budget to, § 7
- section 301(c), referral of concurrent resolution on the budget changing any rule of the House required by, § 7
- section 310(d), authority to make in order amendments achieving goals of reconciliation directives provided by, § 21.5

Concurrent resolutions on the budget
- altering procedures for consideration, unanimous consent objected to by chairman of Committee on the Budget, § 5.7
- amendment guidelines, statement by member of Committee on Rules, § 5.5
- amendment process on, in general, § 5
- amendments to concurrent resolutions on the budget to achieve “mathematical consistency,” §§ 5.9, 5.10
- budgetary enforcement in the absence of a concurrent resolution on the budget, § 17, see **“Deeming” resolutions**
- Committee on the Budget, responsibilities in formulating concurrent resolution on the budget, § 7, see **Committee on the Budget**
- conference report on concurrent resolution on the budget, authorization for chair of Committee on the Budget to establish section 302 allocations contained in, § 18.5
- conference reports on concurrent resolution on the budget, consideration of pursuant to section 305, § 5
- consideration of, § 5, see **Consideration**
- content, mandatory components set out by section 301(a) of the Congressional Budget Act, § 4
- content, optional components set out by section 301(b) of the Congressional Budget Act, § 4
- debate on, pursuant to section 305, § 5
- debate on, structured by special order, § 5
- discharge of unreported concurrent resolution on the budget from Committee on the Budget, by special order, § 16.3
- in general, §§ 1, 4
- layover requirements, § 5
- “mathematical consistency,” amendments to achieve, §§ 5.9, 5.10
- motion to strike resolving clause, applicability to concurrent resolution on the budget, § 5.11
- optional components, “adjustment” authorities, § 4
- optional components, altering existing budget points of order, § 4
- optional components, authority to establish committee allocations, § 4
- optional components, creation of new points of order, § 4
- optional components, credit budgets, § 4

optional components, emergency amounts, § 4
optional components, reconciliation directives, § 4
optional components, requiring analysis of budgetary data, § 4
optional components, reserve funds, § 4
optional components, revisions to prior concurrent resolutions on the budget, § 4
optional components, Senate procedure, § 4
optional components, senses of Congress, § 4
optional components, treatment of "off-budget" amounts, § 4
public debt level contained in concurrent resolution on the budget, restrictions on amendments proposing to change, §§ 5, 29
recommittal of conference report on concurrent resolution on the budget, by "hereby" special order, § 5.12
reconciliation directives in a concurrent resolution on the budget, compartmentalized into three separate measures, § 20.1
reconciliation directives in a concurrent resolution on the budget, containing programmatic detail, § 20.3
reconciliation directives in a concurrent resolution on the budget, framed as spending limits, § 20.2
reconciliation legislation, consideration prior to adoption of concurrent resolution on the budget, §§ 21.6, 21.7
Rule XX clause 10, automatic vote on concurrent resolution on the budget by the yeas and nays pursuant to, § 5
Rule XXI clause 5(b) (formerly clause 5(c)), inapplicability to concurrent resolutions on the budget, § 5.17
Rule XXI clause 7, restriction on concurrent resolutions on the budget containing reconciliation directives proposing a net increase in direct spending, §§ 5, 19, 22
submission of amendments for printing, unanimous consent to extend deadline, § 5.6
voting on concurrent resolution on the budget, pursuant to section 305, § 5

Conference reports

appointment of conferee to reconciliation bill, by unanimous consent, § 21.11
authority to go conference, by special order, § 5
conferees on concurrent resolution on the budget reported in disagreement, motion to dispose Senate amendments proceeds under hour rule, § 5.15
conference report on concurrent resolution on the budget "deemed" effective for Congressional Budget Act purposes in the absence of a final concurrent resolution on the budget, § 17.4
consideration of conference reports to concurrent resolution on the budget, § 5
establishing section 302 allocations, authority contained in conference report on concurrent resolution on the budget, § 18.5
filing of conference report on reconciliation legislation, vacated by special order, § 21.13
motion to instruct conferees on concurrent resolution on the budget, availability, in general, § 5
recommittal of conference report on concurrent resolution on the budget, by "deeming" special order, § 5.13
recommittal of conference report on concurrent resolution on the budget, by "hereby" special order, § 5.12
reconciliation legislation, conference reports on, in general, § 19
unfunded mandates point of order, applicability to conference reports, § 30.5

Congressional Budget and Impoundment Control Act of 1974 (Congressional Budget Act)
Balanced Budget and Emergency Deficit Control Act of 1985, revisions made by, §§ 1, 5, 10, 11, 12, 14, 19, see **Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings)**
Budget Control Act of 2011, revisions made by, §§ 1, 11, see **Budget Control Act of 2011 (BCA of 2011)**
Budget Enforcement Act of 1990, revisions made by, §§ 1, 11, 12, 16, 19, 22, see **Budget Enforcement Act of 1990 (BEA of 1990)**
Budget Enforcement Act of 1997, revisions made by, §§ 1, 7, 10, 11, 13, 14, 15, 19, see **Budget Enforcement Act of 1997 (BEA of 1997)**
Congressional Budget Office, creation of, § 1
former section 402(a), § 14, see **Former Section 402(a)**
former section 602, § 11, see **Former section 602**
Impoundment Control Act, see **Impoundment Control Act of 1974**
in general, § 1
layover requirements for concurrent resolutions on the budget contained in, relationship to House rules, § 5.3
second annual concurrent resolution on the budget, former requirement, § 1
section 300, §§ 1, 2
section 301, § 1, see **Section 301**
section 302, § 11, see **Section 302**
section 302(f), §§ 1, 11, see **Section 302**
section 303, §§ 1, 9, see **Section 303**
section 304, §§ 1, 4, see **Section 304**
section 305, § 5, see **Section 305**
section 306, § 16, see **Section 306**
section 307, see **Section 307**
section 308, §§ 6, see **Section 308**
section 309, see **Section 309**
section 310, §§ 1, see **Reconciliation, Section 310**
section 311, §§ 1, 10, see **Section 311**
section 312, see **Section 312**
section 313, "the Byrd rule", see **Section 313**
section 314, § 14, see **Section 314**
section 315, § 15, see **Section 315**
section 401(a), § 12, see **Section 401(a)**
section 401(b), § 13, see **Section 401(b)**
section 904, § 8, see **Section 904**
unfunded mandates, Part B of Title IV, §§ 1, 30

Congressional Budget Office (CBO)
creation, § 1
estimates from, Chair may rely on to maintain scorekeeping consistency, § 9.12
in general, § 1
incorporating by reference a complete CBO estimate in a previous committee report on similar bill, § 7.1
parliamentary inquiries concerning CBO cost estimates, properly addressed by debate, § 30.1
unfunded mandates, publication of CBO cost estimate regarding, § 30.2

Consideration
amendment process for concurrent resolution on the budget, structured by special order, § 5.2
concurrent resolution on the budget, consideration by special order, § 5
concurrent resolution on the budget, consideration by unanimous consent, § 5
concurrent resolution on the budget, consideration pursuant to section 305 procedures, § 5

conference report on concurrent resolutions on the budget, consideration pursuant to section 305, § 5
conference report on reconciliation legislation, consideration by special order, § 21.12
congressional disapproval of presidential deferrals, consideration by unanimous consent, § 28.1
debt limit legislation, consideration by special order, §§ 29.2–29.4
layover requirements, relationship of section 305 procedures to House rules, § 5.3
privilege for consideration, concurrent resolution on the budget, §§ 5, 5.1
question of consideration, certain points of order decided by, §§ 22, 30, 31
reconciliation directives, point of order against consideration of concurrent resolution on the budget containing certain, § 5
reconciliation legislation, consideration by special order, § 21.4
reconciliation legislation, consideration by unanimous consent, §§ 21.2, 21.3
rules of the House relating to consideration of concurrent resolution on the budget, § 5
section 305 procedures, in general, § 5

Cost estimates

authoritative guidance as to cost of legislation provided by Committee on the Budget, §§ 7, 11
chairman of Committee on the Budget, authority to provide cost estimates of legislation, §§ 7, 11
Congressional Budget Office, in general, § 1, see **Congressional Budget Office (CBO)**
parliamentary inquiries concerning CBO cost estimates, properly addressed by debate, § 30.1
Rule XXIX clause 4, authority for chairman of Committee on the Budget to provide estimates pursuant to, § 7
section 308, applicability to "self-executed" amendments, § 7.2
section 308, incorporating CBO cost estimates by reference, § 7.1
section 308, requirements for inclusion of cost estimates in committee reports, § 7
section 312(a), budgetary estimates provided by Committee on the Budget pursuant to, § 7
unfunded mandates, publication of CBO cost estimate regarding, § 30.2

Debate

amendments to concurrent resolution on the budget, § 5
concurrent resolution on the budget, debate, in general, § 5
conference report on concurrent resolution on the budget filed in disagreement, motion to dispose Senate amendments proceeds under hour rule, § 5.15
earmarks, § 31.8
Humphrey-Hawkins debate, §§ 5, 5.4
parliamentary inquiries concerning cost estimates by Congressional Budget Office, properly addressed by debate, § 30.1
question of consideration, debate under, §§ 22, 30, 31
section 305, limits under, § 5
special order structuring debate time on concurrent resolution on the budget, in general, § 5
unfunded mandate point of order debate, §§ 30.11, 30.12

Debt Limit

Budget Control Act of 2011, relationship to, §§ 1, 11, 29, see **Budget Control Act of 2011**

Committee on Ways and Means, requirement to submit views and estimates to Committee on the Budget regarding level of public debt, § 7
concurrent resolution on the budget, level of public debt required to be included in, §§ 1, 4
consideration of debt limit legislation, by special order, §§ 29.2–29.4
consideration of debt limit legislation, by unanimous consent, § 29.5
consideration of debt limit legislation, in general, § 29
"Gephardt rule," § 29, see **"Gephardt rule"**
germaneness, temporary and permanent increases in the debt limit, § 29.1
in general, § 29
parliamentary inquiries regarding operation of the "Gephardt rule," § 29.7
reconciliation directives, changes to debt limit contained in, § 29
Rule XVIII clause 10(c) prohibition of consideration of amendment to concurrent resolution on the budget changing level of public debt, § 26
section 301, requirement to include level of public debt in concurrent resolution on the budget pursuant to, §§ 1, 4
section 303, restrictions on changes to level of public debt, § 9
veto message of debt limit legislation, referral, § 29.6

"Deeming" resolutions
allocations, special orders establishing in the absence of a concurrent resolution on the budget, §§ 18.1, 18.3
allocations, special order revising in the absence of a concurrent resolution on the budget, § 18.7
budget enforcement resolution, special order "self-executing" adoption of, § 17.3
disengaging the "Gephardt rule", § 29
in general, § 17
separate orders, extension of provisions in "deeming" resolution by, § 17
special orders "deeming" House-adopted concurrent resolution on the budget effective for Congressional Budget Act purposes, §§ 17.1–17.6

Deferrals
City of New Haven, Conn. v. United States decision, § 26
congressional disapproval of presidential deferrals, consideration by unanimous consent, § 28.1
Impoundment Control Act, procedures under, § 26
in general, § 26
rescissions, conversion to deferrals, § 27.3

Earmarks
correcting incomplete disclosure reports, by unanimous consent, § 31.9
debate, § 31.8
disclosure requirement, in general, § 31
in general, § 31
offset, unauthorized contract authority contained in an earmark cannot be used for, § 11.8
parliamentary inquiries regarding, § 31.3
Rule XXI clause 9(a) points of order, applicability to amendments between the Houses, § 31.4
Rule XXI clause 9(a) points of order, applicability to unreported measures, § 31.1
Rule XXI clause 9(a) points of order, cognizability, § 31.2
Rule XXI clause 9(a) points of order, timeliness, § 31.7
Rule XXI clause 9(c) points of order, applicability to "self-executed" amendments, § 31.6

Rule XXI clause 9(c) points of order, applicability to special orders containing earmark disclosure waivers, § 31.5

Elastic clause

in general, § 4

Executive communications

presidential budget submission as, § 3.3

“Fazio exception”

Balanced Budget and Emergency Deficit Control Act of 1985, codification contained in, § 10

Budget Enforcement Act of 1990, broken cross-reference, § 11

codification, § 10

in general, §§ 10, 11

procedural provision in concurrent resolution on the budget operating in similar manner, prior to codification, § 10.9

section 302(f), relationship to, § 11

section 311(a), relationship to, § 10

Former section 402(a)

amendments, applicability to, § 14.1

Balanced Budget and Emergency Deficit Control Act of 1985, repeal contained in, § 14

Committee on Rules, former authority to recommend emergency waivers, § 14

deadline, unanimous consent obtained to have reports considered as having met, § 14.2

exception for Senate companion measures, § 14

in general, § 14

Former section 602

allocations pursuant to, § 11

breach of section 602(a) allocation, striking proviso conditioning new spending on future appropriation causing, § 11.10

Budget Enforcement Act of 1990, creation contained in, § 11

Budget Enforcement Act of 1997, repeal contained in, § 11

“Fazio exception,” relationship to, § 11

in general, § 11

section 302 allocations, relationship to, § 11

section 302(f) points of order, relationship to, § 11

section 603, authority of chairman of Committee on the Budget to establish allocations pursuant to, §§ 11, 18.4

Germaneness

amendment germane to bill providing temporary extension of government borrowing authority that permanently raised the statutory ceiling on public debt, § 29.1

concurrent resolutions on the budget, requirement that amendments be germane, § 5

congressional budget process, proposals to modify, § 1

directed scorekeeping language, § 22

Impoundment Control Act, § 26

“Gephardt rule,” see also **Debt limit**

adoption of concurrent resolution on the budget, relationship to, § 29

debt limit, relationship to, § 29

“deeming ” resolutions, §§ 17, 29, see **“Deeming ” resolutions**

disabling, § 17.3

in general, § 29

parliamentary inquiries regarding, § 29.7

repeal, § 29

Gramm-Rudman-Hollings, see **Balanced Budget and Emergency Deficit Control Act of 1985**

House CUTGO rule

amendments, applicability to, § 25.3

direct spending, applicability to, § 22
estimates as to budgetary levels provided by the Committee on the Budget, § 22
timeliness of points of order under, § 25.1
House PAYGO rule, relationship to, § 22
in general, §§ 1, 22
motion to recommit, applicability to, § 25.2
reconciliation directives, not CUTGO complaint, Rule XXI clause 7 point of order against concurrent resolution on the budget containing, § 22

House PAYGO rule
direct spending contained in appropriation acts, inapplicability to, § 24.3
emergency designations, question of consideration required to be put on measures containing, § 22
House CUTGO rule, relationship to, § 22
in general, §§ 1, 22
motion to recommit, applicability to, § 24.4
question of consideration, inadvertent omission, § 24.1
question of consideration, required for measures containing emergency designations, §§ 22, 24.2

Impoundment Control Act of 1974
Congressional Budget Act of 1974, relationship to, §§ 1, 26
deferrals, see **Deferrals**
in general, § 26
rescissions, see **Rescissions**

Line item vetoes
Clinton v. New York decision, § 26
in general, § 26

Motions
adjourn, see **Adjournment**
concur in Senate amendments, applicability of section 302(f) to, §§ 11.19, 11.20
disposing of Senate amendments, motions debated under the hour rule when conference report filed in disagreement, § 5
intervening motions, relationship to motions to reconsider vote on question of consideration with respect to unfunded mandates, § 30.14
previous question, Congressional Budget Act providing for automatic ordering of, § 5
previous question, moved on deferral disapproval resolutions, § 28.1
previous question, relationship to amendments offered to achieve "mathematical consistency," §§ 5, 5.9
previous question, special orders for the consideration of concurrent resolutions on the budget ordering, § 5
recommit, motion to, see **Recommit, motion to**
reconsider, as applied to question of consideration with respect to unfunded mandates, § 30.14
"rise and report," point of order against in Committee of the Whole where allocation is breached, § 11.23
strike an unfunded mandate pursuant to former Rule XVIII clause 11, § 30.13
strike resolving clause, application to concurrent resolution on the budget, § 5.11
unfunded mandates, former motion to strike, §§ 30, 30.14

New entitlement authority, see **Section 401(b)**

Parliamentary inquiries
amendment procedure under section 305(a) of the Congressional Budget Act, § 5.8
CBO cost estimates as to unfunded mandates, questions properly addressed by debate, § 30.1

division of the question for voting, operation with respect to concurrent resolution on the budget, § 5.18
earmarks, disclosure requirements, § 31.3
earmarks, timeliness, § 31.7
"Fazio exception," § 10.9
"Gephardt rule," operation of, § 29.7
Humphrey-Hawkins debate, § 5.4
Rule XXI clause 5(b) (former clause 5(c)), inapplicability to concurrent resolutions on the budget, § 5.17
section 308, operation of with respect to "self-executed" amendments, § 7.2
unfunded mandates point of order, debate time pursuant to, § 30.6

Pay-As-You-Go procedures
Budget Enforcement Act of 1990, creation by, §§ 1, 22
House CUTGO rule, see **House CUTGO rule**
House PAYGO rule, see **House PAYGO rule**
in general, §§ 1
section 301(b), concurrent resolution on the budget may contain pursuant to, § 4
sequestration, relationship to, §§ 22, 26
Statutory Pay-As-You-Go, see **Statutory Pay-As-You-Go Act**

Points of order
altering existing points of order in optional components of concurrent resolutions on budget, § 4
creation of new points of order in optional components of concurrent resolutions on budget, § 4
enforcement of Congressional Budget Act points of order in the absence of a concurrent resolution on the budget, § 17
former Section 402(a), § 14, see **Section 401(a)**
House CUTGO rule, §§ 22, 25, see **House CUTGO rule**
House PAYGO rule, §§ 22, 24, see **House PAYGO rule**
question of consideration, certain points of order decided by, §§ 22, 30, 31
section 302, § 1, see **Section 302**
section 302(c), § 11, see **Section 302**
section 303, §§ 1, 9, see **Section 303**
section 306, § 16, see **Section 306**
section 311, §§ 1, 10 see **Section 311**
section 315, § 15, see **Section 315**
section 401(a), § 12, see **Section 401(a)**
section 401(b), see **Section 401(b)**
section 425, see **Unfunded Mandates Reform Act of 1995**
section 426, see **Unfunded Mandates Reform Act of 1995**
"rise and report," point of order against motion in Committee of the Whole where allocation is breached, § 11.23
Statutory Pay-As-You-Go Act, §§ 22, 23, see **Statutory Pay-As-You-Go Act**
unfunded mandates, see **Unfunded Mandates Reform Act of 1995**
waivers of statutory rulemaking, authority of House to provide, § 8

Presidential budget submissions
adjournment, budget submission made during, §§ 3.1, 3.3
appropriations process, relationship to, § 2
executive communication, budget submission as, § 3.3
in general, § 3
incomplete budget submission, § 3.4
presidential message, budget submission as, §§ 3.1, 3.2
section 300, relationship to, § 2
waiving statutory deadline for President's budget submission, by unanimous consent, §§ 3.5, 3.6

Privilege
concurrent resolution on the budget, in general, § 5
concurrent resolution on the budget, reconciliation directives affecting privilege of, § 5.1
reconciliation legislation, in general, § 19
reconciliation legislation, report filed as privileged, § 21.1
Process, timeline
in general, § 2
Public debt, see also **Debt limit**
Rule XVIII clause 10(c), restriction on changing the level of public debt contained in a concurrent resolution on the budget, § 5
section 301(a), level of public debt in the concurrent resolution on the budget required by, § 4
section 303, restriction on changing level of public debt contained in, § 9
Recommit, motion to
concurrent resolution on the budget, inapplicability to, § 5
conference report on a concurrent resolution on the budget, inapplicability to, § 5
conference report on a concurrent resolution on the budget, recommittal to existing conference by special order, §§ 5.12, 5.13
House CUTGO rule, applicability to, § 25.2
House PAYGO rule, applicability to, § 24.4
reconciliation directives, instructions to promptly comply with, § 20.5
reconciliation legislation, applicability to, § 19
section 302(c) points of order, applicability to, §§ 11.24, 11.25
section 302(f) points of order, applicability to, §§ 11.16–11.18
section 303, applicability to, § 9.6
unfunded mandates point of order, applicability to, § 30.7
waivers, effect on section 303 points of order, § 9.4
Reconciliation directives
Committee on the Budget, responsibilities regarding committee submissions in response to reconciliation directives, § 19
Committee on Rules, authority to recommend amendments to achieve goals of reconciliation directives, §§ 19, 21.5
concurrent resolution on the budget, reconciliation directives affecting privilege of, § 5.1
deadline for committee submissions, extension by unanimous consent, § 20.4
direct spending, restriction on concurrent resolutions on the budget containing reconciliation directives that would cause a net increase in, §§ 5, 19, 22
House CUTGO rule, relationship to, § 22
in general, §§ 4, 19
legislation reported pursuant to, §§ 19, 21, see **Reconciliation legislation**
motion to recommit, to promptly report recommendations in accordance with reconciliation directives, § 20.5
multiple measures, reconciliation directives proposing, § 20.1
optional components of concurrent resolutions on budget, § 4
programmatic detail, budgetary goals in reconciliation directives providing, § 20.3
Rule XXI clause 7, restriction on concurrent resolutions on the budget containing reconciliation directives proposing a net increase in direct spending, §§ 5, 19, 22

section 301(b), authority to include reconciliation directives in concurrent resolution on the budget pursuant to, §§4, 19
section 310(d), authority for Committee on Rules to recommend amendments to achieve goals of reconciliation directives pursuant to, §§19, 21.5
spending limits, budgetary goals in reconciliation directives framed as, §20.2

Reconciliation legislation
appointment of conferees, by unanimous consent, §21.11
Committee on Rules, authority to recommend amendments to achieve goals of reconciliation directives, §§19, 21.5
consideration, by unanimous consent, §§21.2, 21.3
consideration, in general, §21
consideration of conference report on, by special order, §21.12
consideration of “spending” reconciliation legislation, by special order, §21.4
consideration, prior to final adoption of concurrent resolution on the budget, by special order, §§21.6, 21.7
directives, in general, §20, see **Reconciliation directives**
enrollment of, §§21.14, 21.15
in general, §19
report on, filed as privileged, §21.1
Rule XXI clause 4, applicability to, §21.8
Rule XXI clause 5, applicability to, §§21.9, 21.10
section 310(d), authority for Committee on Rules to recommend amendments to achieve goals of reconciliation directives pursuant to, §§19, 21.5
section 310(f) points of order, §§21.16–21.18
vacating filing of conference report on, by special order, §21.13

Referrals
allocation breach, referrals under section 401(b)(2) caused by, §§11, 11.27–11.31
Committee on Rules, concurrent resolution on the budget sequentially referred to, §7
jurisdiction of standing committees regarding budget matters, §7
presidential budget message, to Committee on Appropriations, §3
section 301(c), concurrent resolution on the budget referred to Committee on Rules pursuant to, §7
section 306, relationship to, §16
section 401(b)(2), referral process under, §§11, 11.27–11.31
veto message of debt limit legislation, to Committee on Ways and Means, §29.6

Rescissions
deferrals, conversion to, §27.3
Impoundment Control Act, expedited procedures under, §26
in general, §26
offsetting proposals to restore rescinded funds, §27.2
Rule XXI clause 2, exception to, §27.1
striking rescission held to provide new budget authority in violation of section 302(f), §11.11
striking rescission held to provide new budget authority in violation of section 311(a), §10.3

Rules of the House
amendments to concurrent resolutions on the budget, restrictions, §5
committee responsibilities regarding budgetary matters, §7
concurrent resolution on the budget, consideration of, §§5, 7

earmark disclosure requirements, § 31
"Gephardt rule", §§ 4, 29
House PAYGO rule, §§ 22, 24
House CUTGO rule, §§ 22, 25
layover requirements for concurrent resolutions on the budget, relationship to those contained in Congressional Budget Act, § 5.3
public debt level, restrictions on amendments to concurrent resolutions on the budget changing, § 5
reconciliation directives, restrictions as to increases in direct spending, §§ 5, 19, 22
Rule XVIII clause 10(a), concurrent resolution on the budget considered as read and open for amendment pursuant to, § 5
Rule XVIII clause 10(b), restrictions on amendments to concurrent resolutions on the budget pursuant to, § 5
Rule XVIII clause 10(c), restriction on changing the level of public debt contained in a concurrent resolution on the budget, § 5
Rule XX clause 10, automatic vote on concurrent resolution on the budget by the yeas and nays pursuant to, § 5
Rule XXI clause 2, rescission exception to, § 27.1
Rule XXI clause 7, restriction on concurrent resolutions on the budget containing reconciliation directives proposing a net increase in direct spending, §§ 5, 19, 22
Rule XXI clause 8, application of Congressional Budget Act points of order to unreported measures pursuant to, § 7
Rule XXI clause 9, disclosure requirements for earmarks pursuant to, § 31
section 308 incorporated into the rules of the House, § 7
statutory rulemaking, relationship to and effect of waivers, § 8
unreported measures, application of Congressional Budget Act points of order to, § 7
views and estimates, requirement for committees to submit regarding budgetary matters within their respective jurisdictions, § 7
vote on concurrent resolution on the budget, requirement to conduct by the yeas and nays, § 5

Second concurrent resolution on the budget
Balanced Budget and Emergency Deficit Control Act of 1985, repeal of requirement for, § 1
in general, §§ 1, 4, 19
section 310(f), relationship to, § 21.6

Section 300
timetable of congressional budget process under, §§ 1, 2

Section 301
committees of the House, Committee on the Budget required to consult with in formulating concurrent resolution on the budget, § 7
Committee on the Budget, responsibilities regarding formulation of concurrent resolution on the budget, § 4
Committee on Rules, requirement for referral of concurrent resolution on the budget changing rules of the House, § 7
"elastic clause," § 4
enrollment delay provision authorized by, § 4
in general, § 4
mandatory components, concurrent resolution on the budget, § 4
optional components, concurrent resolution on the budget, § 4
pay-as-you-go procedures authorized by, § 4

public debt, requirement for inclusion on concurrent resolution on the budget, §§ 4, 29
reconciliation directives, in general, § 19

Section 302
allocations, in general, §§ 11, 18, see **Allocations**
allocation adjustment authority, in general, §§ 4, 11
breach of section 302(a) allocation, increase in new budget authority causing, § 11.1
breach of section 302(b) allocation, failure to trigger adjustment authority causing, §§ 11.14, 11.15
breach of section 302(b) allocation, improper offset causing, §§ 11.7–11.9
breach of section 302(b) allocation, increase in new budget authority causing, § 11.3
breach of section 302(b) allocation, Senate amendment providing new budget authority causing, § 11.21
breach of section 302(b) allocation, striking rescission causing, § 11.11
breach of section 302(b) allocation, relationship to "rise and report" point of order, § 11.23
breach of special allocation, § 11.4
establishing section 302 allocations in the absence of a concurrent resolution on the budget, §§ 17, 18, see **Allocations**
"Fazio exception," relationship to, §§ 10, 10.9, 11
former section 602(a) allocations, relationship to, §§ 11, 18.4
former section 603, authority to revise allocations pursuant to, § 18.4
former section 606(d), exception to section 302(f) points of order, § 11
in general, § 11
joint statement of managers accompanying conference report on concurrent resolution, Congressional Budget Act requirement for inclusion of allocations in, § 18
motion to commit bill with instructions to report "forthwith" an amendment exceeding section 302(a) allocation, violates section 302(f), § 11.17
motion to concur in Senate amendment exceeding section 302(a) allocation, violates section 302(f), § 11.19
motion to concur in Senate amendment, with further House amendment exceeding section 302(b) allocation, violates section 302(f), § 11.20
motion to recommit, applicability of section 302(c) to, §§ 11.24, 11.25
motion to recommit with instructions to report "forthwith" an amendment exceeding section 302(a) allocation, violates 302(f), § 11.18
motion to recommit with instructions to report "forthwith" an amendment exceeding section 302(b) allocation, violates 302(f), § 11.16
optional components of concurrent resolutions on the budget, authority to adjust allocations contained in, § 4
reserve funds, relationship to, § 4
revising section 302 allocations, § 18, see **Allocations**
"rise and report" point of order for section 302(b) allocation breach, § 11.23
section 302(c) points of order, applicability to amendments, § 11.26
section 302(c) points of order, effect of waiver, § 11.26
section 302(c) points of order, in general, § 11
section 302(f), in general, § 11, see **Allocations**
section 302(f), application to outlays, § 11.5

section 311, relationship to, §§ 10, 11
section 314, relationship to, § 11
section 401(b)(2) referrals, relationship to, §§ 11, 11.27–11.31, see **Section 401(b)(2) referrals**

Section 303

amendments, applicability to, § 9.1
appropriations process, relationship to, § 9
authorizations, inapplicability to, §§ 9.2, 9.3
baselines, amendment evaluated as to marginal effect on measure, § 9.10
concurrent resolution on the budget, applicability prior to adoption of, § 9
economic assumptions, determination of section 303(a) points of order may include, § 9.13
entitlement authority, amendment expanding violates section 303(a), § 9.7
entitlement authority, amendment restoring provisions proposed to be cut violates section 303(a), § 9.9
estimates as to budgetary levels not dispositive of points of order under, § 9.11
estimates as to budgetary levels used merely to maintain scorekeeping consistency, § 9.12
in general, § 9
section 303(b) exception, in general, § 9
outlays, applicability in Senate only, § 9
"out-years," inapplicability to spending in, §§ 9, 9.8
revenues, amendment proposing an increase or decrease, application to, § 9.5
separate order expanding application, § 9
unreported measures, inapplicability to, § 9.6
unreported measures, coverage under Rule XXI clause 8, § 9
waivers, effect of, §§ 9.4, 10.8

Section 304

in general, §§ 1, 4
revisions to concurrent resolutions on the budget authorized by, § 4

Section 305

amendment process, concurrent resolution on the budget, §§ 5, 5.5–5.10
appeals, § 5
Committee of the Whole, requirement for consideration of concurrent resolution on the budget in, § 5
conference reports on concurrent resolution on the budget, consideration of, § 5
debate, concurrent resolution on the budget, section 305 parameters, § 5.4
economic goals, germane amendments to concurrent resolutions on the budget permitted, § 5
Humphrey-Hawkins debate, § 5.4
in general, § 5
layover requirements for concurrent resolutions on the budget, relationship to House rules, § 5.3
"mathematical consistency," amendments offered to concurrent resolutions on the budget to achieve, §§ 5.9, 5.10
motions to dispose of Senate amendments when conferees report in disagreement, section 305 procedures inapplicable to, § 5.15
parliamentary inquiries regarding amendments offered pursuant to section 305(a), § 5.8
previous question on concurrent resolution on the budget, considered as ordered, § 5
privilege of concurrent resolution on the budget, effect of reconciliation directives, § 5.1
privilege of concurrent resolutions on the budget, in general, § 5

section 305(d) point of order, withdrawal of, § 5.16
voting procedures, concurrent resolution on the budget, § 5

Section 306
Committee on the Budget, requirement to report or be discharged from consideration of measures dealing with matters within the jurisdiction of, § 16
discharge from committee, special order so providing does not violate section 306, § 16.3
"emergency spending," relationship to section 306 of amendments designating funds as, §§ 16.1, 16.2
in general, § 16
jurisdiction of Committee on the Budget, relationship to, §§ 7, 16
separate order interpreting the term "resolution," §§ 7, 16
Statutory Pay-As-You-Go Act of 2010, relationship to, §§ 16, 22
waiver by special order, § 16
waiver by suspension of rules, § 8.2

Section 307
appropriations process, relationship to, § 6
Balanced Budget and Emergency Deficit Control Act of 1985 revisions, § 6
in general, § 6

Section 308
committe reports, requirement that certain budgetary information be included in, § 7
Committee on the Budget, status reports on budgetary levels required to be provided by, § 10
Congressional Budget Office, required statement from, § 7
cost estimate complying with requirements, § 7.1
in general, §§ 7, 10
rules of the House, requirements incorporated into, § 7
"self-executed" amendments, inapplicability to, § 7.2

Section 309
adjournment, restrictions on, § 5
appropriations process, relationship to, § 6
waiver by special order, § 5.19
waiver by unanimous consent, §§ 5.20, 21.17
waiver, implicit, § 21.18

Section 310, see **Reconciliation**
adjournment, restrictions on, §§ 19, 21.16–21.18
amendments to reconciliation legislation, requirement of budget neutrality, § 19
Committee on the Budget, responsibilities regarding committee submissions responding to reconciliation directives, § 19
Committee on Rules, authority to make in order additional amendments responding to reconciliation directives, § 19
expedited procedures in the Senate, § 19
in general, § 19
public debt increase, relationship to, § 29
section 310(f) points of order, §§ 21.16–21.18

Section 311
allocations, §§ 10, 11, see **Allocations**
applicability, in general, § 10
applicability in Senate, in general, § 10
breach, provisions constituting, § 10.1
breach, provisions not constituting, § 10.2
Balanced Budget and Emergency Deficit Control Act of 1985, revisions made by, § 10

Budget Enforcement Act of 1990, revisions made by, § 10
"Fazio exception," codification of, § 10
"Fazio exception," precursor contained in a concurrent resolution on the budget, § 10.9
in general, § 10
offsetting proposals to restore rescinded funds, § 27.2
rejection of legislation, applicability, § 10.4
Rule XXI clause 8, unreported measures subject to section 311 pursuant to, § 10
Rule XXIX clause 4, budgetary estimates provided by chair of Committee on the Budget pursuant to, §§ 7, 10
section 308(a) reports, in general, § 10
section 312(a) authority to provide estimates, applicability, § 10
striking a rescission held to provide new budget authority, § 10.3
timeliness, in general, § 10
waiver by special order, against amendments, § 8.1
waiver by special order, against consideration but not amendments, §§ 10.6, 10.8
waiver by special order, selective, § 10.5
waiver by unanimous consent, against motion to concur in Senate amendment in violation of section 311, § 10.7
waivers, in general, § 10
unreported measures, applicability, § 10

Section 312

Committee on the Budget, budgetary estimates as to the effect of legislation to be provided by, § 7
estimates of budgetary levels, authority for Committee on the Budget to provide, § 7
former section 311(b), relationship to, § 7
Rule XXIX clause 4, relationship to, §§ 7, 10

Section 313

"Byrd Rule", in general, § 19
extraneous provisions, in general, § 19
reconciliation process, relationship to, § 19

Section 314

adjustment authority under, §§ 11, 11.14
allocations, relationship to, § 11
Budget Control Act of 2011, revisions made by, § 11
discretionary spending caps under, § 26
"emergencies," amounts designated as, §§ 11, 16.1
in general, § 11

Section 315

in general, § 15

Section 401(a)

appropriations process, new spending must be subject to, § 12
credit authority, relationship to, § 12
in general, § 12
provisions constituting new spending authority, §§ 12.2, 12.3
section 401(c) exception, § 12
section 504(b), relationship to, § 12
unreported measures, inapplicability to, § 12.1

Section 401(b)

amendments held to constitute new entitlement authority, §§ 13.1, 13.3
Budget Enforcement Act of 1997, revisions made by, § 13
conference reports, applicability, § 13.3
current fiscal year, definition, § 13
entitlement authority, applicability to, § 13
in general, § 13

motion to concur in Senate amendments, applicability, § 13.2
section 401(c) exception, § 13

Section 401(b)(2) referrals
allocations, relationship to, § 11
appropriations process, relationship to, § 6
Budget Enforcement Act of 1997, revisions made by, § 11
calendars, authority to remove from for sequential referral, § 11
in general, §§ 11, 11.27–11.31
section 401(c) exception, § 11

Section 425 see **Unfunded Mandates Reform Act of 1995**

Section 426 see **Unfunded Mandates Reform Act of 1995**

Section 904
rulemaking, exercise in, § 8
in general, § 8
suspension of rules, effect on points of order, § 8.2
waiver by special order, § 8.1
waiver by suspension of rules, § 8.2

Senate
amendments between Houses, applicability of earmark point of order to, § 31.4
"Byrd Rule", section 313, in general, § 19
concurrent resolution on the budget, requirement to be passed by both Houses, § 1
"deeming " resolutions, inapplicability to Senate procedures, § 17
earmark point of order, inapplicability to amendments between the Houses, § 31.4
former section 402(d), exception for Senate companion measures, § 14
motion to concur in Senate amendment exceeding section 302(b) allocation, violates section 302(f), § 11.19
motion to concur in Senate amendment with further House amendment exceeding aggregate total budget authority, violates section 311(a), § 10.1
motion to concur in Senate amendment with further House amendment exceeding section 302(a) allocation, violates section 302(f), § 11.20
motion to concur in Senate amendment providing new entitlement authority becoming effective during the current fiscal year, violates section 401(b), § 13.2
motion to dispose of Senate amendments to concurrent resolution on the budget when conferees report in disagreement, debate proceeds under the hour rule, § 5.15
offsetting proposals to restore rescinded funds, effect on Senate points of order, § 27.2
optional components, Senate procedures, concurrent resolutions on the budget, § 4
outlays, section 303(a) points of order in the Senate applied to, § 9
recede and concur in Senate amendment, unanimous consent obtained despite section 302(f) violation, § 11.21
reconciliation process, expedited procedures in Senate, § 19
section 303, applicability in Senate, in general, § 9
section 306, applicability in Senate, in general, § 16
section 311, applicability in Senate, in general, § 10
section 313, the "Byrd Rule", in general, § 19
Senate Budget Committee, creation of, § 1
Statutory Pay-As-You-Go Act, applicability to amendments between the Houses, § 22

waiving section 306, section 904(c) of Congressional Budget Act requirements, § 16
waiving section 311, section 904(c) of Congressional Budget Act requirements, § 10
waiving section 313, section 904(c) of Congressional Budget Act requirements, § 19

Separate orders
allocations, authority to establish, §§ 18, 18.2
allocations, authority to revise, § 18.9
authorities carried forward in "deeming" resolutions, § 17
"deeming" resolutions, authorities carried forward by separate order, § 17
entitlement authority, Federal pay excluded from definition of, § 13
mandatory spending, point of order against increasing, § 22
"resolution," interpretation of the term under section 306, § 16
"rise and report" point of order, continuation of, § 11.23
section 303(a), text to be evaluated when measure considered by special order, §§ 9, 15
section 306, interpretation of the term "resolution" under, § 16

Sequestration
Balanced Budget and Emergency Deficit Control Act of 1985, procedures under, § 26
Bowsher v. Synar decision, effect of, § 26
Budget Control Act of 2011, procedures under, §§ 1, 26, 29
Budget Enforcement Act of 1990, procedures under, § 26
Budget Enforcement Act of 1997, procedures under, § 26
directive to Committee on the Budget to replace sequestration procedures, § 26
in general, §§ 1, 26
Office of Management and Budget, responsibilities of, § 26
presidential sequestration orders, jurisdiction over, § 7
Statutory Pay-As-You-Go Act, procedures under, §§ 22, 26

Special orders
amendment "deemed" to have been offered pursuant to procedural provision in concurrent resolution on the budget, by special order, § 4.2
amendment process for concurrent resolution on the budget, structured by special order, §§ 5, 5.2
authority to go to conference on concurrent resolution on the budget, by special order, § 5
concurrent resolution on the budget, consideration by special order, in general, § 5
debate on concurrent resolution on the budget, structured by special order, § 5
debt limit legislation, consideration by special order, §§ 29.2–29.4
"deeming" resolutions, § 17
discharge of Committee on the Budget of unreported concurrent resolution on the budget, special order providing for, § 16.3
filing of conference report on reconciliation legislation, special order vacating, § 21.13
"Gephardt rule", disabling by special order, § 17.3
layover requirements of the Congressional Budget Act, waiver by special order, relationship to House rules, § 5.3
recommittal of conference report on concurrent resolution on the budget, by "deeming" special order, § 5.13

recommittal of conference report on concurrent resolution on the budget, by "hereby" special order, § 5.12
reconciliation legislation, conference report on considered by special order, § 21.12
reconciliation legislation, consideration by special order, § 21.4
reconciliation legislation, consideration by special order prior to adoption of concurrent resolution on the budget, § 21.6
"rise and report" point of order, special order establishing, § 11.23
Rule XXI clause 9(c) point of order against certain special orders, §§ 31.5, 31.6
section 302(a) allocations, established by special order, § 18.3
section 302(a) allocation, revised by special order, § 18.7
"self-executing" special order, curing House PAYGO violations, § 22
"self-executing" special order, providing for adoption of amendments to reconciliation legislation, § 21.5
"self-executing" special order, providing for adoption of budget enforcement resolution, § 17.3
"self-executing" special orders, relationship to earmark point of order pursuant to Rule XXI clause 9(c), § 31.6
"self-executing" special orders, relationship to section 306, § 16
"self-executing" special orders, relationship to section 308 requirements, § 7.2
"self-executing" special orders, relationship to section 315, § 15
separate order evaluating section 303(a) points of order against text made in order by special order, § 9
unfunded mandate point of order, applicability to "hereby" special order, § 30.9
waiver of earmark point of order, restriction on special orders providing, pursuant to Rule XXI clause 9(c), § 31
waiver of pay-as-you-go rules by special order, in general, § 21
waiver of section 303(a) points of order, by special order, in general, § 9
waiver of section 309, by special order, § 5.19
waiver of section 311, by special order, §§ 8.1, 10.6
waivers against consideration of concurrent resolution on the budget, in general, § 5

Spending

appropriation process, in general, §§ 1, 6
authorizations, appropriations distinguished from, § 1
direct spending, in general, § 1
discretionary spending, in general, § 1
entitlement spending, in general, § 1
House PAYGO Rule, inapplicability to spending provided by appropriation acts, § 24.3
mandatory spending, in general, § 1
reconciliation legislation causing an increase in net direct spending, prohibition on, § 19
rescissions, in general, §§ 26, 27
"spending" reconciliation bill, consideration by special order, § 21.4

Statutory Pay-As-You-Go Act of 2010 (Stat-Paygo)

amendments between the Houses, applicability to, § 2
direct spending, applicability to, § 22
discretionary spending, inapplicability to, § 22
emergency designations under, in general, §§ 16, 22, 23
in general, §§ 1, 22

question of consideration, legislation containing emergency designations subject to, §§22, 23.1
question of consideration, omission of, §24.1
question of consideration, waiver by suspension of rules, §23.3
question of consideration, waiver by unanimous consent, §23.2
section 306, relationship to, §§16, 22
sequestration, §26

Suspension of the rules
waiver of question of consideration under Statutory Pay-As-You-Go Act, §23.3
waiver of statutory rulemaking, in general, §8
waiver of statutory rulemaking (section 306), §8.2
waiver of statutory rulemaking (section 311), §8.1
waiver of statutory rulemaking (former section 402(a)), §14

Timeline of budget process
appropriations process, relationship to, §6
presidential submission, see **Presidential budget submissions**
section 300, sets out nonmandatory timetable, §2

Timeliness
earmark point of order, §31.7
House CUTGO rule, raising points of order under, §25.1
section 303, raising points of order under, §9
section 311, raising points of order under, §10
unfunded mandate points of order, §30.10

Unanimous consent
appointment of conferee to reconciliation bill, by unanimous consent, §21.11
concurrent resolution directing Clerk to make certain corrections to enrollment of reconciliation legislation, adopted by unanimous consent, §21.15
concurrent resolution on the budget, consideration by unanimous consent, §5
congressional disapproval of presidential deferrals, consideration by unanimous consent, §28.1
consideration of adjournment resolution implicitly waiving sections 309 and 310(f), by unanimous consent, §21.18
correcting incomplete disclosure reports, by unanimous consent, §31.9
debt limit legislation, consideration by unanimous consent, §29.5
enrollment of measure ordered by unanimous consent, notwithstanding certain procedural provisions of concurrent resolution on the budget, §4.3
extension of deadline for submission of amendments to concurrent resolution on the budget, by unanimous consent, §5.6
extension of deadline for submission of recommendations contemplated by reconciliation directives, by unanimous consent, §20.4
extension of sequential referral pursuant to section 401(b)(2), by unanimous consent, §11.29
filing reports to meet requirements of former section 402(a), permission granted by unanimous consent, §14.2
objection by chairman of Committee on the Budget to unanimous consent to waive certain House rules for offering amendments to concurrent resolution on the budget, §5.7

recede and concur in Senate amendment, unanimous consent obtained despite section 302(f) violation, § 11.21
reconciliation legislation, consideration by unanimous consent, §§ 21.2, 21.3
section 302(a) allocations, authority to revise granted by unanimous consent, § 18.6
section 302(a) allocations, established by unanimous consent, § 18.6
special order by unanimous consent making in order consideration of resolution providing for adjournment notwithstanding section 309, § 5.20
waiver by unanimous consent, against motion to concur in Senate amendment in violation of section 311, § 10.7
waiver of question of consideration required by Statutory Pay-As-You-Go Act, by unanimous consent, § 23.2
waiver of sections 309 and 310(f), by unanimous consent, § 21.17
waiver of statutory printing requirements, joint resolution providing considered by unanimous consent, § 21.14

Unfunded mandates, see Unfunded Mandates Reform Act of 1995
definitions, § 30
in general, § 30

Unfunded Mandates Reform Act of 1995
amendments, applicability to, § 30.6
bills, applicability to, § 30.3
conference reports, applicability to, § 30.5
Congressional Budget Office estimates, publication by Committee on the Budget when received, § 30.2
debate pursuant to, §§ 30.11, 30.12
"hereby" special orders, applicability to, § 30.9
in general, § 1
intervening motions, relationship to motions to reconsider vote on question of consideration with respect to unfunded mandates, § 30.14
joint resolutions, applicability to, § 30.4
motion to recommit, applicability to, § 30.7
motion to strike an unfunded mandate, former rule XVII clause 11, § 30.13
parliamentary inquiries concerning cost estimates by Congressional Budget Office, properly addressed by debate, § 30.1
question of consideration, points of order decided by, § 30
special orders containing waiver of unfunded mandate point of order, cognizability, §§ 30.8, 30.9
timeliness, § 30.10

Unreported bills and amendments thereto
amendments to unreported measures, applicability under section 303(a), § 9.6
Congressional Budget Act points of order, relationship to, in general, §§ 7, 12.1
discharge from committee, special order providing for, § 16.3
parliamentary inquiries regarding, § 12.1
Rule XXI clause 8, extension of coverage of certain Congressional Budget Act points of order to unreported measures pursuant to, §§ 7, 9, 10, 11, 16
Rule XXI clause 9, applicability to, § 31.1

Voting
concurrent resolution on the budget, in general, § 5
division of the question for voting, applicability to concurrent resolutions on the budget, § 5.18

"Gephardt" rule, relationship of vote on concurrent resolution on the budget to vote on debt limit bill, § 29
Rule XX clause 10, requirement for automatic vote on concurrent resolutions on the budget by the yeas and nays pursuant to, § 5
three-fifths vote required by Rule XXI clause 5(b) (formerly clause 5(c)), inapplicability to concurrent resolutions on the budget, § 5.17

Waivers
amendments, waiver of points of order against bill does not extend to, §§ 9.4, 10.8, 11.26
implicit waiver of sections 309 and 310(f), by consideration of adjournment resolution by unanimous consent, § 21.18
layover requirements, waiver of Congressional Budget Act requirements does not waive applicable House rule, § 5.3
Rule XXI clause 9(c) point of order, restrictions on waivers in special orders, §§ 31, 31.5
Rule XXI clause 9(c) point of order, restrictions on waivers in special orders, application to "self-executing" special orders, § 31.6
pay-as-you-go rules, waiver by special order, in general, § 22
section 306, waiver by suspension of rules, § 8.2
section 309 requirements, waiver by special order, § 5.19
section 309 and 310(f) requirements, waiver by unanimous consent, § 21.17
section 311 points of order, waiver by special order, §§ 8.1, 10.6
selective waivers, by special order, § 10.5
special order providing for consideration of concurrent resolutions on budget, waiving rules or orders of House, in general, § 5
statutory rulemaking, waiver by special order, § 8.1
statutory rulemaking, waiver by suspension of rules, § 8.2
statutory rulemaking, waiver, in general, § 8
unanimous-consent request to waive certain House rules for offering amendments to concurrent resolution on the budget, objection by chairman of Committee on the Budget, § 5.7

Withdrawal
rescissions, presidential withdrawal and conversion to deferrals, § 27.3
section 302(f) point of order, § 11.22
section 305(d) point of order, § 5.16

Afterword to the Completion of Deschler-Brown-Johnson-Sullivan Precedents

The completion of volume 18 of Deschler-Brown-Johnson-Sullivan Precedents marks the end of the precedent series first embarked upon by then Parliamentarian of the House Lewis Deschler in 1974. These 18 volumes span the period between 1936 (the year of publication of Cannon's Precedents) and 2012. They capture the increasingly efficient and resilient parliamentary system that has evolved in the House over its 223-year history. Actions ranging from the routine daily order of business to the rarest presidential impeachment proceedings have been executed in the modern House based on the body of practice represented in these volumes. The guardians of the commitment to precedent in the parliamentary practice of the House have been former Parliamentarians William Holmes Brown, Charles W. Johnson, III, John V. Sullivan and the various editors of this series. The Office of the Parliamentarian will now dedicate itself to the next phase of the precedents-publishing replacement volumes comprising cumulative updates of each chapter of the compilation. The table of chapters that follows represents a comprehensive listing of the contents of the completed series and an organizational baseline for future publications.

THOMAS J. WICKHAM, JR.
Parliamentarian

FEBRUARY 8, 2013.

Table of Chapters

CHAPTER 1

Assembly of Congress

A. Meeting and Organization

§ 1. In General; Law Governing
§ 2. Types of Meeting; Sessions
§ 3. Time of Meeting
§ 4. Place of Meeting
§ 5. Clerk as Presiding Officer; Authority
§ 6. Election of the Speaker
§ 7. Business Under Speaker as Presiding Officer

B. Procedure

§ 8. Procedure Before Adoption of Rules
§ 9. —Motions
§ 10. Adoption of Rules; Applicability
§ 11. Resumption of Legislative Business
§ 12. Action on Bills and Resolutions During Organization

CHAPTER 2

Enrolling Members; Administering the Oath

§ 1. In General
§ 2. Status of Members- and Delegates-elect
§ 3. Presentation of Credentials
§ 4. The Clerk's Roll
§ 5. Administering the Oath
§ 6. Challenging the Right to be Sworn

CHAPTER 3
Party Organization

A. Introduction

§ 1. In General

B. Party Caucus or Conference

§ 2. In General; Nature and Purposes
§ 3. Chairmen—Functions
§ 4. Adoption of Rules; Recent Changes
§ 5. Time and Place of Meetings
§ 6. Specific Functions—Selection of Leaders
§ 7. —Nomination of House Officers
§ 8. —Creation of Party Committees
§ 9. —Assigning Members to House Committees
§ 10. —Policy Determination; Party Decisions as Binding

C. Party Committees and Informal Groups

§ 11. Committee on Committees
§ 12. Republican Policy Committee; Research Committee
§ 13. Steering Committee
§ 14. Patronage Committee
§ 15. Official Objectors' Committees
§ 16. Campaign Committees; Informal Party Groups

D. Floor Leaders

§ 17. In General
§ 18. Duties as to Legislative Schedule
§ 19. Role as Party Leader
§ 20. Appointments
§ 21. Duties; Ceremonial Functions
§ 22. Salary and Perquisites; Honors on Death

E. Party Whips

§ 23. In General
§ 24. Duties and Functions
§ 25. Allowances—Clerk-Hire Allowance

CHAPTER 4
House Facilities and Capitol Grounds

A. Introductory

§ 1. In General; Care, Protection and Use
§ 2. Demonstrations and Disturbances
§ 3. Hall of the House
§ 4. Admission to House Floor

B. House Galleries and Buildings

§ 5. Galleries
§ 6. Office Buildings

CHAPTER 5
The House Rules, Journal, and Record

A. House Rules and Manual

§ 1. In General; Printing
§ 2. Jefferson's Manual
§ 3. Background Information—Power of New House to Adopt Rules
§ 4. —Judicial Authority With Respect to Rules
§ 5. —Amendment
§ 6. —Applicability; Construction
§ 7. —Abrogation or Waiver

B. The House Journal

§ 8. In General; Purpose and Use

§ 9. The Journal as Evidence
§ 10. Entry of Particular Proceedings
§ 11. Reading the Journal
§ 12. —Propriety of Business Before and During Reading
§ 13. Effecting Corrections
§ 14. Approval

C. The Congressional Record

§ 15. In General; Purpose and Format
§ 16. Matters Printed in the Record; Civil Liability
§ 17. Deletion of Unparliamentary Remarks
§ 18. Correction of Errors
§ 19. Revision of Remarks
§ 20. Extension of Remarks

CHAPTER 6
Officers, Officials, and Employees

A. The Speaker

§ 1. Introductory
§ 2. Definition and Nature of Office
§ 3. Jurisdiction and Duties
§ 4. Limitations on the Speaker's Powers
§ 5. Participation in Debate and Voting
§ 6. Power of Appointment; Legislative Authority
§ 7. Preserving Order on the House Floor
§ 8. Preserving Order in the House Galleries

B. Speaker Pro Tempore

§ 9. Introductory
§ 10. Definition and Nature of Office
§ 11. Oath of Office; Term of Office
§ 12. Designation of Speaker Pro Tempore

§ 13. —House Approval
§ 14. Election of Speaker Pro Tempore

C. House Officers
§ 15. Qualifications
§ 16. Election
§ 17. Oath; Compensation
§ 18. Duties of the Clerk
§ 19. Duties of the Sergeant at Arms
§ 20. Duties of the Doorkeeper
§ 21. Duties of the Chaplain
§ 22. Vacancies; Selection of Successors

D. As Party Defendant or Witness
§ 23. In General; Immunities

E. Employment
§ 24. In General
§ 25. Creating Positions
§ 26. Minority Positions
§ 27. Compensation

CHAPTER 7
The Members

A. Introductory
§ 1. In General; Rights and Privileges; Term of Office
§ 2. Seniority and Derivative Rights
§ 3. Status of Delegates and Resident Commissioner

B. Compensation and Allowances
§ 4. Salary; Benefits and Deductions
§ 5. Leaves of Absence
§ 6. Travel

§ 7. Franking
§ 8. Office and Personnel Allowances; Supplies

C. Qualifications and Disqualifications

§ 9. In General; House as Judge of Qualifications
§ 10. Age, Citizenship, and Inhabitancy
§ 11. Conviction of Crime; Past Conduct
§ 12. Loyalty
§ 13. Incompatible Offices
§ 14. Military Service

D. Immunities of Members and Aides

§ 15. Generally; Judicial Review
§ 16. For Speech and Debate
§ 17. For Legislative Activities
§ 18. From Arrest

CHAPTER 8

Elections and Election Campaigns

A. Apportionment; Voting Districts

§ 1. In General; Functions of Congress and the States
§ 2. Census and Apportionment; Numerical Allocation of Representatives
§ 3. Districting Requirements; Duty of States
§ 4. Failure of States to Redistrict

B. Time, Place, and Regulation of Elections

§ 5. In General; Federal and State Power
§ 6. Elector Qualifications; Registration
§ 7. Time and Place; Procedure
§ 8. Ballots; Recounts
§ 9. Elections to Fill Vacancies

C. Campaign Practices
§ 10. Regulation and Enforcement
§ 11. Campaign Practices and Contested Elections
§ 12. Expulsion, Exclusion, and Censure
§ 13. Investigations by Standing Committees
§ 14. Investigations by Select Committees

D. Certificates of Election
§ 15. In General; Form
§ 16. Grounds for Challenge
§ 17. Procedure in Determining Validity; Effect

CHAPTER 9

Election Contests

A. In General
§ 1. Constitutional Provisions; Historical Background
§ 2. Contested Election Laws
§ 3. State or Local Election Boards

B. Jurisdiction and Powers
§ 4. The House
§ 5. Election Committees
§ 6. The Clerk; Transmittal of Papers
§ 7. The Courts

C. Grounds of Contest
§ 8. Generally
§ 9. Faulty Credentials; Citizenship
§ 10. Violation of Federal or State Election Laws
§ 11. Improper Attempts to Influence or Confuse Voters
§ 12. Voting Booth and Balloting Irregularities

D. Defenses

§ 13. Generally
§ 14. Contestant's Credentials and Qualifications
§ 15. Abatement
§ 16. Limitations and Laches

E. Practice and Procedure

§ 17. Alternatives to Statutory Election Contests
§ 18. Commencing the Contest
§ 19. Parties

F. Notice of Contest

§ 20. Generally; Time
§ 21. Service of Notice
§ 22. Form and Contents of Notice

G. Pleading

§ 23. Generally
§ 24. Answer
§ 25. Motion to Dismiss
§ 26. Motion for More Definite Statement

H. Taking of Testimony; Depositions

§ 27. Generally; Time
§ 28. Examination of Parties and Witnesses
§ 29. Scope of Examination; Objections
§ 30. Subpenas
§ 31. Affidavits

I. Committee Hearing and Review; Dismissal and Withdrawal

§ 32. Generally; Preparation of Briefs
§ 33. Dismissal and Withdrawal of Contest

J. Evidence

§ 34. Generally
§ 35. Burden of Proof
§ 36. Presumptions
§ 37. Ballots
§ 38. Determination of Voter Intention

K. Inspection and Recount of Ballots

§ 39. Generally
§ 40. Grounds
§ 41. Procedure

L. Disposition of Contests; Resolutions

§ 42. Generally
§ 43. Committee Reports
§ 44. Form of Resolutions
§ 45. Costs and Expenses; Compensation and Allowances

M. Summaries of Election Contests, 1931–72

§ 46. Seventy-second Congress, 1931–32
§ 47. Seventy-third Congress, 1933–34
§ 48. Seventy-fourth Congress, 1935–36
§ 49. Seventy-fifth Congress, 1937–38
§ 50. Seventy-sixth Congress, 1939–40
§ 51. Seventy-seventh Congress, 1941–42
§ 52. Seventy-eighth Congress, 1943–44
§ 53. Seventy-ninth Congress, 1945–46
§ 54. Eightieth Congress, 1947–48
§ 55. Eighty-first Congress, 1949–50
§ 56. Eighty-second Congress, 1951–52
§ 57. Eighty-fifth Congress, 1957–58
§ 58. Eighty-sixth Congress, 1959–60
§ 59. Eighty-seventh Congress, 1961–62
§ 60. Eighty-eighth Congress, 1963–64

§ 61. Eighty-ninth Congress, 1965–66
§ 62. Ninetieth Congress, 1967–68
§ 63. Ninety-first Congress, 1969–70
§ 64. Ninety-second Congress, 1971–72

Appendix

Election Contests, 1917–31

CHAPTER 10
Presidential Elections; Electoral College

§ 1. In General; Electoral Certificates
§ 2. Joint Sessions to Count Electoral Votes
§ 3. Counting Votes; Objections to Count
§ 4. Presidential Nominations for Vice President

CHAPTER 11
Questions of Privilege

A. Introductory

§ 1. In General

B. Privilege of the House

§ 2. In General; Definition
§ 3. Effecting Changes in House Rules or Orders
§ 4. Raising and Presenting the Question
§ 5. Time for Consideration; Precedence of the Question
§ 6. Recognition to Offer; Determinations as to Validity
§ 7. Consideration and Debate; Referral to Committee

C. Basis of Questions of Privilege of the House

§ 8. General Criticism of Legislative Activity
§ 9. Charges Involving Members
§ 10. Charges Involving House Officers or Employees

§ 11. Correcting the Record; Expungement of Words Uttered in Debate
§ 12. Enforcement of Committee Orders and Subpenas
§ 13. Invasion of House Jurisdiction or Prerogatives
§ 14. Service of Process on Members
§ 15. Service of Grand Jury Subpena
§ 16. Service of Process on House, Its Officers, or Employees
§ 17. Service of Process on Committee Chairmen and Employees
§ 18. Authorization to Respond to Process
§ 19. Providing for Legal Counsel

D. Personal Privilege of Member

§ 20. In General; Definition
§ 21. Raising the Question; Procedure
§ 22. Debate on the Question; Speeches
§ 23. Precedence of the Question; Interrupting Other Business

E. Basis of Questions of Personal Privilege

§ 24. Introductory; General Opinion or Criticism
§ 25. Charges Before a Governmental Agency or Committee
§ 26. Charges by Fellow Member
§ 27. Words Uttered in Debate; Charges Inserted in the Record
§ 28. Published Charges of Impropriety
§ 29. Published Charges of Illegality
§ 30. Published Charges Involving Legislative Conduct
§ 31. Published Charges Involving Patriotism
§ 32. Published Charges Impugning Veracity
§ 33. Criticism of Members Collectively

CHAPTER 12
Conduct or Discipline of Members, Officers, or Employees

A. Introductory; Particular Kinds of Misconduct

§ 1. In General; Codes of Conduct
§ 2. Committee Functions
§ 3. Violations of Statutes
§ 4. Violations of House Rules
§ 5. Abuse of Mailing or Franking Privileges
§ 6. Absences From the House; Indebtedness
§ 7. Misconduct in Elections or Campaigns
§ 8. Financial Matters; Disclosure Requirements
§ 9. Abuses in Hiring, Employment, and Travel
§ 10. Communications With Federal Agencies
§ 11. Acceptance of Foreign Gifts and Awards

B. Nature and Forms of Disciplinary Measures

§ 12. In General; Penalties
§ 13. Expulsion
§ 14. Exclusion
§ 15. Suspension of Privileges
§ 16. Censure; Reprimand
§ 17. Imposition of Fine
§ 18. Deprivation of Seniority Status

Appendix

CHAPTER 13
Powers and Prerogatives of the House

A. Generally

§ 1. Scope

§ 2. Admitting States to the Union

B. War Powers

§ 3. In General
§ 4. War Powers Act
§ 5. Declarations of War
§ 6. —House Action
§ 7. —Senate Action
§ 8. Legislation Authorizing Military Action Prior to War Powers Act
§ 9. Pre-World War II Legislative Restrictions on Military Activity
§ 10. Vietnam Era Restrictions on Military Activity
§ 11. Receipt of Presidential Messages
§ 12. Presidential Proclamations

C. House Prerogative to Originate Revenue Bills

§ 13. In General
§ 14. Consideration of Objections
§ 15. Return of Senate Legislation
§ 16. Tabling Objection to Infringement
§ 17. Referring Objection to Committee
§ 18. Action on House Bill in Lieu of Senate Bill
§ 19. Senate Action on Revenue Legislation
§ 20. Authority to Make Appropriations

D. Congress and the Budget; Impoundment

§ 21. In General; Congressional Budget Act

E. Relations With Executive Branch

§ 22. In General; Confirmation of Nomination for Vice President
§ 23. Executive Reorganization Plans

Appendix

CHAPTER 14

Impeachment Powers

A. Generally

§ 1. Constitutional Provisions; House and Senate Functions

§ 2. Who May Be Impeached; Effect of Resignation

§ 3. Grounds for Impeachment; Form of Articles

§ 4. Effect of Adjournment

B. Investigation and Impeachment

§ 5. Introduction and Referral of Charges

§ 6. Committee Investigations

§ 7. Committee Consideration; Reports

§ 8. Consideration and Debate in the House

§ 9. Presentation to Senate; Managers

§ 10. Replication; Amending Adopted Articles

C. Trial in the Senate

§ 11. Organization and Rules

§ 12. Conduct of Trial

§ 13. Voting; Deliberation and Judgment

D. History of Proceedings

§ 14. Charges Not Resulting in Impeachment

§ 15. Impeachment Proceedings Against President Nixon

§ 16. Impeachment of Judge English

§ 17. Impeachment of Judge Louderback

§ 18. Impeachment of Judge Ritter

Appendix

CHAPTER 15
Investigations and Inquiries

A. Basis of Authority to Investigate; Creating Committees

§ 1. In General; Subjects of Authorizing Resolutions

B. Inquiries and the Executive Branch

§ 2. Resolutions of Inquiry and Responses
§ 3. Executive Branch Refusals to Provide Information
§ 4. Litigation to Enforce a Subpena; Senate Select Committee v Nixon
§ 5. Legislation to Obtain Information

C. Procedure; Hearings

§ 6. Limitations on Authority to Investigate—Pertinence of Inquiry
§ 7. —Intent of Witness
§ 8. —Procedural Regularity of Hearings
§ 9. Rights of Witnesses Under the Constitution—Fifth Amendment
§ 10. —First Amendment
§ 11. —Fourth Amendment
§ 12. —Sixth Amendment
§ 13. Rights of Witnesses Under House Rules
§ 14. —Right to Counsel
§ 15. Effect of Derogatory Information
§ 16. Calling Witnesses; Subpenas

D. Authority in Cases of Contempt

§ 17. In General
§ 18. Time for Consideration

§ 19. Matters Decided by House
§ 20. Particular Conduct as Contumacious
§ 21. Purging Contempt
§ 22. Certification to U.S. Attorney

CHAPTER 16

Introduction and Reference of Bills and Resolutions

§ 1. Introduction
§ 2. Sponsorship
§ 3. Reference

CHAPTER 17

Committees

A. Creating and Organizing Committees

§ 1. In General
§ 2. Establishing Standing Committees; Procedure
§ 3. — Authorizing Investigations
§ 4. Committee Expenses; Use of Contingent Fund
§ 5. Establishing Select Committees; Procedure
§ 6. — Subjects of Investigation or Study
§ 7. Joint Committees

B. Committee Chairmen, Members, and Employees

§ 8. In General; Electing Chairmen
§ 9. Electing Members to Standing Committees
§ 10. Appointments to Select Committees
§ 11. Seniority Considerations
§ 12. Setting and Increasing Committee Membership
§ 13. Appointment, Employment, and Compensation of Employees

C. Committee Procedure

§ 14. Generally
§ 15. Adoption of Committee Rules
§ 16. Sitting of Committees While House Is in Session
§ 17. Role of Chairman
§ 18. Members' Access to Committee Records and Files
§ 19. Disposition of Committee Documents, Evidence, and Files
§ 20. Disclosure of Unreported Committee Proceedings
§ 21. Executive Sessions
§ 22. —Use of Information Obtained in Executive Session
§ 23. Reporting Measure From Committee Requires Quorum
§ 24. Point of Order Based on Lack of Committee Quorum—Timing
§ 25. —Effect

D. Jurisdiction of Committees

§ 26. Introduction
§ 27. Referral of Measures to Committees; Procedure
§ 28. Motions to Rerefer
§ 29. Overlapping Jurisdiction; Proposals Involving More Than One Subject
§ 30. Committee on Agriculture
§ 31. Committee on Appropriations
§ 32. Committee on Armed Services
§ 33. Committee on Banking and Currency
§ 34. Committee on the Budget
§ 35. Committee on the District of Columbia
§ 36. Committee on Education and Labor
§ 37. Committee on Foreign Affairs
§ 38. Committee on Government Operations
§ 39. Committee on House Administration
§ 40. Committee on Interior and Insular Affairs
§ 41. Committee on Internal Security

§ 42. Committee on Interstate and Foreign Commerce
§ 43. Committee on the Judiciary
§ 44. Committee on Merchant Marine and Fisheries
§ 45. Committee on Post Office and Civil Service
§ 46. Committee on Public Works
§ 47. Committee on Science and Astronautics
§ 48. Committee on Small Business
§ 49. Committee on Standards of Official Conduct
§ 50. Committee on Veterans' Affairs
§ 51. Committee on Ways and Means

E. Committee on Rules

§ 52. History and Role
§ 53. Jurisdiction and Scope of Authority
§ 54. Committee Procedure
§ 55. Reports From the Committee
§ 56. Same-day Consideration of Reported Resolution
§ 57. Consideration and Adoption by House of Resolutions Reported From the Committee

F. Committee Reports

§ 58. In General
§ 59. Form; Printing
§ 60. Comparative Prints; The Ramseyer Rule
§ 61. Cost-estimate Requirement
§ 62. Time for Filing Report
§ 63. Status as Privileged; Calling Up
§ 64. Supplemental, Minority, and Additional Views

CHAPTER 18
Discharging Matters From Committees

§ 1. In General; Motion to Discharge
§ 2. Discharging Particular Committees
§ 3. Calling Up Motion; Debate

§ 4. Consideration of Discharged Measures
§ 5. Discharge of Vetoed Bills, Other Questions Privileged Under the Constitution, Resolutions of Inquiry, and Reorganization Plans
Appendix-Recent History of Discharge Motions

CHAPTER 19
The Committee of the Whole

A. In General
§ 1. Jurisdiction; House as in Committee of the Whole Distinguished
§ 2. Motions and Requests Generally
§ 3. Remarks in the *Congressional Record*
§ 4. Resolving Into Committee of the Whole

B. The Chairman
§ 5. Speaker's Appointment of Chairman
§ 6. Chairman's Role; Jurisdiction
§ 7. —Limitations on the Chairman's Jurisdiction
§ 8. —Rulings Relating to Amendments
§ 9. —Appeals of Rulings

C. Motion to Recommend Striking Enacting Clause
§ 10. Generally
§ 11. When in Order
§ 12. Procedures; Qualification to Offer or Oppose
§ 13. Debate
§ 14. Renewal of Motion

D. Consideration and Debate
§ 15. Generally
§ 16. Time Limitations
§ 17. Calling Members to Order

§ 18. Reading Papers

E. Points of Order

§ 19. Generally
§ 20. Timeliness

F. Rising of the Committee of the Whole

§ 21. Generally
§ 22. Motions to Rise
§ 23. —When in Order
§ 24. —Offering the Motion
§ 25. —Proceedings Subsequent to Action on Motion
§ 26. Resumption of Business After Committee Resumes Sitting

CHAPTER 20
Calls of the House; Quorums

A. Calls of the House

§ 1. In General; Scope
§ 2. Calls Ordered on Motions; Automatic Calls
§ 3. The Chair's Count; Names Included on Calls
§ 4. Calls by Electronic Device; Time Allowed for Attendance
§ 5. Securing Attendance; Arrests
§ 6. Closing or Locking the Doors
§ 7. The Call in the Committee of the Whole
§ 8. Motions During the Call—To Adjourn
§ 9. —To Dispense With Further Proceedings Under the Call

B. Effect of Presence or Absence of a Quorum

§ 10. Introductory
§ 11. As Related to the Journal

§ 12. As Related to Prayer by the Chaplain and Messages

C. Objections to Absence of a Quorum; Points of No Quorum

§ 13. In General; Timeliness and Diligence
§ 14. Dilatoriness; Effect of Prior Count
§ 15. Proceedings Pending Call of House in Absence of Quorum
§ 16. In the Committee of the Whole
§ 17. Absence of Quorum in Standing Committee as Bar to Floor Consideration or Other Subsequent Proceedings
§ 18. Withdrawal or Withholding of Objections or Points of No Quorum

CHAPTER 21
Order of Business; Special Orders

A. General Principles

§ 1. Order Fixed by Rule and Precedent; Scheduling Business
§ 2. Prayer, Approval of Journal, and Business on the Speaker's Table
§ 3. Unfinished and Postponed Business
§ 4. Calendar Wednesday; Morning Hour Call of Committees
§ 5. District of Columbia Business
§ 6. One-minute Speeches
§ 7. Special-order Speeches
§ 8. Varying the Order of Business

B. Motions to Suspend the Rules

§ 9. Use and Effect

§ 10. When in Order
§ 11. Recognition to Offer
§ 12. Seconding the Motion; Recognition to Demand Second
§ 13. Time and Control of Debate
§ 14. Amendments to Propositions Under Suspension
§ 15. Voting on the Motion

C. Special Rules or Orders

§ 16. Authority of Committee on Rules; Seeking Special Orders
§ 17. Reports and Their Privilege
§ 18. Consideration in the House
§ 19. Interpretation and Effect

D. Types of Special Orders

§ 20. Varying Order of Business; Providing for Consideration
§ 21. "Open" Rules, Allowing Amendments and Making in Order Certain Amendments
§ 22. "Closed" Rules, Prohibiting Amendments and Allowing Only Certain Amendments
§ 23. Waiving and Permitting Points of Order
§ 24. As to Control, Distribution, and Duration of Debate
§ 25. As to Reading for Amendment
§ 26. As to Voting and Motions
§ 27. Senate Bills and Amendments; Conference Reports

E. Privileged Business

§ 28. Authority and Scope Under Constitution, Statutes, and Rules
§ 29. Certain Bills, Resolutions, and Reports
§ 30. Privileged Motions as to the Order of Business
§ 31. Relative Precedence Among Privileged Matters

CHAPTER 22
Calendars

A. Introductory

§ 1. Calendars of the House
§ 2. Union and House Calendars

B. Consent Calendar

§ 3. In General
§ 4. When in Order
§ 5. Calling Measures on the Calendar
§ 6. Precedence Over Other House Business
§ 7. Measures Qualified for the Calendar
§ 8. Objection to or Passing Over Measures on the Calendar
§ 9. Debate; Amendment of Measures

C. Private Calendar; Private Bills

§ 10. In General
§ 11. Calling Up
§ 12. Objections; Disposition
§ 13. Consideration, Debate, and Amendment
§ 14. Private Bills and House-Senate Relations

CHAPTER 23
Motions

A. Introductory

§ 1. In General
§ 2. Offering, Modifying, and Withdrawing Motions; Form
§ 3. Precedence of Motions
§ 4. Dilatory Motions

B. Motions to Postpone

§ 5. In General
§ 6. When in Order
§ 7. Postponement to a Day Certain
§ 8. Postponement for Indefinite Period

C. Motions to Lay on the Table

§ 9. In General; Application and Effect
§ 10. Offering Motion
§ 11. When in Order
§ 12. As Related to Other Motions; Precedence
§ 13. Taking From the Table

D. Motions for the Previous Question

§ 14. In General
§ 15. Effect of Ordering Previous Question
§ 16. Offering Motion; Who May Offer
§ 17. Rights of Proponent of Motion
§ 18. Time for Motion
§ 19. Relation to Other Matters
§ 20. Relation to Other Motions
§ 21. Debate
§ 22. Rejection of Motion as Permitting Further Consideration
§ 23. Rejection of Motion as Affecting Recognition
§ 24. Effect of Adjournment

E. Motions to Refer or Recommit

§ 25. In General
§ 26. Purpose and Effect
§ 27. Priorities in Recognition
§ 28. Offering the Motion; Procedure
§ 29. Time for Motion
§ 30. Debating the Motion
§ 31. As Related to Other Motions; Precedence

§ 32. Motions to Recommit With Instructions

F. Motions to Reconsider

§ 33. In General
§ 34. Purpose and Effect; Pro Forma Motion
§ 35. Who May Offer; Calling Up
§ 36. Withdrawing the Motion
§ 37. Requirement for a Quorum
§ 38. As Related to Other Motions
§ 39. Scope and Application of Motion
§ 40. Precedence of Motion
§ 41. Debate on Motion

G. Unanimous-consent Requests

§ 42. In General; Effect
§ 43. Stating the Request; Withdrawal
§ 44. Recognizing Members for Requests
§ 45. Objecting to Requests
§ 46. Reservation of Objection
§ 47. Scope and Application of Request
§ 48. Limitations on Requests

CHAPTER 24
Bills, Resolutions, Petitions, and Memorials

A. Introductory; Various Types of Bills, Resolutions, and Other Mechanisms for Action

§ 1. In General
§ 2. Bills
§ 3. Private Bills
§ 4. Joint Resolutions
§ 5. Concurrent Resolutions
§ 6. Simple Resolutions
§ 7. Resolutions of Approval or Disapproval of Executive Plans; the "Legislative Veto"

§ 8. Resolutions of Inquiry
§ 9. Titles and Preambles
§ 10. Petitions and Memorials

B. General Procedures Associated With Passage of Legislation

§ 11. Readings
§ 12. Engrossment
§ 13. Transmission of Legislative Messages Between House and Senate
§ 14. Enrollment; Correcting Bills in Enrollment
§ 15. Signing
§ 16. Recalling Bills From the President

C. Veto Powers

§ 17. In General
§ 18. Effect of Adjournment; the Pocket Veto
§ 19. Proposals for Item Veto
§ 20. Return of Vetoed Bills
§ 21. Motions Relating to Vetoes
§ 22. Consideration and Passage of Vetoed Bills; Voting
§ 23. Disposition of Vetoed Bills After Reconsideration

D. Vacating Legislative Actions

§ 24. Procedure

CHAPTER 25
Appropriation Bills

A. Introductory Matters; Authorization of Appropriations

§ 1. Scope of Chapter
§ 2. Requirement That Appropriations Be Authorized
§ 3. Reappropriations

§ 4. Appropriations in Legislative Bills
§ 5. Contingent Fund Expenditures

B. Reporting and Consideration of Appropriation Bills

§ 6. Generally; Privileged Status
§ 7. Nonprivileged Appropriations—“Continuing” Appropriations
§ 8. Consideration Made in Order by Special Rule or Unanimous Consent
§ 9. Waiver of Points of Order—by Resolution
§ 10. General Appropriation Bills Considered by Unanimous Consent
§ 11. Consideration and Debate; Amendments
§ 12. Points of Order; Timeliness
§ 13. House-Senate Relations

CHAPTER 26
Unauthorized Appropriations; Legislation on Appropriation Bills

A. Introductory Matters

§ 1. Generally; Scope
§ 2. Points of Order; Timeliness
§ 3. Waiver of Points of Order; Perfecting Text Permitted to Remain
§ 4. The Holman Rule
§ 5. Provisions Not Within the Holman Rule
§ 6. Amendments Between the Houses

B. Appropriations for Unauthorized Purposes

§ 7. In General
§ 8. Works in Progress
§ 9. Burden of Proof of Authorization
§ 10. Evidence of Authorization

§ 11. Subject Matter: Agriculture
§ 12. Commerce
§ 13. Defense and Veterans
§ 14. District of Columbia
§ 15. Environment and Interior
§ 16. Federal Employment
§ 17. Foreign Relations
§ 18. Justice
§ 19. Public Works
§ 20. Other Purposes
§ 21. Increasing Amount Beyond Authorization

C. Provisions as "Changing Existing Law", Generally

§ 22. In General; Burden of Proof
§ 23. Incorporating or Restating Existing Law
§ 24. Construing Existing Law; Repealing Existing Law
§ 25. Construction or Definition of Terms of Bill or Law
§ 26. Authorizing Statute as Permitting Certain Language in Appropriation Bill
§ 27. Provisions Affecting or Affected by Funds in Other Acts
§ 28. Provisions Affecting Funds Held in Trust
§ 29. Transfer of Funds Within Same Bill
§ 30. Transfer of Funds Not Limited to Same Bill
§ 31. Transfers or Disposition of Property
§ 32. Appropriations Prior to or Beyond Fiscal Year
§ 33. Increasing Limits of Authorization Set in Law
§ 34. Exceptions From Existing Law
§ 35. Change in Source of Appropriated Funds or in Methods of Financing
§ 36. Changing Prescribed Methods of Allocation or Distribution of Funds; Mandating Expenditures
§ 37. Grant or Restriction of Contract Authority
§ 38. Reimbursements
§ 39. Subject Matter: Agriculture
§ 40. Commerce

§ 41. Defense and Foreign Relations
§ 42. District of Columbia
§ 43. Federal Employment
§ 44. Congressional Salaries and Allowances
§ 45. Housing and Public Works
§ 46. Other Subjects

D. Provisions as "Changing Existing Law": Appropriations Subject to Conditions

§ 47. Conditions Contrary to or Not Required by Law
§ 48. Conditions Precedent to Spending
§ 49. Spending Conditioned on Congressional Approval
§ 50. Conditions Imposing Additional Duties

E. Provisions as "Changing Existing Law"; Provisions Affecting Executive Authority; Imposition of New Duties on Officials

§ 51. Restrictions on or Enlargement of Discretion
§ 52. Provisions as Imposing New Duties
§ 53. —Duties Imposed on Nonfederal Officials or Parties
§ 54. Judging Qualifications of Recipients
§ 55. President's Authority
§ 56. Determination of National Interest
§ 57. Subject Matter: Agriculture
§ 58. Commerce
§ 59. Defense and Foreign Relations
§ 60. District of Columbia
§ 61. Education, Health, and Labor
§ 62. Interior
§ 63. Other Agencies and Departments

F. Permissible Limitations on Use of Funds

§ 64. Generally
§ 65. Imposing "Incidental" Duties

§ 66. Exceptions From Limitations
§ 67. Subject Matter: Agriculture
§ 68. Civil Liberties
§ 69. Commerce and Public Works
§ 70. Defense
§ 71. —Military Contracts
§ 72. District of Columbia
§ 73. Education and Community Service; Health; Labor
§ 74. Federal Employment
§ 75. Foreign Relations
§ 76. Interior
§ 77. Treasury and Post Office
§ 78. Veterans' Administration
§ 79. Other Uses

G. Limitation on Total Amount Appropriated by Bill

§ 80. Generally

CHAPTER 27
Amendments

A. Generally

§ 1. Introductory; Definitions; Form
§ 2. Pro Forma Amendments
§ 3. Effect of Special Rule; Amending Special Rule
§ 4. Recognition to Offer Amendments; Priority
§ 5. Permissible Pending Amendments
§ 6. Amendments in the Third Degree

B. When to Offer Amendment; Reading for Amendment

§ 7. In General; Reading by the Clerk
§ 8. Amendments to Text Passed in the Reading
§ 9. Amendments to Text Not Yet Read; *En Bloc* Amendments

§ 10. Amendments to Bills Being Read by Title
§ 11. Amendments to Bills Considered as Read and Open to Amendment
§ 12. Amendments in Nature of Substitute for Several Paragraphs or Entire Bill
§ 13. Time Yielded for Amendment or Other Purposes
§ 14. Effect of Previous Question; Expiration of Time for Debate

C. Offering Particular Kinds of Amendments; Precedence and Priorities

§ 15. Introductory; Perfecting Amendments, Generally
§ 16. Motions to Strike Out and Insert
§ 17. Motions to Strike
§ 18. Substitute Amendments
§ 19. Amendments to Titles and Preambles

D. Withdrawal or Modification of Amendment

§ 20. Withdrawal
§ 21. Modification of Amendment by Proponent or Others

E. Consideration and Voting

§ 22. In General; Reading of Amendment
§ 23. Order of Consideration Generally
§ 24. Perfecting Amendments; Motions to Strike
§ 25. Substitute Amendments; Amendments in Nature of Substitute
§ 26. Committee Amendments
§ 27. Considering Amendments *En Bloc*
§ 28. Debating Amendments

F. Effect of Consideration or Adoption; Changes After Adoption

§ 29. Introduction; Adoption of Perfecting Amendment, Generally

§ 30. Adoption of Amendment as Affecting Motions to Strike or to Strike and Insert
§ 31. Adoption of Motion to Strike Out; To Strike Out and Insert
§ 32. Amendments in Nature of Substitute; Substitute Amendments
§ 33. Amendments Pertaining to Monetary Figures
§ 34. Effecting Changes by Unanimous Consent
§ 35. Effect of Consideration or Rejection

G. House Consideration of Amendments Reported From Committee of the Whole

§ 36. In General; Demands for Separate Vote
§ 37. Order of Consideration
§ 38. Effect of Rejection of Amendment

CHAPTER 28

Amendments and the Germaneness Rule

A. General Principles

§ 1. Introduction
§ 2. Proposition to Which Amendment Must Be Germane
§ 3. Amendment as Relating to Subject Matter Under Consideration
§ 4. Committee Jurisdiction of Subject Matter as Test
§ 5. Fundamental Purpose of Amendment as Test
§ 6. Amendment Accomplishing Result of Bill by Different Method
§ 7. Amendment Substituting Different Agency to Administer Provisions
§ 8. Individual Proposition Offered as Amendment to Another Individual Proposition

§ 9. General Amendments to Specific or Limited Propositions; Amendments Enlarging Scope of Proposition
§ 10. Specific Amendments to General Propositions; Amendments as Within Scope
§ 11. Amendment Adding to Two or More Propositions of Same Class
§ 12. Amendment Extending Coverage of Bill to Other Subjects of Same Class
§ 13. Proposition and Amendment as Affecting Different Classes of Persons or Entities
§ 14. Amendments Conferring Powers Not Granted in Bill
§ 15. Amendments to Appropriation Bills; Rescission Bills
§ 16. Consent Calendar Bills

B. Application of Rule to Particular Forms of Amendment or Proposition

§ 17. In General; Amendment to Special Rule; Amendment to Concurrent Resolution
§ 18. Amendment Offered to Particular Paragraph, Section, or Title
§ 19. Amendment Adding New Section or Title to Bill
§ 20. Amendment Striking Portion of Text of Bill or Amendment
§ 21. Substitute Amendment; Amendment in Nature of Substitute; Amendment to Amendment
§ 22. Committee Amendment
§ 23. Instructions in Motion to Commit or Recommit
§ 24. Amendment Proposing Permanent Legislation Offered to Temporary Legislation

C. House-Senate Relations

§ 25. Rule of Germaneness in the Senate

§ 26. Senate Amendments to House Bills and Amendments; Conference Agreements
§ 27. —Amendment to Senate Amendment
§ 28. Requirement That Amendments to Motions to Instruct Conferees Be Germane

D. Amendments Imposing Qualifications or Restrictions

§ 29. In General; Amendments Providing for Exceptions or Exemptions
§ 30. Amendments Providing for Conditions or Qualifications
§ 31. —Amendment Postponing Effectiveness of Legislation Pending Contingency
§ 32. Amendments Providing for Restrictions or Limitations
§ 33. —Amendments Affecting Powers Delegated in Bill
§ 34. —Restrictions on Use or Availability of Funds

E. Relation of Amendment or Bill to Existing Law

§ 35. Amendments to Bills Which Amend Existing Law
§ 36. Amendment Repealing Existing Law to Bill Amending That Law
§ 37. Amendments to Bills Which Repeal Existing Law
§ 38. Amendments to Bills Which Incorporate Other Law or Matter
§ 39. Amendments to Bills Extending Existing Law or Authority Under Existing Law
§ 40. Amendment Continuing Temporary Law to Bill Amending That Law
§ 41. Amendment Changing Existing Law to Bill Citing or Making Minor Revisions in That Law
§ 42. Amendment Changing or Citing Existing Law to Bill Not Citing That Law

F. Procedural Matters

§ 43. Generally; Point of Order and Debate Thereon

§ 44. Timeliness of Point of Order
§ 45. Consideration Under Special Rule; Waiver of Points of Order; Effect on Germaneness Requirement
§ 46. Factors in Chair's Ruling; Refusal by Chair to Rule; Anticipatory and Hypothetical Rulings

CHAPTER 29
Consideration and Debate

A. Introductory; Initiating Consideration and Debate

§ 1. In General
§ 2. Factors Bearing on Consideration; Points of Order Against Consideration; Special Rules and Unanimous-consent Agreements
§ 3. Consideration in the Committee of the Whole
§ 4. Consideration in the House as in the Committee of the Whole
§ 5. Question of Consideration
§ 6. Questions Not Subject to Debate
§ 7. Opening and Closing Debate; Right to Close

B. Right to Recognition

§ 8. In General; Seeking Recognition
§ 9. Power and Discretion of Speaker or Chairman
§ 10. Recognition for Unanimous-consent Requests; One-minute and Special-order Speeches
§ 11. Limitations on Power of Recognition; Basis for Denial
§ 12. Priorities in Recognition
§ 13. —Of Members of Committee
§ 14. —Of Member in Control
§ 15. —Of Opposition After Rejection of Essential Motion

C. Recognition on Particular Questions

§ 16. As to Bills
§ 17. As to Conference Reports and Other House-Senate Matters
§ 18. As to Simple or Concurrent Resolutions; Special Rules
§ 19. For Offering and Debating Amendments
§ 20. For Points of Order and Debate Thereon; Objections and Inquiries; Calls of the House
§ 21. Under the Five-minute Rule
§ 22. Where Five-minute Debate Has Been Limited
§ 23. Recognition for Particular Motions and Debate Thereon

D. Control and Distribution of Time for Debate

§ 24. In General; Role of Manager
§ 25. Distribution and Alternation
§ 26. Management by Reporting Committee; One-third of Debate Time on Certain Propositions Allotted to One Opposed
§ 27. Designation of Managers
§ 28. Effect of Special Rule
§ 29. Yielding Time
§ 30. —For Motions or Amendments
§ 31. —For Debate
§ 32. Interruption of Member With the Floor
§ 33. Losing or Surrendering Control
§ 34. Control Passing to Opposition

E. Relevancy in Debate

§ 35. Debate in the House
§ 36. —On Question of Privilege
§ 37. Debate in Committee of the Whole
§ 38. Debate Under Five-minute Rule
§ 39. —General Debate in Committee of the Whole

F. Disorder in Debate

§ 40. In General
§ 41. Disorderly Acts; Attire
§ 42. Manner of Address; Interruptions
§ 43. Disorderly Language
§ 44. —Reference to Senate or to Senators
§ 45. —Reference to Gallery Occupants
§ 46. References in Senate to House
§ 47. Criticism of Executive and Governmental Officials; References to Presidential or Vice Presidential Candidates
§ 48. Procedure; Calls to Order
§ 49. —The Demand That Words Be Taken Down
§ 50. —Ruling by the Speaker
§ 51. —Withdrawal or Expungement of Words; Disciplinary Measures
§ 52. —Permission to Explain or to Proceed in Order

G. References to House, Committees, or Members

§ 53. Criticism of House or Party
§ 54. Criticism of Committees or Their Members
§ 55. References to Unreported Committee Proceedings; Discussion of Ethics Committee Deliberations
§ 56. Form of Reference to Members
§ 57. Criticism of Speaker
§ 58. Criticism of Legislative Actions or Proposals
§ 59. Criticism of Statements or Tactics in Debate
§ 60. Critical References to Members
§ 61. —Use of Colloquialisms
§ 62. —Questionable Motives
§ 63. —Falsehood
§ 64. —Lack of Intelligence
§ 65. —Race and Prejudice
§ 66. —Disloyalty

H. Duration of Debate in the House

§ 67. In General
§ 68. The Hour Rule
§ 69. Ten-minute, Twenty-minute, and Forty-minute Debate
§ 70. Five-minute Debate in the House as in Committee of the Whole
§ 71. Effect of Special Rules and Unanimous-consent Agreements
§ 72. Closing Debate; Senate Cloture
§ 73. One-minute, Special-order Speeches, and Morning Hour

I. Duration of Debate in the Committee of the Whole

§ 74. In General; Effect of Special Rules
§ 75. General Debate
§ 76. —Closing General Debate
§ 77. Five-minute Debate
§ 78. —Closing and Limiting Debate
§ 79. —Effect of Limitation; Distribution of Remaining Time

J. Reading Papers and Displaying Exhibits

§ 80. In General
§ 81. Voting on Permission to Read Papers
§ 82. Motions; Unanimous-consent Procedures
§ 83. Certain Readings Prohibited
§ 84. Use of Exhibits

K. Secret Sessions

§ 85. In General

TABLE OF CHAPTERS

CHAPTER 30
Voting

A. Generally

§ 1. Introduction
§ 2. Stating and Putting the Question
§ 3. Duty to Vote
§ 4. Pairs
§ 5. Tie Votes; Supermajority Votes
§ 6. Finality of Votes Once Cast

B. Non-recorded Votes

§ 7. Voice Votes
§ 8. Voting by Division
§ 9. Demand for Division Vote
§ 10. Interruption of Division Vote
§ 11. Objections to Division Vote: Lack of Quorum
§ 12. Determining Presence of Quorum as Related to Division Vote
§ 13. Division Vote as Related to Demand for Tellers
§ 14. Division Vote as Related to Demand for Yeas and Nays
§ 15. Voting by the Chair on Division Votes
§ 16. Voting by Tellers; In General
§ 17. Demand for Tellers
§ 18. Ordering Tellers
§ 19. Appointment of Tellers
§ 20. Interruptions of Teller Votes
§ 21. Voting by the Chair on Teller Votes
§ 22. Recapitulations and Recounts of Teller Votes

C. Yeas and Nays and Other Votes of Record

§ 23. The Yeas and Nays; In General
§ 24. Demands
§ 25. —When Not in Order

§ 26. Ordering of Vote
§ 27. Interruption of Vote
§ 28. Recapitulation of Roll Call Vote
§ 29. Voting by the Speaker
§ 30. Recorded Votes; In General
§ 31. The Electronic Voting System
§ 32. Requests to Alter Electronically Recorded Votes
§ 33. Demand for Vote
§ 34. Taking the Vote
§ 35. Time to Respond on a Vote
§ 36. Casting Votes After the Roll Call; Effect of Announcement of Result
§ 37. Changing Incorrectly Recorded Votes Prior to Announcement of Result
§ 38. Correction of Incorrectly Recorded Votes After Announcement of Result
§ 39. Changing Correctly Recorded Votes; Inquiries
§ 40. Effecting Vote Changes and Corrections
§ 41. Announcement of Member Pertaining to His Own Vote; Announcing How Absent Colleague Would Have Voted

D. Division of the Question for Voting

§ 42. In General
§ 43. Amendments and Substitutes Therefor
§ 44. Motions to Amend an Amendment
§ 45. Motions to Instruct Conferees; Motions to Recommit
§ 46. Motions for the Previous Question
§ 47. Motions to Rise
§ 48. Motions to Strike Out and Insert
§ 49. Propositions Affecting Several Persons
§ 50. Propositions Considered Under a Motion to Suspend the Rules
§ 51. Reports From the Committee of the Whole on Amendments Considered Therein

§ 52. Motions to Recede and Concur

E. Postponing Votes; Clustering Votes; Reduced Voting Time; Separate Votes

§ 53. Evolution of House Rules on Postponement and Reduced Voting Time
§ 54. Postponing Votes
§ 55. Procedures During Postponed Proceedings
§ 56. Postponed Proceedings and the Quorum Rule
§ 57. Reduced Voting Time
§ 58. Separate Votes on Amendments in the House

F. Delegate Voting

§ 59. Delegate Voting in the Committee of the Whole

CHAPTER 31
Points of Order; Parliamentary Inquiries

A. Points of Order

§ 1. In General; Effect
§ 2. Manner of Making Point of Order
§ 3. Reserving Points of Order
§ 4. Timeliness
§ 5. Timeliness as Against Bills or Provisions Therein
§ 6. Timeliness as Against Amendments
§ 7. Debate
§ 8. Burden of Proof on Points of Order
§ 9. Waiver
§ 10. Role of Committee on Rules in Waiving Points of Order
§ 11. As Related to Other Business
§ 12. Relationship of Quorum Requirements to Points of Order
§ 13. Appeals

B. Parliamentary Inquiries

§ 14. In General
§ 15. When in Order

CHAPTER 32
House-Senate Relations

A. Introductory

§ 1. In General; Messages Between the Houses
§ 2. Messages Relating to Bills
§ 3. House Action on Senate Bills
§ 4. House Action on Senate Resolutions
§ 5. House Action on Senate Amendments
§ 6. —Amending Senate Amendments; Degree of Amendment

B. Disposing of Amendments Between the Houses; Motions

§ 7. In General; Precedence
§ 8. Recognition to Offer Motions; Control of the Floor
§ 9. To Agree or Concur
§ 10. To Recede or Recede and Concur
§ 11. To Concur With an Amendment; To Recede and Concur With an Amendment
§ 12. To Insist or Adhere

CHAPTER 33
House-Senate Conferences

A. Introductory

§ 1. In General
§ 2. Motions, Resolutions, and Requests for Conference

§ 3. When Motion is in Order
§ 4. Who May Request Conference

B. Conference Managers or Conferees
§ 5. In General
§ 6. Appointment by the Speaker
§ 7. Power and Discretion of Conferees
§ 8. Changing Conferees; Resignations

C. Instructions to Conferees; Motions to Instruct
§ 9. In General
§ 10. When Instructions Are in Order
§ 11. Recognition to Offer; Debate
§ 12. Binding Effect and Scope of Instructions; Violation of Instructions
§ 13. Extending Power of Managers
§ 14. When Conferees Fail to Act

D. Conference Reports
§ 15. In General
§ 16. Privilege of Filing; When in Order
§ 17. Content of Report; Corrections
§ 18. Signatures
§ 19. Limitations on Scope of Report
§ 20. Statements Accompanying Report

E. Consideration and Disposition of Report
§ 21. In General
§ 22. Calling Up as Privileged
§ 23. Who May Call Up; Reading
§ 24. Custody of the Official Papers
§ 25. Points of Order
§ 26. Waiving Points of Order
§ 27. Time for Consideration; The Three-day Rule
§ 28. Debating Reports

§ 29. Disposition of Reports and Amendments in Disagreement
§ 30. Voting; Final Disposition of Report
§ 31. Rejection of Report
§ 32. Recommittal; Motions to Recommit

CHAPTER 34
Constitutional Amendments

A. Introduction

§ 1. In General
§ 2. Form of Action

B. House Consideration

§ 3. Committee Jurisdiction
§ 4. Procedures for Floor Consideration
§ 5. Voting

C. Senate Consideration; House-Senate Relations

§ 6. Senate Consideration
§ 7. Conference Reports
§ 8. Amendments Between the Houses

D. Ratification

§ 9. Generally; Certification and Publication
§ 10. Submission to the States; Records of Ratification
§ 11. State Consent; Withdrawal and Rescission of Withdrawal
§ 12. Time Limits on Ratification

CHAPTER 35
Presidential Messages & Executive Communications

§ 1. In General; Scope

§ 2. Receipt and Reading of Presidential Messages
§ 3. Referral
§ 4. Joint Sessions to Receive Presidential Messages: In General
§ 5. Joint Sessions to Receive Presidential Messages: Procedure
§ 6. Letters From the President

CHAPTER 36
Ceremonies and Awards

§ 1. Scope
§ 2. Commemorative Occasions
§ 3. —Federal Holidays
§ 4. —Patriotic Observances
§ 5. —Patriotic Observances of Another Country
§ 6. —Religious Observances
§ 7. —Pan American Day
§ 8. —Flag Day; Pause for Pledge Commemoration
§ 9. —Presidential
§10. Memorial Services
§11. —Supreme Court Justices
§12. —Current and Former Members of the House and the Senate
§13. —Moments of Silence
§14. —Holocaust Days of Remembrance
§15. —Honoring Slain Capitol Police Officers
§16. —Honoring Victims of National Tragedies
§17. Former Members' Day
§18. Birthday Felicitations
§19. Military Awards; Receptions for Generals and Astronauts
§20. Presentation of Gifts and Awards
§21. Statuary
§22. Dedication of Buildings and Structures
§23. Ceremonies for Visiting Dignitaries
§24. Congressional Gold Medals

§25. Presidential Inaugurations
§26. Vice Presidential Swearing-in Ceremonies

CHAPTER 37
Resignations

A. Introduction
§1. Scope of Chapter
§2. Background

B. Resignation of a Member From the House
§3. Procedures and Forms
§4. Reason for Resignation; Inclusion in Letter of Resignation
§5. Conditional Resignations; Timing

C. Resignations From Committees and Delegations
§6. Procedures and Forms
§7. Reason for Resignation
§8. Resignations From Delegations and Commissions

D. Resignations of Officers, Officials, and Employees
§9. Procedure
§10. Tributes

CHAPTER 38
Death

§1. In General
§2. Effect of Death on House Business; Presumptive Death of Member
§3. Death Benefits; Claims of Survivor's Spouse

§ 4. Administration of Member's Offices Following Death
§ 5. Announcement of Death; Accounting for Vacancies
§ 6. Resolutions of Sympathy
§ 7. Deaths of Foreign Dignitaries
§ 8. Funeral Committees
§ 9. Adjournment as Mark of Respect
§ 10. Eulogies
§ 11. Services in the Capitol
§ 12. Lying-in-State; Lying in Honor

CHAPTER 39

Recess

§ 1. In General
§ 2. Recess Authority
§ 3. Purposes

CHAPTER 40

Adjournment

A. Generally; Adjournments of Three Days or Less

§ 1. In General
§ 2. Adjournment to Another Place
§ 3. When in Order; Precedence and Privilege of Motion
§ 4. In Committee of the Whole
§ 5. Debate on Motion; Amendments
§ 6. Voting; Effect of Adoption
§ 7. Quorum Requirements
§ 8. Dilatory Motions; Repetition of Motion
§ 9. To a Day Certain; Three-day Limit

B. Adjournments for More Than Three Days to Date Certain

§ 10. In General; House-Senate Adjournments for Differing Periods
§ 11. Consideration of Concurrent Resolution; Privilege, Amendment, Debate, Budget Act Restrictions
§ 12. August Recess
§ 13. Conditional Adjournments; Recall

C. Adjournment *Sine Die*

§ 14. In General; Privilege; Inclusion of Other Matter
§ 15. Conditional Adjournments *Sine Die*; Recall
§ 16. Where Required or Prohibited by Law
§ 17. Procedure and Business at Adjournment
§ 18. Business Subsequent to

CHAPTER 41
Budget Process

A. Introduction to the Budget Process

§ 1. Introduction
§ 2. Timeline of the Budget Process
§ 3. Presidential Budget Submissions

B. The Concurrent Resolution on the Budget

§ 4. Content of the Concurrent Resolution on the Budget
§ 5. Consideration of Concurrent Resolutions on the Budget

C. The Appropriations Process and the Role of Committees

§ 6. Relationship to the Appropriations Process
§ 7. Role of Committees

D. Budget Act Points of Order

§ 8. Section 904
§ 9. Section 303
§ 10. Section 311
§ 11. Section 302
§ 12. Section 401(a)
§ 13. Section 401(b)
§ 14. Former Section 402(a)
§ 15. Section 315
§ 16. Section 306

E. Budgetary Enforcement in the Absence of a Budget Resolution

§ 17. "Deeming" Resolutions
§ 18. Committee Allocations Pursuant to Section 302

F. Reconciliation

§ 19. Introduction
§ 20. Reconciliation Directives in Budget Resolutions
§ 21. House Consideration of Reconciliation Bills

G. Pay-As-You-Go Procedures

§ 22. Introduction
§ 23. Statutory Pay-As-You-Go Act
§ 24. House PAYGO Rule
§ 25. House CUTGO Rule

H. Canceling Budget Authority

§ 26. Introduction and Sequestration Generally
§ 27. Rescissions
§ 28. Deferrals

I. The Debt Limit

§ 29. The Debt Limit

J. Additional Budget Controls

§ 30. Unfunded Mandates
§ 31. Earmarks

Introduction to Appendix

The appendix to volume 18 features a commentary by Charles W. Johnson, III. Mr. Johnson served as Parliamentarian of the House from 1994 to 2004 and has been affiliated with the Office of the Parliamentarian for nearly fifty years. Mr. Johnson follows in the tradition of Parliamentarians Asher Hinds, Clarence Cannon, and Lewis Deschler by capturing in narrative form notable procedural highlights during his tenure. This commentary is organized with the same general structure as the previous 17 volumes of this series, serving as both an appropriate appendix to the earlier volumes and a bridge to the upcoming restatement. It is not intended to be a reference material but rather a historic overview to supplement the more technical publications of the office. Readers should consult future volumes of precedent, the *House Rules and Manual*, and *House Practice* for citable materials addressed in this narrative.

THOMAS J. WICKHAM, JR.
Parliamentarian

FEBRUARY 8, 2013.

Appendix

On May 20, 2004 the author of this appendix[1] included in his letter of resignation the following paragraph:

"One need only refer to the prefaces of *Hinds'*, *Cannon's* and *Deschler's Precedents* to gain a sense of the extent of the procedural evolution in the House for the first 190 years of the Republic, and then compare with that documented history the nature and pace of more recent changes, to understand the enormity of contemporary developments. Along the way, important matters of constitutional separation of powers and continuity of government have occupied high profile status requiring the attention of my office. Numerous incremental changes have considerably altered the procedural landscape during my career. Examples include increased turnover in Membership, committee seniority status, budgetary disciplines, appropriations practices, an ethics process, televised proceedings, multiplicity of committee jurisdictions, oversight and authorization prerequisites, the impact of changing Senate processes, disposition of matters in conference, review of Executive actions, authorities to recess, to postpone and cluster votes and consolidate amendments, an issue-specific super-majority vote requirement, electronic capabilities, committee report availabilities, five-minute rule and other special rule variations, and the interaction between traditional spontaneity of the House's proceedings and trends toward relative predictability of time constraints and issues presented."

That retirement letter necessarily could not document or particularize the many described procedural changes covering a 40-year career. Thus it becomes important for the 41 chapters in the replacement volumes to publish those precedents—standing rules changes and rulings of presiding officers and other examples of recent custom, tradition, and practice ordered by the House or party caucus if affecting House practice, which comprise a record of both continuity and incremental or even abrupt change during the period covered by the replacement volumes. The prefaces to volume I of *Hinds'*, volume VI of *Cannon's* and volume 1 of *Deschler's Precedents* should be consulted for summaries of the procedural histories of the House during those covered periods. To that end, this appendix is a "snapshot" which will present an anticipatory overview of some of the many areas occurring up to the date of its publication, while not comprising a reference source in itself. The reader must await the subsequent precedent volumes' republication for further analysis beyond this "snapshot" and beyond that which will be contained in future updated versions of the *House Rules and Manual* and of *House Practice*. The appendix will include citations to the year of some

1. Commentary by Charles W. Johnson, III, J.D.

precedents to aid the reader's further research into those other sources. This narrative will highlight some of the contemporary procedural history of the House. It will anticipate and particularize many areas of significance without prejudice to subsequent editorial changes, in a general order consistent with numbering of replacement chapters. Throughout this appendix, references and cross-references to chapters, parts and sections within those chapters will conform to the table of contents derived from the current volumes of *Deschler*, *Deschler-Brown*, and *Deschler-Brown-Johnson Precedents*, subject to subsequent changes in the replacement table of contents.

Volumes 1–18 of *Deschler*, *Deschler-Brown*, and *Deschler-Brown-Johnson Precedents* were published over a thirty-five year period, reflecting precedents from approximately 1928 (or in the case of volume 18 from 1974) to their respective dates of publication. Thus the earlier volumes published in the 1970's will require more years of updating than the more recently published volumes. All the updates will, to the maximum extent possible, include relevant precedents up to the dates of republication. The new analyses, precedents and accompanying Parliamentarian's Notes will be expanded in the introductory portions of each existing chapter, part, or section. For example, numerous references to the Committee on Standards of Official Conduct should be understood to refer to the Committee on Ethics beginning in 2011.

The new materials will cross-reference to other chapters containing overlapping treatments, and the reader will see some suggested cross-references in this appendix. For example, matter relating to the Committee on Rules and special orders of business is currently included in chapter 17 on Committees and in chapter 21 on Special Orders. While in retrospect the organization of some of the original chapters might have been different, it is considered preferable based upon the pressing need for republication and continuity of citation to proceed from those existing formats (at the same time clarifying the content of many existing sections in the revised table of contents and adding a few new sections where not disturbing existing numbers). There were commitments made in some existing volumes that updates and more in-depth analyses will be subsequently provided (*e.g.*, "Party Organization" in volume 1).

Chapter 1—Assembly of Congress.

Chapters 1-6 of *Deschler's Precedents* address an array of precedents, customs, and procedures relating to the organization of the House. They include chapters on the assembly of Congress, enrolling of Members, party organization, House facilities and Capitol Grounds, the House Rules, Journal and *Congressional Record*, and House Officers, officials, and employees.

Meeting and Organization. Statutory and rules changes have been adopted since the terrorist attacks on September 11, 2001, that affect the assembly of Congress. Rules changes have accommodated the need for flexibility in establishment of times and places for meetings and have permitted adjustment of meeting times in event of emergency, alternative meeting places both within and outside the seat of government as authorized by resolution, or by concurrent resolution where necessary to comply with the constitutional requirement of two-House concurrence for convening outside of the District of Columbia (which the House has done in its organization in subsequent Congresses but which the Senate has not). Special *ad hoc* authorities contained in concurrent resolutions of adjournment for convening of both Houses during adjournment periods beyond three days either to a day certain or *sine die* by a joint decision of the Speaker and Senate Majority Leader became standard. The Speaker was given unilateral authority by both Houses to convene the House alone during an adjournment to a day certain after the House had adjourned in 1998 ostensibly to consider any reported articles of impeachment if and when reported by the Committee on the Judiciary. In 2010, the two Houses adopted separate concurrent resolutions providing for an "August recess," one for each House, and giving their presiding officers separate reconvening authority. The Speaker exercised that authority in August, 2010, to recall the House to consider a Senate amendment adopted after the House had adjourned, after the Senate Majority Leader had first exercised his authority to convene and amend the House bill.

In 2011, the House by resolution set up a schedule of pro forma sessions to convene every third day in lieu of an "August recess" adjournment to a day certain pursuant to concurrent resolution. On one of those scheduled days, the Senate convened in a 22-second pro forma session in a building outside the Capitol (the Postal Building two blocks away) out of concern for the effects of a sudden earthquake.

At the end of 2011, the two Houses again separately (the House by special order and the Senate by unanimous consent) established schedules of pro forma sessions to convene every third day the last two weeks of the first session and the first three weeks of the second session. The Senate's pro forma sessions (where no business was to be conducted) was intended to prevent the President from making recess appointments. Nevertheless, on December 23, 2011, the Senate reconvened and by unanimous consent "deemed" passed (when received) a House bill (on a matter in direct disagreement between the two Houses to that point) subsequently passed by the House that day, in spite of the Senate's previous standing order that the Senate could do no legislative business on any of those pro forma days.

The House permitted business at the Speaker's discretion, and established two legislative days on January 3 to comply with the three day and the convening requirements in the Constitution. The House also unilaterally empowered the Speaker to reconvene the House at any time during the remainder of that Congress other than that previously established during any daily adjournment where sudden changes in circumstances so warranted. That authority was invoked once in 2012 to reconvene the House on a Sunday, a day earlier than previously set near the end of the Congress, where the "public interest warranted" completion of legislation.

This standing order authority complemented authority conferred in Rule I clause 12 in 2003 for the Speaker to change the convening of the House within a three-day period when notified by the Sergeant-at-Arms of the imminent impairment of the place of meeting. The standing rule authority was twice invoked, once to an earlier time in 2009 prior to arrival of an impending snow storm, and once in 2012 to a later time on a pro forma day due to hurricane conditions. By contrast, the Senate convened at a later time that day in 2012 than previously ordered with no stated record of authority presumably granted by a resolution in a previous Congress.

In 2012, the two Houses returned to some use of concurrent resolutions for adjournments to days certain after the Senate and President came to an accommodation on the use of recess appointments, but following the filing of at least four lawsuits challenging the President's recess appointments that year to the National Labor Relations Board of three of its five members (See, *e.g.*, *National Ass'n of Manufacturers v. NLRB*), No. 12–05086 (D.C. Cir. 2012).

While the Clerk for the previous Congress serves as presiding officer for the convening of a new House, there were new rules adopted in 2003 (Rule I clause 8) permitting the Speaker, once elected, to name other sworn Members in a listed order, rather than the Clerk, who would serve as Speakers pro tempore in the event of vacancy in the office of Speaker, solely to preside over the election of a new Speaker—it being considered preferable to have a sworn Member preside wherever possible.

Election of Speaker and Opening Day. The election of Speaker in 1997 was challenged by an asserted question of privilege directing that the House elect a Speaker pro tempore during continuation of an ethics investigation of the majority party's candidate (the past Speaker) in the new Congress, but was held by the Clerk (sustained by tabling an appeal) not to take precedence under the statutorily and precedentially mandated election of a Speaker. Votes for candidates other than those nominated by the two-party caucuses were cast on several occasions, including votes for non-Members, since the Speaker need not be a Member of the House but must receive a majority of all votes cast for a person by surname.

In 2007, the first female Speaker in the history of the House was elected. Extended floor privileges and the participation of children were unique aspects of that historic occasion.

A separate heading was inserted in the opening-day *Congressional Record* documenting business conducted following *sine die* adjournment of the previous Congress and not included in prior editions of the *Congressional Record*. Such material is separate from business required by law or precedent to be conducted by the Speaker on opening day. This final business of the prior Congress includes resignations, referrals of communications, and appointments effective until noon on January 3 in the previous Congress.

With respect to the organizational and legislative business of opening day of a new Congress, there were many developments governing procedures applicable under general parliamentary law prior to adoption of the standing rules, including implicit application of decorum standards contained in those rules. Use of the electronic voting system by the Clerk became traditionally permitted on the quorum call by States and on other yea and nay votes prior to adoption of the rules. Minority party motions to commit the rules package to a new *ad hoc* select committee with instructions to report back to the House forthwith either an alternative set of standing rules or a perfecting amendment to those proposed by the majority, or a special order of business regarding specific legislation, were permitted with increased flexibility. In the past, such motions were required to specify a length of time to permit the select committee to actually consider the changes.

Beginning in 1993, minority attempts to preempt or prejudge the majority rules resolution with questions of privilege (*e.g.*, separately questioning the constitutionality of a proposed rule) were denied preferential status under the proposition that only one question of privilege—the majority rules package itself—could be pending at one time, to be governed by the Speaker's discretionary power of recognition. A vote on the question of consideration could symbolize constitutional concern about a portion of the rules package where no point of order would lie (*e.g.*, challenging the validity of the reduced quorum requirement in event of catastrophic disabilities in 2005). In 1993, 2011 and 2013 a permissible motion under general parliamentary law to refer the rules package to a select committee to examine a particular constitutional question therein (voting rights for Delegates in the Committee of the Whole) was offered without challenge immediately upon consideration of the resolution and was tabled without debate. The availability of this secondary motion established that the traditional motion to commit offered after the previous question was ordered was not the only motion available to refer the matter to an *ad hoc* select committee with instructions.

New majority parties in 1995 and in 2007 on opening day prior to adoption of standing rules brought special order resolutions from their respective

caucus or leadership to the floor as proper preliminary matters through the Speaker's power of recognition, which governed subsequent consideration of the rules package made in order thereby. The resolutions permitted divisions of the question on some new changes, and/or permitted immediate consideration of particular legislative business including bills newly introduced on that opening day, under closed rules preventing amendment. This technique has enabled the majority party to highlight its immediate legislative agenda without reliance on general parliamentary law or utilization of the Committee on Rules (created itself in the same resolution) to subsequently report special orders of business on those subjects. In 2011, a separate order in the rules package permitted a specific motion to suspend the rules on the next day, a Thursday, on a resolution reducing costs of operation of the House via Member, leadership and committee staff allowances.

Particularly unique was the introduction of the rules package on opening day in 2007 without the prior formal imprimatur of the majority caucus' recommendation. Rather, the organizing rules resolution emerged from the majority leadership's offices and was made in order by a special order called up by the presumptive chairman of the Committee on Rules (not yet established), establishing procedures for consideration of the rules resolution. Upon that special order's adoption, the rules package itself was offered by the Majority Leader, without there having been amendment opportunity in the majority caucus—a departure from the consistent tradition of majority caucus participation prior thereto. In 2011, the new Republican majority reverted to the traditional use of the party conference to recommend rules changes.

The rules resolutions began to recite the readoption of rules contained in laws previously enacted as exercises in rulemaking and applicable at the end of the previous Congress, where their provisions were intended to extend into subsequent Congresses. This covered expedited procedures in existing law on numerous subject including consideration of joint resolutions of disapproval of executive actions. Also concurrent resolutions on the budget which otherwise would expire with a Congress were carried forward by explicit language to avoid uncertainty until a new budget resolution was adopted. In 1999, recodification of the rules incorporated that recitation into Rule XXIX itself. In 2011, when no concurrent resolution on the budget had been adopted in the prior Congress, the chairman of the Committee on the Budget was given discretionary authority in the rules package to insert in the *Congressional Record* spending levels for the current fiscal year which would be considered binding on the House for the remainder of that year (see chapter 41 on Budget Process).

Chapter 2—Enrolling Members, Administering the Oath.

Two recent election contests were of major significance. In the 1985 contest of *McCloskey v. McIntyre*, neither candidate was sworn on opening day

pending a committee investigation despite contestee Rick McIntyre's possession of a certificate of election which was unimpeached by direct evidence from the certifying official, (the Secretary of State). The Majority Leader relied upon the 1961 election contest of *Roush v. Chambers* (discussed in *Deschler's Precedents* Ch. 9 § 59.1), also from Indiana, where neither candidate was sworn at the organization of the House pending a committee investigation and recount, because the House had received evidence from the Secretary of State himself prior to opening day that the certification of election showing George Chambers the winner by 12 votes had been improperly prepared by him and was not accurate. The 1985 action by the majority was thus not justified by a precedent squarely on point, as addressed in debate on that occasion, and represented a refusal to temporarily seat the contestee, who possessed an apparently regular certificate of election, while the committee conducted an investigation and recount. In both the 1961 and 1985 contests, the contestee with the certificate was never sworn, and the contestant—a majority party Member—was eventually seated after a complete recount by the House committee. In the *McCloskey* case, the minority party repeatedly posed questions of privilege in the House during the committee investigation, demanding that the contestee with the certificate be temporarily seated. When the House tabled those resolutions, the minority party walked out of the Chamber in protest. The House had not distinguished between final seating, where the House has the constitutional responsibility to determine the election result to the extent of possibly unseating the certified Member and seating the contestant, on the one hand, and temporary seating of the Member possessing a certificate valid under State law, pending a House inquiry, on the other.

In *Dornan v. Sanchez*, the 1996 contest brought by contestant Bob Dornan, a majority party candidate (and former Member), was not dismissed by the House for almost two years until the very end of the 105th Congress. The contest continued despite the failure of a prolonged committee investigation to reveal irregularities or fraud which would change the result, and despite repeated questions of privilege brought by the minority party calling for the dismissal of the election contest and final seating of the contestee. Debate recalling the partisan nature of those contests and the determination not to perpetuate residual ill-feeling led the House in 2007 to temporarily seat a certified Member-elect despite some compelling evidence of electronic voting irregularities. That evidence ultimately was not persuasive as the House upon report from the Committee on House Administration subsequently dismissed the contest rather than declare a vacancy.

Chapter 3—Party Organization.

Various rules changes within the party caucuses supplemented the 1974 rules change effective in 1975 that made the composition of committees dependent on privileged resolutions offered by direction of the party caucus or

conference, and eliminated rules which had previously set overall committee sizes for each Congress (Rule X clause 5(a)). In 1983, membership on standing committees was made contingent on continuing membership in a party caucus or conference that nominated the Member, and a mechanism was formalized for the automatic vacating of a Member's election should his party relationship cease. The role of those party entities in both the initial nomination and continuation of Members on standing committees, in filling vacancies, and in changing the composition of committees, including potential removal once elected (made privileged in 1983) was thus made specific in standing House rules. For the first time in 2006, a party caucus brought a privileged resolution to the floor removing a Member from an "exclusive committee" (the Committee on Ways and Means), although retaining his position on a non-major committee. While any Member may offer a question of the privileges of the House to remove a Member from a committee if stated as a potential punishment for disorderly behavior, and while both party caucuses have rules suggesting the automatic replacement of indicted or convicted committee chairmen, subcommittee chairmen, or ranking minority party committee members, it marked the first occasion of a formal caucus recommendation for removal not based on a punishment of a Member under criminal indictment. (Rep. William Jefferson, of Louisiana, had not yet been indicted and was subsequently reelected to the succeeding Congress. In that Congress, he was elected to and not removed from another committee (Committee on Small Business) despite being indicted).

This appendix will only briefly summarize the considerable extent of caucus and conference rules changes since chapter 3 was first published, and their impact on comparable House rules changes over that period even prior to 1971 through the date of republication. Formalization of party organization procedures (primarily from the Democratic Caucus as the majority organizing party for most of that period) reflected an increasingly active and complicated role played by those entities in matters of organization (except in 2007 and 2009), procedure and policy. The "reform movement" of the Democratic Caucus, spearheaded by the Democratic Study Group, was primarily effective during the six-year period 1969–1975 in implementing caucus rule changes, some of which translated into House rules changes. Until the mid 1970s, chairmanships were often subject to an application of a seniority system, with appointment rather than election of subcommittees.

From the early 1970s through 1994, power in the House was spread more equitably and those who had power became more accountable. The revival of the long-dormant Democratic Caucus as the basic determinant of majority party policy and organization, its use to democratize House and caucus procedures and to achieve other reforms, and the assurance of greater accountability and responsiveness of those who gained power via the seniority system by requiring an automatic secret ballot vote on committee chairman at

the start of each Congress, were all keys to the reform movement. Term limits on committee chairmen imposed by a Republican majority beginning in 1995 and removal of the requirement for automatic secret ballots for chairmen nominated by the Steering Committee (instead permitting five Members to order secret voting - a procedure not utilized to date) restricted that trend.

Following the era of "King Caucus" from 1910 to 1920, the Caucus had gradually fallen into disuse and the seniority system had taken hold. Thus during the 1950s and 1960s the Caucus met only for a brief pro forma session at the beginning of each Congress to elect the Democratic leadership and other House Officers, and to adopt a resolution designating the Democratic members of the Committee on Ways and Means as the majority's Committee on Committees. That party nominating committee would then recommend the filling of committee vacancies and bring committee membership lists, with the senior-most Member designated as chairman and other members then listed by length of consecutive service on the committee directly to the House floor for pro forma official ratification. Caucus rules were changed in January, 1969, to require monthly meetings of the Caucus, giving individual Members the right to bring matters before the Caucus for debate and action, and reestablishing Caucus control over committee assignments by requiring that the Committee on Committees receive Caucus approval of committee assignments before taking them to the House floor. These changes permitted use of the Caucus to win many other reforms which altered the power structure, opened committee meetings, and gave rank-and-file Members a greater voice in the legislative process. For example, the Caucus established the Committee on Organization, Study and Review in 1971 to study the seniority system and other party and House procedures. In turn, recommendations from that Caucus subunit requiring an automatic secret ballot vote on committee chairman were implemented and had immediate impact. Some long-time chairmen became more responsive to members of their own committees and to Members generally. Others were replaced by secret ballots beginning in 1975. The autocratic powers of committee chairmen also were curbed by reform of committee operations and procedures. For example, instead of the chairman deciding who would be subcommittee chairmen and members, election of subcommittee chairman by the Democratic (majority) members of each committee caucus was required; members were further enabled to choose their own subcommittee assignments. A so-called "bill of rights" was adopted to secure the power and authority of subcommittees and their chairman, assuring them of a staff member of their own choosing and an adequate budget.

Other Democratic Caucus reforms were designed to strengthen the leadership. These included creation of a Steering and Policy Committee chaired

by the Speaker, with the power to nominate committee chairmen and make committee assignment nominations (an authority taken away from Committee on Ways and Means Democrats), and giving the Speaker sole power to nominate the majority members and chairman of the Committee on Rules so that they would be fully responsive to the leadership.

A review of Republican Conference rules and procedures during the comparable period is less revealing, as that party organization remained in the minority from 1955 until 1995 and was less proactive in suggesting reform of party and House procedures and organization. It did adopt comparable secret ballot and committee assignment limitations during the same time frame, roughly mirroring changes in the Democratic Caucus rules. The Republican Steering Committee was given similar authority to the Democratic Steering and Policy Committee to bring standing committee nominations to the full party body, subject to possible secret ballots (if demanded by five members) and ratification there. A significant Republican organizational reform came in 1995, when the new majority party in its conference rules and in House rules, imposed term limits of six years on committee and subcommittee chairmen. A separate four-term limit on the office of Speaker was later repealed in 1999. An exception for the Committee on Rules chairman was made in 2005 and again in 2011. The Democratic Caucus, then the minority party, made no comparable attempt to change its rules to term-limit its own full and subcommittee ranking minority members, and House rules did not address ranking minority status from 1995 forward. When the Democratic party regained the majority in 2007, it retained the standing House term-limit rule which had been in place during the twelve years of its minority status, but its own Caucus rules remained silent on the issue. In 2009, the Democratic rules package repealed the House rule on term-limits for chairmen. In 2011, the Republican rules package reinstated the House rule on three-term limits for chairmen of full and subcommittees (again including the Committee on Rules exception), and in its Conference rule required the counting of that service to include consecutive service as ranking minority members.

At its organizational meeting in 2006 and in 2007, the Democratic Caucus did little to formally change its rules beyond technical changes to adapt them to majority status. Combined with the majority caucus' declination in 2007 to consider and to ratify a proposed House rules package which had emanated from elected leadership offices prior to formal presentation to the House on opening day, control by elected leaders on matters of party and House organization was enhanced. Nevertheless, the importance of the early organizational caucus and conference had been formally recognized beginning in 1994, when the House adopted a resolution subsequently enacted

into permanent law providing funding for Members-elect and staff to attend those meetings at any designated time between the election and beginning of the new Congress, and to conduct orientation programs.

Both parties formalized and enlarged their campaign committees—the Democratic Congressional Campaign Committee and the National Republican Congressional Committee—as part of the party caucus and conference rules.

Various informal organizational entities (some bipartisan in nature) came into existence and later were terminated or lost congressional staffing, office space, and funding. With the elimination of the Consent Calendar in 1995, and then the Corrections Calendar in 2005, (which had replaced the Consent Calendar and actually was given an "office" by resolution), the "Official Objectors" who oversaw those calendars were discontinued. The Official Objectors for the Private Calendar were retained (with the exception of the 111th Congress), since that calendar remained in House rules.

Informal party groups which had come into existence from 1979 through 1994 such as the Democratic Study Group and the Republican Study Committee, and other "Legislative Service Organizations" such as the Congressional Black and Hispanic Caucuses, the Congressional Caucus on Women's Issues, and the House Travel and Tourism Caucus, lost public funding in the House beginning in 1995, when the new Republican majority in its rules package prohibited the use of Members' office allowances to be contributed toward such groups. Instead, former regional, ethnic, and other special interest LSOs were allowed to convert their operations into informal networks of Members with no separate personnel, office space, or funding as congressional Member organizations (CMOs), which could share existing official staff resources but were regulated by the Committee on House Administration.

Floor Leaders. While the election of floor leaders by secret ballot in both party caucuses and the announcement of their elections to the House at its organization remained basically unchanged since the publication of volume I, there were various enhancements of their respective roles. Both parties' rules required the step-aside of the floor leader (like committee chairmen) upon indictment for a felony, and removal from that office upon conviction. Procedures for replacements in those circumstances were put in place.

In the 1970s, the positions of elected floor leaders were nowhere mentioned in the standing House rules. As the rules subsequently evolved, the roles of floor leaders as official members of the Bipartisan Legal Advisory Group were formalized, as were their consultative roles with the Speaker on committees' oversight plans at the beginning of each Congress, and their roles as recipients of information (with the Speaker) about catastrophic

quorum failures. Special prerogatives not enjoyed by other Members (*e.g.*, to offer resolutions as questions of privilege without advance notice, to be recognized for longer periods of debate despite time limitations, and to offer or designate to offer preferential motions to rise and report general appropriation bills in order to prevent limitation amendments), have been embodied in rules or established by custom. The Minority Leader or his designee was given preference in recognition to offer proper motions to recommit with instructions which could not be limited by the Committee on Rules.

Various statutes enhanced the authority of the Minority Leader to make appointments to boards and commissions which the Speaker was not free to ignore. House rules now specifically refer to the presence of an unspecified number of party leadership floor staff on the House floor upon approval by the Speaker.

Since 1994, the allocations of time for special-order speeches, including "morning-hour" five-minute speeches, were placed in the control of the floor leaders by order of the House in each Congress subject to the Chair's recognition. Five-minute speeches at the end of the day requested by individual Members were discontinued in 2011 and were replaced by longer "morning hours." Majority floor leaders were from time to time appointed by the Speaker beyond ceremonial roles to legislative select and conference committees to a greater extent than previously noted, such as to chair a Select Committee on Homeland Security. All of these enhancements elevated the roles of Majority and Minority Leaders in the standing rules and orders. In two Congresses (1988 and 2004), minority leaders from each party published "Minority Bills of (Procedural) Rights" to complain of unfairness by the majority.

Majority Leader's Scheduling of Legislative Business. In 2011, the Majority Leader's office began to circulate "legislative protocols" to be followed by the leadership in the scheduling of business in the House. While not printed in the *Congressional Record* and while constituting merely informal guidelines for the consideration (not the introduction) of legislation, they were noteworthy for their procedural precision. For example in the 112th Congress, the protocols covered such subjects as: (1) a "sunset requirement" date certain for ending of a program; (2) "borrowing justification" to be furnished during debate; (3) "elimination" of "such sums" discretionary authorizations; (4) "cut-go for discretionary authorizations" requiring termination or reduction of a current program of equal or greater size; (5) "availability of measures considered under suspension of the rules" for three days electronically whether or not reported; (6) "Member presence during consideration of sponsored measures" on the floor; (7) "commemoratives" prohibiting consideration of parochial celebration measures under suspension of

the rules in conjunction with a party conference rule; (8) "debate on constitutionality of proposed measures" permitting 50 Members to petition Committee on Rules to include separate 20-minute debate on constitutionality of a measure under a special order; (9) "availability of major amendments self-executed ("hereby adopted") by the Committee on Rules" requiring three-day availability of such major policy amendments electronically, before special order is considered, indicating sponsor; (10) the "Armey protocol" on appropriations requiring explanation of waivers in special orders protecting legislation within jurisdiction of authorizing committee; and separately (11) reiteration of party conference rule 28 guidelines on scheduling under suspension of the rules.

A significant change in party leadership selection was the election of Majority Whip beginning in 1987. Previously the Majority Whip was appointed by the Majority Leader after consultation with the Speaker. The position of Minority Whip remained an elected one in each party as it had been the minority party leadership equivalent of Majority Leader. Both parties' rules began to require secret ballot elections to those positions, and they became more independent sources of political power. In turn, both parties' rules provided an elaborate system of deputy and regional whips as well. The House standing rule (Rule II clause 8, first adopted in 1993), provided a role for the Bipartisan Legal Advisory Group for the "majority and minority leaderships" which has been interpreted to include the two elected party whips.

The five party-elected leaders of the House became entitled to greatly enlarged office staffing allowances consisting of certain statutory positions as well as lump-sum appropriations. The growth of leadership staff, especially compared to committee staff, was part of a recentralization of power within those leadership offices.

Chapter 4—House Facilities and Capitol Grounds; Capitol Visitor's Center.

The use of the Capitol Grounds for specified non-profit, non-political events was the subject of a policy statement emanating from the House Committee on Transportation and Infrastructure, the committee of jurisdiction over various concurrent resolutions governing the use of the grounds adopted during the covered period.

The use of the Hall of the House for joint House-Senate religious ceremonies was suggested by the House in 2001 in the wake of the September 11 terrorist attack, but the concurrent resolution authorizing a joint religious reconciliation ceremony was changed by the Senate and then adopted by the House to convert the venue to the Capitol Rotunda—a more proper venue considering the Senate's involvement and what would have been a departure from policies dating back to the 1830s which precluded use of the

Hall of the House for religious purposes and even precluded the Speaker from entertaining a suspension of that rule.

Classified briefings in the Chamber were permitted by Speakers during recesses of the House to which all Members who had signed the oath of secrecy as required by a specific House rule were invited. Several recent secret sessions of the House were held through adoption of a motion under Rule XVII clause 9 or by unanimous consent (the first since 1830).

Members have access to the Hall of the House during recesses and adjournments, but could not use that facility to conduct "rump" sessions simulating the House in session or as caucuses without the Speaker's approval. On two occasions, in 1995 (during a partial government "shutdown" for lack of appropriations) and in 2008 (during the August recess), minority Members remained on the floor during a recess or adjournment without the necessary permission of the Speaker to conduct impromptu caucuses as symbolic protests against failures to conduct business. In 2011, minority Members attempted to demand recognition on a pro forma day after the Speaker had left the Chair. On these occasions, television cameras, microphone amplification, and television lights were turned off consistent with House rules. The Speaker's chair has been considered off limits during all recess and adjournment periods since 1995 following its improper use to simulate a presiding officer or an inappropriate caricature of the Speaker. While no official record was kept of those gatherings, private or media recording devices were improperly utilized. The Speaker's use of his/her authorities under Rule I to prevent the Chamber from being used other than for actual sessions and party caucuses as provided in Rule IV was thereby affirmed. Beginning in 2009, the "static display" condition of the Chamber when the House was not in session was announced as part of the Speaker's decorum statement to ban any image, *ad hoc* accounts, or composition of events which might be perceived to carry the imprimatur of the House.

A significant change in House rules and procedures was the advent of radio and television coverage of House proceedings, including their impact on the spontaneity of House proceedings, Members' conduct and the resulting information flow to the media and the public. In 1977, the House adopted a privileged resolution reported from the Committee on Rules to provide a system of closed-circuit viewing of House proceedings and for the orderly study and development of a broadcasting system under the Speaker's control. Under Rule V adopted in 1979 as the result of the Speaker's directive of 1978, the Speaker directs the unedited audio and visual broadcasting and recording of the proceedings of the House, to be conducted by employees of the House, and not to be utilized for commercial or political purposes. On one extraordinary occasion in 1984, the Speaker directed periodic wide-angle

television coverage of all special-order speeches at the end of legislative business, with captioning to show the completion of legislative business. This decision was held to be within the Speaker's authority, although implemented without notice in response to partisan utilization of televised coverage by rhetorical speeches and gestures suggesting to the viewing audience that legislative business was being conducted without the participation of unwilling Members, who were in fact absent. Beginning again in the 103d Congress the Speaker prohibited wide-angle "panning" coverage except during votes but continued the caption at the bottom of the screen indicating that legislative business had been completed, but to be cut off at midnight or after four hours, whichever was earlier. In 2011, the cut-off time was shortened to 10:00 p.m., while time for five-minute morning-hour debate was extended.

Rules were adopted restricting former Members' admission to the floor of the House during its sessions if they were lobbyists or had personal or pecuniary interest in any matter pending before the House or its committees. One former Member was banished from the floor on a question of privilege for a breach of decorum, even though he was the contestant in a pending election contest in 1997. Limits were placed in Speakers' opening-day decorum statements of policy on the number of leadership, committee and individual Members' staff (only during the pendency of the Member's amendment) permitted on the floor, and identification badges were required.

The use of all personal electronic office equipment on the House floor was formally prohibited in 1995, codifying past Speakers' rulings in response to the proliferation of electronic communications into and out of the Chamber. That rule was modified in 2003 to prohibit only the use of wireless telephones or personal computers, thereby permitting for the first time the use of text-based message receiving and sending devices. The rule was modified again in 2011 to permit some personal devices but not personal computers or audible electronic devices, all at the Speaker's discretion as a decorum matter. To that extent, the tradition that the House floor should not only be a place for proper decorum, but also should remain a "sanctuary" for Members to enable their deliberations to be uninterrupted by outside persons, was affected.

House Galleries and Buildings. In response to a disruptive demonstration in the gallery, the Chair noted for the *Congressional Record* the disruptive character of the demonstration and enlisted the Sergeant-at-Arms to remove the offending parties in 2002. The Speaker may quell demonstrations in the gallery before the adoption of the rules as in 1995. Admonitions from the Chair regarding manifestations of approval or disapproval of proceedings by visitors in the gallery were reiterated (*e.g.*, 1990).

Naming and utilization of two adjacent buildings as the “O’Neill” and “Ford” House Office Buildings, named after former Speaker Tip O’Neill and former Minority Leader and President Gerald R. Ford began in 1990. The Ford Office Building remains in use, but the O’Neill building was demolished in 2002. Subsequently a law passed in 2012 named another federal building on the House side of the Capitol the Thomas P. O’Neill, Jr. Federal Building.

On December 2, 2008, a ceremony was held in the Capitol Visitors’ Center on the occasion of its opening led by the leadership of both Houses. The 110th Congress had adjourned *sine die*, and the proceedings were not printed in the *Record*. The planning and construction of the Capitol Visitor’s Center on the East Front of the Capitol and its supervision was the subject of various statutory enactments.

Chapter 5—House Rules.

In the 106th Congress, the standing rules of the House were recodified for the first time, reorganizing their sequence and reducing their number (without substantive change) from 52 to 28 rules. The recodification was included in the adoption of the rules resolution on January 6, 1999, as the work product of a bipartisan task force and the Parliamentarian, and was separately adopted to demonstrate their nonpartisan formulation prior to substantive rules changes recommended by the majority party conference considered immediately thereafter. The recodified format arranged the rules by addressing the organization and operation of the House as follows: the duties of Officers and Members (Rules I–III), administration of the House (Rules IV–VI), institutional prerogatives (Rules VII–IX), committees (Rules X–XI), consideration of legislation (Rules XII–XXIII), conduct of Members, Officers, and employees (Rules XXIV–XXVII), and Rule XXVIII—the “Gephardt” rule. The latter rule had required automatic passage of a joint resolution changing the public debt limit upon adoption of a concurrent resolution on the budget, but was repealed in 2011 and the number left vacant. Rule XXIX was amended in 2009 to eliminate gender specific references and incorporated relevant provisions of law into that 111th Congress’s rules. Many references were changed in the recodification to incorporate accepted understandings without substantive change. For example, the concept of a “privileged question” or “privileged motion” was regularized, replacing sundry references to matters “of highest privilege,” “in order at any time,” or “shall always be in order.”

Beginning in 1975, the *House Rules and Manual* was expanded by adding section 1130, to textually include statutorily enacted rules changes and relevant precedents where under Congress from time to time reserved to itself

an absolute or limited right of review by approval or disapproval of certain actions of the executive branch or of independent agencies. Those laws envisioned some form of congressional action falling into one of three general categories: (1) action by both Houses of Congress on a bill or joint resolution requiring presidential signature; (2) action by one or both Houses on a simple or concurrent resolution; and (3) action by a congressional committee. Although provisions in the first category which remain viable were carried forward each Congress in Rule XXIX, provisions in the latter two categories should be read in light of a landmark Supreme Court decision of *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). In that case, a law, contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House, was held unconstitutional as in violation of the presentment clause of article I, section 7 of the Constitution and the doctrine of separation of powers.

Many "legislative procedure" or "congressional disapproval" statutes prescribe special procedures for the House (and/or Senate) to follow when reviewing executive actions. These procedures, termed "privileged procedures" technically are rules of the House or Senate enacted expressly or implicitly as an exercise of the House or Senate's rulemaking authority. At the beginning of each Congress, it has become customary for the House to reincorporate by reference in the resolution adopting its rules (and now in Rule XXIX itself) such "legislative procedures" as may exist in current law. Nevertheless, as either House may change its rules at any time, the Committee on Rules may report a resolution varying the statutorily prescribed procedures for the House. Many of the carried statutes provide expedited procedures in the Senate, which is within its standing rules less able than the House to waive or change its rules.

To continue other jointly adopted rules in place, it also became customary to readopt provisions contained in concurrent resolutions in effect at the termination of the preceding Congress, primarily the concurrent resolution on the budget if there was one in effect, in order that its levels and other prescribed procedures may, as an exercise in rulemaking, remain applicable in accordance with the Congressional Budget Act of 1974 until the adoption of a subsequent budget resolution or some other specific House action.

Beginning near the end of the 20th century, the House began to incorporate standing order, separate order or special order paragraphs or sections in the opening day rules package to include directives or procedures for that Congress not suitable for inclusion in the standing rules or on an experimental basis. These included procedures (some subsequently incorporated in standing rules) to enforce budget disciplines for spending reduction, authorities to make appearances in court proceedings, adjustment of numbers of

subcommittees, and special orders for structured consideration of specified legislation prior to organization of the Committee on Rules. That trend proliferated to the date of this writing.

In 2011, Congress enacted the Budget Control Act which created a Joint Select Committee on Deficit Reduction, empowered to recommend legislation to both Houses by a date certain for expedited consideration without amendment, but also providing that any changes to House rules or to Senate standing rules recommended by that joint committee which might become law (such as the establishment of another joint committee under similar expedited procedures) should be considered merely advisory. That joint committee never filed a report during its existence.

Judicial Authority with Respect to Rules. The limited role of the Judiciary under the doctrine of "political questions" in construing the rules of the House was involved in the case of *Michel v. Anderson*, 14 F.3d 623 (D.C. Cir. 1994). In that case, a Federal court granted minority Members of the House standing to contest the constitutionality of a new rule in 1993 which permitted Delegates and the Resident Commissioner from Puerto Rico to vote in the Committee of the Whole. The rule (which was repealed in 1995, reinstated in 2007, and repealed again in 2011 upon change in party majorities) was held valid, as it required an immediate reconsideration of any vote to be cast only by Representatives in the full House where the collective vote of the Delegates was decisive in the Committee of the Whole. The issue of standing, where the effect of Members' votes might be diluted, was an important exception from the general proposition that the courts would not grant Members standing to collaterally challenge either House's exercise in rulemaking unless it ran afoul of other constitutional provisions bearing on the operation of Congress and on Members' responsibilities.

Another Federal court of appeals decision held that the establishment in House rules of the Office of Chaplain in the House did not violate the First Amendment as an establishment of a religion, relying in part upon the House rule which specifically removes the opening prayer from business of the House requiring a quorum and therefore makes Member attendance at the opening prayer purely voluntary (*Murray v. Buchanan*, 729 F.2d 689 (D.C. Cir. 1983)).

Continuing variations of the Committee on Rules' exercise of its authority to recommend rules changes following adoption on opening day were demonstrated. The evolution of overlapping jurisdiction as between the Committee on Rules and the Committee on the Budget over the congressional budget process, and the relationship between statutory enactment of rules, especially in areas of congressional review of executive actions, and the ongoing constitutional right of the House to change those rules unilaterally as

they relate to House procedures, were pertinent examples. Rules changes considered by unanimous consent and House reaffirmation of free-standing directives contained in simple House resolutions adopting rules and standing orders from the preceding Congress were later codified into the standing rules, such as Rule XXI clause 9 on earmarks being cognizable by the Committee on Ethics (Rule XI clause 3).

Beginning in 1975, the Committee on Rules was required to include in any privileged report on a resolution proposing to amend (but not merely to temporarily waive) a standing rule a "Ramseyer" showing a comparative print of the present rule and the proposed change (Rule XI clause 3(g)). Since 1995, Rule XII clause 6(g) required the Committee on Rules in its reported special orders to specify "to the maximum extent possible" in the resolution the object of any waiver—a rule normally not observed as special orders usually contained general waivers of all possibly applicable points of order. At times general waivers included specified exceptions where the leadership did not want waivers to appear to be avoiding fiscal disciplines such as the "earmark" rule (Rule XX clause 9), and the PAYGO rule (Rule XXI clause 10, adopted in 2007 and amended in 2011 to become the CUTGO rule). The Committee on Rules' authority to recommend that amendments to bills be prohibited in the Committee of the Whole was limited from 1995 to 2011 with respect to motions strike out unfunded mandates, to the extent that the Committee was required under former Rule XVIII clause 11 in 2005 to specifically prevent those amendments and not merely to contain a general prohibition against amendments. That rule was repealed in 2011. The restriction on the Committee on Rules' authority to dispense with Calendar Wednesday was removed in 2009 and its authority to limit motions to recommit with instructions was narrowed to only guarantee minority instructions to bills and joint resolutions with "forthwith" amendments.

Regarding the role of the Chair in construing House rules and orders, several recent precedents reiterated that the Chair would not construe a pending special order or rules change, leaving it to the House in debate to construe its proposed terms and confining the Chair's interpretation to rules already adopted so as not to render anticipatory or hypothetical rulings. Where waivers of points of order against amendments were accomplished by the "self-executing" adoption of those amendments upon adoption of the pending special order from the Committee on Rules and in advance of actual consideration of the (amended) bill, rulings in 1993 held that it was possible to avoid points of order against the special order itself for accomplishing the waiver (since the self-executed amendment was not then separately before the House to enable its consideration to be challenged), even though its subsequent separate consideration as an amendment to the bill and a point of order at that stage was also avoided.

Journal. Under the rule (Rule I clause 1) in effect from the 92d through the 95th Congress, any Member could offer a privileged nondebatable motion that the Journal be read pending the Speaker's announcement of his approval and before agreement by the House. Beginning in 1977, no such motion became admissible unless the House first rejected the Speaker's approval of the Journal, and in the event that the motion to read was then adopted, the Journal was then open to amendment which was debatable under the hour rule. In modern practice, while a vote on the Speaker's approval of the Journal can be postponed until any time on that day as chosen by the Speaker, the vote whenever taken is almost always for a strategic purpose (*e.g.*, as a delaying tactic, or by the party demanding it to ascertain a quorum or to use the voting time for whipping on the floor), and not to force an actual amendment of the Journal.

Since the advent of televised proceedings in 1978, no court determination about the primacy of the Journal as the official record of business of the House has been rendered.

Beginning in the 104th Congress in 1995 upon election of a new party majority for the first time in forty years, a new Rule XVII clause 8 was adopted requiring that the *Congressional Record* be "a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member making the remarks." This verbatim requirement resulted in several rulings and new policies and orders that the Official Reporters strictly observe compliance. Clause 8 required that unparliamentary remarks can only be deleted by permission or order of the House and not by the Member uttering them, so that words "taken down," read to the House and ruled out of order, would be deleted from the portion of the speech in which uttered upon subsequent order of the House, but would remain in the *Record* as part of proceedings conducted by the Chair. The clause established a standard of conduct cognizable by the Committee on Ethics. These precedents included a limit on the Chair's own ability to revise a ruling for precedential accuracy. A unanimous-consent request to revise and extend remarks permitted only technical corrections. Inclusions of additional remarks not actually uttered must appear in a distinctive typeface (replacing a temporary "bulleting" format) so that a Member making any substantive correction would find both versions in the *Record*, but a Member may not remove remarks actually uttered absent an order of the House. Several recent rulings demonstrated that the Chair would not entertain unanimous-consent requests for insertions of colloquies into the *Record* as if spoken, or even in distinctive type style, requiring instead that each participating Members must separately utter or insert statements. Remarks held irrelevant by the

Chair may be removed from the *Record* by unanimous consent only, but remarks uttered while not under recognition (such as when a Member fails to heed the gavel at the expiration of debate time or interjects without being recognized), would not appear in the *Record*. To ensure that the arguments recorded on a question of order were those actually heard by the Chair before ruling, the Chair would not entertain a unanimous-consent request to permit a Member to revise and extend remarks on a point of order in the *Record*.

Records of the House. In the 101st Congress, the House adopted Rule VII regarding retrieval of noncurrent records. That rule provided special procedures supervised by the Committee on House Administration for the public availability from the National Archives of House records after 50 years, if related to the personal privacy of a living individual, personnel records, or closed committee hearings, and after 30 years for other records. In 1991, an order of the House was held to be required for the release of noncurrent records of the House not otherwise covered by specific orders for availability.

In 1992, the House adopted a resolution called up as a question of privilege authorizing executive session testimony before a Select Committee on Covert Arms Transactions with Iran in a prior Congress to be released to a Federal criminal court in a perjury prosecution in response to a subpoena duces tecum. In 2012, the House adopted a resolution authorizing back-up audio records of the Official Reporters of Debates of an open committee hearing to be made available to the court upon request of the Department of Justice in its prosecution of alleged perjury, false statements and obstruction of Congress during a committee investigation of use of steroids in professional sports in a prior Congress. (*U.S. v. Clemens*, No. 10–223 (D.D.C. 2012)). These were two examples of affirmative formal House responses to requests for noncurrent House documents.

Chapter 6—Officers, Officials and Employees.

The Speaker. In 2003, a symposium on "The Changing Nature of the House Speakership: The Cannon Centenary Conference" sponsored by the Congressional Research Service and the Carl Albert Congressional Research and Studies Center was held in the Cannon Caucus Room. Those proceedings were printed as House Document 108–204 by the adoption of H. Con. Res. 345 in the 108th Congress. The proceedings document the institutional and political evolution of the speakership from Carl Albert (1971–76), Thomas P. "Tip" O'Neill (1977–86), James Wright (1987–1989), and Thomas S. Foley (1989–1994), through Newt Gingrich (1995–1998) and include comments of J. Dennis Hastert (1999–2006) and the participation of the latter

four Speakers along with commentary from former Members and others. These documents demonstrated a rapid evolution of the speakership away from the institutional role of presiding officer (most recent Speakers seldom presiding over proceedings), and toward a combined emphasis on party leadership, agenda setting, public relations, and fundraising.

The resignation of Speaker Jim Wright in June 1989, followed an investigation by the Committee on Standards of Official Conduct into allegations of his official misconduct but prior to any report to or action by the House. It was the first resignation of a Speaker to "be effective upon the election of his successor," and on that occasion the Speaker entertained nominations for Speaker and, following the roll call by surname, declared the winner of the election "duly elected Speaker." A rule was adopted in 2003 for filling the Office of Speaker when there is a vacancy (defined to include physical inability to discharge the duties of office), particularly the requirement for a list of Members prepared by the Speaker in the order in which each shall act as Speaker pro tempore in the case of a vacancy solely to preside over proceedings for election of a new Speaker.

Beginning in 1995, a four-term limit was imposed on the Office of Speaker, but that restriction was removed in 1999. The official conduct of the Speaker was questioned on several occasions, resulting in the resignation of Speaker Jim Wright and in the reprimand of and imposition of reimbursement of a portion of the cost of the investigations of Speaker Newt Gingrich by the Committee on Standards of Official Conduct and the Select Ethics Committee in 1997. On other occasions, questions of the privileges of the House were raised but immediately laid on the table with respect to the conduct of the Speaker: (1) in conducting a three-hour vote in 2003; (2) in authorizing the improper inclusion of a provision in a conference report; (3) in not addressing known errors in the engrossment of a bill which were ignored in 2006; and (4) failures to act on learning of a Members' misconduct regarding congressional pages in 2006 and of a Member's sexual harassment of staff in 2010. On one occasion, the Speaker's alleged revelation of classified material while serving on the Permanent Select Committee on Intelligence as Minority Leader was held not to constitute a question of privilege in 2007.

The adoption of several rules also broadened the Speaker's recess authority. Since 1993, the Speaker has used authority under Rule I clause 12 to declare recesses for a short time when no question is pending. Rule I, clauses 12(b)–(d), adopted in 2003, authorized the Speaker to declare emergency recesses and to change the time and place of convening at the seat of government within a three-day period "upon imminent impairment to the place of reconvening." Broad authority to postpone measures in the House

to a later time was granted to the Speaker by special orders of business beginning in 2007, and made part of the standing rules (Rule XIX clause 1(c)) in 2011. Also in 2011, the House adopted a special order permitting the Speaker to reconvene the House at any time, regardless of an emergency. It was first exercised at the end of 2012.

Rule I clause 9 adopted in 1997 authorized the Speaker to implement a system for drug testing in the House. Since 1975, Rule I clause 10 authorized the Speaker to designate Members to travel on the business of the House within or outside of the United States on vouchers signed solely by the Speaker.

Beginning in 1977, the Speaker was authorized to administer a system for closed circuit coverage of House proceedings, and in 1978 a system of complete and unedited audio and visual broadcasting and recording of the proceedings accessible to the news media. That authority now contained in Rule V was held to authorize periodic wide-angle television coverage of all special-order speeches at the end of legislative business in 1984, a decision taken by the Speaker without consultation and criticized at the time in noteworthy debate. On that occasion, the Speaker engaged in debate from the floor in defense of such an action he had ordered as Speaker. In so doing, his words (describing the actions of another Member who had utilized rhetorical comments and gestures during special orders to suggest that absent Members were declining to participate in debate as "the lowest thing" he had seen in 32 years of politics) were ruled out of order upon demand that they be "taken down" as a personality toward another Member. That wide-angle coverage policy was continued in effect until 1994 when the Speaker prohibited wide-angle coverage but continued captioning at the bottom of the screen during non-business special orders and morning-hour debates.

Speakers' participation in debate both in the House, where Speakers have chosen not to preside but to appoint Speakers pro tempore, and in the Committee of the Whole, showed a marked increase in recent Congresses, with liberalized time for recognition, reflecting emphasis on their party leadership roles. In modern Congresses, Speakers have with increasing frequency chosen to vote on certain questions in the House and in the Committee of the Whole, further demonstrating their role as party leaders.

In 1978, the Speaker lost direct appointment authority over the Official Reporters of Debates, it being transferred to the Clerk, but remaining subject to direction and control of the Speaker. Beginning in 1981, the Speaker was given responsibility in Rule VIII to notify the House of the receipt by any Member, Officer, or employee of subpoenas relating to official House functions and to temporarily authorize compliance during extended adjournments. In 1993, the Speaker was authorized in Rule IX to designate within

two legislative days the time for consideration of questions of privilege of the House noticed by any Member, other than party leaders who retained the right to immediate recognition without notice.

An important change in the Speaker's nonpartisan responsibilities as presiding officer materialized from the adoption in 1975 of Rule XII requiring the Speaker to refer all introduced measures (with discretion to include Senate bills and amendments) to all committees with jurisdiction, and not merely to the one primary committee as had been the practice until that point. The Speaker was given discretion to make those referrals jointly to several committees (while designating a primary committee in all but extraordinary cases), to split measures for referral, or to make sequential referrals once the initial committee(s) have reported— all referrals (since 1977) potentially with discretionary time limits. This had the effect of empowering the Speaker to unilaterally discharge the nonreporting committee following those dates. There have been many variations of the exercise of this authority by Speakers since 1975. In making multiple referrals, the Speaker, by delineating each referral to be "for the consideration of such provisions as fall within those committees' respective jurisdictions," establishes an enforceable point of order in committees against markup consideration of bill text or amendments containing matter extending beyond those Rule X jurisdictions as interpreted by the committee chairman in consultation with the Parliamentarian.

The Speaker's discretionary authority in Rule XV to recognize for motions to suspend the rules was extended to every Monday and Tuesday beginning in 1977, and further to Wednesdays beginning in 2003. It was given greater efficacy with the gradual abolition (beginning in 1977 and extended in 1991) of the need for the ordering of a second by tellers.

With respect to other discretionary recognition authority, the Speaker was empowered in Rule XVI clause 4 to entertain highly privileged motions to fix for that day the time and date (within three days) to which the House would adjourn in 1973, and to recognize for motions to declare recesses in 1991. The authority to declare recesses "for a short time" without motion when no question was pending, conferred upon the Speaker by Rule I clause 12(a) in 1993, superseded the need for a motion and was often utilized to promote scheduling efficiency. This was combined with authority to postpone record votes (Rule XX clause 8 being expanded in 1979 to authorize the Speaker to postpone and cluster certain votes) and to postpone legislative business indefinitely despite the ordering of the previous question (pursuant to Rule XIX clause 1(c), added in 2009). By special order, the Speaker was given unilateral authority to reconvene the House after consultation with the Minority Leader prior to the next scheduled day of meeting where required in the public interest. By this combination of authorities, the Speaker

was enabled to suspend much business of the House subject to the call of the Chair for periods sometimes lasting many hours, in order to allow the leadership to adjust the schedule as the result of the exigencies of the moment.

Several recent decisions have expanded the Speaker's authority to maintain decorum by taking initiatives during debate, in order to forestall improper references to the President, Vice President, the Senate and its Members, as well as the improper use of exhibits. The Speaker was authorized in his discretion to submit the question of use of exhibits to the House rather than rule directly in 2001, thus changing the previous rule (Rule XVII clause 6) requiring a vote on use of exhibits on demand of any Member. The Chair in his discretion awaits points of order from the floor when the improper debate involves personal references to other Members of the House. In turn, improper references to the Speaker during debate on several occasions (*e.g.*, 1995) led to a reiteration of the additional respect due that office from all Members.

Three experiments with so-called "Oxford-style" debates in the 103rd Congress under direction of the Speaker, all in 1994, were discontinued thereafter. The format included a "moderator" Member who, upon recognition by the Speaker, would in turn "yield" to an equal number of Members on either side of a pre-determined issue for statements and rebuttals.

The Speaker, beginning in 1981, announced and enforced a policy (Speaker's "guidelines") of conferring recognition for unanimous-consent requests for the consideration of certain legislation only when assured that the majority and minority floor and committee leaderships have no objection. This exercise of discretionary recognition authority (from which there is no appeal) was to prevent individual Members from being forced to go on record as objecting to unanimous-consent requests which had not been cleared by the Speaker and other leaders, and for the *Congressional Record* to reflect the Speaker's denial as a matter of institutional practice and not as having taken a political position on the matter.

While the Speaker has announced his intention to strictly enforce time limits for debate, relaxation of those limits has been accorded by custom to the Speaker and to the Majority and Minority Leaders by the Chair when participating in debate. Beginning on opening day of the 101st Congress and in subsequent Congresses, the Speaker inserted in the *Record* a general statement concerning decorum in the House (reiterated from the Chair in 2012) under his authority to preserve decorum, where the comportment of Members in the Chamber had over time deviated from traditional standards of formality.

In 1983, the Speaker was authorized by Rule XVIII clause 2(b) to declare the House resolved into the Committee of the Whole House on the state of

the Union, without motion, at any time when no question was pending before the House, pursuant to special orders from the Committee on Rules adopted by the House allowing that declaration on a particular measure. This discretion conferred on the Speaker expedited the agenda-setting authority and eliminated votes on motions to resolve into the Committee, and thereby prevented the question of consideration (although not points of order) from being raised once the special order is adopted.

Special orders from the Committee on Rules began to confer on the Speaker discretionary authority (customary through the 110th Congress in all special orders of business) to temporarily withdraw pending measures from consideration in the House notwithstanding the ordering of the previous question to final passage, subject to resumption of consideration at a time later designated by the Speaker. This authority has been interpreted to permit virtually indefinite postponements (*e.g.*, during the pendency or following adoption of motions to recommit). It was made a standing rule beginning in the 111th Congress in 2009.

Since 1973, the Speaker was given discretion to conduct record votes by roll call (or by tellers) rather than by electronic device. On a number of occasions he exercised the roll call option when the electronic system was totally inoperative. In the 110th Congress in 2007, the Speaker's discretionary authority to hold an electronic vote open beyond the guaranteed minimum of 15 minutes was restricted so as not to permit votes to be held open for the sole purpose of reversing the outcome (Rule XX clause 2(a)). This was in response to a decision by the Chair in a previous Congress in 2003—challenged days later on a question of privilege that was tabled—to hold an electronic vote open for approximately three hours to reverse the result although all Members except one had already voted. Subsequently, when the rule was still in effect, the Chair ruled that where the intent was not to hold a vote open solely for that purpose, but rather to accommodate Members arriving to vote or changing their vote (or the Clerk in recordation thereof), the rule was inapplicable. The rule was repealed in 2009.

During the period since electronic voting began in 1973, Speakers have issued rulings and policies with respect to the conduct of electronic votes, including electronic or ballot card vote changes and requests to hold votes open for arriving Members. Beginning in 2009, the Speaker announced on opening day in response to select committee investigative report on a voting irregularity which occurred in 2007, that electronic vote results should be based on certification by the Clerk, and not on temporary displays from the electronic panel.

Beginning in 2005, the Speaker's announcement under Rule XX clause 5 (c) that a catastrophic circumstance has required a provisional quorum of

Members responding to the call (following extended quorum calls and consultation), was authorized and rendered not subject to appeal, as was his announcement of the whole number of the House upon any change in membership (Rule XX clause 5(d)).

In 1974, the Speaker ruled that he was prohibited by Rule XX clause 7 from entertaining a point of order of no quorum unless he was putting a pending question to a vote (*e.g.*, during debate which was no longer to be considered business of the House requiring the presence of a quorum). At the same time the Speaker was granted unappealable discretionary authority to entertain a motion for a call of the House at any time.

In 1979, the Speaker was given authority now contained in Rule XX clause 8 to postpone to designated and redesignated times within the next two legislative days, record votes on a number of specified questions, and on the approval of the Journal until later the same day. That discretionary authority, made further applicable to other specified postponable questions in subsequent Congresses, has enabled the Speaker to control the daily business of the House by clustering record votes to be conducted as unfinished business at subsequently determined times, to reduce with notice the minimum time for all but the first clustered vote to five minutes (reduced to two minutes in the Committee of the Whole beginning in 2011 and in the House beginning in 2013) if no other business has been introduced, and thereby to expedite the order and duration of business requiring Members' presence in the Chamber (while also providing time availability to party whips). In addition, beginning in 1979 the Speaker was authorized to utilize five-minute electronic votes with notice on questions arising immediately following 15-minute votes. In Rule XX clause 7(c) beginning in 1989, the Speaker was given discretion to postpone noticed motions to instruct conferees following twenty days (and concurrently ten legislative days) in conference to the next legislative day. Beginning in 2013, the Speaker was authorized to permit an initial five-minute vote in the House (*e.g.*, on a motion to recommit) following report from a Committee of the Whole despite 10 minutes of debate on the motion if in his discretion it immediately followed a previously recorded vote either in the House or in Committee of the Whole where Members had remained present in the Chamber.

The Speaker has been given several joint (bipartisan) appointment authorities with respect to the Director of the Congressional Budget Office and within the House of the Offices of Compliance and Inspector General. Under the rule, the Speaker in 1995 obtained joint authority with the Majority and Minority Leaders to appoint an Inspector General and under Rule II clause 7 to appoint the Office of the Historian, eventually replacing the Speaker's management of the Office for the Bicentennial of the House established in

1982. In 1993, the Speaker was authorized in Rule II clause 8 to appoint the Office of General Counsel. Beginning in 2008, the Speaker was authorized by standing order to appoint members (with the concurrence of the Minority Leader) of the Office of Congressional Ethics.

With respect to conferee appointments, Speakers have asserted greater flexibility in the timing of their appointment following agreement of the House to go to conference, sometimes delaying their announcement until a subsequent time. The Speaker's unilateral authority to appoint additional conferees or to replace conferees following the original appointment and to remove Members from select or conference committees once appointed was first established in 1993 in Rule I clause 11. Speakers have since 1975 exercised their broadly stated authority to appoint conferees in a number of ways to include Members representing leadership, and various committees or issues committed to conference without those appointments being construed as jurisdictional precedent for subsequently introduced legislation. Speakers have also announced their intention to simplify appointments of conferees to the maximum extent possible.

As a party caucus rule matter, Speakers from both parties have been empowered since the 1970s to nominate the majority party members (nine of thirteen under a ratio negotiated between the parties) to be elected to the Committee on Rules without going through the nominating process of the Steering Committees in the party caucus or conference. This change coincided with the demise of the seniority system which had virtually assured that Members with consecutive Committee on Rules service would be renominated by the party caucus or conference. The Speaker's nominating authority was extended to majority membership of the Committee on House Administration in both parties in recognition that the jurisdiction over internal House matters of those two committees should reflect its members' commitments directly to the party leadership.

In Rule X, the Speaker has been given additional authorities with respect to the composition of select committees and subunits. In 1974 the Speaker was empowered with the approval of the House to appoint special *ad hoc* committees for consideration of specific bills (an authority exercised three times), and since 1995 to conduct oversight on matters within the jurisdiction of more than one standing committee (an authority not yet exercised). In 2007, the Speaker was authorized in Rule X clause 4(a)(5) to appoint a select Intelligence Oversight Panel of the Committee on Appropriations (combining for the first time authorization and appropriations committee members on one panel, but with predominant membership (10-3) and authority given to the Committee on Appropriations reflecting the need for the Permanent Select Committee on Intelligence to have some input on the intelligence budget). That rule was repealed in 2011. It was followed that year

by an Permanent Select Committee on Intelligence rule that authorized the chairman and ranking minority member and staff of the Appropriations subcommittee having jurisdiction over the National Intelligence Program to participate in discussions regarding budget-related information.

Beginning in 1997, the Speaker and Minority Leader were each authorized to name ten Members to investigative subcommittees of the Committee on Standards of Official Conduct. In 1983, the Speaker's appointment of all Members to select or joint committees was made contingent upon that Member's continued membership in the party caucus or conference.

Beginning in 1989, the Speaker was authorized to attend meetings and have access to the records of the Permanent Select Committee on Intelligence, and in 1995 the Speaker, together with the Minority Leader, became non-voting ex-officio members of that committee.

Speakers have provided more detailed decorum announcements and more enforcement in recent Congresses. These notable rulings to preserve decorum on the House floor have included an admonition of a Member who had utilized House pages to demonstrate with signs a debatable matter. On one occasion in 1972, the Speaker ordered the galleries to be temporarily cleared when a number of protestors throughout the gallery disrupted the proceedings of the House. In 2012, the Speaker made an extensive announcement from the Chair when all Members were present reiterating proper decorum requirements.

Pursuant to Rule I clause 8 as amended in 1985, the Speaker was authorized with approval of the House to designate a Member as Speaker pro tempore, or more than one in the alternative, to sign enrolled bills for a specified period of time without the need to elect a Speaker pro tempore. Beginning in 2009, those appointments covered the entire Congress.

House Officers. The Office of Postmaster was abolished in the 102d Congress and the Office of Doorkeeper was abolished in the 104th Congress, the responsibilities of the latter being transferred to the Sergeant-at-Arms. The Office of Chief Administrative Officer was established in 1995, evolving from the former Director of Non-legislative and Financial Services (an officer appointed jointly by the Speaker and Majority and Minority Leaders from 1992 through 1994). The authority of the Speaker, as well as the House, to remove the elected officers except for the Chaplain was established in 1992. In 2001, Rule X clause 4(d)(1) was amended to remove the requirement that the Committee on House Administration provide policy direction to the Sergeant-at-Arms and Chief Administrative Officer while retaining that role over the Inspector General and giving oversight responsibility over those Officers and officials. Resolutions electing officers of the House when vacancies occurred were considered as privileged. The Speaker's statutory

authority to temporarily fill vacancies in all those elected offices was exercised on various occasions. The Speaker in 2000 appointed the first Roman Catholic Chaplain of the House after taking the floor as a question of personal privilege. This followed a dispute over the selection of candidates for election to that office.

As Party Defendant or Witness. The privileges and responsibilities of Officers, officials, and employees as parties defendant or witnesses in court proceedings involving their official duties were addressed in the context of the adoption of Rule VIII and its predecessors beginning in 1977. Until the 95th Congress, whenever an Officer or employee (and Members) received a judicial or administrative subpoena, the House would decide by adopting a resolution granting authority to the person to respond. This case-by-case approach was changed in the 95th and 96th Congresses when general authority was granted to respond to subpoenas and a procedure was established for automatic notice to the House, consultation with the General Counsel, and possible compliance without the necessity of a House vote (unless the House determined not to permit or to condition compliance by adoption of a resolution raised as a question of privilege).

Employment. Materials with respect to other employment issues are contained in a "Model Employee Handbook" on the website of the Committee on House Administration. Statutory and rules changes such as the Congressional Accountability Act applied anti-discrimination laws to congressional employees. The House Classification Act of 1964 provided a classification system for the equitable establishment and adjustment of rates of compensation of positions in the offices of the Officers of the House and press galleries. New standing rules addressing code of conduct standards (*e.g.*, nepotism), shared positions, compensation, and other House orders and materials establishing employment positions and standards were adopted.

In the 112th Congress, the House twice reduced committee staff budgets to symbolize internal reductions in Federal spending by adopting resolutions (the first at the beginning of the Congress under suspension of the rules covering a five-percent cut for all staffs, and then on February 1, 2012, on a resolution reported from the Committee on House Administration covering a further six-percent cut for committee staffs).

A number of House Officials and Offices were created, discontinued, or redefined. They include the Offices of Law Revision Counsel (1974), Technology Assessment (funding discontinued in 1996), House Counsel (1993), Historian (1989), Inspector General (1995), Compliance (1995), Interparliamentary Affairs (2003), Congressional Ethics (2008), House Democracy Partnership (2005), the Tom Lantos Human Rights Commission (2008), and Emergency Planning, Preparedness and Operations (2002), as well as joint

offices such as the Congressional Budget Office (1974) and changes in the selection process for the Architect of the Capitol and policy review of that office, including the Capitol Preservation Commission (1988), and the Office of Congressional Accessibility Services (2008) under the Architect of the Capitol.

Chapter 7—Members.

The question of Members' standing as plaintiffs to bring causes of action in Federal court to contest the constitutionality of executive actions, congressional statutes or internal legislative exercises in rulemaking was judicially addressed. The U.S. Supreme Court in *Raines v. Byrd*, 521 U.S. 811 (1997) dismissed a suit brought by six Members of Congress who had voted against the Line Item Veto Act (later declared unconstitutional in the case of *Clinton v. City of New York*, 524 U.S. 417 (1998)). In *Raines*, the U.S. Supreme Court vacated the judgment of the lower court that the act was unconstitutional, and remanded with instructions to dismiss the complaint, based on the conclusion that the Member plaintiffs lacked standing because their complaint did not establish that they had suffered an injury that was personal, particularized and concrete. The decision was the first ruling of the Court on the issue of standing of Members who assert an injury to their institutional authority as legislators rather than a personal injury (*e.g.*, loss of salary as in *Powell v. McCormack*, 395 U.S. 486 (1969)). The Court was willing to find an institutional injury to be sufficient if that injury amounted to nullification of a particular vote and if the plaintiffs' votes would have been sufficient (outcome determinative) to pass or defeat a specific bill, but not where the impact on the plaintiff Members' votes was potentially less than a full nullification. Several Federal courts of appeals decisions, both prior and subsequent to *Raines*, examined the issue of Members' standing as plaintiffs. By contrast, the D.C. Court of Appeals decision in *Michel v. Anderson*, 14 F.3d 623 (D.C. Cir. 1994) established Members' standing as plaintiffs where their votes could be directly nullified by a House rule.

The diminution of seniority rights of Members has been largely the result of party caucus and conference rules changes and not by any direct action by the House (other than by ratification of standing committee elections submitted from the party organizations). In that respect, the House on several occasions adopted resolutions called up as privileged from the party caucus or conference adjusting Members' committee seniority for reasons other than continuous consecutive service on the committee (*e.g.*, to elect a Member who switched parties by resolution from his new party caucus taking into account previous service on that committee, sometimes as a member of the other party, or based upon other political commitments).

Status of Delegates and the Resident Commissioner. The adoption of Rule III clause 3 (repealed in 1995, adopted again in 2007 and repealed again in 2011 upon shifts in House majorities) gave the Delegates and Resident Commissioner voting and all other procedural prerogatives in the Committee of the Whole (*e.g.*, authority to preside over that forum). The District Court opinion in *Michel v. Anderson*, 817 F.Supp. 126, affirmed by the D.C. Court of Appeals, 41 F.3d 623 (D.C. Cir. 1994), upheld the constitutionality of that rule. *Michel* upheld the rule's constitutionality on the merits—the D.C. Court of Appeals relying on the provision in the rule requiring an immediate revote in the House (without Delegates' participation) on any recorded vote in the Committee of the Whole on which the Delegates' and Resident Commissioner's votes had been collectively decisive (*i.e.*, "but for" those vote the outcome would have been different).

Congress has by law established the Offices of Delegate for the Territory of American Samoa and for the Northern Mariana Islands. The authority in Rule III clause 3(b) for Delegates and the Resident Commissioner to be appointed to select and conference committees evolved from 1974 and was expanded in 1979 and in 1993. A unanimous-consent request was not entertained in 2003 that would have allowed Delegates to sign a discharge petition. However, Delegates were counted toward the establishment of a quorum in the Committee of the Whole from 1993–1995 and from 2007 until the rule was again repealed in 2011.

Compensations and Allowances. The Twenty-seventh Amendment to the Constitution was ratified in 1992. It provides that "no law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." Subsequent Federal court cases have upheld congressional cost-of-living adjustments for Members under the Ethics Reform Act of 1989 as having arisen under a formula prescribed in the 1989 Act and not under any law passed by Congress following the completed ratification of the Twenty-seventh Amendment. The present rate of compensation of Members, Delegates, and the Resident Commissioner is established by law (2 USC § 31) subject to annual cost of living adjustments (2 USC § 31(2)), with an additional amount per annum to assist in defraying expenses (2 USC § 31(b)). Congress has passed laws from time to time denying Members cost-of-living increases for a particular calendar year notwithstanding the COLA automatic adjustment formula. (See, *e.g.*, Pub. L. No. 111–165, denying annual COLA adjustment.) Congress has also enacted a "permanent appropriation" providing funds "effective beginning with fiscal year 1983 and continuing each fiscal year thereafter" from the U.S. Treasury to pay Members' salaries at rates tied to presidential recommendations for Federal employees for each calendar

year (Pub. L. No. 97–51, section 130(c)), in order to avoid the need to annually appropriate those funds (and to render ineffective any limitation amendments to annual general appropriation bills absent waivers of points of order against such legislative language). Beginning in 1992, the authority of the Sergeant-at-Arms to disburse salaries of Members was transferred to the Director of Non-legislative and Financial Services and then to the Chief Administrative Officer when that office was created in 1995. A law passed in 1977 provided that the residence of a Member for purpose of imposing State income tax laws shall be the State from which elected and not the State in which the Member maintains an abode for the purpose of attending sessions of Congress (4 USC § 113).

A variety of rules and laws affecting Members' travel were put in place. The Speaker's authority (Rule I clause 10) to designate Members, Officers and employees to travel on business of the House on vouchers solely approved by the Speaker was adopted in 1975. Also adopted at that time was Rule X clause 8 giving each committee separate authority to authorize committee members' official travel and to clarify the availability of local currencies for travel outside the United States. "Lame duck" prohibitions against retiring or defeated Members' travel were also added in 1977. Earlier restrictions on the number of reimbursable round trips a Member could make to his district each year (24 and then 36) were eliminated with the establishment of the Members' Representational Allowance. Reimbursement for Members-elect travel to early organizational caucuses began in 1974.

Rule XXIV clause 4 as adopted in 1977 and expanded in 1991 to establish restrictions on the use of the frank and mass mailings. In 2005, that clause was amended again to make mass mailings not frankable within 90 days before an election (expanded from 60 days). The *House Ethics Manual* of the 110th Congress contained details of this rule.

The consolidation of Members' Representational Allowances (MRAs) for all official expenses of Members' offices was enacted as 2 USC § 57b and was included in the Members' Congressional Handbook. In the 92nd Congress, a resolution authorizing the Committee on House Administration to adjust allowances of Members and committees without further action by the House was enacted into permanent law (2 USC § 57), but the 94th Congress adopted a subsequent resolution later enacted into permanent law stripping the committee of that authority and requiring House approval of the committee's recommendations, except in cases made necessary by price changes in materials and supplies, technological advances in office equipment, and cost of living increases (2 USC § 57a). The Committee on House Administration retained authority under the earlier statute to independently adjust amounts under those specified conditions. In 1995, the Committee on House

Administration promulgated an order abolishing separate allowances for Clerk Hire, Official Expenses, and Official Mail, to be replaced by the MRA.

Qualifications and Disqualifications. Article I, section 5 of the Constitution provides that each House shall be the judge of the elections, returns and qualifications of its own Members. The U.S. Supreme Court ruled in *Powell v. McCormack*, 395 U.S. 486 (1969), in judging the qualifications of its Members, that the House may not add qualifications to those expressly granted in the Constitution.

Regarding the authority of the States to add to Members' qualifications, the U.S. Supreme Court ruled in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), in a 5-4 decision that the States may not enlarge the qualifications for membership to the U.S. House of Representatives. In 1995, 23 States by amendments to State constitutions had limited the number of terms that Members of Congress may serve. The Court determined that the qualifications clause established exclusive qualifications for Members that may not be added to either by Congress or the States, because the Constitution did not delegate to the States the power to prescribe qualifications for Members. The States therefore did not have any such power (the four dissenting Justices argued that the States could add to qualifications). Six years later, the Supreme Court relied on *Thornton* to invalidate a Missouri law requiring that labels be placed on ballots alongside the names of congressional candidates who had "disregarded voters' instruction on term limits" or declined to pledge support for term limits (*Cook v. Gralike*, 531 U.S. 510 (2001)).

A significant decision of the House was taken in 1981, when the House declared vacant by majority vote the seat of a Member-elect (Gladys Spellman, Maryland). Ms. Spellman was unable to take the oath of office because of incapacitating illness, where the medical prognosis showed no likelihood of improvement to permit the Member-elect to take the oath required by the Constitution or assume the duties of a Representative. In that resolution, the House declared that the ability and willingness to take the oath was a constitutional qualification (article VI, section 3), and that the inability or unwillingness of a Member-elect to take the oath should be treated as a disqualification to be judged by a majority vote. Beginning in 2005, Rule XX clause 5(c) addressed Members' incapacity resulting from catastrophic circumstances in determining a provisional quorum of the House.

Immunities of Members and Aides. Jurisprudence since 1973 addressed the "Speech or Debate" protection accorded Members by article I, section 6 of the Constitution. The U.S. Supreme Court held in *U.S. v. Helstoski*, 442 U.S. 477 (1979), that neither evidence of nor references to legislative acts of a Member may be introduced by the government in a prosecution under the official bribery statute, unless there has been an explicit

and unequivocal waiver of that protection by the individual Member or by the House (which had not been indicated merely by a voluntary grand jury appearance or the enactment of a Federal bribery statute).

The Court held in *Hutchinson v. Proxmire*, 443 U.S. 111 (1979) that the Speech or Debate clause did not protect transmittal of allegedly defamatory material issued in press releases and newsletters by a Senator, as those publications were not essential to the deliberative process of the Senate. A complaint against an Officer of the House relating to the dismissal of an Official Reporter of Debates was held nonjusticiable on the basis that her duties were directly related to the due function of the legislative process (*Browning v. Clark*, 789 F.2d 923 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 996 (1986)). There was no distinction between the members of a (Senate) subcommittee and its chief counsel insofar as complete immunity was provided for the issuance of a subpoena pursuant to legitimate legislative inquiry (*Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975)). Members and their staffs were given immunity for the dissemination of a congressional report (*Doe v. McMillan*, 412 U.S. 306 (1973)). Other Federal cases indicated that the clause provided no protection for "political" or "representational" activities because they were not "an integral part of the deliberative and communicative processes" by which Members participate in legislative activities. The clause protected certain contacts by Members with the executive branch, such as investigations and hearings related to legislative oversight of the executive, but did not protect others, such as assisting constituents in securing government contracts and making appointments with government agencies (*U.S. v. McDade*, 28 F.3d 283 (3d Cir. 1994); *cert. denied*, 514 U.S. 1003 (1995)).

A misperception of the extent of Speech or Debate protection, expressed off the floor by Speaker Newt Gingrich in a press conference to the effect that under that clause Members are free to say "virtually anything on the House floor," was properly circumscribed by the Chair. On that occasion in 1995, the Chair responded to a parliamentary inquiry that the freedom of speech or debate guarantee of the First Amendment was not an impediment to the enforcement within the House of a rule prohibiting personalities in debate, as the Constitution only proscribed a Member from being questioned in any other place and did not obstruct an internal rule of the House (*e.g.*, against personal criticisms of the Speaker)—the authority for the adoption of which rule derived directly from article I of the Constitution.

Several additional Federal cases emerged as landmark decisions involving the extent of Speech or Debate protections to Members. The first involved the execution of a search warrant on the Rayburn House Office of Rep. William J. Jefferson. The search was conducted as part of the Federal Bureau

of Investigation's investigation of Rep. Jefferson to determine whether he and other persons were involved in criminal activity, including bribery and other felonies. Such an action—obtaining a search warrant by court order but without the court scrutinizing the seized materials (relying instead upon a team of executive branch officials separate from the prosecution team)—was unprecedented in U.S. history and raised significant constitutional questions with respect to potential intimidation and diminution of the independence of the legislative branch and its integral legislative functions protected by the Speech or Debate Clause. Although Rep. Jefferson lost his initial legal request to have the seized documents (entire office computer files) returned, the Court of Appeals for the D.C. Circuit later held (*U.S. v. Rayburn House Office Building Rm. 2113*, 497 F.3d 654 (D.C. Cir. 2007), *cert. denied*, 128 S.Ct. 1738) the search to have been a violation of the Speech or Debate Clause. The clause extended not only to the eventual use of seized material in court proceedings, but also to initial examination of legislative materials by the executive (an argument supported by a bipartisan amicus brief submitted by the General Counsel to the trial court). The appeals court determined that Rep. Jefferson should be afforded an opportunity to make his claims of privilege ex parte and in camera to the court with Jefferson's attorney present (before the same Federal judge that originally ruled against that petition). The Department of Justice's writ of *certiorari* on the question of the constitutionality of the seizure was denied by the Supreme Court in *Rayburn House Office Building*, as was a collateral writ stemming from his criminal trial involving grand jury evidence (*U.S. v. Jefferson*, 546 F.3d 300 (4th Cir. 2008), *cert. denied* 129 S.Ct. 2383 (2009)), thereby resolving the issue in favor of the constitutional protection. The case ultimately proceeded to criminal trial and to conviction based on separately gathered non-legislative evidence of crimes, following judicial decisions on other interlocutory Speech or Debate claims based on staff conversations with the defendant Member.

Another Speech or Debate Clause development concerned claims of employment discrimination brought against Members' offices pursuant to the Congressional Accountability Act of 1995. Both the Court of Appeals for the Tenth Circuit in *Bastien v. Office of Senator Ben Nighthorse Campbell*, 390 F.3d 1301 (10th Cir. 2004) and the Court of Appeals for the D.C. Circuit in the case of *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1 (D.C. Cir. 2006), ruled that the clause did not automatically prevent such suits from proceeding. The U.S. Supreme Court rejected an appeal in the Tenth Circuit case on the grounds that the Court lacked jurisdiction to decide the case (the defendant Senator no longer being in office). The rationale of the Court of Appeals for the D.C. Circuit and of the Court of Appeals for the

Tenth Circuit established that there was a distinction between "legislative" acts and "non-legislative" acts (*e.g.*, duties not central to the legislative process such as informal information gathering, purely administrative responsibilities or constituent case work) performed by employees. The trial courts were instructed to receive evidence in assessing defenses claimed by the Member defendant in lawsuits under the Congressional Accountability Act (CAA) claiming discrimination in employment.

The *Fields* decision suggested that the Speech or Debate clause did not require the dismissal of all suits brought under the CAA, but that such cases could go to trial to receive evidence on the question of whether the particular activity performed by the employee was a "legislative" act on behalf of the Member. There were many functions performed by Members which were not entirely or primarily legislative in nature beyond the tendency to enhance the Member's reelection. Thus, where a claim is made that the employing Member has discriminated against the employee, the nature of that employee's function in the office becomes relevant as to whether a Speech or Debate protection should immunize the employing Member in that personnel action.

A third area of Speech or Debate jurisprudence emerged from conflicting D.C. appellate court decisions on the question of the availability of a Member's testimony given before the Committee on Standards of Official Conduct. In *Ray v. Proxmire*, 581 F.2d 998 (D.C. Cir. 1978), the court ruled that such testimony was legislative activity required by internal rules and could not be questioned in court, while the same appellate court ruled in *U.S. v. Rose*, 28 F.3d 181 (D.C. Cir. 1994) that testimony of a Member before the Committee on Standards of Official Conduct regarding his personal misconduct (loan acceptance) was not protected legislative activity. In 2009, a D.C. Federal appellate court panel in *In re Grand Jury Subpoenas*, 571 F.3d 1200 (D.C. Cir. 2009) supported the *Ray* ruling and held such testimony to be protected from prosecution by the Speech or Debate clause and invited reexamination of *Rose*.

In 2007, the first civil privacy action was brought by one Member against another in *Boehner v. McDermott*, 484 F.3d 573 (D.C. Cir. 2007). Rep. Jim McDermott had claimed a First Amendment freedom of speech protection (rather than an article I Speech or Debate protection since his conduct was not a legislative act) against a privacy action seeking compensatory and punitive damages under the civil liability provisions of the Electronic Communications Privacy Act for the illegal disclosure of the contents of a telephone conference call among other Members, the defendant Member knowing it to have been illegally intercepted. The Court essentially reversed its earlier ruling which had found a First Amendment free speech protection based on

an analogous U.S. Supreme Court decision. It ruled that Rep. McDermott acted improperly in giving reporters access to an audio tape given to him by a Florida couple who had recorded a cell phone call on a police radio scanner involving Rep. John Boehner and other party leaders discussing the pending ethics case against then-Speaker Newt Gingrich. McDermott, then a senior minority member of the House Committee on Standards of Official Conduct, leaked the tape to two newspapers, which published articles on the case in January, 1997. Rep. Boehner claimed that McDermott had violated his privacy rights by the intentional release to the press of those illegally recorded conversations and sought compensatory and punitive monetary damages. The issue of Rep. McDermott's First Amendment right of free speech was in question, and the matter went to the Supreme Court which initially remanded to the Court of Appeals in McDermott's favor, finding a free speech protection which trumped privacy protections under the Federal statute. Boehner then was permitted to amend his complaint and the Supreme Court ultimately determined (by denying *certiorari*) that as restated, the First Amendment free speech argument was not applicable because McDermott knew that the tapes had been illegally obtained in violation of Federal law, had also been released in violation of an internal House rule proscribing release by members of the Committee on Standards of Official Conduct, and that its disclosure was unprotected "conduct" rather than protected "speech." This appellate decision reversed the Federal trial court which had applied the First Amendment protection based on the truthful disclosure of the materials, the fact that McDermott had lawfully obtained the tape recording despite its illegal initial interception, and that it contained information on a matter of substantial public concern. The court majority evidently was persuaded that the violation of the internal House rule against disclosure, over which it had no cognizance, was nevertheless relevant in ruling on the legality of McDermott's conduct.

Beyond the Speech or Debate protections of article I of the Constitution, the Federal courts have denied Members' defenses of common-law immunity as not being analogous to case law protecting judges and some members of the executive for official acts for which branches of government there is no comparable constitutional Speech or Debate protection. The Federal courts have found unavailing defenses of common law immunity in cases involving defamation suits against Members of Congress for conduct beyond the protected legislative sphere, despite the escalating volume of non-legislative, constituent-related case work argued by defendant Members to warrant the same protection as "purely legislative" functions (See *Williams v. Brooks*, 945 F.2d 1322 (5th Cir. 1991) (denying immunity protection for statements made in a press conference), *cert. denied*, 504 U.S. 931 (1992); *Chastain v.*

Sundquist, 833 F.2d 311 (D.C. Cir. 1987) (denying immunity for statements in a letter to the Attorney General), *cert. denied*, 487 U.S. 1240 (1988)).

Following denial of protection to Rep. Jack Brooks under the common law doctrine of official immunity, he asked the Department of Justice to substitute the United States for him as defendant under the Federal Tort Claims Act as amended in 1988. At that time, the Federal Employees Liability Reform and Tort Compensation Act of 1988 ("Westfall Act" 28 USC § 2679), amended the law to include Officers and employees of the legislative and judicial branches, as well as the executive branch, as offices under the United States which could not be sued for defamation without its consent under the doctrine of sovereign immunity. In *Williams v. U.S.*, 71 F.3d 502 (5th Cir. 1995), the court construed the amended Federal Tort Claims Act to protect "official" acts of Members of Congress against lawsuits under the doctrine of sovereign immunity, where those acts (remarks in a press interview) were within the scope of employment. The plaintiff in that case, had the burden of proof in Federal court that the Member's conduct was not within the scope of employment so as to prevent substitution of the United States for the defendant. That statute also permitted the United States to be substituted for Rep. Donald Sundquist and for Rep. Cass Ballenger regarding their public statements. The latter case, *Council on American-Islamic Relations v. Ballenger*, 444 F.3d 659 (D.C. Cir. 2006), involved a press interview in the Member's office commenting on his marital separation as having been caused by his wife's feeling that their neighbor was "the fund-raising arm for Hezbollah," a designated foreign terrorist organization. Ballenger's response in this press conference was certified to be an action within the scope of employment, as there was a "clear nexus between the congressman answering a reporter's question about his personal life and his ability to carry out his representative responsibilities effectively" (citing *U.S. v. Rostenkowski*, 59 F.3d 1291 (D.C. Cir. 1995)).

The trial court had dismissed the lawsuit under which the United States was found to have been substituted as the party defendant for lack of subject matter jurisdiction because the United States had not waived its sovereign immunity under the "Westfall Act." *Sundquist* and *Ballenger*, where a Representative's allegedly defamatory remarks in an interview were held to be within the scope of employment for purposes of the Tort Claims Act, were relied upon in *Chapman v. Rahall*, 399 F.Supp. 2d 711 (W.D. Va. 2005) where a Representative's "remarks made to the media to ensure his effectiveness as a legislator, can fairly and reasonably be deemed to be an ordinary and natural incident or attribute of his job as a legislator."

The "Westfall Act" was held to immunize a Member of Congress (Rep. John Murtha of Pennsylvania) for alleged defamation of plaintiff Wuterich

arising from comments to a reporter about a private citizen, overruling the lower court's permission for discovery by deposition to determine whether the remarks were within the scope of employment. The Department of Justice, representing the Member, successfully appealed the trial court's order for discovery, arguing that it could identify no circumstance in which speaking to the media is not within the scope of a Member's employment and that the United States should automatically be substituted as defendant and the suit dismissed where sovereign immunity was not waived. (*Wuterich v. Murtha*, 562 F.3d 375 (D.C. Cir. 2009)).

Chapter 8—Elections and Election Campaigns.

Apportionment. Federal jurisprudence on the issue of apportionment of congressional districts included mid-decade reapportionments. On at least two occasions following the 2000 census, States enacted reapportionment legislation reconfiguring for the second time congressional districts to the advantage of the majority political party in that State following a shift in political majorities in the State legislature earlier in that decade. In *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), the U.S. Supreme Court largely upheld a Texas congressional redistricting plan that was drawn by the State legislature in mid-decade three years after a traditional reapportionment (court ordered) following the decennial census. While not ruling out the possibility of a claim of partisan gerrymandering being within the scope of judicial review under the equal protection clause of the Fourteenth Amendment, the court was unable to find a "reliable" standard for making such a determination. The court also decided that the fact of mid-decade redistricting alone is not a sure indication of unlawful political gerrymanders based purely on partisan motives. At the same time, the Court voided the creation of one congressional district as in violation of the Voting Rights Act of 1965 improperly diluting the voting strength of Latinos. Under article I, section 4, of the Constitution, Congress could, but has not, enacted legislation which would limit States that had been redistricted once from being redistricted again until after the next subsequent census. In *Perry v. Perez*, 565 U.S. ____ (2012), the Supreme Court remanded to a three-judge panel in Texas the question of validity under the Voting Rights Act of a redrawn interim district map regarding the reapportionment of four newly gained congressional seats.

Certain State redistricting practices, particularly the mid-decade redistricting of Texas has led to the suggestion that Congress must assert further regulation over House districts, citing article I, section 4 (the Elections Clause) of the Constitution as the requisite authority for such actions. U.S. Supreme Court decisions establishing limitations on the national government's power under the Tenth Amendment to coercively compel ("commandeer") the States into enacting congressionally-mandated regulations

could impact upon the question of whether Congress can by law (as in the 1967 statute requiring separate congressional districts to be created by State law in all States, instead of an at-large system) "commandeer" the States into enacting such laws by directing the States to repeal at-large districts, for example, without Congress itself fully preempting the issue. (See *Branch v. Smith*, 538 U.S. 254 (2003); *U.S. Term Limits*, 514 U.S. 779 (1995)).

In 2007, the House passed a bill (never enacted into law) creating a voting Representative for the District of Columbia, rather than proposing a constitutional amendment as the House had done in 1967. The prevailing argument in the House that Congress may by law enact such legislation for the District, over which it has "exclusive jurisdiction" under article I, section 9, clause 17 of the Constitution, was countered by the contention that the House of Representatives is defined by article I, section 2 to consist only of Representatives elected by people from the States.

Time, Place, and Manner of Elections. In 2005, Congress enacted a law to require States to hold special elections for the House within 49 days after a vacancy is announced by the Speaker in the extraordinary circumstance (assuming a catastrophe) that vacancies caused by death (but not by disability) in representation from the States exceed 100 (2 USC § 8). On one occasion in 2005, the House rejected a proposed constitutional amendment providing for the immediate "appointment" of temporary Representatives to fill vacancies in the case of catastrophe pending special elections, an approach based on the premise that Congress could not pass a law to that effect.

Article I, section 2, clause 4 of the Constitution states that "when vacancies happen . . . the Executive Authority shall issue Writs of Election to fill such vacancies." Several States' laws permit general elections of Representatives to the subsequent Congress to simultaneously constitute special elections to fill vacancies in the House if the vacancy occurs near the date of the general election (to avoid the costs of a separate election), even where a vacancy may not exist on the date of the election, but only prospectively. For example, Oklahoma permitted a vacancy on election day in 1994 to have occurred even where the incumbent Representative had submitted his resignation to be effective only upon his election (on the same day) to the Senate—a matter not finally determined until after election day. Nevertheless, a certificate of election to fill the "vacancy" was issued to the Representative-elect (Steve Largent) and he was administered the oath of office at a "lame duck" session the next week, despite constitutional misgivings about whether a vacancy existed at all on the day of election. The House inconclusively acknowledged this concern by referring the question of his final right

to the seat to the Committee on House Administration (which did not report on the matter in the one month remaining in the 103d Congress). Statutes in other States have permitted special elections to be held to fill vacancies which, by the terms of the letters of the resigning Member, did not actually exist until after the date of the special election. For example, in 2002, a special election was held before the effective date of the resignation. On one occasion the House allowed a Member to withdraw his resignation in the case of defective resignation transmitted to an improper State official in 1997. On another occasion the resigning Member included a statement in his letter declaring his resignation on a future date to be "irrevocable."

Campaign Practices. While fraudulent conduct in past elections may not be a basis for the House to judge a subsequent election, it may bear on the ethics of the returning Member potentially cognizable for investigation and punishment for up to three Congresses by the Committee on Ethics (the limit for examination of past conduct under Rule XI clause 3(b)(3) unless past conduct was ongoing into more recent Congress). In the 105th Congress, Rep. Jay Kim pleaded guilty in criminal court to accepting illegal campaign donations, including one-third of all donations to his 1992 campaign. He was sentenced to two months of house arrest and was defeated for renomination to the House. The House took no action against Rep. Kim. In 2012, the Supreme Court declined to review a Federal criminal bribery conviction of former Rep. Jefferson based on findings that culpable "official misconduct" had occurred prior to his becoming a Member of the House—during his campaign leading up to his original election. This left in place the rationale of the Kim case that prior illegal or unethical official conduct during a campaign for an initial election to the House remained cognizable by the courts and by the House.

The "Special Committee to Investigate Campaign Expenditures" established at end of each Congress by privileged resolution reported from the Committee on Rules, was not continued beginning in the 94th Congress. This symbolized a recognition of the ongoing authority of the standing Committee on House Administration to conduct investigations during adjournment and report at the end of a Congress to the next Congress. However, a Member's resignation in 1977 during a Committee on House Administration investigation of an election effectively terminated the investigation, as the committee had no further jurisdiction in the matter thereafter.

While unanimous consent is normally granted to administer the oath of office to a Member-elect despite the lack of an official certificate where no question or contest has arisen, that permission was broadened to include the pendency of a mooted lawsuit brought by the winning candidate in 2011.

Buckley v. Valeo, 424 U.S. 1 (1976) (discussed in section 10 of chapter 8), addressed campaigns for Federal office, including congressional campaigns,

and restrictions on spending limits under the Federal Election Campaign Act of 1974 as “free speech” infringements. The Supreme Court decision in *Citizens United v. Federal Elections Commission*, 558 U.S. 50 (2011), overruling *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) and earlier precedent, by another 5-4 decision conferred upon corporations and labor unions (and eventually on so-called “super PACs”) the First Amendment rights of free speech as “persons” who could fund the broadcast of “electioneering communications.” Those communications are defined as a broadcast, cable, or satellite “issue” communication that mentioned a candidate for Federal office within 30 days of a primary election or 60 days of a general election (but were not direct contributions to candidate campaigns or political parties), thereby invalidating a portion of a Federal law (the 2002 Bipartisan Campaign Reform Act—McCain-Feingold—2 USC § 441b) restricting such expenditures.

Chapter 9—Contested Elections.

Several questions of privilege were offered and tabled in 1985 to temporarily seat a Member-elect with a certificate of election (*McIntyre v. McCloskey*) notwithstanding referral on opening day of the question of final right to the seat to the Committee on House Administration and the House’s refusal to temporarily seat either candidate pending that inquiry. That contest resulted in partisan animosity which culminated in the contested election case of *Dornan v. Sanchez* in 1998. Of particular interest in the latter contest were the repeated attempts by the minority party to offer as questions of privilege resolutions dismissing the contest prior to a report by the Committee on House Administration, which ultimately recommended dismissal. All (37) of the election contests from the 93rd through the 111th Congress other than *McIntyre v. McCloskey* in the 99th Congress were dismissed by the House on report from the committee or withdrawn by the contestant for various reasons. The reasons included: lack of evidence; a determination that voting irregularities, fraud or misconduct was insufficient to affect the results of the election; failure to sustain the burden of proof necessary to award the contested seat to the contestant; and improper initiation of a contest or other procedural failures. The enactment of the Federal Contested Election Act in 1969 greatly reduced challenges to certified Members-elect being sworn on opening day, as most contests were initiated by notice and referral to the Committee on House Administration as provided by that law. That option was emphasized in responses to parliamentary inquiries on opening day in 1997.

In *Roudebush v. Hartke*, 405 U.S. 15 (1972), the U.S. Supreme Court held that a State may conduct a recount of votes without interfering with the

authority of either House under article 1, section 5 of the Constitution which provides that each House shall be the (ultimate) judge of the elections, returns and qualifications of its own Members. The determination by the House as to the right to a seat was final, being considered a nonjusticiable political question, but did not foreclose a preliminary State recount.

Chapter 10—Presidential Elections; Electoral College.

The historic and extraordinary proceedings in the 2000 election of President George W. Bush involved the Federal statute (3 USC §§ 1–18) governing the count of the electoral vote, proceedings in the Joint Session of the two Houses on January 6, 2001, and the U.S. Supreme Court decision in *Bush v. Gore*, 531 U.S. 98 (2000). In that case, the 5-4 majority ultimately set aside the Twelfth Amendment—which makes the count of electoral votes and the possible election of the President by the House a political question committed to Congress, by first finding (7-2) a denial of equal protection of the laws by the Florida Supreme Court which had ordered a partial recount of the popular vote in that State (while at the same time declaring that the decision was not to be considered a precedent). The role of Vice President Al Gore (also the losing presidential candidate), as presiding officer during that Joint Session, and the potential conflict of interest had Gore been called upon to make rulings under unique procedures requiring the two Houses to separately consider objections upon objection by at least one Member of each House, lend credence to the "extraordinary" characterization. As a result of the U.S. Supreme Court decision, Vice President Gore had informally asked that no Senator object to the counting of the Florida electoral votes, and so the individual objections of several House Members were insufficient under the statute to trigger separate House and Senate consideration of the objections to counting Florida certificates. Proceedings in the Joint Session of January 5, 2005, to count the electoral vote in the reelection of President Bush over Senator John Kerry, and of separate House and Senate consideration of challenges, where at least one Representative and one Senator did object to the count of the electoral votes from Ohio, came four years later.

Proceedings under the Twenty-fifth Amendment utilized for the confirmations of vice-presidential nominations by the President of Gerald R. Ford in 1973 and of Nelson Rockefeller in 1974 in both Houses were the only examples since ratification of that Amendment.

Chapter 11—Questions of Privilege.

There was an increase of the use of Rule IX to attempt to bring propositions to the immediate attention of the House as preferential to the ordinary business of the House. There were also changes in the procedures for

raising those questions. Resolutions which were ruled to constitute proper questions of privilege included: (1) the judging of elections and qualifications of Members (*e.g.*, the initial or final right of Members to their seats); the declaration of a vacancy where a Member-elect was physically unable to fulfill a qualification for office (*i.e.*, to take the oath of office, as in 1981); (2) the constitutional prerogatives of the House to originate revenue measures, including the origination in a conference report on a general appropriation bill of a new revenue provision not in either the House or Senate version (the House in that instance declining to assert its prerogative and an unprecedented resolution returning the measure to conference was tabled by one vote in 2000); (3) an assertion of the House's traditional authority to originate appropriations measures (as discussed in section 20 of chapter 13); (4) impeachment of the President or Vice President of the United States and resolutions incidental thereto; (5) presidential assertions of "pocket veto" authority during an intersession adjournment; (6) legal issues invoking House prerogatives (*e.g.*, establishment of the Office of House Chaplain), and the development of Rule VIII (beginning in 1981) to provide uniform procedures for House responses to subpoenas, requiring timely notifications to the Speaker and the House and automatic compliance, without the need for a House vote absent a notification or a question of privilege providing an alternative response; (7) the conduct of Members, Speakers, Officers and employees, including the investigation or punishment of specific or unnamed Members or offices (House Bank and Post Office in the 102d Congress) and the ethical propriety of remarks uttered in debate; (8) the integrity of House proceedings, including (a) the constitutional question of the vote required to pass a joint resolution extending the State ratification period of proposed constitutional amendment; (b) supervision of televised coverage; (c) length and other irregularities of specific electronic votes; (d) conduct of a former Member admitted to the House floor; (e) the accuracy of the *Congressional Record* and other House documents, and access to House records; (9) the integrity of committee proceedings, such as intentional violations of House or committee rules by committee chairmen (*e.g.*, "disapproving" release of subpoenaed documents and conduct of committee markups in 1998, and "disapproving" behavior of chairman in the conduct of an investigation in 2012, allegations that majority committee members had improperly withheld committee records from minority members in 2007, disapproving a committee chairman's conduct of a markup session in excluding minority members from committee rooms and refusing to recognize timely objections in 2003, improper dismissal of committee staff in 2005, refusing a proper request for a minority day of hearings, improper characterization in a committee report of amendments offered in 2005, and directing the Sergeant-at-Arms to alert

House personnel to dangers of electronic security breaches of committee computer and information systems in 2008); (10) comfort and convenience of Members, including proper attire, and structural and fire safety of the Capitol; and (11) alleged partisan determinations by the House Franking Commission in 2009.

Several precedents involved the Chair's denial of resolutions as questions of privilege based upon attempts to change House rules or upon mere assertions of constitutional authority of Congress to enact legislation. In particular a question of privilege was repeatedly denied to question the fairness and delay the implementation of an adopted rule or to prescribe a special order of business for the House or in committee, as otherwise any Member could attach privilege to any legislative measure or issue merely by alleging impact on the dignity of the House based upon House or committee action or inaction (See, *e.g.*, 2010). The proliferation of appeals from such proper rulings of the Chair suggested a departure from the narrow question of the propriety of the Chair's ruling and onto the merits of the matters sought to be made in order. In 2009, a resolution creating a select subcommittee of the Permanent Select Committee on Intelligence to investigate the Speaker's statement that she had not been properly briefed when Minority Leader by intelligence officials on enhanced torture techniques and contradicting those agencies' assertions, was held not to constitute a question of privilege since it merely questioned the opinion or statement of the Speaker, did not allege official misconduct or deception on her part, and implicitly called for an investigation of an outside agency.

Numerous rulings upheld the landmark precedents set by Speakers Thomas Brackett Reed and Frederick Gillett in 1890 and in 1921 that neither the enumeration of legislative powers (including declaration of war) in article I, nor the prohibition in the seventh clause of section 9 of that article against any withdrawal from the U.S. Treasury except by enactment of an appropriation, renders a measure purporting to exercise or limit the exercise of those powers as an order of business a question of the privileges of the House. Rule IX is concerned not with the privileges of the Congress as a legislative branch, but only with the privileges of the House as a House, and legislative business should be left to disposition under ordinary application of the standing rules of the House. Those rulings all served to distinguish between "questions of privilege of the House" and "privileged questions" relating to order of business.

Likewise, assertions in the guise of orders of business that congressional action or inaction is a matter of the dignity of the House's proceedings were held not to constitute questions of privilege. In the 111th Congress, there were denials of privilege to several resolutions complaining of special orders

adopted by the House denying individual Members the right to offer amendments and resolving that those amendments be made in order, and in 2010, on a resolution determining not to conduct legislative business during a “lame duck” session.

A change in Rule IX and a number of rulings clarified the procedural priority and renewal of questions of privilege over ordinary legislative business. In the 103d Congress, Rule IX was revised to authorize the Speaker to designate a time within a period of two legislative days for the consideration of a resolution to be offered from the floor by a Member (other than the Majority or Minority Leader, or as a revenue origination prerogative), as a question of privileges of the House after that Member has announced to the House his intention to do so and the content of the resolution. The rules change also divided the time for debate between the proponent and one of the party leaders or designees as determined by the Speaker. A Member recognized only on the question of whether a resolution qualifies as a question of privilege was not recognized to debate such resolution in 2005. The motion to refer such a resolution, although debatable under the hour rule, was not subject to a division of time in 1992 and 2006. The notice requirement served to reduce the element of surprise in the offering of questions of privilege except where a party leader insisted upon immediate consideration, and gave the Speaker flexibility in the announcement of timing of consideration so that the House would be on notice of the text of the resolution and ordinary legislative business could take precedence until the designated time prior to the end of the two day period. A variety of rulings established the priority of recognition on a question of privilege being immediately considered over ordinary legislative business. They included renewal on subsequent days of questions of privilege previously tabled, precedence over reports from the Committee on Rules and over motions to suspend the rules before consideration of that business has begun (although once those privileged business matters were pending, serve notice of intent to offer but not by consideration of questions of privilege themselves). The Speaker may, pursuant to his power of recognition, determine the order as between two questions of privilege. The Speaker may entertain unanimous-consent requests for “one-minute speeches” pending recognition for a question of privilege, since such requests, if granted, temporarily waive the standing rules of the House relating to the order of business. Several rulings reiterated the applicability and timeliness of ordinary motions to table (*e.g.*, following the reading of the resolution but prior to separate recognition for debate thereon), or of the motion to commit under Rule XIX clause 2 even following the ordering of the previous question on the question of privilege. Recent rulings also reiterate the Speaker’s discretion to directly rule on whether resolutions

constitute questions of privilege at the time the resolution is called up (subject to possible appeal), rather than submitting those questions to the House.

Questions of Personal Privilege Involve the Rights, Reputation or Conduct of Individual Members. Such questions were held not in order during the pendency of questions of the privileges of the House, or in the Committee of the Whole, and the Speaker insisted upon advance examination of the material allegedly giving rise to the personal privilege question. Rulings confined those questions to specific allegations against individual Members, and not to general corruption in the House. Other rulings reiterated the distinction between words spoken in debate, which were not collaterally challengeable by personal privilege, on the one hand, and press accounts of one Member's remarks, on or off the floor, that impugned the character or motives of the Member claiming personal privilege, on the other. Three Speakers took the floor on questions of personal privilege to discuss allegations concerning their official conduct. On one occasion in 2008, a Member was recognized on a question of personal privilege to respond in advance to a reported censure resolution, prior to recognition of the Committee on Standards of Official Conduct chairman to offer a question of the privileges of the House proposing to censure that Member.

Chapter 12—Conduct or Discipline of Members, Officers, or Employees.

The change in the name of the standing Committee on Standards of Official Conduct to the Committee on Ethics was made in 2011. There was a series of rules of conduct changes generally applicable to all persons covered by the Code of Official Conduct, and of investigations and sanctions brought against such persons. There were changes in the standards of official conduct, in the procedures for enforcing those standards, and in the composition, jurisdiction and procedures of the Committee on Standards of Official Conduct, especially those adopted by the House in 1997 emanating from a task force on ethics reform.

In 1970, the Committee on Standards of Official Conduct was given legislative jurisdiction over lobbying activities as well as those involving the raising, reporting, and use of campaign funds. Subsequently in the 94th Congress, jurisdiction over campaign contributions was transferred to the Committee on House Administration. In the 95th Congress, jurisdiction over lobbying was transferred to the Committee on the Judiciary, and jurisdiction over House rules changes relating to all aspects of official conduct other than the Code of Official Conduct itself (now Rule XXIII), was transferred to the Committee on Rules. These additional rules addressed "Limitations

on use of Official Funds" (Rule XXIV), including official and unofficial accounts, use of the mailing frank and use of funds by Members not elected to the succeeding Congress, and "Limitations on Outside Earned Income and Acceptance of Gifts" (Rule XXV), including honoraria, copyrights, travel and other gifts. A separate rule on "Financial Disclosure" was amended in 1977 and then incorporated by reference from title I of the Ethics in Government Act of 1978 as Rule XXVI in 1979. While legislative jurisdiction over those rules beyond the Code of Official Conduct itself was transferred to the Committee on Rules, the Committee on Standards of Official Conduct (now Committee on Ethics) retained investigative, adjudicatory and advisory jurisdiction over application of those rules.

The Committee on Standards of Official Conduct (now Committee on Ethics) assumed investigative jurisdiction over these additional rules of conduct and was authorized to maintain the public financial disclosure reports (together with the Clerk) filed by Members, Officers, and employees. In addition, a Select Committee on Ethics was established to assist in the implementation of the new rules but only during the 95th Congress.

In 1977, a resolution establishing the House Select Intelligence Committee authorized the Committee on Standards of Official Conduct to investigate any unauthorized disclosure of intelligence-related information and report to the House on any substantiated allegations. Then in 1977, after the enactment of amendments to the Foreign Gifts and Decorations Act of 1966, the Committee on Standards of Official Conduct was designated as the "employing agency" for the House and authorized to issue regulations governing the acceptance of gifts, trips, and decorations from foreign governments.

In 1978, government-wide public financial disclosure requirements were mandated with the enactment of the Ethics in Government Act (Pub. L. No. 95–521). In 1979, with the adoption of House rules in the 96th Congress, the provisions of the House financial disclosure rule were replaced by those of the Ethics in Government Act and incorporated by reference in Rule XXVI clause 2 into House rules. The role of the Committee on Standards of Official Conduct was confined to review, interpretation and compliance of financial reports that henceforth were to be filed with the Clerk of the House.

Subsequently, the Ethics Reform Act of 1989 (Pub. L. No. 101–194) amending the Ethics in Government Act included a variety of ethics and pay reforms for the three branches of government that further expanded the responsibilities of the Committee on Standards of Official Conduct, including enforcement of the Act's ban on honoraria, limits on outside earned income, and restrictions on the acceptance of gifts. These reforms were coupled with

an automatic cost of living salary adjustment formula mechanism in the same law. The committee was also given the responsibility for consideration of any requests for a written waiver of the limits imposed by the House gift ban rule.

The House in the 105th Congress adopted a new Rule XXV clause 5 banning most gifts to Members, Officers, and employees. On the opening day of the 106th Congress, the House amended its gift rule to conform to the Senate gift rule which had been in effect since 1996, to allow covered persons to accept any gift of $50 or less in a calendar year or a gift with a cumulative value of $100 from any one source in a calendar year, not counting gifts of $10 or less toward the $100 annual limit.

In 2007, four new clauses barring official acts to influence private employment decisions on the basis of partisan political affiliation, use of any funds, with exceptions, for aircraft flights (subsequently amended in 2013 to permit certain private flights), conditioning "earmarks" on votes cast by another Member, and written statements supporting earmarks identifying intended recipients, were added to the Code of Official Conduct. In 2013, clause 8 was amended to include grandchildren of Members in the nepotism restriction.

Committee on Standards of Official Conduct (Now Committee on Ethics). Changes in the composition and procedures governing the Committee on Standards of Official Conduct were similarly extensive. The Ethics Reform Act of 1989 mandated a number of changes in the committee's organization and operation. The Committee established the Office of Advice and Education as part of the Committee but separate from its enforcement functions. Its staff provides recommendations to Members, Officers, and employees on standards of conduct applicable to their official duties. The 1989 Act also: (1) provided for the "bifurcation" within the committee of its investigative and adjudicative functions; (2) required that the committee report to the House on any case it has voted to investigate and that any Letter of Reproval or other committee administrative action be issued only as part of a final report to the House; (3) prohibited committee initiation of an investigation of alleged violations occurring prior to the third previous Congress unless related to a continuous course of conduct in recent years; (4) included a guarantee that any Member who is the respondent in any committee investigation may be accompanied by one counsel on the House floor during consideration of his case; and (5) imposed a limit of committee service of no more than three out of any five consecutive Congresses. The 1989 Act also increased the size of the committee's membership from 12 to 14, but that was superseded by the 1997 reforms that reduced the size of the committee from 14 to 10 members (always an equal number from each party).

Other changes in the committee's procedures included: (1) a House rule adopted effective in 1975 to permit a majority vote (instead of 10 of the then

12 members) to approve committee reports, recommendations, advisory opinions and investigations; (2) a House rule adopted in 1977 permitting a member of the committee to disqualify himself from participating in an investigation upon submission of an affidavit under oath; and (3) a House rule adopted in 1979 to prohibit information, testimony, the contents of a complaint or fact of its filing from being publicly disclosed unless specifically authorized by the full committee. Reforms adopted in 1997 granted discretion to the chairman and ranking member to make public statements about matters before the Committee, subject to consultation with each other and to the authority of the full committee, resulting in the availability of more information to the public. The authority of the ranking minority member to publicize a legal memorandum prepared by Committee on Standards of Official Conduct staff evaluating the relationship between that committee and a proposal to create an Office of Congressional Ethics became the subject of a question of personal privilege in 2008 where the issue of consultation between the chairman and ranking minority member was factually disputed.

In 1997, after seven months of study, the House adopted with amendments the recommendations of the Ethics Reform Task Force which had been established informally by the Majority and Minority Leaders in February of that year. The bipartisan 10-member task force was mandated to review the existing House ethics process and to recommend reforms. During the time of its deliberations, the House by unanimous consent approved a 65-day moratorium on the filing of new ethics complaints (but not questions of privilege) to enable the task force to conduct its work "in a climate free from specific questions of ethical propriety." The moratorium was extended several times prior to adoption of its recommendations. The major changes in the ethics process adopted in 1997 included: (1) changing the way non-Members file complaints with the Committee on Standards of Official Conduct by requiring them to have a Member of the House certify in writing that the information was submitted in good faith and warrants consideration by the committee; (2) decreasing the size of the committee from 14 members to 10; (3) establishing a 20-person pool of Members (10 from each party) to supplement the work of the Committee on Standards of Official Conduct as potential appointees to investigative subcommittees that might be established by the committee; (4) requiring the chairman and ranking member to determine within 14 calendar days or five legislative days, whichever comes first, if the information offered as a complaint meets the committee's requirement; (5) allowing an affirmative vote of two-thirds of the members of the committee or approval of the full House to refer evidence of law violations disclosed in a committee investigation to the appropriate State or Federal law enforcement authorities (prior to which only a

vote by the full House permitted such referrals); (6) providing for a nonpartisan, professional committee staff; (7) allowing the ranking minority member to have an equal opportunity to place matters on the committee's agenda; and (8) decreasing the maximum service on the committee from six to four years during any three successive Congresses and requiring at least four members to rotate off the committee at the end of each Congress (a requirement changed back in the next Congress in 1999 to the 1989 requirement eliminating the off-rotation requirement and extending service back to three Congresses out of five).

In 2005, the House for the first time adopted rules changes recommended only by the majority party conference on opening day affecting the Committee on Standards of Official Conduct's procedures in handling allegations against a covered person. The House mandated adoption of committee rules by requiring dismissal of a complaint rather than automatic forwarding to an investigative subcommittee following the full committee's being equally divided (or other inaction) for 45 days. Three months later, the changes were dropped when the House, following extended partisan recriminations, deleted all amendments to the committee's procedures that had been adopted on opening day. The emphasis in all these rules additions and changes was to adjust acceptable standards of official conduct as circumstances revealed improprieties or appearances of improprieties, "conflicts of interest," or the need for disclosure of finances.

Numerous actions and investigations were undertaken by the committee and by the House. Since virtually all of the Committee on Standards of Official Conduct's activities transpired since the publication of chapter 12, a more complete history of that committee and of House disciplinary actions are further referenced in the *House Ethics Manual* republished in the 110th Congress and in that committee's subsequent activities reports. The Committee on Standards of Official Conduct developed rules providing several options at the conclusion of any formal investigation. It has either recommended no further action, or has issued a "Letter of Reproval" or a "Letter of Admonition" without recommending action by the full House, or has recommended one or more sanctions if it determines a rules violation has occurred. In several Congresses the committee issued public "Letters of Reproval," a sanction created by the committee and first used in 1987 as an expression that the conduct was improper but that no further action is required by the House. The 1989 Act required that such letters be publicly carried as part of a final report to the House. The committee has resolved several complaints by means of a letter to a respondent without a formal investigation. The first such letter of admonishment was sent to the Majority Leader in 2004 at the conclusion of a formal investigation of allegations

related to proceeding during a vote on a conference report in 2003. Other letters of admonishment include one to a Member in 2009 who was further investigated for other alleged ethics improprieties in 2010 resulting in a censure by the House.

The sanctions recommended by the Committee on Standards of Official Conduct since 1975 included expulsion, censure, reprimand or admonishment, a fine, and may include denial or limitation of any right, privilege, or immunity of the Member that is permitted under the Constitution, or any other sanction deemed appropriate by the committee. Since the Civil War, two Members have been expelled by the House by the constitutionally required two-thirds vote. One Member was expelled by the House in 1980 following his criminal conviction in the Federal Bureau of Investigation's Abscam sting operation for bribery and conspiracy, and one Member was expelled in 2002 following his criminal conviction for bribery, racketeering, fraud, and tax evasion.

Five Members have been censured since 1975. Those proceedings included the Speaker's reading of the committee's finding and censure pronounced to the Member standing in the well. In the 96th Congress, two Members were censured by the House as follows: (1) for unjust enrichment by kickbacks from employees' clerk-hire payments, that Member was also ordered to repay the amount with interest; and (2) for transferring campaign funds into official and personal accounts. In the 98th Congress, two Members were censured for improper relationships with House pages in a prior Congress. In the 111th Congress, in a "lame duck" session in 2010, a Member who had previously received a letter of admonition was censured upon recommendation of the Committee on Standards of Official Conduct on eleven findings including nondisclosure of financial assets, use of official letterhead for personal gain, failure to pay Federal income tax, and improper arrangement for rental properties. That action followed rejection of an amendment proposing reprimand in lieu of censure.

Nine Members have been reprimanded, beginning in 1976, where the adoption by the House of the committee's report constituted that punishment. Those actions included: a failure to report certain financial holdings in the 94th Congress; three reprimands in the 95th Congress following an investigation of improper acceptance of things of value from the Republic of Korea; "ghost voting" and "ghost employees" by a Member in the 100th Congress; seeking dismissal of parking tickets and for misstatement of a personal friendship. In the 105th Congress, the Speaker was reprimanded and ordered to reimburse a portion of the costs of the Committee on Standards of Official Conduct's investigation. In 2012, a Member was reprimanded for use of congressional staff for campaign fundraising, a violation of statute and House rules.

The committee has also noted infractions not meriting sanctions by at least ten Members. Approximately 20 Members of the House have resigned after court convictions, after inquiries were initiated by the committee or after charges were reported before House action could be completed. For example, in 1998, a report from the Committee on Standards of Official Conduct on the conduct of Rep. Jay Kim of California which did not recommend a House sanction but was merely informational, was filed through the hopper with the Clerk rather than from the floor as privileged. That Member had pleaded guilty to violations of Federal election campaign laws in prior campaigns waged before he became a Member and had been sentenced to "house arrest" enforced by an electronic tracking device worn on his ankle even while carrying out his duties as a Member. In the Committee on Standards of Official Conduct report, it was acknowledged that the House could investigate some conduct engaged in prior to the respondent becoming a Member.

In the 98th Congress, the committee conducted an investigation of alleged improper alterations of House documents. In the 99th Congress, the committee investigated allegations of improper political solicitations. No Members were implicated in these cases.

The full House itself referred several cases to the Committee on Standards of Official Conduct for investigation, upon the adoption of resolutions raised as questions of the privilege of the House. In the 102d Congress, the committee was referred allegations of impropriety involving the "bank" of the House operated by the Sergeant-at-Arms and reported that 325 current or former Members had incurred overdrafts during the 30-month period of review, but no further House action was taken. Also in that Congress the committee formed a "task force" to review evidence to determine the necessity of an investigation of the operations of the House Post Office. The committee deferred any action at the request of the Department of Justice. Several incidental questions relating to that deferral of action and cooperation with a special prosecutor were raised as questions of privilege. Federal prosecutions of some Members, Officers, and former Members resulted from the committee's investigations.

In 2009, the House adopted a motion to refer a resolution calling upon the Committee on Standards of Official Conduct to initiate an investigation of allegedly improper political contributions to unnamed Members in return for "earmarks" included in appropriation bills. The House also laid on the table several previous and subsequent resolutions of the same import.

Some questions of privilege offered on the floor of the House relating to the official conduct of a specific Member were adversely disposed of by being laid on the table without debate (in 1998, 2003, 2008, and 2012), including

three committee chairmen, and the Majority Leader in 2006, while others were referred to the committee on debatable motion in 2010.

In all, the Committee on Standards of Official Conduct took some form of action on cases involving at least 68 Members through the 110th Congress, including two Speakers and a Majority Leader, and on several additional Members through the 112th Congress (See H. Rept. 111–707 and H. Rept. 112–690). Its actions ranged from public acknowledgment that it was considering the merits of a complaint against a Member, to the dismissal of complaints, to the recommendation of censure, expulsion or other punishments.

There was a continuation of an investigation of a Member into a new Congress, interrupted then by an internal investigation of improprieties by Committee on Standards of Official Conduct staff during the inquiry leading to appointment of an independent counsel by the committee in 2011. In 2012, six members of the committee (five from one party) who had served in the prior Congress' investigation recused themselves, and the Speaker appointed temporary replacements. Finally, in 2012, the complaint against that respondent Member was dismissed by the Committee on Ethics following a public hearing but letters of reproval were transmitted to an employee who was her grandson. The committee had earlier unanimously determined that the respondent had not been denied Fifth Amendment procedural due process by the prior committee's staff misconduct, since she had been afforded notice of the charges, a proper forum and an opportunity to be heard.

The Committee on Standards of Official Conduct (now Committee on Ethics) since its establishment has not been considered the sole investigative entity by the House. In the 105th Congress the House created a select Ethics Committee consisting of returning members of the Committee on Standards of Official Conduct from the prior Congress to complete an investigation of the Speaker's conduct begun in the prior Congress. In the 110th Congress the House created a select committee to investigate a particular voting irregularity by adoption of a resolution offered by the Minority Leader as a question of privilege.

The alleged lack of "self discipline" by the House despite the empowerment contemplated by the Constitution resulted in increasing demands for outside entities to be involved in the complaint and investigative processes. The House since 1989 rejected the ability of private citizens or groups to file complaints with the Committee on Standards of Official Conduct. Resulting pressures for the establishment of an independent Office of Congressional Ethics to publicly forward outside complaints to the Committee on Standards of Official Conduct resulted in the establishment in 2008 of such

an entity, but without subpoena authority. It consisted of six non-Member commissioners and two alternates appointed by the Speaker and Minority Leader acting jointly. The office was not incorporated into standing rules but was reestablished as a separate part of the rules package in the 111th Congress, when it first became operational, and was continued in the 112th Congress.

In 2008, the House passed a Senate bill enacted into law requiring the Department of Justice to investigate the conduct of an unnamed Member involving acceptance of a campaign contribution in return for enactment of a highway provision benefiting the contributor. The provision which originated in the Senate and debated in the House was enacted (Pub. L. No. 110–244) notwithstanding the normal avenue of an internal House Committee on Standards of Official Conduct investigation (the initiation of which was not then publicly known to the House). Enactment of that law acknowledged again the separate constitutional role of the executive branch in investigating alleged violations of Federal criminal law by current or former Members. In 2010 the Department of Justice discontinued its investigation, and the Federal Bureau of Investigation released details in 2012.

Then in 2012, Congress passed a law criminalizing the use by Members of Congress or other Federal officials of "insider trading" on information received during executive sessions and then relied upon in private stock investments. The law also required more periodic public disclosure of stock transactions. This followed allegations of such conduct by a sitting Member, which was investigated by the Office of Congressional Ethics but not forwarded to the Committee on Ethics.

Rule XXIII clause 10 was added to the Code of Conduct in the 94th Congress in 1975 to encourage Members convicted of felonies to refrain from voting in the House and from any committee business; however, no automatic suspension from House or committee proceedings was contemplated out of a constitutional concern for a deprivation of voting representation of constituents.

In addition to the evolution of House rules relating to the discipline of Members, both party caucuses adopted rules relating to the roles of those entities in the selection process of floor or committee leadership positions. Both the Democratic Caucus and the Republican Conference provided "step-aside" procedures (continued in subsequent Congresses) by which felony-indicted leadership Members would be suspended from their positions, and by which Members convicted of felonies or censured by the House would be "replaced" and ineligible to serve in any leadership position for the remainder of that Congress.

Appendices in the *House Ethics Manual* of 2008 more recent than those in the appendix to chapter 12 carry Advisory Opinions of the Committee on

Standards of Official Conduct since 1975 of all published “Advisory Memoranda.” Many advisory “opinions” were furnished privately to Members on request and were not published.

Chapter 13—Powers and Prerogatives of the House.

Chapter 13, published in 1977, was not entirely focused on the powers and prerogatives of the House, as a House, but included material on the powers of Congress emanating from the Constitution. For example, in section 2 relating to the admission of States into the Union, the House and Senate have a co-equal responsibility under article IV, section 3, clause 1 to enact statehood laws, and none have been enacted since the 1977 publication. Other actions by both Houses are contemplated in the Constitution, emanating from article I powers conferred upon Congress or from other specific provisions of the Constitution including the Twelfth Amendment. Procedures under the Twelfth Amendment utilized in 2001 and in 2005 during Joint Sessions and separate House and Senate sessions under 3 USC §§ 15–19 to count the electoral votes for President and Vice President, were noteworthy. Notifications to the two Houses under the Twenty-fifth Amendment of temporary self-proclaimed presidential disabilities in 1985, 2002, and 2007 also fall into that category. Beginning in 2011, House Members were required to submit descriptions of constitutional authority for each introduced bill into the *Congressional Record* on the date of introduction (Rule XII clause 7).

Recent precedents ratified the landmark rulings of Speaker Thomas B. Reed in 1898 and Speaker Frederick Gillett in 1921 and reiterated that powers conferred upon Congress under article 1, section 8 of the Constitution, and under the prohibition in the seventh clause of section 9 of that article against any withdrawal from the U.S. Treasury except by enactment of an appropriation, do not render a measure purporting to exercise or limit the exercise of those powers a question of the privileges of the House in disregard of the ordinary rules of the House.

War Powers. There was utilization of expedited procedures under the War Powers Resolution of 1973, and the refinement of those procedures by laws enacted subsequent to 1977. For example, in 1983, the two Houses passed a joint resolution providing for expedited consideration in the Senate (but not in the House) of bills or joint resolutions requiring the removal of U.S. forces engaged in hostilities outside U.S. territory without a declaration of war. Congress has also engaged in procedures utilized for the consideration of “specific” authorizations for the use of military force, not labeled “declarations of war,” since 1977. Despite the U.S. Supreme Court decision in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983),

declaring unconstitutional under the "presentment clause" simple or concurrent resolutions disapproving or revoking executive actions, the Congress has not repealed and the House has not superseded section 7 of the War Powers Resolution of 1973 (50 USC §§ 1541–1548). The House has to various extents utilized its expediting procedures under section 5(c) in 1993 (Somalia), 1998 (Bosnia and Herzegovina) and 1999 (Yugoslavia) to consider concurrent resolutions purporting to remove military forces from specified areas of hostilities. The House and Senate have also employed joint resolutions on several occasions to authorize the use of force without regard to privileged procedures in the Act. In 2010, the House utilized a special order from the Committee on Rules to permit consideration of an otherwise privileged concurrent resolution relating to the removal of military forces in Afghanistan. In 2011, the House rejected two concurrent resolutions made in order by special orders relating to use of military force in Libya.

Beyond the use of "regular order" (motions to suspend the rules or special orders from the Committee on Rules) for consideration of declaration of war measures, and beyond the application of procedures under the War Powers Resolution enacted as an exercise in rulemaking, the Speaker in 1995 suggested that the mere conferral of authority on Congress to declare war does not permit questions of privilege to replace ordinary business in order to immediately raise that question. Speaker Newt Gingrich on that occasion, relying on Speaker Reed and Speaker Gillett's rulings, reminded the House that individual Members could not bring use of military force matters as questions of the privileges of the House despite conferral upon Congress of the exclusive authority to declare war, as that question did not uniquely involve the prerogatives of the House as a House.

Funding Restrictions on Military Activity. In a unique procedure adopted by the House in 2007, the House made in order in a section of a special order reported from the Committee on Rules providing for the consideration of a Senate amendment to a supplemental appropriation bill, an amendment consisting of the text of an introduced bill expressing policy on the use of force in Iraq or Afghanistan, limiting the use of funds for military action and requiring withdrawal of troops in Iraq, on that subject to an anticipated subsequent supplemental appropriation bill the next year by the chairman of the Committee on Appropriations. It marked the first time a special order had anticipated a specific amendment to be offered to a subsequent generally described measure not yet introduced or before the House. The power of the purse was thus being utilized to influence military action by a temporary restriction on funds and by prioritizing that issue on a subsequent bill through an anticipatory waiver of points of order.

Section 12 of chapter 13 (Presidential Proclamations) was published in 1977 to include proclamations relating to national security. While those materials are more historical than precedential from the standpoint of House

practice, they led to presidential assertions of power as Commander in Chief under article II, section 2 of the Constitution, such as by President George W. Bush in 2007, to overcome House and Senate subpoena efforts relating to issues of torture and warrantless wiretaps under the Foreign Intelligence Surveillance Act. Those assertions took the form of "signing statements" accompanying enactment into law of a measure prohibiting torture, wherein the President announced his intent not to enforce a provision banning torture of alleged terrorists and to oppose possible contempt proceedings in Congress.

House Prerogative to Originate Revenue Bills. On at least thirty occasions since the publication of this section in 1977, the House adopted a "blue-slip" resolution offered as a question of the privileges of the House (usually by a member of the Committee on Ways and Means) alleging infringement of article I, section 7 of the Constitution by the Senate and returning to that body a Senate bill or amendment originating revenue legislation. Those Senate infringements included: provisions in bills providing tax-exempt or other special status to persons or entities; numerous provisions prohibiting or limiting the importation of dutiable commodities subject to tariff, thereby reducing revenues; Senate amendments to general appropriation bills limiting funds for the Internal Revenue Service to enforce a requirement in law (thereby reducing general revenue) or proposing a user fee raising revenue to finance broader activities of the agency imposing the levy; a bill repealing a fee that would otherwise raise revenue; an amendment to the criminal code that would make it unlawful to import certain assault weapons that were dutiable under separate tariff law. The assault weapons "blue-slip" resolution was contested in the Senate as not having been an amendment to the tariff law. That position was countered in parol argument by the U.S. Customs Service that they were sworn to uphold all U.S. law bearing on importations, including criminal provisions that although not directly denying entry into customs territory as a matter of tariff law, nevertheless effectively resulting in denial of entry as a matter of criminal law and in the loss of tariff revenues on otherwise dutiable items. In 2010, the House for the first time returned to the Senate from the Speaker's table several (five) infringing measures by adoption of a single (divisible) resolution offered as a question of privilege. In 2012, one resolution combined two alleged Senate infringements.

The House in 1983 adopted Rule XXI clause 5(a) prohibiting consideration of any amendment, including any Senate amendment, proposing a tax or tariff measure during consideration of a bill reported by a committee not having that jurisdiction. The rule was meant to augment the question of privilege procedure by permitting the House to show its disagreement to a

particular Senate tax or tariff amendment (especially to appropriation bills) by sustaining a point of order rather than requiring return of the entire bill and all Senate amendments to the Senate by invoking article I, section 7 of the Constitution.

In 1991, the Speaker announced a new policy distinguishing between tax and tariff provisions properly originating in the Committee on Ways and Means, on the one hand, and user or regulatory fee measures originated by other committees as part of regulatory schemes to offset the costs of the regulatory service, which also raised revenue for the assessing agency, on the other. The Speaker acknowledged the constitutional prerogative of the House to originate revenue in the context of protecting the jurisdiction of the Committee on Ways and Means to receive "an appropriate referral of broad-based fees which could be recast as excise taxes." The Speaker also asserted that "the constitutional prerogative of the House to originate revenue measures will continue to be viewed broadly to include any meaningful revenue proposal that the Senate may attempt to originate." The previous year, the chairman of the Committee on Ways and Means during debate on a point of order had criticized the Speaker for not having adequately defended the prerogative of his committee to be the originator of all revenue legislation.

In 1993, the House amended Rule IX to permit questions of privilege relating to the House prerogative to originate revenue legislation to continue to be offered in preference to all other business without the notice requirement otherwise imposed at that time on all Members other than the Majority and Minority Leaders. This was in recognition of the potential immediate need to respond to Senate infringements, without awaiting the Speaker's scheduling within two days following notice to the House.

In 2000, the House by a single vote margin laid on the table a resolution asserting that a conference report (on a House general appropriation bill), on which the House was acting first, had originated revenue provisions in derogation of the constitutional prerogative of the House. The matter newly inserted by the conferees was a direct amendment to a corporate tax provision in the Internal Revenue Code, and had not been in either the House bill or Senate amendment sent to conference. The resolution offered as a question of privilege by the chairman (with the support of the ranking minority member) of the Committee on Ways and Means in a bipartisan assertion of the House constitutional prerogative, was nevertheless opposed by the majority leadership. This action (laying the resolution on the table without debate) represented the first rejection of an assertion by the Committee on Ways and Means of the House prerogative in modern Congresses. The tax provision remained in the final version of the bill, which was subsequently vetoed by the President. Thus no collateral challenge to the law in

court would have been possible. The fact that the bill had originated in the House, that the Senate had not originated the revenue provision, and that the House had acted first on the conference report, all mitigated against the contention that the Committee on Ways and Means should have originated the provision in a House-passed bill. The effort by the Committee on Ways and Committee chairman and ranking minority member, which would (by an unprecedented recommittal) have returned the bill to the conference committee and not to the Senate, was based as much on a committee jurisdictional argument as on a House constitutional prerogative. The House had waived all points of order against the conference report, and thus no separate scope or revenue point of order in the House lay against inclusion of that new matter in the conference report. Nevertheless the House by tabling the question of privilege resolution declined to honor its revenue committee's bipartisan recommendation.

On a number of occasions, the Senate passed its own general appropriation bill prior to action by the House, but did not message the Senate measure to the House, instead honoring the traditional claim of the House to originate appropriation bills. The Senate accomplished this by entering orders holding the Senate bill at the desk and then substituting its text as an amendment to the companion House measure if and when received. At no time did the Senate originate a general or continuing appropriation measure and message it to the House. On one occasion the Senate did, however, amend a dormant House-passed general appropriation bill to convert it into a short-term continuing resolution, and the House concurred in the Senate amendment in 2010 by adoption of a special order of business.

On another occasion in the 104th Congress, the chairman of the House Committee on Appropriations introduced through the hopper a resolution purporting to return to the Senate a bill and amendments thereto "to assure that all Federal employees work and are paid" during a partial government shut-down. The Senate amendment to the House amendment contained a direct appropriation of funds. The "blue-slip" resolution was referred by the Speaker to the Committee on Appropriations, and the House did not act on the resolution. The Senate bill had been amended by the House by unanimous consent and the Senate then had amended the House amendment to include a direct appropriation. There was no further action by the House on the Senate amendment. The introduction of the "blue-slip" resolution was intended to symbolize the prerogative of the House to originate appropriations although it was not called up as a matter of privilege.

Relations with the Executive Branch; Faithful Execution of Laws. Article II of the Constitution requires the executive branch to faithfully execute Federal law. Further, a provision of law (28 USC § 530D) confers discretionary authority upon the President to direct the Department of Justice

to refrain from defending the constitutionality of Acts of Congress in Federal court. Litigation challenging the constitutionality of the Defense of Marriage Act of 1996 (defining marriage for all purposes of Federal law to be between a man and a woman), signed into law by former President Clinton and supported in court by former President George W. Bush, led the Attorney General to notify Congress by executive communication of President Obama's declination to continue such support in 2011. The BLAG voted, by a 3-2 margin, to retain private counsel. The propriety of the Department of Justice in refusing to defend the validity of that Act of Congress where a reasonable argument existed supporting its constitutionality (as ruled by several Federal courts) and then to actively participate in litigation against the statute, was a political determination with unforeseen precedential impact under article II and was challenged by the Bipartisan Legal Advisory Group counsel in a petition for *certiorari* in *BLAG v. Gill*, case no. 10–2204 (1st Cir. 2012). The declination was challenged again in the subsequent Congress when on the opening day of the 113th Congress, the House adopted a separate order as part of its rules package asserting the authority of BLAG to continue to represent the House in that litigation. There the Court had requested briefing on the question of BLAG's standing (even where the minority Members of that entity did not support participation).

Congressional Review Statutes. Congress has reserved itself a proliferation of statutes that allows an absolute or limited right of review by approval or disapproval of actions of the executive branch, of independent agencies or other governmental entities such as the D.C. City Council. A compilation of those laws is contained in section 1130 of the *House Rules and Manual* in each Congress, especially those current laws which prescribe special procedures for the House and/or Senate to follow when reviewing executive actions. In addition to the Executive Reorganization Act and the War Powers Resolution, Congress subsequently enacted at least thirty statutes and amended some of them to require joint resolutions of approval or disapproval, rather than concurrent or simple resolutions, in light of *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). In that case the Supreme Court held unconstitutional as in violation of the presentment clause of article I, section 7 of the Constitution, and the doctrine of separation of powers the provisions of the Immigration and Nationality Act contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House. That same year, the U.S. Supreme Court (*Process Gas Group v. Consumer Energy Council*, 463 U.S. 1216 (1983)) summarily affirmed several lower court decisions invalidating provisions contemplating disapproval of executive actions by concurrent or simple resolution or by committee action.

On one occasion in 2008, the House disabled for the remainder of the Congress the privileged procedure contemplated by section 152 of the Trade Act (19 USC § 2192) for nonamendable consideration of a specific bill implementing presidential determinations under section 203 of that law relating to free trade with Colombia, by utilization of a special order from the Committee on Rules. It marked the first time that the House rendered inapplicable expedited procedures under any review statute on a particular bill for the remainder of an entire Congress. It also meant under that law, where only one presidential message per nation can be considered under a "fast-track" procedure in any Congress, but where a subsequent House nevertheless wants to consider similar legislation anew, it cannot utilize the expedited procedure, one ramification of which is the preclusion of a motion to recommit. This one-time "fast-track" procedure was acknowledged in 2011 when a new Congress again considered a bill on Colombian free trade under a special rule that permitted a motion to recommit (while also providing for separate consideration for the first time of two other free trade bills—with South Korea and Panama—which special order was able to deny the motion to recommit under the Trade Act).

Subsequently in 2008, the House by special order disabled another statutory expedited procedure which provided for "a bill to respond to a Medicare funding warning" relating to excess general revenue Medicare funding, submitted by the President under 31 USC § 1105. Under that law, only a special order which solely waived the expedited procedure therein, and contained no other procedural matter, could be considered. Then, consistent with that restriction, the House in its rules package for the next Congress in 2009 again disabled that expedited procedure for the entire Congress (which it was permitted to do because the exclusivity requirement had not yet been readopted as a rule on opening day). The disabling by separate order was not continued beginning in 2011.

The Congressional Review Act of 1996 (5 USC §§ 801–808) provides for expedited procedures on an introduced joint resolution of disapproval of any one major agency rule and regulation once finally promulgated and submitted to Congress. Under the Act, Congress has 60 legislative days to exercise a regulatory veto power by joint resolution under expedited procedures, after which the proposed regulation will go into effect. The law has been seldom utilized. Between 1996 and 1999, for example, only seven joint resolutions of disapproval were introduced in Congress pertaining to five of 186 major regulations (those having at least a $100 million annual impact) promulgated during that time. None of those joint resolutions became law. From the 105th Congress through 2007, only 43 joint resolutions of disapproval were introduced in the House and Senate. None of the 25 House

joint resolutions passed the House. Three of the 18 Senate joint resolutions passed the House. Altogether, the disapproval mechanism established by the Act invalidated one rule (Pub. L. No. 107–5) through 2010. Nevertheless the law remains an example of joint exercise of rulemaking primarily to enable the Senate to expeditiously consider joint resolutions disapproving specific agency regulations—by permitting 35 Senators to sign a discharge motion to bring it to the Senate floor for an up-or-down vote following 10 hours of debate and without amendment. The statute contains no comparable procedures for expedited House action (except to permit final votes on Senate companion measures if received in the House), preferring to retain flexibility for the leadership through utilization of the Committee on Rules to make in order a disapproval resolution reported from committee or to discharge a committee of jurisdiction if necessary and including language deeming a proposed regulation to have been finally submitted for review in 2012. While the law was enacted to symbolize the ability of Congress to respond to major agency rulemaking regimes without micromanaging their formulation, its lack of utilization shows that it was not a panacea in addressing regulatory excesses or inadequacies. The assumption that the President would veto any joint resolution disapproving a regulation emanating from an agency whose membership and policy direction he controls, and that a two-thirds vote of each House would be required to enact the disapproval over his veto, leads to this conclusion. Appropriation bills to limit funding to implement specific regulations were more often the vehicle utilized.

Public debt limit increases became a fourth layer of annual decision-making linked to the budget and appropriations processes, under partisan pressure threatening government bond default. The Budget Control Act of 2011 (BCA) enacted three future contingencies for debt limit increases to impose an expedited disapproval scheme so that presidential debt limit increases up to $1.2 trillion for the remainder of that Congress (and presidential term) would go into effect linked to comparable reductions in spending, unless a possible veto of the President's proposed increases was overridden. Those disapproval efforts under expedited procedures failed of enactment in the Senate, although passing the House, preventing bond defaults. On the spending side under the BCA (which revived some "sequestration" procedures contained in the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings, Pub. L. No. 99–177) permitted to expire in 2002), across-the-board deficit reduction mandated in both military and other discretionary spending would result in sequestration of those amounts unless Congress enacted comparable specific cuts, and discretionary spending caps on appropriations were imposed by that law for the next ten years. The option of revenue enhancement as a deficit reduction tool was minimized by the BCA and as the House changed its "Pay-As-You-Go" rule to

a “Cut-As-You-Go” rule and adopted other rules requiring direct spending reductions in all bills, including “deficit reduction lockboxes” in appropriations bills, as the only offset option. At the end of the 112th Congress, availability of those revived sequestration procedures was delayed by law for three months.

The BCA in part expedited both debt limit extensions and spending cuts of at least equal amounts over ten years (either through across-the-board sequestration beginning in 2013 or future legislation), and created a bipartisan joint select committee to recommend further deficit reduction measures (which could include revenue, entitlement and other spending changes without procedural challenge) by a date certain in 2011. When that date was not met, the expedited procedures for floor consideration were not activated and Congress was left to address the specifics after voting by the end of that year on an unspecified constitutional amendment requiring a balanced budget before the rest of the law took effect. Such a constitutional amendment failed to pass both Houses.

Chapter 14—Impeachment.

The House saw an increase in impeachment proceedings during this time. Specifically, six Federal judges and a President of the United States were impeached by the House during the period covered at this writing, and four judges were convicted by the Senate and removed from office. A fifth impeached judge resigned in 2009 pending a Senate trial, causing the House and Senate to adopt resolutions discontinuing the trial. In 2010, a Federal judge was impeached and removed from office based on official misconduct occurring in part prior to his term as a Federal judge.

The constitutional principle was affirmed that impeachment was a remedial process—that of removal from public office and possible disqualification from holding further office in order to maintain constitutional government—and was not primarily a punitive process. In 1998, the Speaker pro tempore ruled that a motion to recommit four articles of impeachment against President William J. Clinton to the reporting Committee on the Judiciary with instructions to amend the resolution to provide instead for censure of the President was not germane, being a punitive matter not constitutionally contemplated and not ever having been separately permitted as a question of the privileges of the House under House precedent. The Chair’s ruling was appealed and that appeal was laid on the table (a separate resolution of censure having previously been rejected in the Committee on the Judiciary following its reporting of the four articles of impeachment). Thereby, the constitutional separation of powers, which specifically permits impeachment but does not include censure or other expressions of no confidence of an executive or judicial official as a remedial option, was held to

foreclose that matter as a question of privileges of the House and to render it nongermane as an amendment to an impeachment resolution. The pending impeachment resolution itself had been called up as privileged (as reported by the Committee on the Judiciary) under the precedents permitting impeachment to be a privileged question whether reported or raised on the floor by any Member.

Excerpts from the report of the Committee on the Judiciary recommending four articles of impeachment against President Bill Clinton (H. Rept. 105–830) and excerpts from the reports from that Committee on the Federal judges who were impeached by the House, indicated the recommended grounds for impeachment ("high crimes and misdemeanors") in each case. The examples of impeachment focused on three broad categories of impeachable conduct as voted by the House: (1) abusing or exceeding the lawful powers of the office (allegations that President Clinton obstructed justice in the course of a Federal civil action); (2) behaving officially or personally in a manner grossly incompatible with the office (allegations that President Clinton committed perjury before a Federal grand jury); and (3) using the power of the office for an improper purpose or for personal gain (allegations in 1986 that Federal Judge Harry Claiborne had falsified tax returns, and in 1989 that Federal Judges Alcee Hastings and Walter Nixon had criminally conspired to gain unjust enrichment or to influence prosecutions—on some of which allegations Judge Hastings had been acquitted in a Federal criminal prosecution). Under categories (1) and (2), the House refused to adopt an article of impeachment reported from the Committee on the Judiciary alleging that President Clinton had in contempt of that committee abused his office by inadequately responding to 81 written questions posed by the Committee on the Judiciary during the impeachment inquiry.

The impeachment by the House of Judge Alcee Hastings in 1988 demonstrated again that the final adjournment of that Congress did not prevent his trial (and removal from office upon conviction) by the Senate in the next Congress. This precedent, (ironically having its roots in the British impeachment of Warren Hastings by the House of Commons in one Parliament and his trial in the House of Lords in the next Parliament in 1791—furnished in detail to the House Parliamentarian by Mr. James Hastings, Journal Clerk of the House of Commons in 1998), served to support an impeachment trial in the Senate of President Clinton in the subsequent 106th Congress following the House impeachment at the end of the preceding Congress, once the House managers of the impeachment charges were reappointed by a vote of the House in that subsequent Congress in 1999.

The materials leading to the impeachment proceedings against President Clinton were formally presented to the House by Independent Counsel Kenneth Starr on September 9, 1998, in the form of 36 boxes of secret grand

jury proceedings examining perjury and obstruction of justice allegations under 28 USC § 595(c) in a Federal civil action. The documents were not immediately available to Members as committee documents, but were in the custody of the Sergeant-at-Arms until the House, by adopting a special order from the Committee on Rules, referred them to the Committee on the Judiciary. The day after receipt, the Speaker made an anticipatory announcement with the concurrence of the Minority Leader about proper decorum in the House during subsequent debates. However, admonition against personal references to the President was to be repeated several times during subsequent debates. On September 11, 1998, the House adopted a special order reported from the Committee on Rules which provided: (1) for referral of the matter to the Committee on the Judiciary; (2) that a designated portion of such material be immediately made public (printed as a House document); (3) that the balance of the material be deemed received in executive session but be released from that status by a date certain except as otherwise determined by the committee; (4) that additional material compiled by the committee be deemed to be received in executive session unless received in open session or subsequently made public by affirmative vote of the committee; and (5) that access to executive-session material of the committee during the "review" of the material be restricted to committee members and designated committee staff and not to all House Members as otherwise permitted by House standing rule.

A development of the significant procedural events leading up to the impeachment of President Bill Clinton continued on September 23, 1998, when a resolution offered from the floor directing the Committee on the Judiciary to release executive-session material referred to it by a special rule of the House was held to propose a collateral change in the rules and therefore not to constitute a question of the privileges of the House.

Thereafter, many of the procedures invoked by the House Committee on the Judiciary upon its receipt of the materials closely followed those previously adopted by the House and by that committee in the 1974 impeachment investigation of President Richard Nixon. A deliberate attempt to mirror those documented precedents and proceedings was made by the House Committee on the Judiciary and the majority leadership in 1998, as to avoid allegations of excessive partisanship during the investigation. That attempt was demonstrated in 1998 when the House adopted a resolution reported by the Committee on the Judiciary called up as a question of privilege authorizing an impeachment investigation by that committee. As was the case in the Nixon investigation in 1974, the ability of the Committee on the Judiciary to recommend its own empowerment by reporting and calling up, without three day report availability, resolutions in the House as questions of

privilege—authorizing an impeachment investigation—is unique to that committee as a matter of constitutional impeachment prerogative and urgency.

Other committee inquiries ordered by the House normally result from privileged reports from the Committee on Rules, rather than from reports of the same committee seeking to conduct the investigation. It was another affirmation of the precedent that a committee to which has been referred privileged resolutions for the impeachment of an officer may report and call up as privileged resolutions incidental to consideration of the impeachment question, including conferral of subpoena and deposition authority. The counsel deposition authority was based on a previous question of privilege in 1988 authorizing depositions by committee counsel in an impeachment inquiry into conduct of a Federal judge. One unique additional authority in the Clinton investigation included the exercise of such special investigative authorities by the chairman and ranking minority member acting jointly, or by one acting alone unless the other referred the matter to the committee, or by committee or subcommittee action.

The recall of the House following a *sine die* adjournment (pursuant to authority granted by concurrent resolution in anticipation of impeachment proceedings for the Speaker to reassemble the House alone "should the public interest warrant it") was a unique variation from the then-customary conferral only on the Speaker and Senate Majority Leader of joint recall authority of both Houses during adjournment periods. In adopting the *sine die* adjournment concurrent resolution for the 105th Congress, second session, the majority leadership had contemplated House impeachment proceedings during the "lame duck" session, to be followed by a possible Senate trial in the next Congress. Thus, the Speaker was given unilateral reconvening authority. Speaker Newt Gingrich (despite his announcement that he would not serve as Speaker or Representative in the next Congress), exercised that conferred reconvening authority by giving one week's notice of the reconvening, although not required to give any such notice. Another example of exercise of unilateral reconvening authority in an ordinary legislative context took place in 2010 and in 2012.

Further, there was an unsuccessful attempt in 1998 by a Member (Rep. Alcee Hastings), who had been elected to the House after having been impeached and removed from office as a Federal judge, to impeach the Independent Counsel who had submitted the grand jury allegations to the House and who was by statute (28 USC § 596(a)) an impeachable executive branch officer. That impeachment resolution was offered as a question of privilege, but was tabled without debate.

A 1998 resolution offered by the Delegate for the District of Columbia asserting her right to vote on the articles of impeachment based upon the

Twenty-third Amendment to the Constitution—granting the District of Columbia three electoral votes for President—was held not to constitute a question of the privileges of the House, but rather an attempt to change the rules to permit that Delegate a vote in the House.

Consideration of the impeachment resolution itself was privileged upon report of the Committee on the Judiciary without regard to the three-day report availability rule. The resolution contained four articles of impeachment: alleging perjury in a Federal grand jury; perjury in a Federal civil action; obstruction of justice in a Federal civil action; and abuse of power in response to a House impeachment inquiry.

Other unique 1998 procedures included a planned response to any possible objection for unanimous consent to enlarge the time for debate, whereby the Member next-in-seniority among the majority party members of the managing committee was yielded time by the manager to announce that he would oppose ordering the previous question if moved at the end of the first hour so that he might be recognized in the Speaker's unappealable discretion under the general hour rule to control a successive hour.

The Chair announced that during the debate, remarks could include references to pertinent personal misconduct of the President but may not be abusive or personally offensive and may not include comparisons to the personal conduct of sitting Members of either House. Following debate under the hour rule for two hours, the House adopted a special order by unanimous consent: (1) closing the impeachment resolution to amendment by ordering the previous question without intervening motion except enlarged time for debate to a time certain on that day and one hour the subsequent day, equally divided and controlled between the chairman and ranking minority member of the Committee on the Judiciary; (2) permitting one motion to recommit debatable for 10 minutes if including instructions; (3) providing for controlled debate on a resolution appointing and authorizing managers for the impeachment trial if called up as privileged; (4) adjourning to a time certain for resumption of the resolution as unfinished business the next day; and (5) reiterating that the impeachment resolution was divisible as among each article.

During debate on the final day of consideration (December 19, 1998), the Member who had been nominated by the majority party conference as Speaker in the next Congress called upon the President to resign and then announced his own resignation from the next Congress to be effective at a future time. That extraordinary announcement came following his public acknowledgement of marital infidelity. When made amid minority Members' chants on the floor calling for his resignation, a silence fell over the Chamber and many were overcome with emotion. When the focus thus temporarily shifted from impeachment to "anarchy" in the House, the Chair nevertheless declined to exercise his discretionary authority to entertain a motion

for a call of the House, in order to complete the debate on impeachment as required by the ordering of the previous question on the resolution of impeachment. The point of order against the germaneness of the motion to recommit with instructions to substitute censure for the articles of impeachment was the most significant ruling of the Chair during the impeachment proceedings. During debate on the point of order which the Chair permitted in his discretion to continue for an extended period, the Chair refused to follow some early precedents suggesting that he could submit to the House the issue of germaneness, choosing instead to rule directly on the point of order subject to appeal. Following adoption of the articles of impeachment, privileged and indivisible resolution was called up by the chairman of the Committee on the Judiciary and contained the following elements: (1) electing managers to present the articles; (2) notifying the Senate of the adoption of articles and election of managers; and (3) authorizing the managers to prepare for and to conduct the trial in the Senate. This streamlined the prior practice of separate privileged resolutions on each of those incidental matters.

Proceedings before and during the trial in the Senate extended from the appointment of thirteen House managers (all majority Members), and their reappointment at the beginning of the next Congress on January 5, 1999, to the Senate's first organizational steps on January 7, 1999, through to the final votes in the Senate on February 12, 1999, adjudging President Clinton "not guilty" of the charges contained in the two articles of impeachment. At least 24 steps were taken in the Senate to organize and conduct the trial, including evidentiary and other interlocutory rulings made by the Chief Justice presiding over the trial, and including motions for subpoenaing witnesses, video tapes of their depositions, suspension of the rules motions and other resolutions adopted or rejected by the Senate during the course of the trial. Actions by the House and the role of House managers at various stages of the entire trial as well as all procedural steps in the Senate sitting as a trial court were part of the record.

Other impeachment trials included the unique Senate process under its "Rule XI of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials" during the impeachments of the Federal judges, establishing by resolution for the first time "a committee of twelve Senators to receive evidence, hear testimony, and report to the Senate thereon." That action was held nonjusticiable by the U.S. Supreme Court in *Nixon v. United States*, 506 U.S. 224 (1993). The Court ruled that under the Constitution, the Senate could adopt its own rules on interlocutory matters so long as the ultimate trial of the respondent was by the full Senate.

In 2007, a Member offered a resolution as a question of privilege impeaching Vice President Richard Cheney for having allegedly manipulated the intelligence process to deceive the Congress and the American people about:

(1) a threat of Iraqi weapons of mass destruction, and about an alleged relationship between Iraq and al-Qaeda in a manner damaging to U.S. national security interests; and (2) for openly threatening aggression against Iran absent any real threat to the United States. The motion to lay the resolution on the table without debate was rejected by the House, following which the motion to refer the resolution to the Committee on the Judiciary was adopted by the House after brief debate.

The attempt to impeach Independent Counsel Kenneth Starr in 1998 (laid on the table), the 2007 resolution attempting to impeach Vice President Cheney, and two unsuccessful attempts in 2008 to impeach President George W. Bush, reflected efforts by a Member rising to a question of the privileges of the House to directly impeach an executive branch officer. The resolutions seeking to impeach President Bush were on motion referred to the Committee on the Judiciary following brief debate thereon.

Chapter 15—Investigations, Inquiries and Oversight.

Chapter 15 and chapter 17, section 3, of *Deschler's Precedents*, address the general authority of all committees to conduct investigations and oversight on matters within their jurisdictions and to utilize compulsory process during those proceedings. Part A, section 1 ("Basis of Authority to Investigate; Creating Committees"), discusses general conferral of subpoena authority on committees. Until 1975 only a few standing committees (*e.g.*, Appropriations, Government Operations, and Standards of Official Conduct) were authorized by the standing rules to conduct investigations and to issue subpoenas. Special authority was conferred on every other standing committee pursuant to separate resolutions reported from the Committee on Rules each Congress prior to that time. The Committee Reform Amendments of 1974 amended Rule X and Rule XI to provide all committees with investigative and subpoena authority, thus obviating the need for special resolutions from the Committee on Rules. Collegial action has been contemplated by all committees and subcommittees in the issuance of subpoenas, even requiring a full majority quorum to be present in open session to vote on their authorization. This authority has not been extended to other subunits of a committee such as "task forces" absent specific House conferral. However, since 1975, full-committee chairmen may unilaterally authorize subpoenas when that authority is delegated by the full committee, either on an *ad hoc* basis or generally by committee rule. The delegation of that authority has been subject to question, as evidenced by the action of the chairman of the Committee on Government Reform in 1998, when his actions were challenged (unsuccessfully) by the minority in the House as a question of privilege alleging deliberate violation of committee rules. Having been delegated unilateral subpoena authority, the chairman proceeded to issue hundreds of subpoenas duces tecum and then to unilaterally release materials received in

response, in violation of a committee rule requiring collegial determination of the public status of those materials. The standard requirement for collegial action with a full quorum present to determine whether to issue specific subpoenas remained a safeguard against such unilateral action, and full committees can countermand the delegation if abused. A few committees made that general delegation to the chairman and others only during adjournment periods when committee quorums might not be available.

In the 1975 rules change, the House imposed general oversight responsibilities on all its standing committees, as well as special oversight functions and “additional functions” upon certain standing committees in clauses 3 and 4 of Rule X. The House continued to create special or select committees from time to time to conduct specific investigations and inquiries, normally with subpoena power but usually without authority to report legislation to the House.

In the 100th Congress, the requirement that members of the Committee on Government Operations (now Oversight and Government Reform) meet with other committees at the beginning of each Congress to discuss oversight plans and that that committee report to the House its oversight coordination recommendations within 60 days after the convening of the first session, was deleted. Since 1995, at the beginning of each Congress, standing committees of the House were required to adopt oversight plans in a public meeting with a quorum present by February 15 and to submit them to the Committee on Oversight and Government Reform, which in turn was given 45 days to submit a consolidated report on coordination of plans to the House. These plans are simultaneously submitted to the Committee on House Administration for formulation of a biennial budget for committees, which emerges in the form of a privileged resolution presented to the House providing funds for each committee’s investigative activities for the two year period of that Congress. At the end of each Congress all committees were required to submit activities reports which summarize and evaluate oversight activities actually undertaken in that Congress. Since 1995, these separate final reports represented the extent of review of oversight already undertaken. Beginning in 2011, each committee was required to submit four activities reports, two each calendar year and in 2013, the requirement was reduced to two reports, one each year.

Also in 1995, the House amended its rules to grant explicit authority to the Speaker with the approval of the House to appoint “special *ad hoc* oversight committees to review specific matters within the jurisdiction of two or more standing committees.” At the time of this writing this authority has not been directly utilized.

Since the adoption of the 1995 rule, a select committee was created and funded in 2005 to Investigate Preparation for and Response to Hurricane

Katrina, but established by a special order from the Committee on Rules. In 2007, again not utilizing the Speaker's direct establishment authority, the House established an *ad hoc* select committee on Energy Independence and Global Warming, despite the standing Committees on Energy and Commerce and on Science and Technology having overlapping jurisdiction over energy, public health, and over environmental research and development respectively. The new select committee was created by adoption of a special order reported from the Committee on Rules merged with the "self-executed" biennial funding resolution for all committees for the 110th Congress. The Select Committee on Energy Independence and Global Warming was not given legislative jurisdiction but was given subpoena authority to compel information on global climate change, particularly on the impact of auto carbon dioxide emissions. It was not reestablished in 2011 upon a change in party majorities.

In 1999, the House further amended its rules to permit committees to have a sixth subcommittee (beyond the general limit of five), if it were an oversight subcommittee. In 2007, eleven standing committees established oversight subcommittees in addition to their legislative subcommittees.

Inquiries and the Executive Branch. There was a change in the rule regarding resolutions of inquiry, specifically the extension in 1983 from 7 to 14 legislative days of the waiting period after which a motion to discharge becomes privileged in the House. There were few rulings as to the privilege of resolutions of inquiry called up, as a common drafting technique requested the production from the President or Cabinet secretary of "copies of documents, if any" on identified matters, so as to avoid the suggestion that the resolution is calling for an investigation or for an expression of opinion which would render the resolution nonprivileged. A resolution of inquiry was held in 1979 to be privileged only where it did not contain a statement as to the purpose for which the information is sought. To retain its privilege, a reported resolution of inquiry must be filed from the floor and not through the hopper. Since the advent of multiple referrals in 1975, where a resolution of inquiry was referred to two committees, but neither reported, the resolution could be discharged by majority vote and called up by any Member. If one committee reported, the other committee could be discharged by motion, but only the reporting committee could then call it up. If both committees reported, the resolution could be called up by direction of one or both committees. In recent Congresses, resolutions of inquiry have been referred by the Speaker only to one committee, in order to avoid the anomalous situation of one committee's report and another committee's discharge only to have the reporting committee as the only authority to call up the resolution itself despite a successful discharge by the House of the nonreporting committee.

Executive Branch Refusals to Provide Information; Litigation to Enforce a Subpoena. In 2008, the House adopted a single indivisible resolution which certified the failure of two White House employees to respond to committee subpoenas for prosecution for criminal contempt under 2 USC § 194. It also for the first time empowered House Counsel to apply to Federal court for civil relief (declarative or injunctive) to enforce the Committee on the Judiciary's subpoena in the investigation of the dismissal of U.S. Attorneys by the Department of Justice. In that case, the Attorney General had announced his refusal to direct U.S. Attorneys to prosecute the case, citing "executive privilege" on behalf of the President. The House thereupon authorized an alternative method to enforce the committee subpoena. The Senate by statute (2 USC § 288d) possessed a remedy: to bring lawsuits in Federal court for civil contempt against recalcitrant witnesses (except those in the executive branch) in lieu of criminal contempt to enforce a committee subpoena in a particular case, in order to expedite resolution of a constitutional matter which might otherwise be mooted by the end of the term of the executive prior to a criminal prosecution. Unlike the Senate, the House possessed no such general avenue in its rules or in law to pursue a civil remedy, but did for the first time adopt a resolution through a special order of business specifically authorizing counsel to initiate or intervene in Federal court in a particular civil action to assure court jurisdiction. In 2008, the U.S. District Court for the District of Columbia upheld the relief sought in the civil action brought by the House of Representatives seeking summary judgment to enforce the Committee on the Judiciary's subpoenas. The Federal judge ordered two witnesses who had refused to appear before that committee under a claim of executive privilege to respond to the subpoena, in order that they might subsequently assert any executive privilege protection on an *ad hoc* basis during their appearance. That court order was stayed by a Federal appeals court which assumed the mootness of the case at the end of the 110th Congress unless initiated anew in the next Congress by issuance of a new subpoena. The reinitiation of those subpoenas and of that civil litigation was authorized on the opening day of the next (111th) Congress as a separate order in the rules package. The question of the extent to which a new administration would protect blanket claims of executive privilege on behalf of a former President was tentatively resolved by an agreement in 2009 that the two witnesses would respond in executive session hearings and could make *ad hoc* claims of executive privilege on behalf of a former President at that time, to be then evaluated by the Committee on the Judiciary.

In 2012, the Committee on Government Reform and Oversight reported the refusal of the Attorney General to respond to committee subpoenas seeking Department of Justice information involving a failed drug enforcement

program. After the committee reported, the President asserted an executive privilege claim against production of the documents although they did not involve direct communications with him—an argument more akin to a "deliberative process" qualified privilege. The House adopted the report and certified the contempt to the appropriate U.S. Attorney under the statute. The Department of Justice immediately declined to prosecute its Cabinet head by a letter to the Speaker. Contemporaneously the House adopted a second resolution authorizing House Counsel to proceed in a civil action to challenge the President's claim of executive privilege (the second such example of an *ad hoc* authorization for a civil action). Both resolutions were made in order by a special rule that allowed the resolution to be called up as privileged and permitting only one motion to refer the contempt after separate limited debate thereon. That unsuccessful motion attempted to direct the committee to conduct a more thorough investigation of the matter. Litigation ensued to enforce the subpoena in the case of *House Committee on Oversight and Government Reform v. Holder* (civil action no. 12–1332, D.D.C.). This authority for House Counsel was extended at the beginning of the subsequent Congress in 2013 as a separate order in the rules package.

Statutes to Obtain Information. One anomaly in statute runs counter to the model in the rules requiring committee majorities to authorize and undertake investigative activities; namely, that provision in 5 USC § 2954 which permits any seven members of the Committee on Oversight and Government Reform of the House (and any five members of the Senate Homeland Security and Government Affairs Committee) to demand information from an executive agency. This "seven-member rule" has been the subject of inconclusive litigation, and has been interpreted by at least one Federal court, in a case later vacated on appeal, to be the equivalent of compulsory process based on the statutory requirement that the requested agency "shall" furnish the information, allowing fewer than a majority of members of either committee (not even a majority of the minority) to compel information. Dismissal of that initial District Court ruling on appeal, coupled with a more recent Federal court opinion that congressional plaintiffs lacked standing to sue under that statute for absence of personal injury (*Raines v. Byrd*, 521 U.S. 811 (1997)) cast doubt on its enforceability by a court.

With respect to the Committee on Standards of Official Conduct, where the House authorized an investigation by that committee of other persons not directly associated with the House, the committee's jurisdiction was thereby enlarged and a broader subpoena authority was required to be conferred on the committee in 1976. The special rule for authorizing and issuing a subpoena by a majority of members of a subcommittee of the Committee on Standards of Official Conduct was adopted in 1997 to reflect the

bifurcation between the investigative role of the subcommittee and the adjudicative role of the full committee.

Procedures; Hearings. Two U.S. Supreme Court cases expanded upon the permissible scope of congressional investigations delineated in *Watkins v. United States*, 354 U.S. 178 (1957). In *Doe v. McMillan*, 412 U.S. 306 (1973), the court determined that it would not question the wisdom of the committee investigation or its methodology. In *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975), the court ruled that the very nature of the investigative function is such that it may take the searchers up some "blind alleys" and into unproductive enterprises. The validity of a legislative inquiry is not contingent on a predictable end result.

Rules changes impacted on committee investigative and oversight procedures, and on the rights of witnesses. In 1981, the requirement for a prompt entry of public notice of committee hearings into the Daily Digest and an electronic data base was adopted. In 1995, the rule was amended to permit the calling of a hearing on less than seven days notice upon determination of good cause either by vote of the committee or subcommittee or by its chairman with the concurrence of its ranking minority member. In 2011, the electronic public announcement of the seven-day notice of the hearing (and three-day notice of meetings) was required.

In 1997, a provision was added to encourage committees to elicit curricula vitae and disclosures of certain interests from nongovernmental witnesses. It was amended in 2011 to require electronic availability of their "truth-in-testimony" and to permit certain redactions by witnesses.

With respect to the procedural regularity of committee hearings, one House rule relating to legislative hearings (Rule XI clause 2(g)(5)) contained in the Legislative Reorganization Act of 1970 (Pub. L. No. 91–510) uniquely protected the ability of a committee member to pursue a point of order to the House floor if legislative hearings on the reported measure were not conducted in accordance with all the provisions of that clause (relating to openness, scheduling, calling of witnesses and other procedures) but only if that point of order was timely raised in committee or subcommittee and "improperly" disposed of at that time. Since adoption of that House rule, no point of order based on an invalid hearing procedure has been made in the full House, indicating that committees dispose of such matters at the committee or subcommittee level.

Beginning in 2009, Rule XI clause 2(n) was added to require all committees or any subcommittees thereof to conduct at least three hearings each year on the topic of waste, fraud, abuse or mismanagement in government programs, including mandates for certain inquiries into auditor disclaimers that they had not received information in preparation of agency financial

statements and "high-risk lists" of programs identified by the Comptroller General.

Other changes in Rule XI addressing committee hearing procedures including the process for the questioning of witnesses have not been the subject of points of order or rulings in the full House but rather have been interpreted and administered at the committee level.

Rule XI clause 2(j)(2) requires utilization of the five-minute rule per member per witness but was amended in 1997 to permit committees to adopt a motion or rule which extend examinations of witnesses for an additional hour equally divided between designated members, or by staff, of each party.

In 1979, Rule XI clause 2(k)(5) was amended to permit a committee or subcommittee to hear testimony asserted to be defamatory in executive session upon a determination by a majority of those present either that such testimony was indeed defamatory, degrading or incriminating, or preliminarily to discuss that question. In 2001, that rule was further amended to permit such an assertion to be made by the witness with respect to himself, or by a member of the committee with respect to any person. In 1997, the rule was clarified that a majority of those voting (a full quorum being present) may decide to proceed in open session. The essence of those rules changes, beginning in 1979, was to presumptively protect the rights of a witness or other persons from defamatory testimony in open session, requiring its initial receipt and retention in closed session unless a majority with a full quorum present determined to the contrary.

Other reasons for closing hearings to the public were first inserted into the rules in 1973, including national security, the compromise of sensitive law enforcement information, and violation of a law or rule of the House. In 1977, the rule was amended to provide that a noncommittee Member cannot be excluded from a hearing except by a vote of the House. In the 1970s, the rule was adjusted to permit certain committees to vote to close a hearing for multiple days. In the 104th Congress the rule was amended to require that hearings open to the public also be open to broadcast and photographic media, eliminating the need for each committee to vote to permit such coverage.

The provision in Rule XI clause 2(k)(5) that a witness may request the committee to subpoena additional witnesses has been interpreted to allow any witness to request subpoenas duces tecum for documents, as well as for testimony, such interlocutory question to be decided by the committee with a quorum present. The various requirements in Rule XI that a majority of the committee or subcommittee shall constitute a quorum for the purposes of closing meetings or hearings or issuing subpoenas have been construed

to require that a majority shall likewise constitute a quorum to release or make public any evidence or testimony received in any closed meeting or hearing and any other executive session record of the committee or subcommittee.

With respect to the rights of committee witnesses under the Constitution, there has been little Federal case law beyond that cited in the previous publication (chapter 15, Part C, sections 9–12) through 1973. The assertion of an attorney-client privilege during a House hearing included a contempt resolution in the Ralph and Joseph Bernstein case in 1986, where the subpoenaed witnesses declined to respond to questions based upon the assertion of that common law privilege. Only following the certification of contempt by the House did those witnesses agree to respond and prosecution was not then pursued under the statute. The District of Columbia Bar Association issued an opinion (#288) in a House committee investigation of Franklin Haney that the attorney-client privilege could be waived by the witnesses' attorney even if there had been a recommendation from the relevant subcommittee to the full committee that the witnesses be cited for contempt but the full committee had not yet acted. While no court has as yet recognized the inapplicability of common law testimonial privileges in congressional proceedings, committee decisions suggest that the acceptance of a claim of attorney-client, work product, or other common law testimonial privilege rests in the sound discretion of the committee, which should weigh legislative need, public policy and the duties of oversight against any possible injury to the witness (See contempt reports against Haney (H. Rept. 105–792 (1998); Quinn, Watkins and Moore (H. Rept. 104–598 (1995)); and the Bernsteins (H. Rept. 99–462)).

To justify withholding subpoenaed information, an executive branch witness sometimes contended that the President has claimed executive privilege with respect thereto or has directed the witness not to disclose the information. The U.S. Supreme Court rejected the claim that the President has an absolute, unreviewable executive privilege in *United States v. Nixon*, 418 U.S. 683 (1974). Subsequently, the question was raised of the applicability of that claim by witnesses in the context of a failure even to appear in response to a subpoena before the committee, where two White House employees were ordered by a Federal judge to appear before the House Committee on the Judiciary before asserting an *ad hoc* executive privilege claim.

Witnesses' rights before committees under House rules were clarified in 2001 to require that a copy of the committee rules be furnished a witness only on request of the witness. The former requirement that a witness must pay the cost of a transcript copy of his testimony was eliminated in 1975. The former requirement of Rule XI clause 4(f) that a subpoenaed committee

witness could demand that audio, video and photographic coverage of his testimony be terminated was eliminated in 1997.

Under Rule XI clause 2(j), a majority of the minority members of a committee or subcommittee have the right to call witnesses of their own choosing to testify in a hearing for one day, and the chairman may set the day under a reasonable schedule. That rule was interpreted in 1987 not to require the calling of witnesses on the opposing side of an issue.

Summoning Witnesses; Subpoenas. Changes in Rule XI clause 2(m) were made in 1975 that authorized subpoenas to be signed by the chairman of the full committee or by any member designated by the committee. The clause was further amended in 1977 to permit a subcommittee, as well as a full committee, to authorize subpoenas and to allow a full committee to delegate such authority to the chairman of the full committee. In 1999, a paragraph was added to permit the terms of return of a subpoena duces tecum to specify a place other than at a meeting of the committee or subcommittee. Following the conferral of general authority to compel evidence or testimony "by subpoena or otherwise" in 1975, that authority has not been interpreted to permit committees on their own initiative to confer interrogatory or deposition authority on any single Member or on staff absent initial conferral by the House. Such staff empowerment only happened in the context of a few investigations including ethics, impeachment, or continuation of a contempt proceeding from the prior Congress (Committee on the Judiciary in 2009) until it was generally conferred on one investigative committee of each House covering all oversight in an entire Congress, beginning in 1948 in the Senate and in 2007 in the House. That year, the House Committee on Oversight and Government Reform was empowered in Rule X clause 4(c) to permit staff depositions and interrogatories or in the presence of one committee member, but in 2011 that authority was limited to require the presence of at least one committee member, unless waived by the deponent.

Authority in Cases of Contempt. A new alternative means for relief against contempts of the House was implemented three times (authority for civil proceedings seeking injunctive or declaratory relief), in addition to certification to the Federal courts of criminal contempt and the inherent authority of the House to impose a "common law" contempt punishment by detaining the witness in its own precincts. There must be authorization by the full House before a subcommittee chairman can intervene in a lawsuit in order to gain access to documents subpoenaed by the subcommittee (*In re Beef Industry Antitrust Litigation*, 589 F.2d 786 (5th Cir. 1979)). There are also statutes on perjury (18 USC § 1601), obstruction of proceedings (18 USC § 1001), and on intimidation of witnesses (18 USC § 1505). Under those

criminal laws, the Department of Justice separately determines whether to investigate and bring an indictment of the committee witness or other respondent. That determination can be based on an informal communication received from a committee chair (and ranking minority member) as in the case of the unsuccessful prosecution of major league pitcher Roger Clemens for perjury and obstruction of proceedings in 2011 and 2012.

Of the ten Cabinet-level officers cited by the House or Senate committees for contempt since 1975, only two, in 1982 and in 2012, were endorsed by the full House. The first involved refusal of the Administrator of the Environmental Protection Agency to produce executive branch documents. It was the first example wherein the House cited an executive official for contempt of Congress. In the following Congress, the House adopted a resolution reported from the same committee (Committee on Energy and Commerce) certifying that an agreement had been reached for access by the committee to the documents that were the subject of the contempt citation, where the contempt had not yet been prosecuted in 1983. Also in 1983, the House for the second time certified refusal of an executive branch official to respond to a subpoena duces tecum. In all other cases, the subpoenaed Cabinet official and the requesting congressional committee reached a negotiated accommodation for access to documents and testimony prior to a vote on a contempt resolution.

In committee contempt reports regarding Secretary of Interior James G. Watt in the 97th Congress, and regarding Attorney General Janet Reno in the 105th Congress, the House took no action on the report which was called up and then withdrawn. On the latter occasion, it was reaffirmed that a resolution directing the Speaker to certify to the U.S. Attorney as a criminal matter the refusal of a witness to respond to a subpoena issued by a House committee involves the privileges of the House and may be offered from the floor as privileged by direction of the committee reporting the resolution. In 1986, a resolution with two resolve clauses separately directing the certification of the contempt of two individuals was held subject to a demand for a division of the question as to each individual, as was a resolution with one resolve clause certifying contempt of several individuals in 2000.

In 2012, the House adopted a committee report from the Committee on Oversight and Government Reform certifying the Attorney General for criminal contempt for refusal to comply with a committee subpoena. That occasion marked the first example of citation for contempt of a Cabinet secretary and the second example of an accompanying resolution authorizing House counsel to seek civil relief against the President's claim of executive privilege (continued by separate order in the subsequent 113th Congress).

Chapter 16—Introduction and Referral of Bills and Resolutions.

The requirement that all bills and resolutions be introduced through the hopper while the House is in session has traditionally not been waived. The Committee on Rules has, however, permitted consideration of a measure not previously numbered or sponsored, but rather coming into existence upon adoption of a special order of business and never having a sponsor in 1986. Similarly, in 1988, the Committee on Rules reported a special order self-executing the "hereby" adoption of an unintroduced resolution or concurrent resolution (but not a bill or joint resolution since the motion to recommit may not be denied in a special order).

An order of the House precluding or limiting the potential for organizational or legislative business on certain days was considered not to deprive Members of the privilege of introducing bills and resolutions during pro forma sessions on those days, such measures being numbered on the day introduced but not noted in the *Congressional Record* or referred to committee until the day on which business was resumed in 1991 and 1992.

At its organization for the 106th Congress, and in subsequent Congresses, the House adopted an order that the first ten bill numbers be reserved for assignment by the Speaker during a specified period, with the time extended by orders of subsequent Congresses to the entire first session and then to the entire Congress. In 2011, the second ten bills were permitted to be numbered by the Minority Leader whenever introduced.

Effective in 1979, the authority of not more than 25 Members to cosponsor a public bill or resolution (adopted in 1967) was amended to permit unlimited cosponsorship of all public measures on introduction, and to provide a mechanism for Members to add their names as cosponsors of measures (upon signature of the original sponsor) that have already been introduced, up until the day of final report from committee(s). Although before the 106th Congress, Rule XII clause 7 only permitted a cosponsoring Member himself to request unanimous consent for his deletion as a cosponsor, in 1982 the primary sponsor of a measure was permitted to request unanimous consent to delete the name of a cosponsor he had listed. In 1985, unanimous-consent requests to delete Members' names as cosponsors were not entertained after the last committee authorized to consider the measure reported to the House. In 1986, a Member requested unanimous consent that his name be deleted as a cosponsor of an unreported bill during its consideration under suspension of the rules and before a final vote thereon.

On various occasions it was held that by unanimous consent a Member may add his own name as a cosponsor of an unreported public bill where the primary sponsor is no longer a Member of the House. A designated Member has been authorized to sign and submit lists of additional cosponsors where the initial primary sponsor was no longer a Member. Otherwise,

the Chair does not entertain any unanimous-consent request to add a cosponsor, the remedy being the filing of a cosponsor list, signed by the original sponsor, through the hopper. At its organization for the 104th Congress the House resolved that each of the first 20 bills introduced in that Congress could have more than one Member reflected as a primary sponsor and the signatures of all primary sponsors would have to be attached. While the authority to cosponsor measures only applies to public and not to private legislation, where a measure contains both private relief for a living person and a public policy statement, such as the Terri Schiavo measure in 2005 addressing Federal court jurisdiction over the removal of life support to a comatose individual, it was treated as a public measure as it also contained a general statement of policy, in order to accommodate cosponsors and to be considered under suspension of the rules procedures. Overall, the introduction (and enactment) of private bills has been greatly reduced in number over time.

Additional restrictions against the introduction and consideration of certain measures have grown. In 1995, at the beginning of the 104th Congress, a rule was adopted prohibiting the introduction (and consideration) of a bill or resolution if it established or expressed a commemoration (Rule XII clause 5). The term "commemoration" was defined by the rule as a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time. The House by unanimous consent has waived the prohibition to permit introduction and consideration of a joint resolution including provisions in the resolve clause (and not merely in the preamble) to designate September 11 as "United We Stand Remembrance Day" (2001). Speakers have narrowly interpreted this prohibition against introduction, and have permitted the introduction of commemorative bills or resolutions so long as they are not date-specific, or so long as they suggest a specific date only in a preamble and not in the resolve clause. This rule has not appreciably reduced the number of commemorative measures introduced, but has resulted in the use of concurrent or simple resolutions, rather than joint resolutions enacted into law, to generally proclaim a special event or congratulatory message. Thus the proliferation through 1994 of public laws establishing specific dates for commemorative purposes abated, and the House chose instead to express its congratulatory sentiments in preambles or in general terms not establishing a date certain. The parochial nature of many of those congratulatory resolutions led to an informal determination announced by the Majority Leader beginning in 2011 to limit their consideration under suspension of the rules.

The adoption of Rule XXI clause 6 in 2001 prohibited the consideration (but not the introduction) of a measure providing for the designation of a

public work in honor of a sitting Member of Congress. That prohibition was waived on one occasion that year by a special order reported from the Committee on Rules permitting the consideration of a bill to name a Federal facility in honor of a sitting Member (Joe Moakley of Massachusetts).

In 2011, Rule XII clause 8 was amended to require a constitutional authority statement to be published in the *Congressional Record* upon introduction of a bill or joint resolution.

Referral Generally. New rules and practices governing referral and committee jurisdiction over public and private bills and resolutions, Senate-passed measures, presidential messages and executive communications were adopted. Rule XII clause 2 contained in the "Committee Reform Amendments of 1974," effective in 1975, required the Speaker to refer introduced measures to all committees with proper jurisdictional claims so as to ensure, "to the maximum extent possible" that each committee of jurisdiction over any provision therein will have an opportunity to consider that provision and report to the House. The procedure applicable through 1974 had allowed the Speaker to refer an introduced measure only to one committee, regardless of its disparate provisions. Messages from the President other than state of the Union messages have been referred to multiple standing committees since 1975, rather than to the Union Calendar. Executive communications have been jointly referred to all committees of jurisdiction, often as an advance indication of the subsequent introduction and referral of recommended bills, some to be introduced "by request" reflecting that executive department's draft measure.

Rule XII clause 2 as originally adopted in 1975 permitted the Speaker to set time limits on all committees of referral except on the original committees, and was amended two years later to include the initial committees among those upon which the Speaker could set time limits. Thus, beginning in 1975, the rule gave the Speaker discretion to: (1) refer the measure to other committees either initially or sequentially (following the primary committee's report) and in either case subject to time limits imposed after the primary committee has reported; (2) to refer designated portions of the same measure to other committees (a split referral seldom utilized); and (3) to refer a measure to a special *ad hoc* committee established by the House, consisting of members of committees with shared jurisdiction over the measure. The clause was subsequently amended in 1995 to require the Speaker to initially designate a committee of primary jurisdiction in each referral of a measure. An exception to that requirement was added in 2003 where the Speaker determined that extraordinary circumstances justified review by more than one committee as though primary (*e.g.*, Medicare-related bills where both the Committees on Energy and Commerce and on Ways and

Means have separate jurisdictions over health care measures depending on the source of financing (general revenues or payroll deductions)). Additional committees of original referral are listed after the primary committee. The Speaker normally imposes time limits on the additional committees following the primary committee's report to the House, but not prior thereto, and each additional committee is free to begin markup of the measure even prior to the primary committee. The Speaker may discharge a committee from further consideration of a bill not reported by it within the time for which the bill was referred and place the bill on the appropriate calendar.

With respect to sequential referrals, the Speaker may limit them to consideration of such portions having a "direct effect" on specified subjects within the sequential committee's jurisdiction, as in 1982 and 1987, or merely to portions of the primary committee's amendment or original text of the measure. The Speaker may extend the terms of a sequential referral or in rare cases discharge a reported measure from the calendar and sequentially refer it where a jurisdictional claim is later discovered.

The Speaker refers messages from the Senate in his discretion, including Senate-passed bills and amendments to House-passed measures, under the same conditions permitted for introduced House measures. For example, the Speaker has referred nongermane portions of Senate amendments without referring the remainder of the amendment, and has jointly referred a few Senate-passed measures where no House committee has reported on the subject.

The House on three occasions by privileged resolution upon recognition by the Speaker created *ad hoc* select committees to consider a particular bill emerging from standing committees under Rule XII clause 2(c)—two with respect to Outer Continental Shelf measures and one major energy measure. Then in 2002, the Select Committee on Homeland Security was created by special order reported from the Committee on Rules. The select committee was required to report to the House its recommendations on a bill establishing a Department of Homeland Security. In making its recommendation, the select committee was required to take into consideration recommendations by each standing committee (12) to which the bill was initially referred.

Chapter 17—Committees.

Changes in House rules and practices since 1975 have altered standing, select and joint committee creations, namings, organization, funding, investigations, choices of chairmen, members and staff, procedures, jurisdictions, reports, and discharge of measures.

Creating and Organizing Committees; Subcommittees. There were both rule and practice changes relating to subcommittees. In 1995, Rule X

clause 5(d) was amended to require that except for the Committee on Appropriations (with thirteen subcommittees) and the Committee Oversight and Government Reform (with seven subcommittees), no standing committee could have more than five subcommittees, except those with subcommittees on oversight. This requirement for oversight subcommittees did not relieve other subcommittees of their oversight responsibilities. It replaced the 1975 requirement that all standing committees having more than 20 members (except the Committee on the Budget) establish at least four subcommittees. In various subsequent Congresses, standing orders permitted certain committees to have more subcommittees than the prescribed number in the standing rule. The rules for the Committee on Appropriations established fewer than 13 subcommittees (10 in 2005 and 12 beginning in 2007). All subcommittees were permitted to issue subpoenas in 1977 by standing rule. In 1995, the authority of chairmen and ranking minority members of subcommittees to each appoint one staffer separate from full committee approval established in 1975 was deleted, and that authority was replaced by a requirement that the minority be treated fairly in the appointment of subcommittee staff (Rule X clause 6(d)).

Abolition and Renaming of Standing Committees. Significant changes came in 1995 when a new Republican majority amended the rules to abolish three standing committees—District of Columbia, Merchant Marine and Fisheries, and Post Office and Civil Service. The jurisdictions of the District of Columbia and Post Office and Civil Service committees were transferred to the Committee on Government Reform (now Committee on Oversight and Government Reform), where they became separate subcommittees (except for matters relating to the Franking Commission transferred to Committee on House Administration). The jurisdiction of Merchant Marine and Fisheries was split among three committees as follows: (1) the Committee on Armed Services assumed jurisdiction over inter-oceanic canals, the Merchant Marine Academy and State Maritime Academies, national security aspects of merchant marine including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference and merchant marine officers and seamen matters relating to national security; (2) the Committee on Resources assumed jurisdiction over fisheries and wildlife, including research, restoration, refuges and conservation, international fishing agreements, marine affairs (including coastal zone management other than oil and other pollution of navigable waters), and oceanography; and (3) the Committee on Transportation and Infrastructure, assumed jurisdiction over the Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy; navigation and laws relating thereto, including pilotage, registering and licensing

of vessels and small boats, rules and international arrangements to prevent collisions at sea; the merchant marine (except for national security aspects thereof); and marine affairs, including coastal zone management as they relate to oil and other pollution of navigable waters.

The names of a number of standing committees were changed, some several times, without significant changes in jurisdiction. These changes are also shown in *House Practice*.

The Committee on Armed Services became the Committee on National Security in 1995, but was renamed Armed Services in 1999.

The Committee on Education and Labor became the Committee on Economic and Educational Opportunities in 1995, and then Education and the Workforce in 1997. It was renamed Education and Labor in 2007, and again Education and the Workforce in 2011.

The Committee on Energy and Commerce had been the Committee on Interstate and Foreign Commerce until 1975, when it became the Committee on Commerce and Health, then Energy and Commerce in 1980, Commerce in 1995, and again Energy and Commerce in 2007.

The Committee on Financial Services, first so named in 2001, had been Banking, Currency and Housing since 1974, Banking, Finance and Urban Affairs since 1977, and Banking and Financial Services since 1995.

The Committee on Foreign Affairs regained its name in 2007, having become the Committee on International Relations in 1975, Foreign Affairs in 1979 and International Relations again in 1995.

The Committee on Oversight and Government Reform was so named in 2007, having been the Committee on Government Operations through 1994, Government Reform and Oversight through 1998, and then the Committee on Government Reform through 2006.

The Committee on House Administration was renamed House Oversight in 1995 and again House Administration in 1999.

The Committee on Natural Resources, so named in 2007, had been the Committee on Interior and Insular Affairs until 1993 when it gained its current name, and then became Resources in 1995.

The Committee on Science, Space, and Technology had been the Committee on Science and Astronautics until 1975, when it was renamed Science and Technology until 1987, then Science, Space and Technology until 1995 when it became the Committee on Science, again Science and Technology in 2007, and again Science, Space, and Technology in 2011.

The standing Committee on Small Business was first established in 1975, having been a select committee since the 77th Congress.

The Committee on Standards of Official Conduct was renamed the Committee on Ethics in 2011.

Committee Expenses; Oversight Plans; Funding Resolutions; Interim Funding; Travel; "Lame Duck" Travel. Since 1995, at the beginning of each Congress standing committees of the House have been required to adopt oversight plans, in a public meeting with a quorum present, by February 15 in the first session and to submit them to the Committee on Oversight and Government Reform, which in turn was given 45 days to submit a consolidated report on coordination of plans to the House. Such plans were simultaneously submitted to the Committee on House Administration for formulation of a biennial budget for committees. Those committee budgets emerge in the form of a privileged resolution presented to the House providing funds for each committee in the form of expenses for "applicable accounts of the House" (previously named the "contingent fund").

The requirement (Rule X clause 6), which first replaced separate annual funding resolutions for each committee as a result of the Legislative Reorganization Act of 1970, was amended in 1977 to apply to all committees and other House entities. In 1995, the rule was amended to institute biennial funding of committee expenses (except the Committee on Appropriations) and to require that all committee staff salaries and expenses (including statutory staff) be authorized by expense resolution. In 1997, the rule was amended to permit a primary expense resolution to include a reserve fund for unanticipated expenses of committees. An exemption from the biennial requirement for the Committee on the Budget was effective from 1974 through 1994. While the new clause required the accompanying report from the Committee on House Administration on a primary or supplemental expense resolution to detail the funding provided for each committee, a resolution establishing a task force of members of a standing committee and providing for the payment of its expenses was held not to need an accompanying report detailing the funding provided, since called up at the beginning of a session before consideration of a primary expense resolution for all committees in 1992. In 1995, special provisions for interim funding were adopted in light of the abolishment of three standing committees. Interim funding for all committees became automatic for the first three months of each Congress as a standing rule (Rule X clause 7(a)) in 1985, replacing routine separate resolutions at the beginning of each Congress considered prior to the regular funding resolutions reported from the Committee on House Administration.

Procedures were utilized in some recent Congresses to bring those biennial funding resolutions to the House by utilization of special orders from the Committee on Rules despite their privilege for immediate consideration if reported from the Committee on House Administration. The expeditious use of special orders permitted consideration or "self-executed" adoption of

the funding resolutions without amendment and motions to recommit (motions otherwise applicable under the general rules of the House), to prevent restrictions and alternative committee budgets from being offered by the minority. In 2011, the biennial funding resolution was reported as privileged and then considered by unanimous consent, there being no controversy. It continued the requirement for second-session justifications to be submitted by each committees' leadership to the reporting Committee on House Administration.

Until 1975, each committee was given separate authority to incur expenses in connection with its investigations and studies, and only certain committees were authorized to use local currencies for foreign committee travel, by resolutions reported from the Committee on Rules in each Congress. Rule X clause 8 was amended in 1977, to clarify the availability and limit of local currencies for travel by all committees outside the United States authorized by committee chairmen, to require reports within 60 days and to authorize the Committee on House Administration to recommend in biennial expense resolutions expenses for foreign as well as domestic travel. Funding for "lame duck" travel for defeated or retiring Members was prohibited beginning in 1977 (Rule XXIV clause 10).

Establishing and Abolishing Select Committees. The creation of House select committees expanded, but most of those committees were terminated at the end of their desired existence without renewal into the next Congress. In all, some 23 select committees were established by the House. They can be categorized as follows: (1) panels to investigate and report on specific matters or events without authority to consider and report accompanying legislation; (2) panels with legislative jurisdiction to report to the House or to standing committees; (3) panels to consider House organization and procedures; and (4) panels to oversee internal administration.

As examples within category (1), select committees on Aging; Assassinations; Children, Youth and Families; Covert Arms Transactions with Iran; Crime; Hunger; Hurricane Katrina; Narcotics; Population; Professional Sports; Technology Transfers to China; Military Missing in Action; Global Climate Change; and to investigate a voting irregularity on a specific date in the House all were given investigative and reporting authority (the latter as a question of privileges of the House to report findings and recommendations to the House by a date certain). Some, such as Aging, Children, and Hunger, were reestablished in at least one subsequent Congress by temporary incorporation into the standing rules of the House.

Within category (2), select committees on Energy, Outer Continental Shelf, Homeland Security, and Intelligence were empowered to report legislation to the House, and Intelligence became a "permanent" select committee by incorporation into the standing rules in the same Congress (94th)

in which it was originally established in 1975. The Committee on Homeland Security became a standing committee in the 109th Congress in 2005.

Within category (3) the select committees on Committees, on Congressional Operations, and two on Ethics all existed during a single Congress. The first ethics panel in 1977 was created to respond to Member requests for advisory information and the second in 1997 was created to continue an investigation of the Speaker begun by the Committee on Standards of Official Conduct in the prior 104th Congress but not finalized. In the 110th Congress, the House for the first time by adoption of a resolution raising the question of the privileges of the House created a select committee (also mentioned in category (1)) to investigate a particular procedural (voting) irregularity rather than refer the matter to the Committee on Standards of Official Conduct.

Within category (4) three select committees—on the Beauty Shop, on the House Restaurant, and on Parking—were all created and terminated in the 95th Congress as purely internal oversight panels.

In 1993, the Speaker was authorized in Rule I clause 11 to remove Members whom he had appointed from select (and conference) committees . He exercised that authority several times (See, *e.g.,* 1998, 2002, 2004, 2005, 2007).

The first attempt at the creation of a House select oversight committee came in 2005, when the House, utilizing the Committee on Rules, created a "Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina." That select committee was never fully appointed, as the Minority Leader refused to recommend Members' names to the Speaker. Nevertheless, the select committee held hearings attended only by majority party members, but by unanimous consent permitted participation by a few minority noncommittee Members of the House from the geographic areas affected by the hurricane, although they could not vote on the report ultimately filed with the House. It filed a final report in 2006. Although the select committee was not equal in terms of party representation (despite the formal title of "bipartisan"), such equally-divided committees have been virtually unknown in the House—the primary exception being the Committee on Ethics. The minority noncommittee Members who were permitted to participate in the hearings had no standing to represent their leadership's concerns about the performance of the executive agencies controlled by the opposite political party. That opportunity was left to minority members of the standing Committees on Homeland Security, Transportation and Infrastructure and Appropriations which retained ongoing oversight jurisdiction over those aspects of the Federal Emergency Management Agency—the entity that the new select committee had been called upon to investigate.

Creation of Joint Committees. The Joint Committee on Atomic Energy was terminated on January 4, 1977, and its legislative jurisdiction transferred to several standing committees. Two joint committees on congressional operations or organization were established. The Joint Committee on Congressional Operations established in 1970 became inactive in the 94th Congress in 1976, while the Joint Committee on Organization of Congress was established in 1992 and terminated in December, 1993, upon report to the House and Senate. Neither joint committee was given legislative jurisdiction but both filed final reports to the two Houses; and some of their recommendations were separately implemented. Membership ratios on each committee reflected majority/minority ratios in each House.

For a discussion of the Temporary Joint Committee on Deficit Reduction, established in the wake of the *Bowsher* v. *Synar* decision, see section 26 of chapter 41.

The Budget Control Act of 2011 established the Joint Select Committee on Deficit Reduction which was instructed by that law to develop a bill to reduce the Federal deficit by at least $1.5 trillion over the 10 year period ending in fiscal 2021. The joint committee, which was bipartisan with six members from each House (three from each party) voting per capita, was required to vote on proposed legislative language and on an accompanying report by November 23, 2011, in order to take advantage of expedited procedures in both Houses which precluded amendment and required a vote in both Houses by December 23, 2011. The Joint Committee failed to meet the November 23 reporting deadline and thus lost its ability to bring legislation to the floor of either House under expedited procedures.

Electing Chair; Vice Chair. In 2001, Rule XI clause 2(d) was amended to provide that the ranking majority member of each committee and subcommittee be designated as its Vice Chair. In 1995, the rule was further amended to permit the chair of a full committee to designate Vice Chairs of the committee and its subcommittees (not necessarily the next ranking member). In 2009, Rule X clause 5(c) was amended to clarify the devolution of authority in case of absence or vacancy. In 1991 and 1994, a privileged resolution offered by the majority caucus contained an incidental provision that the Chair's powers and duties be exercised by the Vice Chair, unless otherwise ordered by the House (due to incapacities).

Election of Committee Members. There were a number of changes in caucus and conference rules relating to nominations of Members to standing committees. The role of the respective party caucus or conference in making nominations for House election to committees or to fill vacancies was made specific in standing rules in 1983 (Rule X clause 5(a)). The requirement for election of standing committees within the first seven calendar days and the

conferral of privileged status on caucus and conference resolutions to elect of change composition of committee members was made specific in 1985.

The requirement that membership on standing committees be contingent on continuing membership in a party caucus or conference along with the mechanism for automatic vacating of a Member's election to committee should party relationship cease, was added in 1983 in Rule X clause 5(b). The limitation on full committee assignments was added in 1995 (no more than two standing committees or four subcommittees except ex officio service under a committee rule and service on investigative subcommittee of Committee on Standards of Official Conduct). Exceptions from this limitation were to be approved by the House on the recommendation of the relevant party caucus or conference (accomplished by resolutions electing Members to three or more full committees and by separate resolution in case of subcommittee beyond four). The latter rule was not consistently observed since the House had no formal notice of subcommittee assignments. Communications relating to the removal of a Member because of change in party affiliation are laid before the House. The party to which the Member switched, presents resolutions electing them to committees, often with adjusted seniority to reflect past service while in the other party. In modern practice, the party with which the Member chooses to caucus takes the responsibility to handle committee assignments for third-party or independent Members by separate privileged resolution to that effect (*e.g.*, 1991, 2001).

Seniority Considerations; Term Limits. The House in 1995 adopted a limitation on terms (three two-year terms not counting service for less than one session in a Congress) for committee and subcommittee chairmen on committees or subcommittees of the same jurisdiction. The House term-limit rule (Rule X clause 5(c)(2)) was repealed in 2009 but was reinstituted in 2011 upon change in party majorities. Party rules extended that term limit to apply to both chairman and ranking minority positions, cumulatively. Beginning in 2005, the chairman of the Committee on Rules was exempted from the three-term restriction.

Setting and Increasing Committee Membership; Ratios. Overall committee size was implicitly controllable by the majority by voting against any minority resolution if not in accordance with the agreed upon ratio. In 1984, a resolution directing that the party ratios of all standing committees, subcommittees and staffs thereof be changed within a time certain to reflect overall party ratios in the House was held to constitute a rules change and not to raise a question of privilege. Later that year a question of the privileges of the House was raised alleging that subcommittee ratios should reflect full committee ratios established by the House and failure to do so denied representational rights at the subcommittee level.

Appointment, Employment and Compensation of Employees. In 1975, a rule was adopted authorizing the chairman and ranking member of a subcommittee each to appoint one staff member to the subcommittee, to be reflected in the committees' expense resolutions. In 1995, the rule (Rule X clause 6(d)) was amended to require the full committee chairman to provide sufficient funding for all subcommittees and "fair treatment" in the appointment of minority subcommittee staff (a return to the 92nd Congress standard) rather than as an entitlement for separate appointment without full committee action. That 1975 rule had previously replaced the 1971 rule guaranteeing one-third of a committee's staffing funds to be devoted to the needs of the minority. The 1995 change also eliminated the former distinction between professional and clerical staff, set the authorized maximum for committee staff under expense resolutions at 30, and set the entitlement of the full committee minority (as determined by a majority of those minority members) within that number at one-third (10).

The Ethics Reform Act of 1989 prescribed that committee staffs' work be confined to committee business during congressional business hours, with exceptions for "associate or shared" staff added in 1995, subject to Committee on House Administration regulations except for the Committee on Appropriations (which retained its independent authority on all staffing). On at least two occasions upon the change in party majorities, the House reduced its overall committee staff by at least one-third from the previous Congress in 1995, or by a percentage of expenditures in 2011 and again in 2012.

Procedure in Committee. In the 99th Congress, Rule XI clause 2 was amended to allow a privileged nondebatable motion to dispense with the first reading of a measure if printed copies are available, superseding the requirement in *Jefferson's Manual* that a bill or resolution be read in full upon demand before being read by paragraphs or sections for amendment. In 2005 a privileged nondebatable motion in committees to recess subject to the call of the chair within 24 hours was added to that clause. In 2011, electronic availability of all committee publications was required "to the maximum extent feasible" (Rule XI clause 2(e)(4)). That year also marked the first formal reference in House rules (Rule X clause 4) to alternative electronic in lieu of print availability of House documents under regulations promulgated by the Committee on House Administration.

Rule XI clause 1(b) was amended in 1997 to waive the readings of certain investigative and oversight reports if text was available for 24 hours, and to permit final activities reports to be filed with the Clerk after seven days for committee members to file separate views. A clause 1(d) requirement that final activities reports be filed prior to the expiration of the Congress

and that they include separate sections on legislative and oversight activities and recommendations was added in 1995. In 2011, the rule was amended to require four activities reports from each committee to the House in each Congress, two per session. That requirement was reduced to two per Congress, one for each session, in 2013.

The publication of committee rules in the *Record* was required beginning in 1991 within 30 days after members were elected (refined to refer to the election of the chair of the committee in 2011), rather than after the beginning of the Congress, and was required electronically beginning in 2011 (Rule XI clause 2(a)(2)). Committees were authorized beginning in 2005 in clause 2(a)(3) to adopt rules permitting the chair in his discretion to offer motions to send bills to conference.

In 2011, all committees except the Committee on Rules were required to give three days notice of all meetings unless the chairman and ranking minority member agree for good cause to begin earlier or the committee voted to do so. The 24-hour electronic availability to the public of text to be considered in a committee markup was also required beginning in 2011 (Rule XI clause 2(g)(3)).

Sitting of Committees While House in Session. Rule XI clause 2(i) was amended several times to liberalize the ability of committees to sit either in a hearing or meeting when the House was in session. A provision that special leave to sit be granted if ten Members did not object was added in 1977. In 1989, that rule was amended to prohibit committee sittings during joint sessions or meetings. The rule was stricken altogether in 1993 but was reinstated in 1995 with specified exceptions for five committees, along with a provision for a privileged motion by the Majority Leader to permit committees to sit. The rule was stricken again in 1997 except that committees may not sit during joint sessions or meetings.

Proxy Voting; Postponement of Votes. Beginning in 2003, postponed votes on amendments and reports in committees were permitted if committees adopted such a rule. In 1975, the prohibition on proxy voting in the Committee Reform Amendments of 1974 never became operative, when it was modified to permit proxy voting in committees with additional restrictions requiring an assertion that the grantor was absent on official business or otherwise unable to attend, requiring the Member to sign and date the proxy, and permitting general proxies for procedural matters. Proxy voting in committees was totally prohibited beginning in 1995 (Rule XI clause 2(f)).

Committee Jurisdiction. A multiple referral, after being made to resolve an ambiguity, itself can become a precedent for subsequent referrals, including those in subsequent Congresses, unless House rules are rewritten to supersede them.

Informal agreements, drafted among committees or their chairmen to stipulate their understanding of jurisdictional boundaries, have been used in recent years. These agreements, called "memoranda of understanding," have been considered instructive, although not necessarily binding, in subsequent Congresses when they are supported by all the committees concerned, signed by their chairmen and inserted into the *Congressional Record*. They are not formally ratified by the House. Memoranda of understanding can be disclaimed by new committee chairs or by the Speaker as of no further significance in a subsequent Congress. On opening day in 2013, a memorandum of understanding was inserted in the Record by two chairmen to explain a jurisdictional rules change in the rules package relating to insular areas beyond territories of the United States.

Six committee chairmen signed a memorandum of understanding over energy jurisdiction inserted in the *Record* in 1980. Two committees (the Committee on the Budget and the Committee on Rules) inserted an agreement on budget process jurisdiction in 1995. Neither of these memoranda of understanding was renounced in subsequent Congresses. There have been many examples of committee reports or matters inserted in the *Record* containing an exchange of letters between committee chairmen waiving a committee's claim to review a portion of a particular bill, with the understanding that this reluctance to assert jurisdiction over the matter was not permanent. Typical in this area were situations where a primary committee reported a measure and sought to bring it to the floor expeditiously. Often a committee seeking a sequential referral would forego a meaningful time limit imposed by the Speaker in favor of a symbolic one-day referral to signal a proper jurisdictional claim for future referrals, accompanied by an exchange of letters. Most recently, the one-day sequential referrals have given way to exchanges of letters published in the committee report or in the *Record*. Beyond these token referrals, the Speaker's discretionary authority under Rule XII to impose time limits on any committee of referral potentially injected a political calculation into the referral process. While jurisdictional decisions were nonpartisan, as delegated to the Parliamentarian, the time granted to a committee for review could enhance or detract from a secondary committee's ability to hold hearings and mark up the referred measure.

Beyond the language of Rule X and the precedents of prior referral, and informal discussions with the Parliamentarian, however, there were some misplaced notions that referrals could be based: on political influence exerted through the Speaker; on the status of the sponsor of the measure (as for example a committee chairman or "expert in the area"); on the fact that oversight on the general subject may have been conducted by a committee

seeking referral; on the fact that there had been conference committee participation on a prior bill; or on the fact that authorizing committee jurisdiction should align with appropriation subcommittee jurisdiction.

Over the course of 185 years of single referrals a large array of precedent had been established as to committees of predominant jurisdiction, but given the complexities of contemporary issues and the perceived need to modernize standing committee jurisdictions, the House established a Select Committee on Committees in 1974 to recommend jurisdictional realignments and consolidations. That select committee's bipartisan recommendations were rejected by the House in favor of retention to the present day of most of the traditional fragmentation which existed even after enactment of the Legislative Reorganization Act of 1946. For example, the select committee recommended the establishment of a new standing committee on Energy and Environment, which would have assumed various jurisdictions of five or six committees, including energy policy, agricultural environment, energy and environmental research and development, military aspects of those matters, public lands and resources, and air and water pollution matters. A coalition of Members were convinced that they stood to lose rather than gain more power and influence in those and other major subject areas as a result of the proposed realignments, as they could not all gain assignment to the newly consolidated committee. They rejected the consolidation proposal in favor of retention of the existing fragmentation. Contained in a separate unamended section of the select committee's consolidation proposal—but only as a safeguard in the perceived unlikely event that jurisdictional overlaps might continue to occur—was the new requirement for multiple referrals in the event of such overlap. A review of the debate on that occasion failed to disclose that the House consciously adopted a new requirement for multiple referrals while retaining more overlapping and fragmented jurisdictions than envisioned by the select committee. If it was the policy of the prevailing coalition to multiply Members' jurisdictional involvement at the committee level by insisting on a proliferation of referrals, it was not articulated. In fact, the so-called Democratic Caucus "Burton-Hansen coalition" amendment (named after Reps. Phil Burton and Julia Hansen who led the opposition to the select committee's proposal and who proposed an alternative following a six-month majority caucus review) retained with moderate changes the existing jurisdictional scheme. It was drafted to amend only that portion of the select committee resolution containing the jurisdictional statement, and not the subsequent section mandating multiple referrals. Of the factors motivating the prevailing coalition to advocate the retention of fragmented jurisdictions, success could be enhanced on the crucial vote if more Members stood to serve on more committees than under the

Select Committee's consolidation alternative. Combined with the empowerment of the Speaker to place time limits on referrals, in order to bypass entrenched committee chairmen who had gained their positions by seniority and were often not answerable to the leadership, this multiple jurisdictional commitment contributed to profound institutional change in the House.

All committees were empowered by actual language of the Speaker's referral to consider only "such provisions of the measure as fall within their respective jurisdictions under Rule X." This restriction imposed by the Speaker from the outset of the referral confined each committee's consideration without being delineated by the referral, based on advice of the Parliamentarian, and created a point of order in committee markups if attempts were made to read or amend portions of the measure not within that committee's jurisdiction. While those rulings by committee chairmen were not reported to the House and are not treated as precedent for the purpose of this work, they were available through committee markup transcripts.

Prior to 1975, the Speaker could not formally impose time limits on the committee of referral. Only a formal discharge petition or the infrequent utilization of a special order of business from the Committee on Rules to discharge a committee from an unreported bill could accomplish the purpose of the House to take a measure away from a standing committee as though a time limit had been imposed.

The infrequency with which the Committee on Rules was utilized until recent Congresses to report special orders of business which discharged standing committees from unreported legislation was demonstrated in 1972. On that occasion, the Committee on Education and Labor had not reported a measure ending a west coast dock strike, and the Committee on Rules was utilized to bring that matter directly to the floor. The debate on that occasion reflected the "unprecedented" use of a special order to discharge a standing committee from an unreported measure. A review of examples of such special orders from the 1930s until that time indicates only three similar occasions. Two years later, in 1974, the Speaker responded to a parliamentary inquiry that the Committee on Rules had the authority to report a special order which discharged the Committee on Appropriations from consideration of an unreported measure, but it remained clear that the practice of the House was not to so utilize the Committee on Rules. Rather, the practice remained deferential to standing committees in an era of decentralization of authority away from the elected majority leadership and toward the independence of committee chairmen.

In 1975, the first year the Speaker could impose time limits, only committees receiving secondary referral could be time limited. This restriction was quickly removed at the beginning of the 95th Congress in 1977 to permit

time limits to be imposed on all referrals. While this authority has not often been exercised by Speakers, its mere conferral signaled that from the standpoint of available "time" for committee consideration, formal limits were possible from the outset. It symbolized new leadership ability to circumscribe committees from the day of introduction, not merely following a primary committee's report, whenever that might be, to expedite plenary consideration. It represented imposition of a degree of institutional certainty of available time at the committee stage, an enhancement of centralization of majority party leadership, a corresponding reduction of committee and subcommittee independence, and the beginning of a reemergence of majority leadership dominance not seen since the speakership of Joseph Cannon at the beginning of the 20th century (1903–1911) (also utilizing the Committee on Rules).

From 1975 to 1995, joint referrals without the designation of one primary committee had proliferated, where measures containing substantive provisions were separately or concurrently within the jurisdiction of more than one committee and were not merely incidental to more predominant provisions. In 1995, the requirement for the Speaker to designate a primary committee among all committees to which the bill was jointly referred was instituted. In 2003, a return to the pre-1995 policy was permitted but only if based on the "exceptional circumstance" of overlapping and conflicting jurisdiction prompted by ongoing disputes, as over national health care measures between the Committee on Energy and Commerce and the Committee on Ways and Means. The jurisdictional conflict in this area emanated from the 1974 fragmentation of the issue of health care financed by general revenues—conferred upon the Committee on Energy and Commerce, and health care financed by payroll deductions—conferred upon the Committee on Ways and Means. The premise that jurisdiction over health care should depend on the source of Federal funding—payroll tax as opposed to general revenues—ignored a third form of financing, namely premiums which were not collected as payroll taxes. They were the primary source of health care funding under Medicare part B, first enacted in 1965 when the only committee of jurisdiction was the Committee on Ways and Means. Both committees continuously claimed co-equal jurisdiction in this important part B area (and currently in the part D prescription drug benefit area enacted in 2003) since Rule X language was not changed to clarify this omission. This ambiguity in the rule combined with valid claims of the Committee on Education and Labor over health care in employment pension plans, and with the perception that the primary committee might enjoy an added prestige. Yet ongoing disputes remained despite the requirement that the Speaker select a primary committee (and despite the reality that an additional committee of

original referral had as much opportunity to hold hearings and report such a bill within their jurisdictions from the outset as the primary committee). Thus the "exceptional circumstance" safety valve reemerged where the rule and precedents did not enable the Speaker to easily make the determination of primary referral as otherwise required since 1995.

The elimination of three standing committees in 1995 represented the most extensive jurisdictional realignment since the 1946 Reorganization Act. It was adopted as a part of a larger package of partisan procedural reforms rather than as a bipartisan effort utilizing the Committee on Rules or a select or joint committee. A Joint Committee on Congressional Operations, while recommending a series of reforms in the procedures of both Houses, had declined in 1994 to recommend House or Senate committee jurisdictional realignments during its existence in the 103d Congress, thereby tacitly acknowledging the political difficulty encountered in the House in 1974 of accomplishing "reform" in that area.

The six-year evolution of jurisdiction over matters pertaining to homeland security beginning in 2002 was unique. The creation in 2005 of a standing Committee on Homeland Security was the culmination of activity in three consecutive Congresses that ended a temporary procedural anomaly in the Speaker's role in making referrals and an extensive dispute over the extent to which existing standing committee jurisdictions would either be transferred to or shared with a new entity. First, in 2002, the House established a Select Committee on Homeland Security, pursuant to a resolution reported from the Committee on Rules, which was tasked to receive recommendations from 12 standing committees to which the Speaker had referred a bill establishing a new Department of Homeland Security in the executive branch, and to report a bill based on an evaluation of those recommendations. That select committee went out of existence upon final congressional approval in 2002 of the bill which created the department. Then the House at the beginning of the 108th Congress in 2003, in a standing order accompanying the opening-day rules package, created a new Permanent Select Committee on Homeland Security. Its mission was: to develop recommendations on such matters that relate to the Homeland Security Act of 2002 (Pub. L. No. 107–296) as may be referred to it by the Speaker; to conduct oversight of laws, programs, and government activities relating to homeland security; to conduct a study of the operation and implementation of the rules of the House, including Rule X, with respect to homeland security; to report its recommendations to the House on matters referred to it by the Speaker; and to report its recommendations on changes to House rules to the Committee on Rules by September 30, 2004. The legislative jurisdiction conferred on that select committee was unusual in that it referred only to the 2002 Act

which created the department and "matters relating thereto as determined by the Speaker." Even before that matter was debated in the House on January 7, 2003, Speaker-elect Dennis Hastert, in his acceptance speech prior to taking the oath of office, pledged to the House that upon becoming Speaker and upon adoption of the rules creating the new select committee with limited legislative jurisdiction, his referrals would not be prejudicial to the jurisdictions of those standing committees that had contributed to the 2002 Act. He was thus promising a very restricted set of referrals of measures to the select committee so as not to diminish the jurisdictional claims of the standing committee chairmen who would in turn reluctantly support its creation. Over the course of the 108th Congress, only a handful of measures were referred to the select committee, and only two or three to that committee as primary, although others directly amended the 2002 Act in some reorganizational or substantive respect. The Speaker personally examined each measure on the date of introduction, and did not conclusively seek the advice of the Parliamentarian based on precedent. For example, if the bill proposed to expand or transfer new authority to the new department, it was likely referred to one or more of the existing standing committees because the proposed reorganization was not contained in the 2002 Act and therefore not "related thereto." The Speaker had taken the extraordinary step of announcing even prior to taking office that he would protect the standing committees of the House, and further appointed virtually all standing committee chairmen who had contributed recommendations to the 2002 Act, and who had overlapping jurisdictions, as members of the new select committee. The legislative activities of the select committee during its two year existence in 2003–2004 were therefore very limited, because the Speaker would not confer an expansive jurisdictional role on it through his referrals.

The House on opening day of the 109th Congress in 2005, on recommendation of the majority conference, then created the standing Committee on Homeland Security with jurisdiction over both the organizational aspects of the new department and over subject matter aspects on a wide variety of matters relating in whole or in part to homeland security. Shared jurisdiction was made explicit in several areas, with the new committee having jurisdiction over customs except customs revenue (retained by the Committee on Ways and Means), border and port security except immigration policy and non-border enforcement (retained by the Committee on the Judiciary), transportation security (with the Committee on Transportation and Infrastructure retaining jurisdiction over transportation except transportation security functions of the new Department of Homeland Security), and integration, analysis, and dissemination of homeland security information (overlapping the intelligence jurisdiction of the Permanent Select Committee

on Intelligence). On that day, the Speaker announced that his referrals in the previous Congress to the former select committee would not be considered precedent for referrals to the new standing committee, affirming that the traditional nonpartisan role of the Parliamentarian would be resumed in all subsequent referrals. The calamitous events of September 11, 2001, were to be reflected in the first major legislative jurisdictional realignment of standing committees of the House since the 1995 elimination of three standing committees, but only after three years of examination and trial through utilization of a select committee with very limited jurisdictional authority. After three years of executive branch reorganization, the House could no longer resist a permanent internal reorganization reflecting a comparable prioritization in the complex area of homeland security in the executive branch. It responded to a demand from the executive and the public that a more expeditious capacity for and degree of oversight be put in place. At the same time, the jurisdictional overlaps with other standing committees and the unique conferral of some subject matter jurisdiction only to the extent that it was a function of the Department of Homeland Security (*e.g.*, transportation security unless it is a function of another department, and catastrophic emergencies only if defined to include terrorist activities), demonstrated the limits of the new jurisdiction.

A number of other jurisdictional transfers from one standing committee to another were accomplished by changes in Rule X. As well, several unanimous-consent orders set precedents by rereferrals of specific measures to correct or clarify existing jurisdictions.

With respect to the Committee on Agriculture, that committee assumed jurisdiction by rule over inspection of poultry, seafood, and water conservation regulated by the Department of Agriculture in 1995. By rereferral the committee's jurisdiction over the Horse Protection Act, food stamp eligibility requirements for aliens, and executive level positions in the Department of Agriculture was clarified.

The Committee on Appropriations gained specific jurisdiction over rescissions and deferrals under the Impoundment Control Act of 1974. Section 401(b) of the Congressional Budget Act (formerly section 402), required sequential referral of bills reported by other committees containing new entitlement authority in excess of allocations in a budget resolution. Several mandatory sequential referrals to the Committee on Appropriations were made by Speakers in 1977 through 1981. In 1997, that referral authority was made discretionary on the part of the Speaker.

The Committee on Armed Services gained jurisdiction over military applications of nuclear energy in 1977, over inter-oceanic canals, the Merchant Marine Academy, and national security aspects of merchant marine in 1995, and over cemeteries operated by the Department of Defense in 2011.

The Committee on the Budget in 1995 gained limited legislative jurisdiction over the congressional budget process generally (with the Committee on Rules), over special controls over the Federal budget including budgetary treatment of off-budget Federal agencies and programs, and over measures relating to sequestration orders. In 2012, the House adopted a concurrent resolution on the budget requiring the Committee on the Budget to itself report legislation which responded to reconciliation-like instructions in lieu of automatic "sequestrations" to be effective in 2013. When the Senate did not act on the concurrent resolution, the House adopted that requirement as a standing order instructing its own Budget Committee.

The Committee on Financial Services, was the recipient of a major jurisdictional consolidation in the 107th Congress when it obtained jurisdiction over securities and exchanges from the Committee on Energy and Commerce, and was given jurisdiction over insurance generally. A memorandum of understanding between those committees with respect to accounting standards (jurisdiction to be retained by the Committee on Energy and Commerce) in 2001 no longer served as jurisdictional guidance to the Speaker following his renunciation four years later in a statement inserted in the *Record* (the first example of such a renunciation), thereby giving the Financial Services Committee comprehensive jurisdiction over banking, securities, insurance and accounting aspects of financial institutions, many of which were performing all those services for customers.

The Committee on Energy and Commerce underwent several jurisdictional changes in Rule X. In the 96th Congress, the committee obtained specific jurisdiction over national energy policy generally, over energy resources, energy information, generation, marketing, interstate transmission of, and ratemaking for power including siting of generation facilities, and general management of the Department of Energy and the Federal Energy Regulatory Commission. In the 104th Congress, the committee's jurisdiction over inland waterways and railroads was transferred to the Committee on Transportation and Infrastructure, and over commercial application of energy technology to the Committee on Science (now Science, Space, and Technology), while the committee gained exclusive jurisdiction over regulation of the domestic nuclear energy industry from the Committee on Natural Resources. In 2001, the committee relinquished jurisdiction over securities and exchanges to the Committee on Financial Services and in 2005 was stripped by the Speaker of jurisdiction over accounting standards which it had previously retained based on a memorandum of understanding between those committees. While the committee has retained jurisdiction over health and health facilities financed from general revenues (*e.g.*, Medicaid), as opposed to health and health facilities financed from payroll deductions (*e.g.*, part

A of Medicare), which was assigned to the Committee on Ways and Means by the Committee Reform Amendments of 1974, a subsequent referral by the Speaker has resulted in joint jurisdiction with Committees on Ways and Means and Energy and Commerce over health care financed by other sources such as premiums (*e.g.*, parts B and D of Medicare) and in acknowledgment in the 109th Congress that such joint referrals in extraordinary circumstances could occur without regard to listing a "primary" committee as otherwise required beginning in 1995. Only one such joint referral has been made.

The Committee on Foreign Affairs assumed jurisdiction in 1977 over nonproliferation of nuclear technology and hardware, and over international agreements on nuclear exports, upon termination of the Joint Committee on Atomic Energy.

The Committee on House Administration assumed jurisdiction in 1995 over the Franking Commission, and lost jurisdiction over the erection of monuments to the memory of individuals to the Committee on Natural Resources. The Committee's policy direction and oversight jurisdiction over the Inspector General was retained in 2001 while policy direction (but not oversight) over other officers of the House conferred in 1995 was eliminated. In 2011, the committee was empowered in Rule XXIX clause 3 to establish regulations governing electronic availability of measures in the House and in committees. Those regulations were reported in December, 2011.

The Committee on Natural Resources absorbed much of the jurisdiction of the former Committee on Merchant Marine and Fisheries including fisheries and wildlife, international fishing agreements, marine affairs and oceanography, upon abolition of that committee in 1995. Jurisdiction over the Trans-Alaska Oil Pipeline was transferred from the Committee on Transportation and Infrastructure. The Committee on Natural Resources relinquished jurisdiction over the domestic nuclear energy to the Committee on Energy and Commerce. In 2013, it was given explicit jurisdiction along with the Committee on Foreign Affairs over insular areas beyond territorial possessions, such as the sovereign Freely Associated States.

The Committee on Oversight and Government Reform lost jurisdiction over general revenue sharing, over off-budget treatment of agencies or programs (to Committee on the Budget) in 1995, and over budget process (to Committee on the Budget) in 1997, while assuming the jurisdictions of the former Committees on Post Office and Civil Service and on the District of Columbia in 1995.

The Committee on Science, Space, and Technology was given jurisdiction in 1981 over energy demonstration projects and federally-owned nonmilitary energy laboratories as an extension of its energy research and development

jurisdiction. In 1995, the committee received jurisdiction over marine research (upon termination of the Committee on Merchant Marine and Fisheries) and over commercial application of energy technology from the Committee on Energy and Commerce.

The Committee on Transportation and Infrastructure obtained jurisdiction in 1995 over several matters transferred from the former Committee on Merchant Marine and Fisheries, including navigation, registration of vessels, international rules to prevent collisions at sea, the merchant marine (except for national security aspects), and marine affairs as related to oil and other pollution of navigable waters. That year the committee also was given jurisdiction over all aspects of transportation including inland waterways and railroads.

The jurisdiction of the Committee on Ways and Means was further protected by the adoption of Rule XXI clause 5(a) in 1983 permitting points of order to be raised "at any time" against tax or tariff provisions in bills not reported to the House from that Committee, or amendments thereto. There were rulings in 1985 and in 1989 interpreting that rule in the context of reconciliation bills with language "recommended" by the Committee on Ways and Means but reported from the Committee on the Budget (creating the anomaly discussed in chapter 41). In 2005, the restriction against such tax or tariff provisions was extended to amendments to general appropriations bills, which per se were in the form of limitations on funds for the administration of a tax or tariff (but not to such limitation language in the bill itself), in order to avoid the difficulty of the Chair's determining whether or not such floor amendments had the inevitable and necessary effect of resulting in a loss or gain in tax liability and in tax collection. Language in the general appropriation bill itself would continue to require the necessary and inevitable determination regarding the negative effect of the limitation on such tax or tariff liability or collection.

A history of the Committee on Rules was published as a committee print in the 97th Congress in 1983, together with a short updated history found on the Committee on Rules website posted in 1996. The composition, role, and work product of that committee has evolved, beginning with the method used in majority party caucus rules to select the majority members. The current size and ratio of the committee, which stood at 8-4 through 1970 (and in the 112th Congress due to a majority vacancy), then at 11-5 through the 97th Congress, and since then at 9-4, regardless of the majority party size in the House, reflected the traditional notion that the leadership's agenda should presumptively be enhanced by a committee with a disproportionate majority reflecting the leadership's legislative priorities. In the 1970s, the rules of the Democratic Caucus were amended to confer upon the Speaker

the authority to nominate the majority members without seniority considerations and without going through the bidding selection process applicable to other committee assignments. The Republican Conference followed suit to authorize their Speaker or Minority Leader to similarly nominate its members.

In 1977, the Committee on Rules was implicitly given jurisdiction over rules relating to financial disclosure so long as not directly amending the Code of Official Conduct, transferred from the Committee on Standards of Official Conduct. In 1991, the authority of the Committee on Rules to report emergency waivers of the required reporting dates for bills authorizing new budget authority, conferred by the Congressional Budget Act, was repealed as obsolete. The requirement for automatic sequential referrals to the Committee on Rules of budget resolutions and other measures changing congressional budget processes was refined in a memorandum of understanding in 1995 in part to subsume that committee's original jurisdiction over rules into the expectation that the committee would exercise its jurisdiction in the context of special orders of business governing budget resolutions.

Committee on Rules Procedure. There were changes in party caucus policy since 1974 with respect to Committee on Rules members' support of "restrictive" special orders limiting the offering of germane amendments. That year Democratic Caucus rule 35 (but not Republican Conference rules) required announcements to the House in the *Congressional Record* respecting the Committee on Rules' expectation to hold a hearing on a request for a special order limiting germane amendments which might be offered on the floor. That announcement required no less than four legislative days in advance of a committee meeting, so as to enable a possible petition by at least 50 majority Members for a caucus to consider whether that amendment should be made in order. While party policies not to seek or support "closed" rules were sometimes utilized, these were not committee rules and therefore not binding. Both majority parties until the 21st century usually gave some advance notice to the House of leadership intent, during which time Members were requested to deliver amendments to the Committee on Rules by a time certain before the hearing. More recently, most "closed" or "modified-closed" (*i.e.*, "structured") rules reported from the Committee on Rules were not preceded by such announcements on the floor by either majority, but rather by "dear colleague" letters and electronic announcements.

Rules of the Committee on Rules were printed in the *Congressional Record* and indicate their evolution. They demonstrate reduced quorum requirements for hearings (five members rather than a majority), additional provisions governing emergency meetings, as well as additional provisions required by House rules for inclusion in all committees' rules (*e.g.*, of all

record votes on motions to amend or to report showing totals and individual members' votes in the accompanying report, and the banning of proxy voting). In the 110th Congress, House rules were amended to no longer require the Committee on Rules to include committee record votes in its accompanying report (so as to avoid possible points of order in the House based on a report error), but the committee rules continued to include the requirement. In 2011, that requirement for the Committee on Rules was reinstated (Rule XIII clause 3(b)).

Reports from the Committee on Rules must show proposed direct changes or repeals in standing rules as a comparative print ("Ramseyer"). That rule (Rule XIII clause 3(g)) was held in 1993 not to apply to a special order providing for consideration of a bill which would affect certain changes in House rules on enactment of the bill into law, where the special order itself did not itself repeal or amend any rule. In 1995, the Committee on Rules was required to include in its accompanying report "to the maximum extent possible" a specification of the object of any recommended waiver of a point of order against a measure or its consideration. The committee in subsequent Congresses did not always adhere to that standard in reports accompanying special orders. This requirement was clarified in 2013.

Beginning in 1995, a motion to recommit with proper instructions pending initial final passage of a bill or joint resolution (although not applying to adoption of concurrent or simple resolutions or of Senate amendments) if offered by the Minority Leader or a designee could not be restricted by the Committee on Rules in a special order of business. This rule change recommended by the Joint Committee on Organization of Congress in 1993 was in response to several rulings by Speaker Thomas Foley in 1990-94 (relying upon a precedent by Speaker Henry Rainey in 1934) that the Committee on Rules had the authority to report special orders which precluded instructions in motions to recommit, so long as not totally denying a straight motion to the minority. This protection of the minority right to offer recommittal motions was held in 1990 not to apply, however, to a special order providing for consideration of a bill under suspension of the rules, as there is no ordering of the previous question under that procedure which would otherwise protect a recommittal motion.

In the 111th Congress, the motion to recommit made in order under Rule XIX clause 2(b) following the ordering of the previous question and pending initial final passage of a bill or joint resolution was restricted to require that any instructions included in the motion contain the "forthwith" reporting of an amendment. That 2009 rules change had the effect of precluding such motions to recommit with instructions to report "promptly" or to take any other action than forthwith reporting. By limiting the definition of permissible motions to recommit with instructions, the authority of the Committee

on Rules to report special orders having the effect of restricting other minority motions to recommit with non-amendatory instructions was accordingly enhanced. While other restrictions on the authority of the Committee on Rules to report special orders limiting or prohibiting motions to recommit on initial passage of bills or joint resolutions remained in place, its authority to prohibit motions to recommit on conference reports or on amendments between the Houses, addressed in other rules of the House and not expressly prohibited by Rule XIII clause 6, was left unimpaired (See, *e.g.*, *Deschler-Brown Precedents* Ch. 33 § 31.5).

Also in the 111th Congress, the House changed the Calendar Wednesday rule by requiring a committee chairman to give one day's notice of intent to call up a reported bill under general rules of the House on Wednesdays, rather than requiring an alphabetical call of all committees every Wednesday unless the call was dispensed with by a two-thirds vote. As a conforming amendment, that subparagraph of Rule XIII clause 6(c)(1) which had prevented the Committee on Rules from reporting special orders setting aside Calendar Wednesday by less than a two-thirds vote, was repealed, leaving in place only constraints against denial of proper recommittal motions and same-day consideration without a two-thirds vote.

Several rulings with respect to the privileged filing and consideration of reports from the Committee on Rules included a decision in 1987 that such a report may take precedence over a motion to consider a measure that is "highly privileged" pursuant to a statute enacted as an exercise of the rule-making authority of the House, thereby acknowledging the constitutional authority of the House to change its rules at any time. On that same day, however, a resolution raising a question of the privileges of the House was held to take precedence over a privileged report from the Committee on Rules. Special orders of business reported from the Committee on Rules which temporarily waive or indirectly alter the rules of the House, including statutory provisions that would otherwise establish an exclusive procedure for consideration of a particular type of measure, were held privileged in 1975, 1986 and 1987. In 1991, it was held that the Committee on Rules was permitted to report a special order making in order specified amendments that have not been preprinted as otherwise required by an announced policy of that committee.

Several changes in the standing rules and in practice affected the requirement for a two-thirds vote of the House to consider a report from the Committee on Rules on the same (legislative) day reported. In 1976, Rule XIII clause 6(a)(1) was amended to permit the immediate consideration of a reported special order if it only waived the three-day layover requirement for consideration of a reported bill or the two-hour layover requirement for consideration of conference reports and contained no other provisions. All other

special orders were still required to lie over "beyond the same day reported" in order to avoid a two-thirds vote on the question of consideration.

In 1987, a trend began permitting a report filed by the Committee on Rules at any time before the convening of the House on the next "legislative" day to be called up for immediate consideration without the two-thirds requirement. If the House continued in session into a second calendar day (by continuous session or by "short time" recesses declared by the Chair), and then adjourned and met again the second day, or convened twice for two legislative days on the same calendar day, any report filed on the first legislative day was permitted to be called up on the second such day without the question of consideration being put. A landmark occasion for holding two legislative days on one calendar day was in 1987, with two sessions separated only by a brief adjournment pursuant to motion to set the time for reconvening recognized by Speaker Jim Wright in his discretion, which permitted the Committee on Rules to meet and file prior to the adjournment. This sequence followed House rejection of a similar special order earlier that calendar day. The House then received the filing of a second special order on the same bill prior to adjournment, all within the space of approximately two hours. While the Speaker's decision and the action of the House was in order under a previous determination that "on the same day" reported meant a "legislative" day in 1985, the Speaker's decision was subjected to extensive criticism from the minority for having changed the time for reconvening to a later time on that same calendar day, rather than waiting until the next calendar day as otherwise established by standing order for daily convening.

Only when that minority became the majority in 1995 until 2007 did the practice of "two legislative days in one calendar day" by extended declared recesses become commonplace. Often through 2006, and then only twice during the 110th Congress under another new majority, the practice persisted that reports would be filed by the Committee on Rules late at night or early in the morning interrupting an extended (sometimes overnight) recess declared by the Speaker. Those special orders often made in order a conference report or newly introduced bill (filed only an hour or so earlier), to be immediately followed by an adjournment of the House to meet again at the ordered time (usually a very short time later) the same calendar day. They were given privileged consideration despite the lack of printing of either the special order or the measure being made in order.

The frequent practice developed where the Committee on Rules anticipated the need to waive the two-thirds requirement for same day consideration of a special order it might subsequently report, but was not yet certain of the nature of that report. In that case, the Committee on Rules would

report a preliminary “same-day rule” merely waiving the layover requirement for any subsequent special order on that measure, which preliminary special order would itself lie over for one legislative day and then adoption by the House. That “same-day rule” would permit subsequent special orders on the measure(s) covered to be considered by the House without a two-thirds vote as soon as filed.

One constraint upon the Committee on Rules was its informal policy not to meet until the measure to be made in order was available for at least one hour (either electronically or in printed form). Thus a conference report needed to be filed or a new bill introduced (and an electronic version available) for at least one hour prior to a Committee on Rules meeting. This tactic was made possible by the expanded use of short term recess authority. It suggested a contrast (an “inverse ratio”) between the importance and complexity of the measure being made in order and proximity to an adjournment period, on the one hand, and the minimal time permitted for Members to scrutinize the measure, on the other, with waivers of the three-day availability rule becoming the “customary” way of permitting immediate consideration of the measure just filed.

Committee Reports. There were several rules changes over the years: those pertaining to filing permitting only two rather than three legislative days for the filing of additional, minority or supplemental views from the day reported (Rule XI clause 2(l)) in 1997; permitting the filing of committee reports with the Clerk within one hour after receiving all such views, despite a House adjournment and without unanimous consent (Rule XIII clause 2(c), redesignated in 1999); and permitting supplemental reports to correct technical errors and omissions in the previous report without requiring unanimous consent for filing or being subject to a new three-day availability requirement if only correcting depiction of a record vote in committee (Rule XIII clause 3(a)(2) as added in 2001).

Various additions to and repeals of reporting requirements included: a requirement that committee members’ votes on reporting or on amendments be shown (Rule XIII clause 3(b) in 1995) (a change in 2007 exempting the Committee on Rules from this requirement was repealed four years later); a requirement that committee reports include a statement of performance goals and objectives (Rule XIII clause 3(c)(4) in 2001) (replacing a requirement that oversight findings and recommendations by the Committee on Government Reform be included); and a requirement for citation of constitutional authority of Congress to enact the bill (Rule XIII clause 3(d)) in 1997 (replacing a requirement for an inflation impact statement). In turn, the requirement for citation to constitutional authority in committee reports was replaced in 2011 by a requirement for that statement to be included in the

Record the same day as the introduction of all bills and joint resolutions. In 1989, the Committee on House Administration was given privilege to report matters relating to preservation and availability of noncurrent House records. Beginning in 1995, reports were required to contain a description of the applicability of a measure to the legislative branch under the Congressional Accountability Act (Pub. L. No. 104–1) of that year, with points of order in the House waivable by majority vote. In 2013, the "Ramseyer" rule (Rule XIII clause 3(e)) was amended to require the display of "contiguous portions of existing law" in addition to that being directly amended if providing clarity at the committee chair's discretion. Also that year all committees were required by standing order to include in reports on legislation estimates of the number of "directed rule makings" to agencies contained therein, as well as a statement on potential duplication of other Federal programs.

In reports on general appropriation bills, a specific list of unauthorized appropriations was required for inclusion beginning in 1995 and broadened in 2001 to include levels of such funds (Rule XIII clause 3(f)).

Regarding measures amending the Internal Revenue Code, requirements were added in 1999 for report or *Congressional Record* language to include a "tax complexity analysis" and in 2003 for a "macro-economic impact analysis," both to be prepared by the Joint Committee on Internal Revenue Taxation (Rule XIII clause 3(h)). In 1981, cost estimates from the Congressional Budget Office if available were required to be included in lieu of optional committee cost estimates; and various changes in the reporting of spending and revenue levels over five years were included in 1990 and 1995.

In the Unfunded Mandates Reform Act, a requirement for inclusion in a committee report or in the *Congressional Record* of estimates of levels of unfunded intergovernmental mandates was enacted and made the premise for a point of order to be decided by a vote on the question of consideration rather than by a ruling from the Chair. Beginning in the 109th Congress, requirements for inclusion in committee reports or in the *Congressional Record* of "earmarks" of special spending or tax provisions, and of the Members' sponsoring those provisions were similarly made the premise for a point of order decided by a vote on the question of consideration.

Changes in Rule XIII clause 5 were made with respect to privileged reports from committees. In 1981, reports on continuing (non-general) appropriations joint resolutions were made in order after September 15 of each year (although this provision was not utilized, as privilege is attached *en bloc* by special orders from the Committee on Rules so as to limit amendments otherwise in order).

Clarifications as to the calculation of calendar-day time required for the availability of committee reports, as well as exceptions therefrom, were

added on several occasions between 1979 and 1997 (Rule XIII clause 4). Reports from the Committee on the Judiciary relating to impeachment proceedings and from the Committee on House Administration dismissing an election contest were held in 1998 to be immediately in order as reported questions of privilege without a three-day availability. The three-day availability requirement for most committee reports was qualified in 2011 by Rule XXIX clause 3 to permit electronic availability under standards promulgated by the Committee on House Administration. Also that year a similar three-day availability requirement for consideration of introduced but unreported measures was put in place (Rule XXI clause 11).

Filing of Reports. In 2011, the House entered a standing order by unanimous consent permitting the filing of privileged reports by committees during Morning-hour debate, a departure from the prohibition against conduct of any business during that period initiated in 1994. While all other business requiring consent of the House continued to be prohibited during that period, the filing from the floor was permitted in order to begin the layover period for availability of reports. This had the effect of precluding preemptive motions to adjourn which might otherwise prevent the filing of privileged reports.

Chapter 18—Discharging Matters from Committees.

The discharge rule (Rule XV clause 2) has undergone several changes. In 1991, the clause was amended to permit debate on a resolution discharged from the Committee on Rules. Prior thereto, the House voted immediately on adoption of the discharged resolution without debate. In 1993, after a successful petition under that clause placed on the Calendar, a motion to discharge the Committee on Rules from further consideration of a resolution to require publication of the names of Members who had signed pending discharge petitions, the clause was so amended. In 1995, the clause was amended to ensure the periodic publication of signed names; and, in 1998, it was held to require publication of the withdrawal of such signatures. In 1997, the clause was amended to clarify that, to be a proper object of a discharge petition, a resolution providing a special rule must address the consideration of only one measure and must not propose to admit or effect a nongermane amendment. This change had the effect of limiting application of discharge petitions to one measure which had been pending for the requisite period so as not to serve as a vehicle for nongermane amendments which did not themselves qualify as introduced measures under the timetable of the rule. In 2003, the Chair clarified that Delegates were ineligible to sign a petition, even by unanimous consent.

In 1992, and again in 1994, a discharge petition received the requisite number of signatures on the same day it was filed, and on the former occasion, the House by unanimous consent dispensed with the motion to discharge and agreed to consider the object of the petition (a special order)

under the same terms as if discharged by motion. On those and other occasions, the line of Members waiting to sign the discharge petition proceeded to the rostrum from the far right-side aisle where the Chair would not permit Members to stand between the Chair and Members engaging in debate or to otherwise obstruct debate.

The prior publication of chapter 18 illustrated certain matters arising under the Constitution and privileged for consideration at any time (such as veto override and impeachment) which may therefore be discharged from committee at any time irrespective of the requirements for petitions under the discharge rule, subject to relevant notice and scheduling under Rule IX. Added to the examples of such measures were motions in 1997 to discharge a committee from a proposition involving the right of a Member to her seat.

Additionally, statutory procedures enacted as joint exercises in rule-making involving motions to discharge committees from various measures of approval or disapproval of executive actions were compiled in the *House Rules and Manual* in section 1130. They are covered in chapter 18, section 5, to the extent that questions were raised as to utilization of discharge motions to bring those matters before the House. Motions to discharge committees from resolutions approving Reorganization Plans were mooted in 1984 when the authority of the President to submit reorganization plans was terminated by law.

The use of special orders making in order consideration of unreported measures, and of measures not yet introduced, has increased over time. Under Rule XXI clause 11 added in 2011, unreported bills must be available either in electronic or printed form to be considered on the third calendar day (not necessarily for 72 hours).

Chapter 19—Committee of the Whole.

House Rule XVIII was codified in 1999 (changed from Rule XXIII) to reflect current usage of the Committee of the Whole House on the state of the Union for consideration of public bills, with respect to matters requiring consideration therein, methods for resolving into a Committee of the Whole, and elimination of a separate "Committee of the Whole House" for consideration of private bills. The latter was recodified as "the Private Calendar" under Rule XV clause 5. Also, consideration of measures in the "House as in the Committee of the Whole," although technically available under existing precedent, has been largely discontinued. While the jurisdiction of the Committee of the Whole remained unchanged in Rule XVIII clause 3, and also with respect to initial consideration of Senate amendments under Rule XXII clause 3, the authority of the Committee on Rules to report special orders of business which waived the requirement for Committee of the Whole

consideration of Senate amendments prior to the stage of disagreement by "hereby adopting" a Senate amendment on the Speaker's table otherwise requiring such consideration was upheld in 1993.

Special orders often provided for consideration in the House of reported bills on the Union Calendar under a restrictive rule permitting no amendments or only a few amendments. This had the effect of precluding the consideration of many measures under the five-minute rule in the Committee of the Whole. Where Committee of the Whole consideration was permitted for the consideration of multiple amendments, the traditional consideration through the 1970s of all major measures, except revenue bills, under an "open" rule (permitting any germane amendment and amendment thereto to the pending portion of the bill) gradually gave way to "closed" or "modified-closed" rules permitting consideration of designated amendments in a specified order, normally not subject to second-degree amendments and without the five-minute rule governing debate. This departure from the standing rule (traditionally giving individual Members the right to offer any germane amendments) became commonplace by the 110th Congress, and was the result of the constant utilization of the Speaker-designated majority of the Committee on Rules to control amendments and debate.

The customary spontaneity and unpredictability of Committee of the Whole amendment procedures were often superseded on the general appropriation bills although the five-minute rule was retained for the most part through 2008 (and revived again on an omnibus appropriation bill in 2011). Standing rule procedures were often overtaken by unanimous-consent agreements in the House to establish a "universe of amendments" governing some of the amendment process in the Committee of the Whole. On one occasion in 2010, a special order providing for a motion in the House to concur in a Senate amendment included a contingency that an amendment to the Senate amendment be first considered in a Committee of the Whole under a structured rule, rather than merely given priority status as a motion in the House to concur with an amendment—an anomalous procedure.

In the 103d and again in the 110th and 111th Congresses, Delegates and the Resident Commissioner were permitted to vote and to preside in the Committee of the Whole. That rule (former Rule XVIII clause 6(h)) was held constitutional by a Federal appellate court in 1993, based on the provision for immediate reconsideration in the full House in the event that the cumulative votes of the Delegates and Resident Commissioner were decisive to the outcome. The rule was again repealed in 2011.

Motions and Requests Generally. At least twelve forms of unanimous-consent requests were allowed to be entertained in the Committee of the Whole as not materially altering procedures required by special rule or

order adopted by the House (*e.g.*, enlarging debate on an amendment but not general debate congruent with terms of equal division imposed by the House). Those rulings were contrasted with at least sixteen types of requests which could not be entertained and required the Committee of the Whole to formally rise by motion in order to consider the unanimous-consent requests in the full House (*e.g.*, limiting the "universe of amendments" which may be offered). The number of rulings making that distinction coincided with the rapidly increasing use of special orders from the Committee on Rules providing "closed" or "modified-closed structured" rules for the consideration of most major legislation, where procedural accommodation subsequent to adoption of those special orders often necessitated unanimous-consent modifications with respect to specified amendments being considered under time and amendment limitations. On one occasion in 1986, the House by unanimous consent delegated to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in an adopted special order, but for the most part those requests were made *ad hoc* in the House, the Committee rising, as the situation arose.

Resolving into Committee of the Whole. The adoption of Rule XVIII clause 1(b) in 1983 reflected the use of special orders to authorize the Speaker to declare the House resolved into the Committee of the Whole without motion when no other question was pending, in order to avoid the question of consideration on motions to resolve into Committee and votes thereon, although not to avoid points of order against consideration which might arise initially in the House.

The Chairman. The tradition of the appointment of one Chairman to preside over the entire deliberations on a measure gave way in modern practice to rotations at regular intervals, without the Speaker naming more than one Chairman, to accommodate Members' schedules. Pursuant to Rule XVIII clause 1, Delegates were appointed on two occasions in the 103d Congress, (the first being the Delegate from the District of Columbia), and again in the 110th and 111th Congresses, to preside over its consideration. The rule was repealed in 2005, reinstated in 2007, and repealed again in 2011. In 2007, the traditional assurance that no member of a committee which had considered the measure should preside over the Committee of the Whole was considered not to be technically binding on a Speaker pro tempore—a member of the reporting committee—in ruling on a point of order in the House prior to his declaration of the House into the Committee of the Whole, although the Parliamentarian suggested future diligence in avoiding that appearance of a conflict of interest.

In 1995 and 2002, the chairman of the Committee of the Whole determined that he did not rule upon matters which may arise in the House in

the future, such as a possible motion to recommit, or (in 1999) on scheduling matters which are the prerogative of leadership. The Member offering an amendment in the Committee of the Whole pursuant to a special order of the House had the burden of proving to the Chair that it met the description of the amendment made in order in 1996, as where the amendment made in order was described by subject matter rather than by prescribed text in 2000.

In the 110th Congress a newly adopted rule (Rule XX clause 2(a)) prohibiting the Chair from holding open an electronic vote "for the sole purpose of reversing the outcome of such vote" was held not to be directly enforceable in the Committee of the Whole. That point of order during the conduct of a vote could not be appealed during the pendency of the underlying vote (a recorded vote on the appeal could not be simultaneously accommodated by the electronic system), and questions of privilege of the House to collaterally challenge the Chair's action could not be immediately entertained in 2008. The Chair in that instance indicated that a point of order following the challenged vote could be entertained in the Committee of the Whole. In any event, the rule was repealed at the start of the 111th Congress in 2009.

Other rules changes with respect to voting on amendments in the Committee of the Whole included the authority of the Chair added by Rule XVIII clause 6(f) in 1991 to reduce to five minutes the time for electronic voting on any pending amendments without intervening business after a 15-minute recorded vote on the first amendment. Beginning in 2011, two-minute minimum votes were permitted under that rule in such circumstances (and in 2013 on all votes immediately following regular quorum calls), obviating the need for similar authority previously granted in some special orders in prior Congresses. Reductions of voting time to two minutes had been permitted by unanimous consent obtained in the House but not in the Committee of the Whole (*e.g.*, 2006). Division votes were held not to constitute such intervening business in 1994, but pro forma amendments to discuss the program were held in 2000 to be intervening business such as to preclude a five-minute vote except by unanimous consent.

Rule XVIII clause 6(g) was added in 2001 to permit the chairman of the Committee of the Whole to postpone requests for recorded votes on any amendment. Prior to that time, special orders of the House gradually provided the chairman this authority on an *ad hoc* basis. In 1998, its exercise was held to be entirely discretionary. Several rulings from 1987 through 1998 prevented the Committee of the Whole from entertaining unanimous-consent requests to postpone and cluster votes on amendments absent a conferral of that authority by the House. Recorded votes on appeals could not be postponed under that rule even by unanimous consent in the Committee

of the Whole as the rule was only applicable to votes on amendments. At the Chair's discretion the Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending in 2000. Requests for recorded votes were held in 1998 and 2004 to be withdrawable by unanimous consent during the interval before proceedings resumed on the request as unfinished business, but then as a matter of right when the postponed question was pending and was put.

Appeals. A vote on an appeal could not be postponed, even by unanimous consent, although an appeal could be withdrawn in Committee of the Whole as a matter of right in 2000. An appeal is debatable under the five-minute rule (2003), and the ruling is sustained by a majority vote (1989).

Motions to Strike the Enacting Clause. Several rulings in 1986 reiterated the requirements of Rule XVIII clause 9 that the motion to strike the enacting clause in the Committee of the Whole be in proper form and in writing. In 1979, the motion was held applicable in the Committee of the Whole to the resolving clause of a concurrent resolution on the budget. The motion was held to take precedence over the motion to rise and report at the end of the reading of a general appropriation bill, and over a motion to limit debate on pending amendments. In 1979 and 1995, rulings reiterated that the Member offering the motion must qualify as being opposed to the bill, if challenged.

The equally-divided ten minutes of debate on the motion could not be reserved or subdivided between more than two Members, and priority of recognition in opposition was given to a managing committee member, to be determined after the five minutes of debate in favor of the motion (as demonstrated in 1988 and in 1991, respectively). Where the motion was withdrawn by unanimous consent rather than voted upon, a second motion was permitted on the same day without the requirement that the bill be modified in 1996.

On one occasion in 1994, the Speaker indicated that notwithstanding that consideration of the pending bill was governed by a "modified-closed" rule permitting only specified amendments, pending the concurrence of the House with the recommendation of the Committee of the Whole that the enacting clause be stricken, the House could by instructions in a motion to refer under Rule XVIII clause 9 direct the Committee of the Whole to consider additional germane amendments (the previous question not yet operating at that point so as to prevent additional amendments in the House).

Consideration and Debate in Committee of the Whole. A significant change in Rule XVIII clause 6 in 1977 limited points of order of no quorum during debate in the Committee of the Whole (and in the House), and was

supported by two rulings in 1977 to the effect that debate was not such "business" as to require the presence of a quorum under article I, section 5 of the Constitution. After a quorum has been established in committee on any given day (by quorum call or recorded vote), the Chair would not thereafter entertain a point of order that a quorum was not present unless: (1) the Committee of the Whole was operating under the five-minute rule (which was interpreted to include any "modified-closed" amendment process under the terms of a special order); (2) the Chair has put the pending question to a vote; or (3) by unanimous consent. During general debate, there was no absolute requirement of a quorum (100 Members); but the Chair was given the discretion to recognize for a point of order. From 1977, as reaffirmed in 1984, the Chair must entertain a point of no quorum during the five-minute rule if a quorum has not yet been established that day on the pending measure.

Several rulings clarified the control of general debate in the Committee of the Whole, as in 1985 where the majority manager was assured the right to close under Rule XVII clause 3. This included discretion given to the Chair to determine the order of recognition and the right to open and close where more than one committee has been allocated debate time, while protecting the paramount right of the primary committee. Among several managers for and against a proposition an order of closing in the reverse order of opening was held appropriate. Where the House has fixed the time for general debate in the Committee of the Whole, the Committee could not even by unanimous consent, extend it (as in 1984 and in 1999).

A series of rulings reaffirmed the right codified in Rule XVII clause 3(c) in 1999 of the manager of a bill or other representative of the committee, if opposed, and not the proponent of an amendment to close controlled debate thereon.

Points of Order in Committee of the Whole. In 1995, Rule XXI clause 1 was amended to provide that at the time a general appropriation bill is reported to the House, all points of order against provisions therein shall be considered as reserved, so as not to require *ad hoc* reservations by the minority at the time of reporting. This provision automatically enabled the Committee of the Whole on sustained points of order to strike provisions in a bill referred to it by the House which violate Rule XXI clause 2 containing unauthorized items or legislation. By unanimous consent, point of order proceedings was vacated in the Committee of the Whole in 1991, but a point of order may be withdrawn as a matter of right by its proponent before action thereon (*e.g.*, 2000). Points of order against tax or tariff provisions in a bill reported by a committee other than the Committee on Ways and Means (or amendment thereto) were permitted under Rule XXI clause 5 beginning in 1983, to be made "at any time" during the pendency of the bill

or amendment under the five-minute rule, mirroring the same expanded guarantee in clause 4 of that rule of the timeliness of points of order against appropriations in a bill reported by a committee other than the Committee on Appropriations (or amendment thereto). In 2003, clause 5 was further amended to prohibit amendments to appropriations bills limiting funds for the administration of taxes or tariffs, while permitting them in the bill itself (if otherwise in compliance with that clause).

Rising of the Committee of the Whole. The priority of the straight motion to rise (as the counterpart of the motion to adjourn in the House) was reaffirmed as not requiring a quorum for adoption, however it was held not in order in 1986, 1995, and 2007 where another Member had the floor during debate on a pending amendment. When the House has vested control of general debate in certain Members, their control could not be abrogated by another Member moving to rise, unless yielded to for that purpose, as in 1999. Its repeated use other than by the majority manager or leader was limited from time to time by special orders adopted by the House in order to avoid potential filibusters on particular measures. The motion to rise was not permitted to include restrictions on the amendment process or limitations on future debate on amendments in 1990, and the motion was held not debatable in 2000.

Informal risings of the Committee of the Whole by announcement of the Chair without motion to receive messages or to lay signed enrollments before the House were held in 2000 not to permit unanimous-consent business to be transacted in the House, and to require automatic resolve back into the Committee of the Whole immediately upon completion of those actions.

Rising and Reporting. A 1983 change in Rule XXI clause 2(d) permitted the motion to rise and report a general appropriation bill upon the completion of its reading. It was amended in 1995 to limit that preferential motion to the Majority Leader or his designee. This procedure was designed to restrict the offering of limitation amendments during the reading of a general appropriation bill under the five-minute rule and then to give the leadership motion to rise and report priority over all amendments at the end of the reading. In the 109th Congress and in subsequent Congresses, a standing order was adopted to prevent the Committee of the Whole from rising and reporting an appropriation bill if the bill had been amended to contain funding in excess of the relevant section 302(b) Budget Act suballocation. The order provided for a specific motion permitting such rising and reporting, or if rejected a "proper" amendment was adopted after 10 minutes of debate adjusting the bill to that suballocation level.

Chapter 20—Calls of the House; Quorums.

Section 2 of chapter 20 of *Deschler's Precedents* states that "amendments to the rules affecting procedures subsequent to the 94th Congress under

calls of the House and under automatic yea and nay votes will be discussed in greater detail in supplements to this edition as they appear.” Those changes began in 1977 and included calls of the House ordered on motion which were made in order at any time in the House only at the discretion of the Speaker. This discretion was held in 1977 not subject to appeal or subject to parliamentary inquiry as to numbers present. The rule adopted that year provided that points of order of no quorum were prohibited unless the Chair was putting a pending question to a vote. The absolute discretion to recognize for the motion for a call of the House was supported by subsequent rulings. It was held in 1977 that no point of order against the enforcement of this clause during debate lay independently under the Constitution. This significant reform had the effect of expediting the business of the House by determining that debate was not such business as required the presence of a quorum on a point of order made by any Member, while at the same time giving the Speaker unlimited authority to recognize for a motion for a call of the House (potentially requiring a vote) regardless of the quorum situation. Previous rules restricting points of order during the prayer, administration of the oath, reception of messages or special orders of business were repealed by the recodification in 1999 in light of the overarching prohibition adopted in 1977, when absolute discretion to permit the motion was given to the Chair at any time other than during the pendency of votes. This discretion and restriction imposed on the Speaker had the effect of diminishing the use of the “old form” in Rule XX clause 5 that 15 Members could order a call of the House upon recognition by the Speaker.

Calls by Electronic Device. The implementation of electronic votes and quorum calls first utilized in 1973 impacted the ascertainment and procurement of quorums. Most of the rulings in this area have relevance to electronic calls of the House or quorum calls in the Committee of the Whole. Based upon the presumed infallibility of the electronic system, quorum calls (like votes) once completed and announced could not be reopened or corrected even by unanimous consent. Several rulings established that the 15-minute minimum requirement did not relieve the Chair of the responsibility of permitting all Members present prior to the announcement of the result to record their presence.

Quorums in the Committee of the Whole. Automatic yea and nay votes based on lack of a quorum were not permitted in the Committee of the Whole. Rulings under Rule XVIII clause 6 held that the chairman must entertain a point of order of no quorum during the five-minute rule if a quorum has not yet been established in the Committee on the bill then pending, but that where a quorum has once been established on that bill on that day during the five-minute rule, a subsequent point of no quorum

was precluded during debate, although a call of the Committee may be ordered by unanimous consent. On a division vote totaling less than 100, the Chair has relied on his immediately prior count on a point of no quorum and on his observation of several Members present but not voting in finding the presence of a quorum. Several rulings reiterated that the presence of a quorum was not necessary for adoption of the motion that the Committee of the Whole rise. The discretionary use of "notice" or "short" quorum calls (where the call may be vacated when 100 Members appear) as well as conversion to regular calls gradually fell out of use, congruent with the liberalized ease (at the sufferance of the Chair) for ordering recorded votes by 25 Members.

Effect of Presence or Absence of a Quorum. Where less than a quorum rejected a motion to adjourn, the House could not immediately consider business but could dispose of motions to compel the attendance of absent Members. Several rulings reiterated that where the announced absence of a quorum has been made the House may not, even by unanimous consent, vacate pending business, since a unanimous-consent agreement was business and was not in order in the wake of such an announced absence of a quorum.

Dilatoriness. Since Rule XVIII and Rule XX were amended to restrict recognition for points of order of no quorum only where the question is being put, the use of repeated points of order as a delaying tactic lost its efficacy.

Withdrawals of Points of No Quorum. The current practice developed that the Chair would resume his count for a recorded vote in the Committee of the Whole when the requesting Member withdrew his point of order (as Members came to assume that the Chair will always count a sufficient number (25) to order a recorded vote in order to avoid an unnecessary preliminary quorum call, and that a sufficient number would be present and standing before ordering subsequent clustered record votes). Thus the expectation that business would be expedited by the Chair to order recorded votes without intervening quorum calls, regardless of the number actually standing, took hold in modern practice.

The impact of the postponement of votes in the House and in the Committee of the Whole upon the pendency of points of order of no quorum which accompanied the demands for those votes was inevitable. Pursuant to Rule XX clause 7, which prohibits a point of order of no quorum unless the Speaker has put the pending proposition to a vote, the Speaker announced pursuant to clause 8 of that rule, after postponing a vote where objection was made on the grounds that a quorum was not present, that the point of order was considered as withdrawn, since the Chair was no longer putting the question and it was no longer pending. Likewise in the Committee of the Whole, the Chair's authority was established to postpone and

cluster requests for recorded votes on amendments, as part of the standing rules (Rule XVIII clause 6(g)) in 2001. It could not be permitted in Committee of the Whole even by unanimous consent prior to that time absent a special order adopted by the House, because it constituted a change in procedure imposed by the House. Thus the postponement authority was included in many special orders of business until 2001. Where proceedings resume on a request for a recorded vote, the previous voice vote was acknowledged and a point of order of no quorum could then be renewed.

The intervention of a motion to adjourn pending a call of the House or an "automatic" yea and nay vote, while in order under Rule XX clause 6(c), as clarified in 2003, has been limited at certain stages in the House by language in supervening special orders ordering the previous question on a pending measure to final passage "without intervening motion"—including motions to adjourn (except one motion to recommit).

Reduced Quorums as Result of Disabilities in Catastrophic Circumstances. There were rules changes and interpretations relating to the composition of a quorum of the House, stemming from the constitutional requirement that a majority of Members constitute a quorum for the conduct of House business. In the wake of the terrorist attacks of September 11, 2001, and discussion of potential catastrophic circumstances impacting on Congress, Rule XX clause 5(c)(7)(B) was added at the beginning of the 109th Congress in 2005 to codify prior precedent that the "number of Members constituting a quorum was a majority of the whole number of the House chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House." While the denominator of that equation would be reduced upon the death of sworn Members, left unanswered was the issue of the inability of the House to establish a quorum due to incapacitation of Members where their deaths had not been determined. At that time, the House adopted a new rule (also in clause 5(c)), that in the case of the established absence of that full quorum (218 Members) due to catastrophic circumstances (described to include natural disaster, attack, contagion or similar calamity) caused by the incapacitation but not proven death of Members, a quorum would be determined based upon a provisional number of the House, to be determined by a prolonged call of the House over a period of 72 hours to ascertain those Members able to respond to the call, with subsequent adjustments to that number based either on certified deaths or appearances. At the end of that 72-hour period, the Speaker would be required to receive and announce without appeal a certified catastrophic quorum failure (fewer than 218) report from the Sergeant-at-Arms based on the most authoritative information available. While that new rule had bipartisan support in the House, the House's constitutional ability to adopt the rule was challenged by a point of order raised

against the rules package in 2005. The Speaker ruled that the constitutionality of a resolution adopting the rules allegedly containing such a provision was a matter for the House to decide by way of the question of consideration or disposition of the resolution, and not on a point of order. The argument that such a provisional quorum requirement as a rules change was unconstitutional, and that the House could not unilaterally change that requirement short of a constitutional amendment permitting appointed Members to temporarily be seated in the House, was subsequently addressed that year. The House rejected a constitutional amendment which would have enabled Congress by law to establish a mechanism for temporary appointment of Members.

Chapter 21—Order of Business; Special Orders.

Rule XIV clause 1 was recodified in 1999 to acknowledge in the parenthetical "(unless varied by the application of other rules and except for the disposition of matters of higher precedence)" that the standing rules prescribing a daily order of business could be superseded by operation of other rules and orders. The Pledge of Allegiance to the Flag requirement as the third daily order of business was added in 1995 to codify the practice which began in 1988 whereby the Speaker in his discretion recognized a Member to lead the Pledge. That followed the Chair's ruling on that day that while a resolution requiring the Pledge of Allegiance was an attempted change in the order of business rule and did not constitute a question of privilege, the Chair would henceforth exercise that discretionary recognition following approval of the Journal.

Unfinished and Postponed Business. New authorities were given to the Chair in the House and in the Committee of the Whole to postpone announced or pending matters either to designated times and places or indefinitely in the House following ordering of the previous question, rendering somewhat obsolete the ordinary motion to postpone to a day certain and the sixth priority given to unfinished business under Rule XIV clause 1.

Calendar Wednesday. A rules change in 2009 removed the century-old guarantee that an alphabetical call of all committees on each Wednesday to call up reported measures could not be precluded by a special order reported from the Committee on Rules. Rule XV clause 6 was amended to eliminate the requirement that all committees be called as the first order of business each Wednesday and that a two-thirds vote be necessary to dispense with the call—a guarantee that could not be waived by the Committee on Rules by simple majority vote. The rule provided instead that only those committees which had reported measures and had given notice the previous day (Tuesday) seeking recognition would be called. Thus committees retained the

ability to have reported measures considered under the general rules of the House regardless of Committee on Rules inaction if called up by the chairman or (as reaffirmed by several rulings) by another specifically authorized committee member, but only upon timely one day notice. As a conforming amendment, that subparagraph of Rule XIII clause 6(c)(1) which had prevented the Committee on Rules from reporting special orders setting aside Calendar Wednesday by less than a two-thirds vote was repealed, thereby removing a constraint against the Committee on Rules' ability to report special orders relating to measures which might be called up on Wednesday. In sum, the protection accorded to reporting committees guaranteeing floor action on those measures despite Committee on Rules inaction was eliminated in favor of a right given to standing committee chairman to give one day's notice to call up a specified report, while tacitly permitting the Committee on Rules to recommend the preemption of that Calendar Wednesday call if the House so desired by majority vote.

District of Columbia Business. The Committee on the District of Columbia was eliminated in 1995, and its jurisdiction and accompanying privilege to call up reported business was transferred to the Committee on Oversight and Government Reform. The fact that the House had considered some District of Columbia business before motions to suspend the rules on a second or fourth Monday was held in 1984 not to affect the eligibility of further such business after suspensions have been completed. From 1995, District of Columbia business was never called up as privileged business by the Committee on Oversight and Government Reform to the time of this writing.

General Priorities in the Order of Business. No standing rule of the House addressed the timing of one-minute, special order and morning-hour opportunities for speech-making. Rather, the practices have developed by announced policies of recognition by the Speaker (negotiated with the minority) with respect to one-minute and special-order speeches, and by unanimous-consent standing orders, in the case of morning-hour debates.

For example, the priority given by the Speaker to recognize for one-minute speeches in the order of business was held to be a matter entirely within his discretion by unanimous consent prior and/or subsequent to legislative business. In 1980, it was held not in order to raise as a question of the privileges of the House a resolution directing the Speaker to recognize for such speeches, as such a proposal would impinge upon the Speaker's discretionary power of recognition and based upon the practice that unanimous-consent requests may supersede established orders of business.

Special-Order Speeches. There have been recent developments subsequent to 1994 on matters of priority, alternation and duration of recognition

for special-order speeches. First, recognition on consecutive days alternated between the parties—a continuation of the Speaker's policy announced in 1984. The Speaker's announcement in 1994 that henceforth recognition for special orders longer than five minutes would depend not only upon the Speaker's discretionary power of recognition for unanimous consent, but also upon lists submitted by the Majority and Minority Leaders on a daily basis, marked the first time that the order of speeches following legislative business would not be based on the will of the House through unanimous-consent recognitions conferred by the Speaker. Its purpose (while retaining the Speaker's authority to declare recesses, to recognize for motions to adjourn, or to terminate disorderly speeches) in addition to cutting off special orders at midnight, was to allow each party leadership to determine its own priorities for debate during the first two hours of a potential four hour time frame (beyond that on Tuesdays until midnight). Then the leaders could accommodate individual Members of their parties through prepared lists submitted to the Chair for the second two hours or prorated reductions thereof, rather than allow a more random prioritization based on the order in which unanimous-consent requests of individual Members were accepted. The Chair continued to announce the possible resumption of legislative business once special orders have commenced as needed, but that announcement was a courtesy and not a necessary condition to the order of business. Beginning in 2011, recognition for special-order speeches ended at 10:00 p.m. every day or after four hours divided as before and with 30-minute segments per party during the second hours, whichever came first.

With respect to five-minute special-order speeches, individual Members could, until 2011, continue to obtain recognition by unanimous consent, could not extend their time, and could not be on the leadership-submitted lists for longer special orders. First recognition alternated between the parties each day as on one-minutes, regardless of the time within the previous week permission was granted. Beginning on February 1, 2011, the Speaker announced that recognition for special-order speeches of five minutes or less would not be granted after legislative business. Rather, morning hour was expanded to four days per week and for up to one hour longer on those days to accommodate more five-minute speeches.

Morning-hour speeches were initiated in 1994 by a unanimous-consent standing order to partially offset the debate time lost by the midnight cutoff of special orders. Morning-hour procedures have been refined at the beginning of each subsequent Congress. In 1994, they ordered that the House convene one hour earlier than the ordered time on Mondays and Tuesdays for up to one hour of five-minute speeches from leadership-submitted lists, during which no business of the House could be conducted. In 2011, morning-hour speeches were made in order on Mondays through Thursdays, to

begin two hours in advance of the regular convening time, for up to one hour of five-minute speeches controlled by each party's leadership. The filing of privileged reports and notifications to the House requiring no House action were permitted during Morning-hour beginning in 2011, having the effect of precluding motions to adjourn to preempt such filing, in order to begin layover times for printing. Otherwise, the prayer, approval of the Journal and Pledge of Allegiance and all business by unanimous consent were postponed until the conclusion of the assured 10-minute recess following morning hour.

Varying the Order of Business. The impact of unanimous-consent requests and special orders on the daily order of business was formally acknowledged (as the parenthetical "(unless varied by the application of other rules and except for the disposition of matters of higher privilege)" added to Rule XIV clause 1 by the recodification in 1999 suggested).

Motions to Suspend the Rules. Since publication, there were expansions in the requirements and utilization of the suspension rule and procedures. Generally, the weekly use of the Speaker's discretionary authority under Rule XV clause 1 accelerated rapidly to permit recognition, first on two days and then on three days of each week (Monday through Wednesday) and often on additional days pursuant to unanimous consent or special orders. It was reiterated that the motion may be repeated regardless of prior rejection, the motion to reconsider not being entertained on rejected motions to suspend the rules. As the Consent and Corrections Calendars were abolished (in part due to lack of use and to avoid minority motions to recommit), and as fewer measures were considered by unanimous consent given increased partisanship, motions to suspend the rules proliferated. They became the primary procedure for consideration of noncontroversial measures with recorded votes often postponed and clustered to enhance leadership management of time and the availability of Members in the Chamber for whipping.

Use and Effect of Motions to Suspend the Rules. All other rules inconsistent with the purpose of the motion (requiring a two-thirds vote for adoption) are suspended, including the requirement that a quorum be present when a bill is reported from committee or that the bill be previously reported or even introduced, as in 1996. The motion to suspend the rules may provide for passage of a bill that consists of the text of two bills previously passed by the House, as in 2000. The motion may include an amendment without the formality of committee approval, but the motion is not separately amendable. The motion has been increasingly utilized to dispose of amendments between the Houses, including the commitment of a bill to conference. A motion to suspend the rules and concur in a Senate amendment waived the PAYGO requirement in Rule XXI clause 10 that new

spending be offset (the first example of such a waiver occurring in 2007). Copies of reports are not required to be available in advance, but cannot be filed after the reported measure is passed (as the bill is no longer before the House). Advance notice of scheduling was not required, unless a special rule requires that the object of a motion to suspend the rules be announced on the floor at least one hour before the Chair's entertaining the motion in 1996, and without such notice unanimous consent was required. The motion may be withdrawn, modified and reoffered *de novo* by the proponent at any time (*e.g.*, 2006), as the ordering of a second (no longer required since 1991) previously restricted withdrawal or modification except by unanimous consent. A motion to suspend the rules decided in the affirmative remained subject to the motion to reconsider in 1996.

The Speaker's traditional discretion not to utilize recognition under motions to suspend the rules to pass private bills was honored, with one anomaly being the consideration in 2005 of what was primarily a private bill for the relief of Terri Schiavo. The bill contained a section on "right-to-die" policy and was introduced as a public bill and then considered under suspension of the rules. While no point of order was warranted on that occasion, the Speaker's referral and recognition avoided the practice that suspension motions not be utilized on private bills in order to prevent a proliferation of such requests and to avoid Private Calendar objectors' screening.

Seconding the Motion. Until repeal of the requirement for a second in 1991, several rulings were made regarding the ordering of a second by tellers. That requirement was eliminated to avoid delay and to permit continuous debates on scheduled motions before postponed votes began (without intervening motion except one to adjourn pending and one between each motion). Other matters taking precedence of motions to suspend the rules included the priority of questions of the privileges of the House in 1983 and 2007.

Time and Control of Debate. Several rulings further defined recognition for control and relevance of the 40 minutes of debate divided between the mover and a Member opposed to the motion. The challenge whether a manager of time was opposed must be made when the time was initially allocated by the Chair. Debate was not permitted to range to the merits of a measure not scheduled for suspension on that day in 1991. The Chair did not evaluate the degree of opposition, but granted precedence to the minority and then to committee membership if there was other opposition.

The Chair's customary announcement of his intent to postpone recorded votes, which was made before consideration of a series of motions, was held not to be a necessary prerequisite to his postponement authority, and where there has been an announcement, there may be a redesignation in the Chair's discretion within the two legislative-day period.

Special Rules and Orders. Utilization of special orders reported from the Committee on Rules has consistently affected the operation of the standing rules. Several rulings demonstrate the authority of the Committee on Rules to report special orders of business which short-circuit the ordinary sequence of consideration of bills and amendments. These include the following authorities: to recommend consideration of measures and amendments thereto the subject of which might be separately pending before a standing committee (often a direct "discharge"); to make in order the consideration of the text of an introduced bill as original text in a reported bill; to permit consideration of a previously unnumbered and unsponsored measure that comes into existence by virtue of adoption by the House of the special order; to provide that an amendment containing an appropriation in violation of Rule XXI clause 4, or that a legislative amendment to a general appropriation bill be considered as adopted in the House when the reported bill is under consideration; and to provide that an amendment (whether or not germane) be considered as adopted in the House. The authority to "self-execute adoption" (a "hereby" resolution)—for example, that a concurrent resolution correcting the enrollment of a bill be considered as adopted by the House (as in 1988), or that a Senate amendment at the Speaker's table and otherwise requiring consideration in the Committee of the Whole be "hereby" considered as adopted (as in 1993)—was held to be within the authority of the Committee on Rules to report, since the restriction on the committee's authority to deny motions to recommit with instructions imposed in 1995 was confined to initial consideration of bills and joint resolutions and did not extend to concurrent resolutions, simple resolutions, or to amendments between the Houses.

In 2011, a special order reported from the Committee on Rules not only providing for a "closed" rule for the consideration of a bill without amendments but also making in order the subsequent considerations of two concurrent resolutions without intervening motions, correcting the possible enrollment of the bill if passed by the House and Senate (without amendment), and also conditioning that enrollment on a message from the Senate informing that a vote had been taken on those resolutions, was held within the authority of the Committee on Rules to report, since not denying a motion to recommit a bill or joint resolution and consistent with other examples of Committee on Rules reports delaying enrollments. By this action, the House for the first time adopted a special order delaying enrollment of a bill if passed by both Houses contingent upon the Senate's voting on (although not necessarily adopting) resolutions correcting its final enrollment, in order to assure some Senate action prior to final disposition while preventing earlier votes on those matters as amendments to the bill.

Reports from the Committee on Rules repealing a statutory joint rule, or which were nearly identical to one previously rejected by the House, were held to be privileged. The Committee on Rules, in 1982, was held empowered to report any resolution temporarily waiving or altering any rule of the House (other than constraints on denial of recommittal motions) including waivers of statutory provisions enacted as an exercise of joint rulemaking, where those laws did not constrain the Committee on Rules from making such reports. The Committee was not precluded from reporting a special order making in order specified amendments that were not preprinted as otherwise required by an announced policy of that committee in 1991.

Privileged reports from the Committee on Rules may be filed at any time the House is in session, including during special-order speeches. The one legislative-day layover requirement between filing and consideration of privileged reports from the Committee on Rules and the requirement for a two-thirds vote for consideration on the same legislative day reported were minimized on numerous occasions by shortening the time between an adjournment immediately following a filing of the report (often at the end of a recess) and reconvening of the next session, even though on the same calendar day.

Consideration and Debate in the House. Motions (otherwise in order under the standing rules in the House) were held to be “dilatory” under Rule XIII clause 6(b) during the consideration of reports from the Committee on Rules, including the motion to recommit after the ordering of the previous question in 1984, and the motion to postpone to a day certain in 1986. However, the member of the Committee on Rules calling up a privileged resolution on behalf of the committee was permitted to offer an amendment without the specific authorization from the committee in 1990, subject to being preempted by the ordering of the preferential motion for the previous question. A motion to table such a pending amendment was held dilatory, but not the motion to table a motion to reconsider in 1990. Adoption of a motion tabling the motion to reconsider was held not to carry the pending special order to the table. Motions to reconsider made during the pendency of a special order, including reconsideration of the vote on ordering the previous question on the rule and pending amendment thereto, were held not to be dilatory in 1990. The purpose of the unique restriction against “dilatory” motions, determined by precedent and not merely by the Chair’s discretion, was to expedite special orders of business. To that end, only one motion to adjourn was admissible and could be offered immediately after the reading of the resolution but could not be made when another Member had the floor. Where the House adjourns during consideration of a special order, further consideration of the report became the unfinished

business on the following day, and debate resumed from the point where interrupted, as in 1993. However, where the special order is withdrawn during consideration, debate begins anew on such special order when reoffered. In sum, motions applied to a pending special order beyond one motion to adjourn or motions to reconsider were ruled out as dilatory. If the previous question were rejected, the rule against dilatory motions was held to no longer apply, and motions to dispose of the special order became permissible in their general order of priority under Rule XVI clause 4, including germane amendments, as in 1980 and 1982.

Important rulings in 1980 and 1982 addressed the developing strategy of utilizing debate and the vote on the motion for the previous question to advocate adoption of amendments to pending special orders which would permit consideration of additional or substitute subjects not already made in order. An amendment that would permit the additional consideration of a nongermane amendment to the bill was held not germane. This demonstrated that it was not in order to do indirectly by amendment to a special order what could not be done directly to the measure to be made in order. There were limits to this doctrine where the pending special order already contained diverse germaneness waivers. A number of rulings beginning in 1989 established that debate could range to the merits of the bill to be made in order, but not to the merits of an unrelated measure not to be considered under that special order (when relevancy was challenged on a point of order).

The Chair reiterated reluctance to interpret special orders while they were pending in response to parliamentary inquiries, it then being a matter for debate, in contrast to the Chair's proper role following their adoption. Special orders may not be materially modified by the Committee of the Whole. This lack of authority of the Committee of the Whole to change or modify rules adopted by the House was the focus of several rulings.

A series of rulings on one day in 1993 involving the pendency and effect of "self-executed" adoption of specified amendments (usually incorporated by reference in the accompanying Committee on Rules report) by virtue of adoption of the underlying special order demonstrated the significance of that technique in expediting the amendment process and in foreclosing points of order and separate votes. That the referenced amendment was never separately pending before the House or the Committee of the Whole, but rather was considered adopted by adoption of the special order and thereby became part of the original text from that point on, reflected the ability of the Committee on Rules to alter the text of a committee's work product without separate consideration of those alterations.

Types of Special Orders. The forms of special orders and reports thereon showed trends in the more varied use of special orders, ranging from

"open," "modified-open," to "structured" or "closed." The biennial activities reports filed by the Committee on Rules at the end of each Congress (*e.g.*, H. Repts. 103–891; 109–743; 110–931) and semi-annually beginning in 2011, support those analyses. In 2013, the requirement was reduced to annual reports.

As stated in section 16 of chapter 21 of *Deschler's Precedents*, "due to the numerous possible variations in the form of special orders, only a representative sample is included in this and the following sections." Many more variations were reported from the Committee on Rules due in part to the increased complexity of the interaction of standing and statutory rules and to proposed waivers of points of order on an *ad hoc* basis. As well, frequent leadership determinations to provide more certainty in time and issue management by "modified-closed" special orders increasingly led to the "discharge" from standing committees without awaiting committee reports. Such rules limited the offering of germane amendments and second-degree amendments, imposed the order of consideration and time limits for debate by reference to the accompanying Committee on Rules report, and either "self-executed" the adoption of many changes or grouped amendments for subsequent *en bloc* consideration. While it is not the purpose of chapter 21 or of chapter 27 (Amendments) to comprehensively document each step in that development, some examples of departures from "open" rule forms which had traditionally governed consideration of most reported legislation (other than revenue measures reported from the Committee on Ways and Means) further illuminate those changes. As a noteworthy example, the form already contained in section 3.31 of chapter 27 represented a significant departure from the traditional "open" consideration of reported non-revenue measures. Following prolonged but incomplete consideration of a complex immigration measure in the previous Congress under an "open" rule in 1982, the subsequent special order in the 98th Congress made in order an immigration reform measure under a "modified-closed" rule permitting sixty-nine floor amendments, including some recommended by sequentially reporting committees, in a prescribed order as contained in the accompanying Committee on Rules report, waiving all points of order against those amendments and permitting five-minute debate but prohibiting second-degree amendments. The chairman of the Committee on Rules indicated on that occasion that a further special order could be reported if debate could not be limited under the five-minute rule.

Thus began a trend whereby the Committee utilized the reports accompanying its special orders of business to incorporate by reference in the resolution the text of those amendments proposed either to be considered as adopted and made original text, or to be separately made in order, together

with the order of consideration, their amendability, allocation of debate time, and either general or specific waivers of points of order applying to those amendments (some containing exceptions from waivers such as Rule XXI clauses 9 and 10 relating to earmarks and PAYGO, respectively, in the 110th and 111th Congresses to demonstrate the political importance of those standing rules).

“Closed” and “Structured” Rules. Many special orders provided for consideration of measures in the House, rather than in the Committee of the Whole, where no amendments or only one amendment were to be permitted, thereby eliminating the applicability of Committee of the Whole procedures including the five-minute rule and the offering of second-degree amendments. By ordering the previous question to final passage, those special orders also precluded motions otherwise in order in the House, including motions to adjourn, to lay on the table, and to postpone.

Waiving and Permitting Points of Order. Statutory and standing rules changes permitted points of order to be made against the consideration of special orders of business, where those special orders themselves contained blanket waivers against bills alleged to contain unfunded intergovernmental mandates, or congressional earmarks. In both the Unfunded Mandates Reform Act, and in Rule XXI clause 9 requiring reports or the *Congressional Record* to list earmarks and their sponsors, where the special order waived those points of order against the upcoming bill, points of order were permitted against consideration of the special order itself so as to focus 20 minutes of debate, with a vote on the question of consideration of the special order constituting disposition of the point of order.

A further enhancement of the opportunity for separate votes on unfunded intergovernmental mandates (Rule XVIII clause 11) was added in 1995 permitting amendments in Committees of the Whole to strike unfunded mandates unless specifically precluded, and was held in 2005 not to be precluded by a structured rule generally permitting only certain amendments, but not specifically precluding such motion to strike. Subsequent special orders were drafted to overcome that inadvertent omission by specifically precluding that motion to strike. The rule was repealed in 2011 as redundant to the statutory procedure.

Reading for Amendment. Departures from standing rules requiring second readings in full of the pending bill text and amendments became commonplace, so as to consider bill text to have been read and to require only the Clerk’s designations and not the reading of actual text of amendments where available in the *Record* or Committee on Rules report.

Voting and Motions; Combined Consideration of Several Measures or Matters. The Committee on Rules frequently utilized one report to make

in order consideration of more than one measure, sometimes contingent upon the passage of a previous measure made in order in the same resolution, and containing procedures which merged the separately passed provisions in the final engrossment of one of those measures. While each of those provisions permitted separate motions to recommit with germane instructions pending passage as required of the Committee on Rules, the combined engrossment after passage was not required to be made subject to one subsequent recommittal motion under a broader germaneness test of the instructions measured by the combined text. Other such special orders also contained (non-divisible) sections covering a variety of standing orders governing procedures in the House during a designated "recess" time period or whenever such "housekeeping" was necessary.

In 2012, a single special order of business made in order the entire "open" consideration of three reported general appropriation bills and "modified-closed" consideration of one authorization bill. Also that year another special order made in order a nonamendable motion to amend a Senate amendment to one measure, and a closed rule for consideration of another measure introduced that day and referred to eleven committees (the "fiscal cliff" special order).

Incrementally, special orders containing *ad hoc* procedures governing particular bills conferred on the Chair the authority in the Committee of the Whole to postpone and cluster votes on amendments, and authority in the House for the Speaker to postpone consideration indefinitely notwithstanding the ordering of the previous question. When those *ad hoc* authorities proved workable, they were transferred into the standing rules in subsequent Congresses. In 2009, on a general appropriation bill, a special order permitted the time on clustered votes on amendments to be reduced to a minimum of two minutes. That authority became a standing rule for Committee of the Whole proceedings in 2011.

Rule XXI clause 10 acknowledged the ability of the Committee on Rules in the context of PAYGO compliance in 2009, and then CUTGO compliance in 2011 to make in order separate initial consideration of two measures, followed by their merger after final passages into one engrossment for budgetary scorekeeping purposes.

Special orders often addressed separate matters in discrete sections, including many "housekeeping" or "martial law" matters relating to tabling of other special orders on the House Calendar no longer needed to conduct business and in order to prevent an individual Committee on Rules member from calling them up after seven legislative days as permitted by Rule XIII clause 6(d), adjournments for three days or less, to permit pro forma sessions without legislative business or to conduct business at the Speaker's

discretion, suspension of the rules authority, authority to consider specified rules on the same day reported, and budgetary scorekeeping—all in order to expedite those matters (the special orders not being subject to demands for division of the question under Rule XVI clause 5(b)(2)).

There was increased utilization of special orders reported from the Committee on Rules governing the disposition of amendments between the Houses either by "self-executed" adoption of amendments or by unamendable (although sometimes divisible) motions to concur or to concur with amendment(s). In 2010, a pending special order permitting a motion to concur in a Senate amendment to a House amendment to a Senate amendment with an amendment in the fourth degree was itself amended to clarify that the motion would first be considered in the Committee of the Whole, following which a motion to concur in the Senate amendment (as so amended or not) would be pending in the House. The divisibility of motions to concur in Senate amendments permitted two votes on different portions, with separate majorities resulting in disposition of the entire amendment.

Privileged Business. Numerous rulings, reiterating the landmark decision of Speaker Frederick Gillett in 1921 (6 *Cannon's Precedents* § 48), determined that the empowerment of Congress to legislate in a prescribed area does not give individual Members the ability to raise such measures as a question of privilege, the extent to which empowerments to Congress in the Constitution, by law, or by rule, necessarily attach a privileged status to various items of business, combined with precedents which confined the claim of constitutional privilege to consideration of presidential vetoes and to impeachments. A central purpose of the recodification of the rules in the 106th Congress was to distinguish ordinary privileged business from questions of privilege under the Constitution or Rule IX by providing consistent definition to various privileged questions, in order to remove ambiguities which emerged over time from language such as "highly privileged," and "of the highest privilege."

Privilege for Certain Bills, Resolutions and Reports. The removal from Rule XIII clause 5 of the authority of certain committees to report privileged legislative business included: the Committee on Ways and Means on bills raising revenue; the Committee on Natural Resources on certain public land and conferral of Statehood matters; the Committee on Transportation and Infrastructure on improvements of rivers and harbors; and the Committee on Veterans' Affairs on general pension bills. The list of privileged reports was expanded to include joint resolutions providing for continuing appropriations if reported by the Committee on Appropriations after September 15, and matters relating to preservation of noncurrent House records if reported by the Committee on House Administration. While formerly the right conferred on several committees to file privileged reports "at

any time" carried with it the right of immediate consideration, the advent of the three-day report availability rule (Rule XIII clause 4) in 1971 was subsequently interpreted to cover all committees except the Committee on Standards of Official Conduct (now Committee on Ethics) on matters relating to the conduct of a Member, contempt reports from all committees, separate one-day layover requirements for funding resolutions from the Committee on House Administration, and the two-thirds consideration requirement for reports from the Committee on Rules on the same legislative day reported.

Privileged Motions as to the Order of Business. The recodification of Rule XIV clause 1 reiterated that the daily order of business can always be interrupted or preempted by other rules and by matters of higher precedence. Various statutes that confer privileged status on motions relating to the order of business in the House are included in section 1130 of the *House Rules and Manual*, which has been updated each Congress from section 1013 of the 1979 *House Rules and Manual*. The motion to resolve into the Committee of the Whole has been largely displaced by the Chair's discretionary designation to that effect, so that the House no longer votes on that motion as the equivalent of the question of consideration and the vote on the special order of business permitting the Speaker to make that designation becomes the determining vote on the order of business. Beyond that designation authority, however, several rulings on the priority and applicability of raising the question of consideration demonstrated the House's ability, by voting on that question, to determine the order of business.

Chapter 22—Calendars.

The advent of Rule XII clause 2 in 1975 requiring the Speaker to refer bills to all committees with jurisdiction was interpreted by Speakers to authorize them to remove a reported measure from the House or Union Calendar and to sequentially refer the bill to another committee where a valid jurisdictional claim was called to his attention, but overlooked at the time of the original calendar referral. Similarly, bills on the wrong calendar were transferred to the proper calendar as of the date of original reporting in 1984 and 1990.

Much of the material in the chapter on Calendars will be merely historical, as the Consent Calendar was abolished in 1995 and replaced by the Corrections Calendar. That calendar was in turn repealed in 2005. The Corrections Calendar was only applicable for ten years, its purpose having been to give the Speaker discretion to select for expedited consideration reported legislation which was intended to eliminate or "correct" governmental regulatory excesses. The rule facilitated disposition of relatively noncontroversial

reported bills on the second and fourth Tuesdays of each month with one hour of debate, amendable only by the manager and requiring a three-fifths vote for passage. As was the case with the Consent Calendar, its utilization was rendered unnecessary by the Speaker's increased recognition for motions to suspend the rules. Suspensions, although requiring a two-thirds vote, could cover the same types of business, but did not require a committee report and were not susceptible to the minority's motion to recommit with instructions.

In 1999, the Calendar of the Committee of the Whole House was recodified to become the Private Calendar, reflecting its proper use as the receptacle for all reported private bills and resolutions. During several Congresses, a Member serving as an "Official Objector" for the Private Calendar included in the *Congressional Record* an explanation of how bills on the Private Calendar are considered. Speakers remained unwilling to recognize for motions to suspend the rules and pass private bills. The Speaker's discretion to permit the call of the Private Calendar on the third Tuesday of each month was reaffirmed in 1990, and a motion to dispense with the call on that day once the call had begun was held in 1981 to be consistent with the Speaker's discretion on the call of the entire Calendar.

Chapter 23—Motions.

Certain motions merit separate treatment, as to adjourn (chapter 40), to recess (chapter 39), to suspend the rules (chapter 21), calls of the House (chapter 20), and to discharge committees (chapter 18). Other primary motions not secondary to any pending question, including: a motion for a call of the House; that when the House adjourns on that day it adjourn to a day and time certain; and that the Speaker be authorized to declare a recess, were specifically made in order at the Chair's discretion in rules changes.

Recognition for the Purpose of Offering Motions Generally. Rulings and usages reaffirmed that recognition to offer a motion in response to the Chair's query "for what purpose does the gentleman rise" did not assure the pendency of that motion where motions of higher precedence might intervene, as in 1988 and 1992.

A Member having the right to withdraw a motion in the House before a decision thereon was held to have the resulting power to withdraw and reoffer a modified motion in 1990, and a Member having the right to withdraw a motion to instruct conferees before a decision thereon had the resulting power to modify the motion by offering a different motion at the same stage of proceedings in 1993.

The rule (Rule XVI clause 2) that motions may be withdrawn in the House before action thereon was applied in 1977, even though the motion

was under consideration as unfinished business postponed from the preceding day. That principle was also held to apply to motions to instruct conferees in 2000. The ordering of the previous question on the motion, however, was held to preclude withdrawal as a matter of right in 1995.

Any Member may demand that a motion be reduced to writing and in the proper form, including the motion to adjourn in 1993 and 1995, and the demand may be initiated by the Chair, as was done in 1986. No rule requires, however, that motions properly in writing be separately distributed on the floor in 2000. The Clerk usually performs that function as a matter of course.

There were no direct rulings holding motions to be generally dilatory. One ruling in 1996 allowed repeated offerings of a motion to permit the use of charts in debate (a motion since restricted by Rule XIII clause 6(b)). There were, however, reiterations of the specific prohibitions against dilatory motions pending a report from the Committee on Rules under Rule XIII clause 6.

Motions to Postpone. The use of the motion to postpone to a day certain was largely superseded by the advent of discretionary authorities given to the Chair to postpone requests for recorded votes in the House (now Rule XX clause 8).

The Speaker's authority to postpone further proceedings to subsequently designated times on measures on which the previous question had been ordered was made part of the standing rules (Rule XIX clause 1(c)) in 2009. It had been included in *ad hoc* special orders of business in several prior Congresses. While the original purpose of that discretionary postponement authority inserted in special orders was to avoid the operation of the ordering of the previous question in the House on occasions when it was necessary to temporarily set aside that business, the authority was later utilized to entirely suspend the consideration of measures where unanticipated motions to recommit with instructions were pending (or even where final passage was uncertain prior to the vote thereon). This unilateral postponement authority given to the Chair potentially removed a major impact of the ordering of the previous question by the full House under traditional practice which had not permitted interruption.

The motion to postpone indefinitely is not utilized in modern practice having the least priority of all motions listed in Rule XVI clause 4. In 1977, however, it was utilized twice on motions that the House resolve into the Committee of the Whole pursuant to the provisions of a statute that specifically allows such a motion on a resolution disapproving a certain executive action.

Motions to Lay on the Table. Relevant rulings in this area established the following: (1) that the action of the House in adopting the motion to lay

a proposition on the table was equivalent to a final adverse disposition thereof, and did not merely represent a refusal to consider in 1978; (2) that the motion was in order after the proposition was called up for consideration but before debate thereon in 1978, and in 1984, but came too late after the Chair put the question on the pending proposition to a vote in 1979; (3) that the motion to lay on the table was not debatable under Rule XVI clause 4 in 1991; and (4) that gratuitous remarks by the Majority Leader who had offered the motion could not be included in the *Congressional Record* in 2007 (a question of privilege complaining of that omission was itself laid on the table the next day). In 1984, debate on the motion was permitted by unanimous consent. Several rulings supported the applicability of the motion to privileged or incidental matters such as a resolution electing Members to committees in 1997, an appeal from the decision of the Chair in 2006, and a motion for a secret session in 2007. The priority of the motion over the motion for the previous question was reiterated in 1985, but the motion was held not in order where applied to a bill itself after the previous question was ordered to final passage, except where applied to a motion to reconsider in 1979. The motion was held dilatory when applied to a pending special order from the Committee on Rules in 1990. The motion was held unamendable in 1991. The motion was held not applicable to motions which themselves are neither debatable nor amendable, such as the motion to adjourn in 1990, or adjournment to a day and time certain in 1981. The motion was, however, held applicable to debatable secondary motions for disposal of another matter, such as the motion to refer in 1982, or to a motion to dispose of a Senate amendment in disagreement. A variation from rulings that a motion to take a tabled matter from the table was not itself in order nevertheless permitted a resolution raising a question of the privileges of the House which had been tabled to be reoffered in identical form with a different number on a subsequent day if still constituting a question of privilege in 1995.

Motions for the Previous Question. The motion for the previous question retained its status as the third most preferential motion and as the most basic guarantee that a majority can foreclose further debate and amendment and bring a pending matter to an immediate vote. This was especially true in the context of special orders reported from the Committee on Rules where under Rule XIII clause 6 other motions, except one motion to adjourn, were considered dilatory. Nevertheless, rejection of the motion for the previous question on a special order was held in 1982 to remove the restriction against "dilatory" motions and to permit recognition of Members to offer proper motions to dispose of the special order in the order of priority stated in Rule XVI clause 4.

The motion was again held applicable (and indivisible) to a pending resolution and an amendment thereto in 1990 and in 1998, and was held in 1979 to be in order by any Member pending the offering of an amendment made by the Member calling up the resolution. The motion was held not in order where debate time on a pending proposition was equally divided by standing House rule until all such debate was used or yielded back in 1989. On that occasion, the Speaker vacated proceedings whereby the previous question was ordered on a motion on which a portion of debate time controlled by an opponent under House rules had not been utilized or yielded back. That rationale was for a while considered to extend to cover situations where a block of time has been yielded by the manager to another Member for further yielding, but a 1977 ruling (carried in *Deschler-Brown Precedents* Ch. 29 § 68.6) which had held that the manager of a special order from the Committee on Rules could move the previous question in derogation of the equal debate time already ("traditionally") yielded to a minority Member, was not directly repudiated.

With respect to the effect of the adoption of the motion, it was reiterated in 2001 and 2002 that the motion to adjourn is not available when the previous question has been ordered by special rule "to final passage without intervening motion (except one motion to recommit)." A special order ordering the previous question in the House without intervening motion was held to order that motion from the beginning of debate in the House and not merely after debate, precluding the consideration of any intervening motion during debate in 1980, and in 2001. However, the ordering of the previous question to final passage even without intervening motion no longer guarantees an immediate vote on final disposition of recommittal. The Speaker was empowered by Rule XIX clause 1(c) (first adopted in 2009), and various special orders in previous Congresses, to unilaterally postpone consideration of the pending measure being considered under terms of a special order to a subsequently designated time based on unforeseen circumstances.

Motions to Refer or Recommit. The recodification of the rules in 1999 reorganized the four variations of the motions to refer, to commit or to recommit, all with different requirements for timing of the motion, for opposition to the proposition to which offered, and for debate, as further explained in section 916 of the *House Rules and Manual*.

In 1982, the priority in Rule XVI clause 4 of the ordinary motion to refer, and its amendability, over an amendment to the underlying question following rejection of a motion for the previous question, was affirmed. In 1990, the ordinary motion to refer with instructions was held debatable under the hour rule but not preferential to the motion for the previous question.

Prior to adoption of the rules at the beginning of a Congress in 1981, a motion to commit was entertained after ordering of the previous question as a usage consistent with “general parliamentary law” patterned after Rule XIX clause 2, treating the motion to have higher priority than the ordinary motion to refer when a matter is “under debate.”

Debating the Motion. Until 2009, a straight motion to recommit (without instructions) following the ordering of the previous question pending initial final passage of a bill or joint resolution under Rule XIX clause 2 was not debatable. That rule was changed to permit the same 10 minutes of debate as on motions with instructions equally divided between a proponent and an opponent. When read in conjunction with the prohibition against “promptly” motions to instruct adopted at the same time, it became apparent that a minority intent upon returning a bill to committee indefinitely by straight recommittal should be able to explain their position without forcing Members to immediately vote on an amendment which may never be subsequently before the House. Other rulings reiterated that the 10 minutes of debate does not apply to any motion to recommit a resolution or a conference report. Recognition of the bill’s manager in opposition to the motion carried with it the right to close debate, and neither side was permitted to reserve time, or yield blocks of time, but could yield while remaining standing. In 2002, the Chair ruled that an amendment to a motion to recommit following the rejection of the previous question was not separately debatable but must be read in full.

Prior to 1995, eight rulings from 1990 through 1994 (several on appeal) supported the authority of the Committee on Rules to report special orders which only permitted “straight” motions to recommit, based upon a ruling by Speaker Henry Rainey in 1934. The minority had become particularly concerned that the motion to recommit with instructions of their choosing was being restricted just as the ability of all Members to offer amendments was being increasingly limited or “structured” in the late 1980s and early 1990s. The element of surprise had become problematic to majority leaderships since the recommittal motion did not need to be available in advance of being offered. In 1995, the House, following a recommendation from a Joint Committee on Congressional Organization in the prior Congress, amended Rule XIX clause 2 to deny the Committee on Rules authority to recommend special orders which prevented the Minority Leader or his designee from offering proper instructions in a recommittal motion pending initial final passage of a bill or joint resolution. As minority motions to recommit with instructions to report “promptly” proliferated beginning in the 1990s, a series of parliamentary inquiries demonstrated that adoption of such a motion which contained specific or general language of amendment

would permit but not require the committee to which the measure might be recommitted to meet again to consider the measure in the form amended by the House, but without authority to require the House to immediately consider the measure when reported absent a subsequent order of the House. The use of the instruction to “promptly” report had the combined effect of requiring Members to vote on the amendment included in the motion, while at the same time voting to return the bill to committee for an uncertain fate and preventing a vote on final passage of the underlying measure. On several occasions in the 110th Congress further proceedings on bills pending motions to recommit were postponed unilaterally by the Speaker before the vote, pursuant to authority contained in special orders. Rule XIX clause 2(b)(2) was amended in 2009 to provide that the motion to recommit a bill or joint resolution with instructions following the ordering of the previous question could only instruct the committee to report the measure back to the House “forthwith” with specific amendments, and not to report back “promptly” or with any other general or indefinite, non-immediate instructions to amend or take any other action.

Motions to Reconsider—Effect of Adoption. In 1980, where the House adopted a motion to reconsider a vote on a question on which the previous question has been ordered, the question to be reconsidered was neither debatable nor amendable unless the vote on the previous question was then separately reconsidered.

Several rulings clarified the requirement of Rule XIX clause 3 to qualify on the prevailing side of a question in order to enter or make the motion to reconsider. In modern practice, entry of the motion was the equivalent of making the motion, as they were accomplished contemporaneously before proceeding to other business. Formerly, in 1980, where intervening business was pending, the motion to reconsider could be entered but not voted upon immediately unless debate had not yet begun on the intervening business. On a nonrecord vote, any Member could make the motion to reconsider whether or not he voted on the prevailing side, as in 1992, but otherwise only a Member who voted on the prevailing side could offer the motion to reconsider, as in 1986. The Chair, having voted on the prevailing side, offered the motion to reconsider by stating the pendency of the motion where no motion was made from the floor in 1997. A motion to vacate proceedings whereby a motion to reconsider had been disposed of on passage of a bill was held not in order in 1985.

—**Applicability and Debate.** The motion to reconsider has been held applicable to the vote on ordering the previous question on a special order, a vote postponing a bill to a day certain, an affirmative vote on the question of consideration, and an affirmative vote on a motion to suspend the rules.

The motion to reconsider was held not itself subject to reconsideration, nor available in the Committee of the Whole. Because the motion for the previous question is itself not debatable, a motion to reconsider such a vote was likewise held not debatable.

Unanimous-Consent Requests. While the Consent Calendar procedure was abolished in 1995, the ability of the House on an *ad hoc* basis to consider business by unanimous consent was not impacted and was viewed as a proper alternative to the formalities of that Calendar. Since then, partisanship often prevented unanimous consent from being utilized and much noncontroversial business was conducted under suspension of the rules.

There were a number of announcements by the Speaker in the exercise of his discretionary power of recognition under Rule XVII clause 2, beginning in 1981, which required Members to obtain clearance from majority and minority floor and committee leaders before seeking recognition to propound a unanimous-consent request for the immediate or future consideration of business. Over the years since then, that policy was expanded to include a variety of requests for the disposition of legislative business, to cover both unreported and reported measures, the offering of nongermane amendments, expedited consideration of measures on subsequent days, disposition of Senate bills, and amendments at the Speaker's table (where only an authorized committee manager would be recognized for clearance), and for constituent parts of a single request combining final disposition of several separate measures. The Chair, by declining recognition on his own initiative absent that assurance of clearance, was thereby relieving all Members on the floor from the responsibility of going on record as objecting to the request, so as to prevent provocations forcing objecting Members to be so indicated, while at the same time imposing an objective standard which would not necessarily indicate the Chair's personal preference in response to the request. The Speaker's denial of recognition under this policy was a matter of discretion held not subject to appeal. "Floor leadership" was construed to apply only to the Minority Leader and not to the entire hierarchy of minority leadership, and the Speaker asserted discretion to indicate (or not) which leadership side had not cleared the request. In 1984, Delegates were held to be authorized to object to unanimous-consent requests in the House.

—**Reservation of Objection.** Rulings from the early 1990s reaffirmed that a Member objecting to a unanimous-consent request must stand and be identified for the *Record*, and that a reservation of the right to object is precluded upon a demand for the regular order.

—**Scope and Application of Requests.** Generally, unanimous consent for the immediate consideration of a measure in the House did not preclude

a demand for a record vote when the Chair subsequently put the question on initial final passage, since it merely permitted consideration of a matter not otherwise privileged. Senate amendments, on the other hand, continued to be routinely agreed to or amended by one unanimous-consent request where votes were not anticipated. With respect to initial House consideration, *House Practice* indicates several expanded uses of unanimous consent not only to permit consideration but also to expedite subsequent stages of consideration up to and even including the question of final passage. Beyond such expedited consideration by unanimous consent, several unanimous-consent requests also included final disposition, as for the first time "deeming" a conference report to be considered "and adopted" in 1989, and a certain measure consisting of separate bills to be passed or adopted *en bloc* in 2002. Other deeming requests included those sending to conference a measure not yet passed by the Senate as amended if and when that message was received in 1987, and consideration on any subsequent day of a bill to be introduced by the chairman of a committee in 1982. While these examples of the use of unanimous consent were not challenged on points of order, they reflected the flexibility and expansion of the procedure upon recognition by the Speaker and within the Speaker's guidelines.

—**Limitations on Requests.** The availability of unanimous-consent requests in the Committee of the Whole to modify rules or orders of the House became the subject of several rulings. Generally, requests to alter adopted orders governing the conduct of specific business increased in both the House and in the Committee of the Whole because the House increasingly considered measures under "structured" or "modified-closed" special orders or previous unanimous-consent orders. Those orders often denied flexibility, for example, by restricting the order of consideration of amendments, imposing time limits on each amendment, and precluding second-degree amendments thereto, and did not anticipate subsequent modifications as those needs arose. This trend toward "structure" gradually set aside standing rules and the tradition of spontaneity under the five-minute rule which allowed the Committee of the Whole to perfect amendments and to limit debate by motion. The requests were not permitted in the Committee of the Whole when they would substantively change a rule or order of the House, other than minor variances which were congruent with those rules or orders (such as extensions, reductions, or control of equally divided debate time on amendments). Conversely, modifications by unanimous consent of amendments once pending were permitted to be propounded but only by the proponent of the amendment in the Committee of the Whole, since the governing special order precluded second-degree amendments by other Members but not modifications by the sponsor. Thus the Committee of the Whole

was often required to rise to permit unanimous-consent requests in the House to modify a previously adopted special order. Such requests in the House were particularly utilized during the consideration of general appropriation bills, where "universe of amendments" unanimous-consent orders to specify permissible amendments were entered on many bills following some consideration under the five-minute rule. Those orders usually dispensed with the reading of the remainder of the bill except the last "short title" line, named the sponsors of amendments, and indicated their number as printed in the *Record* or their generic subject matter, without specifying an order of consideration or waiving any points of order.

In 2011, an order separately permitted the bipartisan managers of the bill acting to offer some of those amendments *en bloc* for a indivisible vote. On occasion the vagueness of those requests became problematic where the Chair was required to discern, upon the offering of the amendment, whether it met the general description of the unanimous-consent request. The same "universe" agreements also prescribed the parameters of debate, normally a set time by number of minutes of debate equally divided between the proponent and an opponent. This "universe" practice as an order of the House was intended to bring some certainty to the completion of the amendment process on appropriation bills, but fell into disuse beginning in the 110th and 111th Congresses when bipartisan agreement could not be reached. It was revived in 2011 to accommodate over 100 amendments on an "omnibus" appropriation bill to be offered in the Committee of the Whole following several days of "modified" consideration (*i.e.*, a preprinting requirement).

Other denials of recognition for unanimous-consent requests included the extension of special-order speeches beyond midnight, based upon the bipartisan arrangement first announced by the Speaker in 1994 which also included: the refusal to recognize Members to request second five-minute speeches or to be listed by their leaderships for longer special orders on the same day; to revise and extend arguments on points of order; to insert colloquies in the *Record* in 1997 and in 1998; and to reduce the time for an initial recorded vote below 15 minutes where there would be lack of notice to Members in 1985. By unanimous consent, the House may vacate a previous unanimous-consent agreement, as in 1983. The Speaker will not entertain unanimous-consent requests to preclude him from recognizing for consideration of a certain matter, as such an agreement would render that restriction an order of the House impeding the Speaker's discretion and use of the guidelines. Requests for five-minute speeches except during an expanded morning hour were not recognized beginning in 2011.

Chapter 24—Bills, Resolutions, Petitions, and Memorials.

Various types of bills, resolutions and other mechanisms for action have evolved in recent practice in relation to the purpose, form and content of different legislative vehicles.

Resolutions of Approval or Disapproval of Executive Decisions; "The Legislative Veto." Former or currently effective laws constituted an exercise in House or Senate rulemaking where Congress reserved for itself a period of time to approve or disapprove various executive actions under expedited procedures. This section includes rulings of the Chair interpreting those statutes, and variations of House utilization of those statutory provisions. The model for many of those statutes was the (Executive) Reorganization Act of 1939 (5 USC §§ 902–12). In the immediate aftermath of the landmark Supreme Court decision in *Immigration and Naturalization Service v. Chadha,* 462 U.S. 919 (1983), section 905(b) of that law was amended by Pub. L. No. 98–614 in 1984 to terminate the authority of the President to submit reorganization plans for expedited congressional review. The provisions remain relevant, however, because other acts have incorporated their procedures by reference. In *Chadha*, the U.S. Supreme Court held unconstitutional as in violation of the presentment clause of article I, section 7 of the Constitution and the doctrine of separation of powers, the provisions of the Immigration and Nationality Act contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House. That same year, the Supreme Court summarily affirmed several lower court decisions invalidating provisions contemplating disapproval of executive actions by concurrent resolution or by a committee action (*Process Gas Group v. Consumer Energy Council*, 463 U.S. 1216 (1983)). Congress then amended several such statutes to convert provisions requiring simple or concurrent resolutions to provisions requiring joint resolutions to be signed by the President. At the beginning of each Congress, it became customary (and was codified into Rule XXIX in 1999) for the House to reincorporate by reference in the resolution adopting its rules such "legislative procedures" as may exist in current law, subject to the constitutional right to change its rules at any time. This was demonstrated by a ruling in 1987 that a special order reported from the Committee on Rules can supersede statutorily privileged business. Statutes which prescribe no special procedures for consideration of executive action, while not constituting rules of the House, were last compiled in H. Doc. 101–256 in the 102d Congress. There were examples of joint resolutions of disapproval being brought to the House under special orders, where the Congressional Review Act of 1995 contained no expedited procedures for House consideration (*e.g.*, 2012).

Titles and Preambles. Amendments to the title of a bill were held not in order in the Committee of the Whole in 1986. In the Committee of the Whole, amendments to the preamble of a joint resolution were considered following disposition of any amendments to the resolving clause, as in 1967

and in 1993. In the House, amendments to the preamble of a concurrent or simple resolution were considered following adoption of the resolution, as in 1970 and in 1973, and to preambles of joint resolutions pending engrossment and third reading, as in 1993.

Engrossment. The third reading in the House was by title and the question of engrossment and third reading was not subject to a demand for division of the question in 1989. The correction of substantive omissions or errors to be made in the engrossment, following final passage and prior to messaging to the Senate, could be accomplished by unanimous consent and the changes are read by the Clerk, as in 1985, while unspecified technical and conforming corrections such as punctuation, table of contents, and cross-references in the engrossment may be made by the Clerk by unanimous consent. The House has by unanimous consent or special order permitted the engrossment of one House-passed bill to include another separately passed bill as a separate title before being messaged to the Senate, sometimes to avoid consolidation of all the provisions as one bill where the test of germaneness would have been broadened but budget scoring would be cumulative. It is considered within the authority of the Committee on Rules to provide such a merger in the engrossment as long as each measure when considered separately was made subject to a motion to recommit, and there need not be a separate vote on passage of the combined measure.

In the 111th Congress, House standing rules formally acknowledged the possible merger of two House-passed measures into one engrossment. The PAYGO rule (Rule XXI clause 10) was amended to anticipate the likelihood of special orders merging two House-passed bills into one engrossment while permitting separate consideration for germaneness and budget scorekeeping purposes. The rule allowed the scoring of the savings in one measure to offset spending in the other. In 2011, the PAYGO rule was replaced by the CUTGO rule which maintained the provision regarding the merger of two bills into one engrossment for the evaluation of whether the combined bill increased direct spending. The so-called "Gephardt rule" (repealed in 2001 readopted in 2003, and repealed again in 2011), required automatic engrossment and passage of a joint resolution adjusting the public debt limit reflecting final adoption of a budget concurrent resolution and avoided a separate vote on passage in the House.

Transmission of Legislative Messages Between Houses. In 1996, the House treated as privileged a Senate request for the return of a message so as to show the proper naming of conferees while the Senate had been in possession of the papers. On several occasions, the House treated as privileged (as a constitutional prerogative) Senate requests for returns of Senate bills that included revenue provisions (*e.g.*, 1999 and 2004). The House also

treated as privileged motions to request the Senate to return House-passed measures where the engrossments were incorrect in 2004, and to agree to a Senate request where the engrossment failed to properly depict the action of the Senate in 2005. There were requests by both Houses for the return of engrossments they had previously passed. Several House actions reiterated that a request of one House for the return of a bill messaged to the other or to correct an error in its message to the other, may either qualify as a privileged motion, or may be disposed of by unanimous consent where no error is alleged (as the claim of privilege cannot become a substitute for the motion to reconsider where no error is involved) in 1982 and in 1986. Such requests in the House were not debatable unless under a reservation of the right to object, as in 1977. In 1998, the Senate requested the return of a bill to effect a specified substantive change in its text, and in 2004, in order to recommit the bill to a Senate committee, and those requests were granted by unanimous consent in the House.

Enrollments; Correcting Bills in Enrollment. In 2001, Rule II clause 2(d)(2) was amended to authorize the Clerk, rather than the Committee on House Administration, to prepare enrollments of bills and joint resolutions. Concurrent resolutions authorizing the hand enrollment of certain bills to avoid delay in presentation of parchment to the President were privileged and were utilized in the last six days of a session pursuant to law permitting that procedure in 1982 and 1984. Prior to the last six days, however, a joint resolution changing the law to permit hand enrollments was required and had no privileged status absent unanimous consent or a special order in 1985 and 1998. The speed with which enrollments can be produced electronically has reduced the need for hand enrollments. Congress has enacted laws which permit a separate printed enrollment to be prepared at a later time for deposit in Archives in 1987 and 1988, or to require the Archivist to include the text of a bill incorporated by reference as an appendix in the archived enrollment where the enactment was by bill number only (a practice properly not replicated since that date (Pub. L. No. 106–554)).

Concurrent resolutions authorizing the Clerk of the House or Secretary of the Senate to correct enrollments of measures which have passed both Houses enjoy no privilege in either House, but were often made in order by unanimous consent or pursuant to a special order in the House. The House has adopted special orders "hereby adopting" concurrent resolutions correcting enrollments of final measures, as in 1988, without separate debate or motions to recommit those concurrent resolutions. This was held to be within the authority of the Committee on Rules which was only restricted under Rule XIII clause 6 from reporting such special orders on bills and joint resolutions. On occasion, the House has agreed to a concurrent resolution correcting the enrollment of a joint resolution before the consideration

of a conference report on that measure (as in 1985), in order to make the Senate aware of the preferred final text should it be able to consider the concurrent resolution by unanimous consent in that body.

On another occasion in 2011, the House permitted separate "closed" consideration of two concurrent resolutions correcting the eventual enrollment of a bill, setting a new procedure by conditioning that final enrollment upon receipt of a message from the Senate that it had "taken votes" on those concurrent resolutions (whether or not adopted). The purpose was to make the Senate aware that final enactment awaited some response to the House correcting efforts.

On a unique occasion in 2008, the two Houses enacted a law (Pub. L. No. 110–244) requesting the Department of Justice to investigate an unauthorized change in a previously enrolled bill prior to its presentation to the President in the prior Congress. The Member ostensibly responsible for that change erroneously claimed during debate that the enrolling clerk could make changes on his own initiative where there was informal consensus in 2008. The section of law, originated in the Senate, was a departure from the usual practice of the House with respect to internal investigation of conduct of a Member, and without Senate involvement. It reaffirmed that the enrolling clerk can make no substantive changes in any enrollment absent authority in a concurrent resolution. Two Congresses later in 2012, the Department of Justice reported possible conversion of campaign contributions to personal use by that Member (alleged to have influenced the unauthorized change).

In the 109th Congress, the House laid on the table a resolution offered as a question of privilege calling for an investigation by the Committee on Standards of Official Conduct of an enrollment procedure whereby the Secretary of the Senate made a change in the enrollment to reflect intended Senate action although it had not been earlier corrected by a request for return of the engrossed Senate message containing the error. Several Federal courts dismissed lawsuits which were filed challenging the enactment of that entire law, citing *Field v. Clark*, 143 U.S. 649 (1892), to prevent the courts under the doctrine of separation of powers from looking behind the signatures of the Presiding Officers and into procedural actions of the two Houses.

In the 110th Congress, the House laid on the table a resolution offered as a question of privilege rebuking the Speaker for signing an enrolled bill knowing that a portion of the bill had been omitted in the enrollment process, and calling for a Committee on Standards of Official Conduct investigation.

Signing. Rule I clause 8(b)(2) was adopted in 1985 to authorize the Speaker with approval of the House to appoint Member(s) to sign enrollments during a designated period of time. Prior to that time, a Speaker pro

tempore had to be elected by the House to be authorized to sign enrollments. In the 111th and subsequent Congresses the House on opening day approved the Speaker's appointment of two or more designated Members (some of whose districts were close to the seat of government) to sign enrollments in his/her absence during the entire Congress.

Veto Powers—Effect of Adjournment; Pocket Vetoes; Protective Returns. Several Presidents made challenged assertions of "pocket veto" authority, during intrasession or intersession adjournments. No Supreme Court opinion finally resolved the issue because of mootness, leaving the applicability of the *Pocket Veto Case*, 279 U.S. 655 (1929) and *Wright v. U.S.*, 302 U.S. 583 (1938) to many such adjournment vetoes in question. In 1976, following *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974) and a consent decree in *Kennedy v. Jones*, 412 F.Supp. 353 (D.D.C. 1976) it was announced that President Gerald Ford would utilize a "return" veto, subject to override, in intersession and intrasession adjournments (other than final *sine die* adjournments of a second session), where *ad hoc* authority existed for the originating House to receive such messages notwithstanding the adjournment. On several occasions, the Congress in adjournment resolutions asserted the Clerk's authority to receive messages during intrasession adjournments. The Clerk was given ongoing explicit authority in Rule II clause 2(h), beginning in 1981. A Federal appellate court in *Barnes v. Kline*, 759 F.2d 21 (D.C. Cir. 1985), vacated as moot in *Burke v. Barnes*, 479 U.S. 361 (1987), determined that a bill could not be pocket-vetoed during an "intrasession" adjournment of Congress to a day certain for more than three days, where the House of origin had made appropriate arrangements for the receipt of presidential messages during any adjournment, or during a recess.

On at least five occasions, the bipartisan leadership of the House wrote to four different Presidents complaining of improper presidential assertions of pocket veto authority. On the first occasion on August 16, 1989, President George H.W. Bush claimed to have pocket vetoed a joint resolution (permitting a hand enrollment of a bill which had been mooted by presentment of the parchment) by not returning it during an intrasession adjournment to a day certain. On several subsequent occasions, that President Bush and Presidents Bill Clinton, George W. Bush and Barack Obama respectively asserted pocket veto authority during intrasession or intersession adjournments, while nevertheless returning those bills to the originating House with "memoranda of disapproval" asserting pocket veto authority although not exercising it. On those occasions (*e.g.*, 1991) the House correctly regarded the President's actual return without his signature as a return veto and proceeded to reconsider the bill over the President's objections (in 2010 sustaining the veto). The Speaker inserted remarks in the *Record* on the

"pocket veto" in light of modern congressional practice concerning the receipt of veto messages during recesses and adjournments in 1992. Several jointly signed letters of the Speakers and Minority Leaders (but never with Senate leadership participation) responding to improper presidential claims of pocket veto authority were inserted in the *Record* in 1990, 2000, 2008 and 2010. The Attorney General responded on behalf of the President in 1990, citing the *Pocket Veto Case* as the binding U.S. Supreme Court ruling, although it applied only to a *sine die* adjournment pocket veto. The 2008 correspondence summarized prior congressional assertions as follows: "the pocket veto and the return veto are available on mutually exclusive bases, and therefore, during mutually exclusive periods . . . your return of H.R. 1585 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of any body to whom he might return it with his objections."

Proposals for Item Veto. The Line Item Veto Act (2 USC § 691) took effect on January 1, 1997. The Act gave the President the authority to cancel discrete dollar amounts of discretionary budget authority, new direct spending, and limited tax benefits contained in acts sent to him for approval. Cancellations were effective unless disapproved by law. Such disapprovals could be enacted under expedited congressional review procedures set forth in the Act. The President on three occasions exercised his cancellation authority in the 105th Congress. The Supreme Court in *Clinton v. City of New York*, 524 U.S. 417 (1998) held that the cancellation authority of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution, as it gave the President the ability to unilaterally change (cancel) enacted items unless a subsequent law of disapproval were enacted by Congress and then passed over the President's likely veto by two-thirds votes. The U.S. Supreme Court had previously held in *Raines v. Byrd*, 521 U.S. 811 (1997) that congressional plaintiffs lacked standing to sue under that statute for lack of personal injury. Following the *Clinton* decision, bills were introduced to change the congressional review authority to one of approval of the President's recommendation, with the cancellation only being temporary (a deferral) unless Congress approved it by law within a specified time. That approach was argued to pass constitutional scrutiny when such a reform bill passed the House in 2012 but no bill had been enacted at this writing.

Motions Relating to Vetoes. Rulings from the late 1980s confirmed certain principles regarding the availability and precedence of motions to dispose of a vetoed bill, viewed in light of the constitutional mandate that the House "shall proceed" to consider such vetoed bill. For example, although

the motion for the previous question takes precedence over motions to postpone or refer when a question is under debate, where the Speaker has laid before the House a veto message but has not yet stated the question on overriding the veto, that question was not "under debate." Therefore the motion for the previous question did not take precedence, but under earlier precedents motions to postpone or refer could be offered at that point. A motion to refer a vetoed bill to committee may be laid on the table, and vetoed bills successfully referred to committee are subject to (repeatable) privileged debatable motions to discharge—a motion that itself could be tabled. The motion to refer may include instructions to report "promptly" as in 1990. The adoption of a motion to postpone to a day certain removes the privilege of consideration prior to that day. A motion to postpone has been for as long as eight months, and into the next session of the same Congress, as in 1985.

Vacating Legislative Actions. Several examples of vacating business proceedings by unanimous consent were employed, some involving voting situations. In 1995, a proceeding in the Committee of the Whole by which a recorded vote on an amendment was vacated in the House the next day after the Committee had risen, so as to require the Chair to put the question *de novo* on the amendment when the Committee resumed its sitting. There the Chair had declined to permit several Members who were in the Chamber to vote and the result had been announced prematurely. In 2011 and 2012, the Committee of the Whole by unanimous consent immediately vacated an announced recorded vote on an amendment and conducted the vote *de novo* where it was alleged that a Member in the well had not been permitted to vote. A question of privilege was raised in 2008 proposing to vacate a vote which had allegedly been held open beyond a reasonable time in violation of a rule then in place preventing such action solely to change the result.

On several occasions, the ordering of the yeas and nays or of recorded votes was subsequently vacated by unanimous consent where the matter was no longer the pending business so as to permit the earlier voice vote on that matter to be dispositive or to permit the Chair to put the question *de novo*. This procedure was utilized where requests for record votes on amendments in the Committee of the Whole or ordering of record votes on motions to suspend the rules had been postponed and were subsequently determined to be unnecessary either during the interim or as proceedings resumed as unfinished business.

On other occasions, unanimous consent was utilized to vacate the transaction of specific business, including action on a Senate amendment, on election of a Member to a committee, on going to conference (in order to permit a motion to instruct conferees), and on filing a report on a bill already passed the House.

Chapter 25—Appropriation Bills.

In addition to that contained in chapter 26, there was much procedural jurisprudence on appropriations issues due to a large number of rulings by the Chair, standing rules changes, special orders of business, unanimous-consent orders, variations of other House practices, and the advent of Congressional Budget Act disciplines. In practice, the concepts "unauthorized appropriations" and "legislation and limitations on general appropriation bills" sometimes have been applied almost interchangeably as grounds for making points of order pursuant to Rule XXI clause 2, because an appropriation made without prior authorization in law has, in a sense, the effect of legislation, particularly in view of rulings of long standing that a "proposition changing existing law" may be construed to include the enactment of a law where none exists. The two concepts were treated separately in these chapters as, since the restructuring of clause 2 in 1983, they derived from different paragraphs in that clause and constituted distinct restrictions on the authority of the Committee on Appropriations and on amendments to general appropriation bills..

Reappropriations. Rule XXI clause 2(a)(2) was amended in the 99th Congress by section 228(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) to permit the Committee on Appropriations to report certain transfers of unexpended balances in a general appropriation bill, if those reported transfers were within the department or agency for which they were originally appropriated. This exception to the prohibition in bill text was added to the existing exception for reappropriations in continuation of public works on which work had commenced, but did not cover amendments. The clause was held to apply only to reported general appropriation bills in 1988. Rulings in 1982 and in 1988 reinforced the prohibition against amendments continuing the availability of funds previously appropriated for a prior fiscal year. The fact that appropriations may be authorized in law for a specified object did not permit an amendment to include legislative language mandating the reappropriation of funds from other acts in 1992. Clause 2(a) was read together with clause 2(b) to rule out as a change in existing law a provision in a general appropriation bill that authorized an official to transfer funds among appropriation accounts in the bill in 2006 (as contrasted with reported language making direct "within-bill" transfers (rather than conferring authority) as permitted by the exception in clause 2(a)(2)).

Appropriations in Legislative Bills. Rule XXI clause 4 was held not to apply to a special order reported from the Committee on Rules "self-executing" the adoption, to a bill being made in order, of an amendment containing an appropriation, because the amendment was not separately before

the House during consideration of the special order in 1993. The clause was, however, held to apply to an amendment proposed to a Senate amendment to a House bill not reported from the Committee on Appropriations in 1980.

The provision in clause 4 that a point of order against an amendment containing an appropriation to a legislative bill may be made “at any time” was interpreted to require that it be raised during the pendency of the amendment under the five-minute rule, even against an amendment in its perfected form while still pending, or against an amendment which was identical to bill text against which that point of order had been waived in 1975. The additional protection accorded to points of order “at any time” against appropriations in legislative bills, and not merely at the outset of consideration as required on most points of order, became the focus in rulings in 1975. That model for points of order “at any time” was extended in 1983 to tax or tariff provisions or amendments in bills not reported from the revenue-raising Committee on Ways and Means to mirror the added protections accorded to the Committee on Appropriations against encroachments on their respective jurisdictions.

Language permitted to remain in a House-passed bill and included in a conference report was not subject to a clause 4 point of order, since the only rule prohibiting such inclusion (Rule XXII clause 5) was limited to language originally contained in a Senate amendment in 1975. An appropriation in a bill reported by a legislative committee and then sequentially reported adversely by the Committee on Appropriations was subject to Rule XXI clause 4 in 1975, but the point of order must be directed to the provision (potentially including an entire section containing it) and not against the entire bill. A provision exempting loan guarantees in a legislative bill from statutory limitations on expenditures was not prohibited by clause 4 in 1974, nor was authority to make available loan receipts or other payments where the actual availability remains contingent upon subsequent enactment of an appropriation act in 1975 and in 1980. Several rulings reinforced the prohibition against diverting an appropriation already made for one purpose to another in 1988, as by expanding definitions of recipients of funds already appropriated in 1976 and in 1980, or from one fiscal year to another in 1992, or making existing funds available for a new purpose or to a new agency without further appropriation in 1974, 1979, and 1985. A diversion of previously appropriated funds in lieu of the enactment of new budget authority if a maximum deficit amount under existing law was exceeded was held to constitute an appropriation, though its stated purpose was to avoid the sequestration of funds in 1988.

Contingent Fund Expenditures. A change in terminology in the House occurred in 1995 from “Contingent Fund” to “Applicable Accounts of the

House" as contained in the statement of jurisdiction for the Committee on House Administration in Rule X clause 1(j)(1). Chapter 17 includes the area of funding of House committees and the privilege and use of "primary" and "supplemental" committee expense resolutions. All such funds originally derived from annual appropriations in the Legislative Branch Appropriations Act.

Reporting and Consideration of Appropriation Bills. Sections 6 and 7 include rulings defining "general" appropriation bills, as distinguished from non-general "special purpose" bills or joint resolutions "continuing" appropriations, and their privileged status. In 1979, 1980 and 1988, joint resolutions providing an appropriation for a single government agency or permitting a transfer of appropriated funds to another agency were held not to constitute general appropriation bills and not subject to Rule XXI clause 2. Continuing appropriations joint resolutions were made in order in 1981 as privileged if reported by the Committee on Appropriations after September 15 preceding the new fiscal year, but that status has not been utilized. Additional requirements for reports accompanying general appropriation bills (Rule XIII clause 3(f)) were adopted in 1974, including separate headings for rescissions and transfers of unexpended balances, unauthorized items in 1995, requiring more detail on the status of unauthorized appropriations in 2001, and in 2009 requiring earmarks to be shown in all reported bills (Rule XXI clause 10).

Consideration Made in Order by Special Rule or Unanimous Consent. Increasingly special orders of business reported from the Committee on Rules were utilized to govern the entire consideration of reported general appropriation bills in order to grant necessary waivers of points of order against consideration and against specific provisions in those bills, and to structure the amendment process in some cases. This trend replaced traditional consideration of appropriation bills by privileged motions resolving into the Committee of the Whole under standing rules, in order to manage expeditious consideration in the Committee of the Whole and to order the previous question following Committee of the Whole consideration. In 2012, several special orders of business provided for the separate entire considerations of multiple reported general appropriations bills, in one case together with an authorization bill, departing from the traditional practice that there be a separate rule for each bill.

Unanimous-consent orders of the House also proliferated—some at the outset of consideration of nonprivileged measures continuing appropriations or on general appropriation bills where it was considered unnecessary to first adopt a special order of business. Unanimous-consent orders in the House since 1995, establishing a "universe" of amendments, became routine

and followed general debate at various point(s) during the amendment process.

Waivers of Points of Order by Resolution. Generally, special orders were utilized to waive all points of order against consideration of general appropriation bills. Those points of order often were directed at three-day availability of the accompanying report, at new budget authority in excess of allocations to subcommittees, at failure of the committee report to contain a comparison of spending in the bill with subcommittee allocations (*e.g.*, 1986), and at the lack of availability of hearings for at least three calendar days (Rule XIII clause 4(c)). With the "universe" of amendments prescribed by the Committee on Rules in advance of consideration, those special orders protected the permitted amendments by waivers.

Consideration and Debate. In what came to be known as "universes of amendments," unanimous-consent orders permitted a specified number of amendments departing from the five-minute rule, to expedite reading of bills and amendments to the bill. Those orders did not usually prescribe the order of consideration but did restrict debate (including pro forma amendments), amendability, divisibility, and intervening motions. These expeditious steps by unanimous consent were not, however, intended to waive points of order otherwise applicable when the amendments were actually offered. This technique was utilized because it provided all parties a benefit—party leaders got increased certainty about the floor schedule, the Committee on Appropriations was able to move its bills forward more readily, and individual Members were permitted, as the price for acceptance of the order, to offer amendments of their choice but unprotected from points of order. The permitted amendments were usually described by number as printed in the *Record* or generically in the unanimous-consent order. In 2007, where it was not possible to obtain unanimous consent for a "universe" of amendments on a general appropriation bill, a second special order was reported from the Committee on Rules to accomplish that result. Then, in 2009, the Committee on Rules began to report "modified-closed" special orders of business on general appropriation bills, where the negotiations of "universe" agreements between the leaderships had not been productive and where additional certainty of time and issue was sought during a period of heavy legislative scheduling. The Committee on Rules reported, upon the leadership's request, "modified-closed" rules which permitted the offering of a relatively small number of the many amendments submitted to that committee, even giving certain sponsors the choice of offering up to a specific number of amendments from among a larger number submitted by them on a certain subject (*e.g.*, striking "earmarks"), and then waiving points of order against the permitted amendments. To further prevent unanticipated

delays during consideration, those special orders restricted the offering of privileged motions (to rise or to strike the enacting clause) and permitted two-minute votes on clustered amendments (permitted by standing rule beginning in 2011).

In 2011, on the first general appropriation bill being considered, the House, following some consideration of amendments under the five-minute rule, reestablished a "universe of amendments" unanimous-consent order by permitting 129 preprinted amendments in the Committee of the Whole on an omnibus continuing appropriation bill under a procedure which permitted second-degree amendments thereto (none were offered), with controlled and limited debate on each amendment and without waiving points of order.

En bloc offsetting amendments, and motions to rise and report to preempt limitation amendments, were new procedures. New forms of amendments proposed to change appropriation amounts in pending portions of the reported bill as parenthetical insertions "(increased or reduced by $________)" or "(in addition thereto $________)." Because it is not in order to amend text previously amended, this form had the advantage of allowing separate and subsequent consideration of amendments to a pending "umbrella" or consolidated amount in the bill, often symbolizing focus on priorities within an existing number while not textually stating a specific purpose (which might not have been separately authorized). This form was permitted regardless of prior adoption of similar indirect changes in those umbrella figures, in order to avoid the need for second-degree amendments which might address other issues covered by the amended amount, or in order not to directly change that amount by way of a motion to strike and insert.

"Fetch-back" amendments to appropriation bills in the form of new paragraphs inserted to indirectly change amounts contained in previous paragraphs were in order as long as the amendment was germane to the portion of the bill to which offered (such as "general provisions") and only if reducing funds contained in previous paragraphs in 1999. "Fetch-back" amendments which attempted to increase an amount contained in a prior paragraph were required to be supported by an authorization, because the precedents that admit a germane perfecting amendment to an unauthorized item permitted to remain deal only with actual changes in the figures permitted to remain and not with the insertion of new matter beyond that permitted to remain, and because waivers against unauthorized portions were usually stated as waivers against portions of the bill and not against amendments adding unauthorized increases at another part of the bill, as in 1995, 1997, and 2012.

The adoption in 1995 of Rule XXI clause 2(f), permitted *en bloc*, indivisible offsetting "reach-ahead" amendments transferring funds in a pending

paragraph to portions of a general appropriation bill not yet read for amendment, if both budget authority and outlay neutral when measured against the increase or decrease proposed in the pending paragraph. Several rulings established that such an *en bloc* offsetting amendment must not net to increase the levels of budget authority or outlays and that the proponent carried the burden of so proving (See, *e.g.*, 1999, 2000, 2004, 2011, and 2012). They also determined that such reach-ahead amendments offered during the reading could not include limitation language beyond a change in amounts of budget authority and could not change the amount of a rescission in the bill in 2011. In 2012, clause 2(f) was held inapplicable to an amendment which not only reached ahead to change amounts of budget authority but also included an increase in a limitation on obligations from the Highway Trust Fund. The estimate of relative outlay rates as between the appropriation being reduced and that being increased, in order to maintain the same outlay rates over the course of the covered fiscal year, required the Chair to rely on estimates from the Committee on Appropriations in 2012. An amendment otherwise in order under this paragraph may nevertheless be in violation of clause 2(a)(1) if increasing an appropriation above the authorized amount contained in the bill. The Chair queried for points of order against provisions of an appropriation bill not yet reached in the reading before recognizing for "offsetting" reach-ahead amendments offered *en bloc* to achieve new priorities within the bill while maintaining budget authority and outlay neutrality. This was consistent with the priority given to points of order before *en bloc* amendments were offered to relevant portions of such bills.

In 2011, the House adopted a standing order supplementing Rule XXI section 2(f) to permit *en bloc* transfers of amounts in the bill to a spending reduction account at the end of the bill, rather than to other spending accounts. In 2012, an amendment transferring more to a spending reduction account than was reduced in previous accounts was ruled out as impermissible under that *en bloc* authority.

House–Senate Relations on Appropriation Bills. The House addressed the authority of House conferees to agree to Senate amendments containing legislation or unauthorized appropriations, and to House conferees' authority to agree to Senate legislative bills or amendments containing appropriations, absent specific authority of the House as required by Rule XXII clause 5. A provision in a Senate amendment included in a conference report on an authorization bill considered after the relevant appropriation has been enacted into law, directing that those funds be expended on a project not specifically funded in the appropriation, was itself held in 1979 to be an appropriation not to be recommended by House conferees absent specific authority through instructions. A legislative conference report

containing a Senate provision not only authorizing appropriations to pay costs incurred in judgments against the United States but also requiring that where such payments were not paid out of appropriated funds, payment be made directly out of the U.S. Treasury pursuant to a direct appropriation previously provided by law, was ruled out of order in 1980 where House conferees had not been specifically authorized under Rule XXII clause 5 to agree to that provision.

Congressional Earmarks. Provisions requiring the reporting of earmarks were originally adopted in the form of a standing order in 2006 and then added to Rule XXI as a new clause 9 in 2007. Patterned after the unfunded mandates point of order added in 1995, the congressional earmarks point of order was essentially a reporting requirement. It established a point of order against initial consideration of appropriation (as well as limited tax and tariff) measures unaccompanied by a list of earmarks either in a report or inserted in the *Congressional Record*. Such earmarks were defined as a specific spending authority of a specific amount of discretionary budget authority for an object or entity other than through a statutory or administrative formula-driven or competitive award process. A point of order against a special order waiving that reporting requirement required a separate vote on the question of consideration of the special order, following 20 minutes of debate, as disposition of the point of order. Clause 9 required a point of order under that clause was held in 2007 not to lie against an unreported measure where the chairman of the relevant committee has printed in the *Record* a statement that the measure contained no congressional earmarks, or against a reported measure where the committee report contained such a statement. The point of order did not contemplate a question of order relating to the content of such statement, merely to its existence, and was untimely after consideration has begun, as in 2007. Later that year the House adopted a standing order by unanimous consent extending the point of order to conference reports unless the joint statement of managers contained a list of earmarks not contained in either the House or Senate committee report but rather “air-dropped” into the conference report. That standing order was incorporated into Rule XXI clause 9 in 2009. In 2011, earmarks were informally banned in Congress, not specifically by House rule, but rather by majority (Republican Conference) rules which discouraged their inclusion. The ban was also adopted by the Senate for the 112th Congress by caucus rules adopted by both parties.

PAYGO. Rule XXI clause 10 (PAYGO) was added in 2007 and repealed in 2011. It provided points of order against measures affecting direct spending and revenues which increase the deficit by not being offset by comparable spending reductions or revenue increases. The PAYGO rule was

held in 2008 not to apply to general appropriation bills based upon then-existing definitions of applicable "direct spending" incorporated from the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). That ruling established a major exception from Rule XXI clause 10. In 2010, the clause was amended to narrow the definition of applicable "direct spending" to incorporate only the statutory definition and to restrict the Committee on Appropriations from going beyond it on "changes in mandatory programs" ("CHIMPs") without an emergency designation. As demonstrated in 2009 during consideration of the "economic stimulus" general appropriation bill, the 2008 ruling established that the exception did not apply to revenue provisions also contained in such a bill, thus requiring emergency designation language in that bill and triggering the separate vote on consideration provision inserted in the rule in the 111th Congress.

The PAYGO rule was amended in 2009 to allow for emergency exceptions for provisions designated as "emergency spending" in a non-appropriation bill. The Chair put the question of consideration on the bill or amendment containing that language on his own initiative without a point of order and without regard to a waiver of points of order in a special order. The purpose of this unique exception was to allow for an automatic vote on consideration of measures that respond to emergency situations such as an act of war, terrorism, a natural disaster or a period of sustained low economic growth. On one occasion in 2010, the inadvertent failure of the Chair to take the initiative to put the question of consideration on a measure containing an emergency designation was held to have been cured by the vote on adoption. While the PAYGO rule was replaced in 2011, the requirement in law (the Statutory Pay-As-You-Go Act of 2010) remained that the Chair must on his own initiative (without a point of order) separately put the question of consideration on any bill containing emergency exception language or on any special order waiving that requirement.

Cut-As-You-Go. Beginning in 2011, the House replaced the PAYGO rule with the CUTGO rule (also Rule XXI clause 10) which prohibited consideration of a bill, joint resolution, conference report, or amendment having the net effect of increasing mandatory spending within the one-year, five-year, and ten-year budget periods. The rule only addressed attempts to increase mandatory spending by requiring at least equal offsets in spending authority and did not permit offsets of increased spending by comparable revenue increases. Its purpose was to eliminate the option of revenue increases from permissible offsets and to require only offsetting spending reductions. The provision continued the clause 10 PAYGO practice of counting multiple measures considered pursuant to a special order which directed the Clerk to engross the measures together after passage for purposes of compliance

and provided a comparable mechanism for addressing "emergency" designations by requiring the Chair to put the question of consideration on any measure containing such language. In 2011, the Chair ruled out of order a motion to recommit a revenue bill with instructions to amend various portions of the Internal Revenue Code based upon an "authoritative" estimate from the chairman of the Committee on the Budget that the motion would increase direct spending over the amount in the bill.

Spending Reduction Accounts; Lockbox. By standing order included in the rules package in 2011 as section 3(j) of H. Res. 5, the House imposed for that Congress an additional option to Rule XXI clause 2(f) for "reach-ahead" amendments in order to allow an amendment to reach ahead *en bloc* to reduce amounts in paragraphs not yet read and to place those reductions in a "spending reduction account." The "lockbox" would be the last section of the bill and would contain only a recitation of the amount by which an applicable 302(b) allocation exceeded the amount of new budget authority proposed by the bill. The section 3(j)(2) standing order prohibited all other amendments to the spending reduction account contained in the bill except modifications proposed by the chairman of the Committee on Appropriations prior to filing the reported bill. Any such spending reduction account contained in the last section of the appropriation bill itself would not be subject to a Rule XXI clause 2(b) point of order as legislation. The provision was continued by standing order in the next Congress in 2013. In addition, the standing order in section 3(j)(3) prohibited a net increase in budget authority in the bill, and thus, in 2011, an amendment was ruled out of order which attempted to reach ahead to provide offsets in subsequent paragraphs but resulting in a net increase in new budget authority in the bill. Guidance to the Chair in the enforcement of that standing order was based on "persuasive" evidence submitted by the chairman of the Committee on the Budget as to the net effect of the *en bloc* amendments. Two other amendments in the form of limitations preventing the use of funds for the Internal Revenue Service's contracting out the collection of revenues under a specific law, or reducing to zero budget authority for certain regional power authorities, were likewise held to increase net budget authority in violation of section 3(j)(3) on "persuasive estimates" from the Committee on the Budget chairman (presumably based on the assumption that the prohibitions would incur additional budget authority in terminating the programs). A motion to recommit a continuing appropriation with instructions to continue current rates of spending without the reductions contained in the joint resolution was ruled out as an increase in net budget authority in 2011. This role of the Chairman of the Committee on the Budget in the enforcement of section 3(j)(3) should be contrasted with the new authority conferred upon him in

2011 in enforcement, pursuant to section 312, of Congressional Budget Act points of order by Rule XXIX clause 4, where his estimates are "authoritative and conclusive." In 2012, an *en bloc* amendment attempting to avail itself of a standing order (section 3(j)(1)) was ruled out of order when it mathematically transferred more to the spending reduction account than the amount being transferred out of other accounts.

Chapter 26—Unauthorized Appropriations; Legislation on Appropriation Bills.

Precedents interpreting Rule XXI clause 2 beginning in the 1980s were as numerous as any rulings to be documented in the entire republication. This increase was caused in part by the frequency of unauthorized appropriations, based on the inability of Congress to enact relevant authorization bills into law in a timely manner before consideration of the appropriation bill and the beginning of the fiscal year in question. Even where the House had passed an authorization bill, delays in the Senate often prevented enactment by the time the appropriation bill was scheduled for House floor consideration under the timetable of section 301 of the Congressional Budget Act. It also reflected increased use of reported language in bill text and in amendments to general appropriation bills—many permissible in the form of annual negative limitations on funding although having policy implications. General appropriation bills thus often became vehicles for enactment of legislative policy (sometimes upon informal recommendation from authorizing committees). Waivers of points of order under clause 2 were required to facilitate such legislation. On one occasion in 1981, a special order applied the restrictions in clauses 2 and 6 of Rule XXI (otherwise applicable only to reported bills) to all provisions in an unreported bill being made in order. The recurring use of special orders which provided partial waivers against reported language but also subjected certain provisions in reported general appropriation bills to points of order under that clause, reflected utilization of the Committee on Rules as a screening mechanism to balance the interests of the majority leadership and of the authorizing and appropriations committees (the "Armey" protocol).

There were two anomalous examples of the enactment of authorizing laws which, in order to enhance the primacy of the authorization process, required that subsequent appropriations must first be specifically authorized by separate law before the funds may be spent by the executive branch (*e.g.*, military funding (10 USC § 114) and intelligence funding (50 USC § 414), enacted in 1973 and in 1985, respectively). Even those restrictions have since been waived by legislative language in appropriation bills (such provisions being protected by waivers of points of order under Rule XXI clause 2 in

special orders) to permit immediate spending upon enactment of the appropriation contained in the same bill. Those waivers were further examples of the blurring of the protections of the authorization and appropriations processes based on the statutory need under the Anti-Deficiency Act of 1921 and the Congressional Budget Act of 1974 to enact actual spending prior to the beginning of a new fiscal year.

The impetus for the increase in rulings on points of order under Rule XXI clause 2 was also premised on the intermittent continuation of the tradition permitting general appropriation bills to be considered for amendment under a relatively "open" rule or order for amendments, or pursuant to unanimous-consent orders permitting a "universe of amendments" but not waiving the applicability of clause 2. Thus, at least through the 109th Congress, and beginning again in 2011, individual Members were permitted to offer amendments addressing many aspects of funding for the congressional budget, while remaining subject to clause 2, to the germaneness rule, and to the Congressional Budget Act. There were relatively few exceptions contained in "structured" or "modified-closed" special orders dictating the amendment process which protected amendments from points of order in 2007–2010.

Chapter 26 of *Deschler's Precedents* covered rulings and rules changes through 1984, and included brief discussion of the reorganization of Rule XXI clause 2 in 1983, when the 98th Congress restructured that clause in the basic form of paragraphs (a) through (d). In 1999, as part of recodification, former clause 6 was transferred to clause 2(a)(2) to clarify that reappropriation points of order, like unauthorized appropriation points of order, lie against the offending provision in the text and not against consideration of the entire bill. In the 99th Congress, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) amended clause 2 to permit the Committee on Appropriations to report transfers of unexpended balances within the department or agency for which originally appropriated. That law (Pub. L. No. 99–177) also added the last exception in paragraph (b) permitting the inclusion of legislation rescinding appropriations made in prior appropriation acts, and permitted legislative committees with proper jurisdiction to recommend retrenchments to the Committee on Appropriations for its discretionary inclusion in the reported bill.

In 1983, clause 2 was amended by adding paragraph (d) to permit certain "limitation" amendments to be offered only at the conclusion of the reading of the general appropriation bill in the Committee of the Whole (and by inference not in the House). This so-called "Obey" rule, named after former Rep. David Obey, was put in place at the recommendation of the Democratic Caucus to restrict the proliferation of limitation amendments (which had

come to address a wide range of policy issues by a denial of funding for the fiscal year and could unpredictably be offered wherever germane in the bill) during the reading of general appropriation bills for amendment. The new rule made it possible to prohibit most limitation amendments altogether if the Majority Leader's preferential motion to rise and report at the end of the reading were adopted. The rule also had the effect of prohibiting motions to recommit with limitation instructions which had not been previously offered in the Committee of the Whole. Recommittal motions containing limitations were ruled out in 1989, 1995 and in 2009 by enforcement of clause 2(d) in the House.

In 1997, paragraphs (b) and (c) of clause 2 were amended to treat as legislation (per se) a provision reported in a general appropriation bill or amendment thereto that made funding contingent upon whether circumstances not made determinative by existing law for the period of the appropriation were "known" by an official in receipt or possession of information (sections 52 and 64–65). The Parliamentarian's reliance upon precedents established in 1908 (7 *Cannon's Precedents* § 1695) and in 1989 eventually prompted a change in clause 2 itself in 1997. The rules change directly overcame those precedents as the preferred approach to elimination of the "made known" exception, rather than through reinterpretation of those precedents by the Chair or an appeal from a ruling. Over a period dating from 1908, the House had developed a line of precedent to the effect that language restricting the availability of funds in a general appropriation bill could be a valid limitation if, rather than imposing new duties on a disbursing official or requiring new determinations by that official, it passively addressed only the state of knowledge of the official. This reasoning last culminated in a ruling in 1996 admitting as a valid limitation an amendment prohibiting the use of funds in the bill to execute certain accounting transactions when specified conditions were "made known" to the disbursing official. The same reasoning had also formed the basis of the Parliamentarian's advice (no point of order was raised but amid considerable controversy) in response to provisions relating to funding to perform abortions with exceptions where the life of the mother would be endangered if the fetus were carried to term or the pregnancy was the result of rape or incest. Such abortion-related provisions or amendments which did not include the "made known" language were ruled out as legislation imposing new duties in 1977, 1993, and 1998, but were presumed by the Parliamentarian based on precedent to be in order in 1993 if utilizing the "made known" technique. This advice prompted use of the "made known" exception in other contexts until its abolition by the rules change in 1997. Several subsequent rulings rejecting that language beginning in 1997 were mandated by the per se violation restriction of the new rule.

Reservation of Points of Order on General Appropriation Bills. Rule XXI clause 1 providing for automatic reservation of points of order on reported general appropriation bills was added in 1995 to render unnecessary the former practice that a Member reserve points of order when a general appropriation bill was referred to the Union Calendar, in order that provisions in violation of Rule XXI could be stricken in the Committee of the Whole. Other rulings will analyze points of order if made against the whole or only a portion of a paragraph. The fact that a point of order was made only against a portion of a paragraph was on several occasions held not to prevent an expanded or immediately subsequent point of order against the whole paragraph, and the sustaining of a point of order against any portion of a package of amendments considered *en bloc* ruled the entire package out of order and required reoffering of the permissible amendments separately. Points of order against provisions in a portion of the bill read "scientifically" (*i.e.*, merely by heading and appropriation amount), or considered as read by unanimous consent, must be made before amendments are offered and may not be reserved. The text of the pending portion of the bill must be known before amendments to it were offered in order to prevent subsequent points of order against the bill from addressing text already amended. Once amendments were pending, however, reservations of points of order against them were commonplace, in order to permit some debate on their merits before the point of order was pressed.

Waivers of Points of Order; Perfecting Text Permitted to Remain. Rulings relating to the timeliness of points of order, and of waivers of (or failure to raise) points of order against provisions in a general appropriation bill or in amendments thereto, established that when an unauthorized appropriation or legislation was permitted to remain in a general appropriation bill by waiver or by failure to raise a point of order, an amendment merely "perfecting" by changing that amount or restricting application of that legislative language was in order as not adding "further" legislation. However, other included rulings demonstrate that this doctrine of "perfection" did not permit an amendment that added additional legislation in 2012, that proposed or earmarked for a new unauthorized purpose, or that increased an authorized amount above the authorized ceiling. Amendments adding a new paragraph indirectly increasing an unauthorized amount contained in a prior paragraph permitted to remain were ruled out in 2012 because the new paragraph was not directly "perfecting" existing text protected by the waiver of points of order. Conversely, a new paragraph indirectly reducing an unauthorized amount permitted to remain in a prior paragraph passed in the reading was held in order as not adding a further unauthorized amount. These numerous rulings reflected the importance of

the reading for amendment in determining whether amendments directly perfect language permitted to remain during the reading, or instead reached ahead to unread portions.

Where legislation was permitted to remain, the following types of amendments were ruled out as not merely perfecting the included legislation: expanding the class entitled to a benefit; expanding a restriction on benefits pursuant to new criteria; expanding a sanction on one nation to include other nations; and substituting a new trigger for the restriction of funds (such as the enactment of other legislation). By contrast, the following types of amendments were allowed under the perfecting doctrine: restating verbatim or particularizing but not expanding a definition; altering the criteria for an exception where the evaluation of such exception was fully subsumed by the prior criteria; and striking a delimiting date for a funding restriction to broaden it to the entire year. Exceptions from limitations on funds were held merely "perfecting," unless imposing new duties (*e.g.*, to determine "equivalence" of benefits), as in 1998.

The Holman Rule. Amendments in Rule XXI clause 2(b) in 1983 narrowed the definition of permissible legislative provisions which "retrench" expenditures to cover only retrenchments reducing amounts of money included in the bill as reported, and permitted legislative committees with proper jurisdiction to recommend such retrenchments to the Committee on Appropriations for its discretionary inclusion in the reported bill. In 1995, paragraph (d) of that clause was amended to limit the availability of the preferential motion to rise and report to the Majority Leader or his designee in order to foreclose retrenchment amendments (as well as limitation amendments) which were in order only at the conclusion of the bill's reading. Retrenchments have been distinguished since 1985 from permitted "rescissions" in reported bills, which are reductions of funds appropriated in prior appropriation acts and not in the reported bill. Decisions under the Holman rule were few, as the use of limitations in appropriation bills was perfected so that most modern decisions by the Chair dealt with distinctions between limitations and legislation.

Rescissions and Deferrals. Authority to the Committee on Appropriations was conferred by Rule XXI clause 2 in 1985 to report legislation containing rescissions of funds in prior appropriations acts, rescission bills, and deferral resolutions were statutorily treated in title X of the Impoundment Control Act of 1974. The reporting authority conferred on the Committee on Appropriations did not extend to: floor amendments to those bills; legislation in those bills providing rescissions of contract authority contained in other laws or in a loan guarantee program; or rescissions under an agricultural law. A provision constituting congressional disapproval of a deferral of budget authority proposed by the President pursuant to the Impoundment Control Act was likewise held to be legislation in 1982 when included in a general appropriation bill rather than in a separate resolution of disapproval under that act.

Amendments Between the Houses. This section of chapter 26 addresses the authority of House conferees on general appropriation bills to agree to or amend Senate amendments containing unauthorized items or legislation for inclusion within a conference report.

Until the mid-1990s, appropriations conferences usually considered discrete Senate amendments in disagreement, numbered at the appropriate place in the House-passed bill, reflecting separate consideration and adoption given those issues by the Senate. As a result, appropriations conferees enjoyed less latitude without waivers of points of order in arriving at compromises within the scope of difference because comparisons between the House provisions and the corresponding numbered Senate amendment (often isolated as specific amounts of money) were easily discerned. Subsequent waivers of points of order in the House recommended by the Committee on Rules were not traditionally anticipated or sought, and conferees were required to abide by standing rules and precedents which restricted their authority. With numbered amendments conferees could submit a partial conference report to their respective Chambers, containing everything they both agreed upon in fact and had authority to recommend. Amendments on which they still disagreed either technically or which remained in true conflict, were then separately disposed of in each Chamber without directly jeopardizing previous adoption of the partial conference report. Proceeding under standing rules and precedents on separately numbered Senate amendments had proven to be complicated and time-consuming, involving procedural issues of time allocation, *en bloc* consideration by unanimous consent, and priority of motions. Even if not germane in the Senate, Senators could further amend compromise House amendments to Senate amendments remaining in disagreement, in order to revisit matters contained in the conference report or to broach new issues. In the House, special orders from the Committee on Rules had not been utilized and standing rules and precedents governed the unpredictable sequence of preferential motions and votes.

Beginning in the 1990s, Senate amendments to House-passed general appropriation bills were increasingly messaged to the House in the form of one amendment in the nature of a substitute (striking all after the enacting clause and inserting entire new text) which were not divisible for separate votes in the House, for disposition in conference or subsequently in either House. When embodied within entire conference reports in the House, rather than being reported in real or technical disagreement for separate disposition, the conference reports required waivers of points of order because they were in violation of Rule XXII clause 5 since House conferees were not specifically authorized to agree to such Senate amendments. The advantages

of this form of Senate amendment to general appropriation bills include the consolidated consideration of all issues in disagreement for disposition by one debate and vote on the conference report in both Houses rather than the time-consuming and complicated consideration of motions to dispose separately of each of many numbered Senate amendments on which House conferees had no authority to agree. This emerging process assumed that the Senate would package all its amendments as one substitute despite their previous separate consideration in that body. It also assumed that the House would, after the filing of the conference report, adopt a special order from the Committee on Rules (as it has almost without exception) waiving that point of order (and all other points of order).

Two rulings (in 1979 and in 1987) reiterated the principle stated in section 6.9 of chapter 26 that when a Senate amendment proposing an unauthorized item or legislation on a general appropriation bill is, pursuant to Rule XXII clause 5, reported back from conference in disagreement, a motion to concur in the Senate amendment with a further amendment was in order, even if the proposed amendment adds legislation to that contained in the Senate amendment, and the only test was whether the proposed amendment was germane to the Senate amendment reported in disagreement. As noted above, those rulings were no longer utilized after the mid-1990s.

The Senate adopted a new Rule XLIV in 2007 which impacted on the House. That rule prohibited the "air-dropping" (first time insertion) of new matters not committed to conference by either House into appropriation and other conference reports providing for "direct spending," and required a three-fifths waiver to permit the consideration of the conference report in the Senate.

Appropriations for Unauthorized Purposes. The requirement in Rule XXI clause 2(a) that appropriations contained in general appropriation bills be authorized by law was frequently enforced by points of order. Chapter 26 of *Deschler-Brown Precedents* generally cites to rulings under Rule XXI clause 2 through 1984. There were decisions beginning in the 99th Congress in 1985 regarding the sufficiency of provisions in law asserted to support items of appropriation, and the "works in progress" exception from that requirement.

Although the object to be appropriated for may be described without violating the rule, an amendment proposing an appropriation under a heading that indicates an unauthorized purpose as its object was ruled out in 1991. An amendment stating a legislative position constituted legislation in 2001, as did one establishing a select committee or a trust fund in the Treasury in 2006. Although the Committee on Appropriations may include in a general appropriation bill language not in existing law limiting the use of funds

in the bill, if such language has the combined effect of constituting an appropriation of funds (*e.g.*, “not more than $________ shall be available for . . .”), it must be authorized by law.

Several rulings were based upon the burden of proof required to demonstrate sufficient authorization, such as proving (by a preponderance of the evidence) that the funds were authorized by a law previously enacted, currently in force, and not lapsed. Thus, the following were ruled out for lacking sufficient authorization: international agreements predating the authorization for funding such agreements; private compensation based solely on the constitutional guarantee of just compensation; funding for matching grants to States where not required by law; and funding from trust funds where only authorized from the general treasury. Whether organic statutes or general grants of authority in law constituted sufficient authorization to support appropriations depended either upon whether the general laws applicable to the function or department in question required specific or annual subsequent authorizations (as in 1978 and in 1997), or on whether a periodic authorization scheme has subsequently “occupied the field” (as in 1997). An authorization of “such sums as may be necessary” was sufficient to support any dollar amount (but not to relieve other conditions of that law) in 1993, whereas amendments to a general appropriation bill providing that “not less than” a certain amount be made available to a program were held to require an authorization permitting that directive in 1988 and in 2000. The Chair will not invoke a “fairness” standard in determining whether the proponent of an amendment has met the burden of proof to support an amendment containing legislation, as in 2012.

An amendment limiting funds to the extent provided in authorizing legislation on or after the date of enactment of the pending appropriation bill was not in order in 2005. This extended the precedents that delaying the availability of an appropriation pending subsequent enactment of an authorization did not protect the item of appropriation against a point of order.

Precedents on the “works in progress” exception to the authorization requirement continue to demonstrate the relative narrowness of the exception. Thus, the clause was held only to apply to cases of general revenue funding, and not to lapsed authorizations or projects not yet under construction. Neither will the exception apply in cases where a comprehensive authorization scheme (not contemplating the specific project) has “occupied the field.” A general system of roads on which some work had been done or an extension of an existing road was not considered a “work in progress” in 1993.

The cataloging of rulings based on the specific subject matter of the purpose or program of the appropriation, while more anecdotal from a precedential standpoint than those which analyze the decision-making process itself,

will be included where they involved some new subject matter rulings such as "Intelligence".

Provisions as Changing Existing Law. Emergency spending designations within the meaning of the Congressional Budget Act were held to constitute legislation in a general appropriation bill, and matter within the jurisdiction of the Budget Committee, in violation of section 306 of that Act in 1999.

Appropriations Subject to Conditions. There were rulings regarding contingencies, such as provisions limiting the use of funds in a bill "unless" or "until" an action contrary to existing law was taken in 1996. Other conditions held out of order included requirements for submission of an agreement to Congress and congressional review thereof in 1986, or for legal determinations to be made by a Federal court and an executive department in 1988.

Spending Conditioned on Congressional Approval. Recent rulings carried in section 1055 of the *House Rules and Manual* were shown there to have effectively overruled earlier 1968 and 1979 rulings. Making the availability of funds contingent upon subsequent congressional action or approval constituted a legislative condition. Where stated as an exception from a negative limitation in those cases where Congress has approved and funded such activity under existing law, however, as contrasted with a new requirement, the reference to congressional action was held merely descriptive of the status quo and did not affirmatively impose a new condition in 1991. A provision may not require funds available to an agency in any future fiscal year for a certain purpose to be subject to limitations specified in advance in appropriations acts in 1986. Restrictions on executive authority to incur obligations were held to be legislative in nature and not a limitation on funds.

Provisions Affecting Executive Authority; Imposition of New Duties on Officials. A number of decisions ruled out language imposing affirmative new responsibilities on officials, or directly interfering with discretion conferred upon them by existing law. In section 1054 of the *House Rules and Manual* for the 111th and subsequent Congresses, examples numbered 11–44 recited rulings chronologically made since the last date of publication of Part E in 1985 whereby various requirements for new determinations were held to change existing law. Contrasted with these rulings, section 1054 then recited at least fourteen rulings since 1983, also chronologically inserted, wherein limitations were held in order as consistent with requirements of existing law since not placing new duties on officials. Thus, any duties imposed by a limitation must be merely ministerial or already required by existing law. In each case, the procedural question involved a

burden of proof to the Chair placed on the proponent of the bill or amendment, as the case may be, that the language did not require actions, investigations, findings, or other new duties beyond those required by existing law. This was most recently demonstrated in 2012 where language in the bill was held to impose new duties on Federal officials to determine the "semi-professional" status of potential recipients of an appropriation.

Permissible Limitations on the Use of Funds. Almost continuously since the 44th Congress at the insistence of Rep. John Quincy Adams in 1835, the rules have contained language forbidding the inclusion in general appropriation bills of unauthorized appropriations, to which was added in 1880 the prohibition against any provision changing existing law (4 *Hinds' Precedents* § 3578). Rule XXI clause 2 contains two exceptions from the restriction against "legislation": (1) the "Holman rule" permitting germane provisions that "retrench" expenditures and (2) rescissions of previously enacted appropriations. The distinction permitting "limitations" which do not constitute "legislation" in general appropriation bills or in amendments thereto was established by precedent over many years (primarily by numerous rulings of chairmen of the Committee of the Whole). The term "limitation" did not textually appear in clause 2 until 1983, when the House first required most limitation amendments to be offered only at the conclusion of the reading of a general appropriation bill for amendment, and then only if the Committee of the Whole did not adopt a preferential motion by the Majority Leader or his designee to rise and report the bill to prevent such amendments from being offered.

Construing Existing Law or Terms of Bill; Repealing Existing Law. Provisions prescribing rules of construction were held to constitute legislation, such as a prospective rule of construction for possible tax enactments in 2000 or a declaration of the meaning of a limitation in 1988. The mere recitation that a determination is to be made pursuant to existing laws and regulations, absent a citation to the law imposing such responsibility, was held not to be sufficient proof provided by the amendment's proponent in 1986. Language waiving provisions of existing law was ruled out as legislation in 1996 and in 2000, as was language repealing existing law in 2006. Amendments proposing to increase budget authority and to offset that increase by proposing a change in the application of the Internal Revenue Code (to increase revenues) were held to constitute legislation on several occasions in 1999 and in 2003.

Authorizing or Budget Scorekeeping Statute as Permitting Certain Language in Appropriation Bill. Certain limitation amendments are permissible under Rule XXI clause 2(c) during the reading of the bill because "specifically contained or authorized in existing law for the period

of the limitation." Requirements of budget enforcement laws were enacted contemplating the inclusion of legislative scorekeeping language. For example, a proposal to designate an appropriation as "emergency spending" within the meaning of the budget-enforcement laws (or so designated under provisions of a budget resolution), was on several occasions held to be legislative in character (1999 through 2005). Similarly, a provision containing an averment necessary to qualify for certain scorekeeping under the Congressional Budget Act was conceded in 1989 to be legislation, even though the Budget Act contemplated that expenditures may be mandated to occur before or following a fiscal period if the law making those expenditures specifies that the timing was the result of a "significant" policy change.

Provisions Affecting or Affected by Funds in Other Acts. Rules changes and rulings have related to the rescission of previously appropriated funds, either in the committee bill or in amendments thereto. The last sentence of clause 2(b) was added by statute in 1985 to permit legislation in a reported general appropriation bill which proposed to rescind funds appropriated in previously enacted appropriation acts, but not enacted in other non-appropriation laws such as contract authority, or a loan guarantee program. An amendment proposing such a rescission was held to be legislation in violation of clause 2(c) in 1993. A provision constituting congressional disapproval of a deferral of budget authority proposed by the President under the Impoundment Control Act was held not in order in 1982 if contained in a general appropriation bill rather than in a separate resolution of disapproval under that act. An amendment limiting funds in the bill to the extent provided in subsequently enacted authorization law was also ruled out in 2005 as it assumed and incorporated possible future legislation. The words "no funds in this or any other Act may be used . . ." reiterated prior rulings that the limitation was not confined to funds in the bill and was legislation in 2012.

Transfers of Funds in the Same Bill; En Bloc Offsetting Amendments (to the pending paragraph as well as to a subsequent paragraph). Rule XXI clause 2(f) was added in 1995 to permit "reach-ahead" amendments *en bloc* which amend portions of the general appropriation bill not yet read for amendment, so long as the increases or decreases of budget authority and outlays proposed by the offsets were either neutral or netted to reduce those levels. The proponent of the amendment carried the burden of proof which was particularly difficult to meet when measuring outlay neutrality, since the text of the bill itself did not provide outlay levels and must be determined by extrinsic evidence as to "rates of spend-out." Thus the offset amendments often reduced more budget authority than was increased in the *en bloc* offset counterpart, in order to neutralize outlay levels

(as estimated by the Committee on Appropriations) during the covered fiscal year. The clause did not permit "reach-back" *en bloc* offsets to paragraphs passed in the reading, nor did it permit increases in amounts beyond authorized levels in 1999. The Chair queried for points of order against provisions of a bill not yet read when they are addressed by an offsetting amendment under clause 2(f) in 2005 as the text of the unread paragraph which may be subject to a clause 2 point of order must be known before amendments may then be considered. Such *en bloc* offsetting amendments may not, however, include legislative authority to make transfers, but may only directly increase or decrease amounts.

Extended Availability of Funds Prior to or Beyond the Fiscal Year. In 2006, language permitting funds to remain available until expended or beyond the fiscal year covered by the bill was held to be legislation where existing law does not permit such availability. Permitting funds to be available immediately upon enactment before the fiscal year covered by the bill (in 1986 and in 1988), to be available to the extent provided in advance in appropriation acts although not explicitly beyond the fiscal year in question (in 1981), or setting a floor on spending that is not established by existing law (in 2003), were all ruled out as changes in existing law. A proposal to amend existing law to provide for automatic continuation of appropriations in the absence of timely enactment of a regular appropriation bill constituted legislation in 1996.

Mandating Expenditures. Several amendments emerged in the form of limitations but comprised a textual "double negative" (the coupling of a denial of an appropriation with a negative restriction on official duties). Those efforts have been stated by the Chair to be "suspect" if resulting in an affirmative direction or statement of intent mandating the expenditure of funds and therefore tantamount to legislation. Thus, in order to carry the burden of proof on an amendment proposing a double negative, a Member must be able to show that the object of the double negative is specifically contemplated by existing law and may not result in an affirmative direction or statement of intent (*e.g.*, 2003). A provision to limit funds to officials who would prohibit the obligation of funds up to a specified amount for an unauthorized transportation project (thereby effectively authorizing an unauthorized project in 1993); an amendment to limit funds to prohibit projects that promote the participation of women in international peace efforts, such promotion not specifically contemplated by law in 2003; and an amendment to limit funds to officials who would prohibit the establishment of an independent commission not contemplated by existing law in 2003, were all ruled out as legislation. A provision that elevated existing guidelines to mandates for spending was legislation in 1989. A provision that mandated

a distribution of funds in contravention of an allocation formula in existing law was legislation in 1995, as was an amendment that mandated that not less than a certain sum "should" be allocated in 2006. A provision requiring States to match funds provided in an appropriation bill was ruled out where existing law contained no such requirement in 1993. However, where existing law prescribed a formula for the allocation of funds among several categories, an amendment merely reducing the amount earmarked for one of the categories was held not to be legislation in 1995 as it did not textually change the statutory formula.

Beginning in 1983, the only "limitations" permitted during the reading for amendment (not to be preempted by the preferential motion to rise and report) were those which were "specifically contained or authorized in existing law for the period of the limitation." This narrow exception has been strictly construed to apply only where existing law contemplated the inclusion of annual language of limitation in an appropriation bill on the availability or use of funds (*e.g.*, limits on the amount of new contract, borrowing and credit authority in advance in annual appropriation acts contemplated by section 401(a) of the Congressional Budget Act). In 2000, the tendency of a limitation to change existing law was measured against the state of existing law "for the period of the limitation," such that the presence of the same limitation in the annual bill for the previous fiscal year did not justify its inclusion the following year.

A limitation amendment prohibiting the use of funds for certain construction if not subject to a project agreement was held not in order in 1988 during the reading, even though existing law directed Federal officials to enter into such project agreements, since limitation amendments merely alleging consistency with existing law, but not required for inclusion in appropriation acts for the period of the limitation, must await the end of the reading of the bill. An amendment expanding a limitation already in the bill was not in order in 2003 during the reading unless merely "perfecting," but was required to await the end of the reading.

It was held in order by way of limitation to deny the use of funds for implementation of currently promulgated regulations, such as: a precisely described Executive Order in 1977; a regulation described as having been promulgated pursuant to court order and constitutional provisions in 1980; an existing Internal Revenue Service ruling in 1979; and changes to a set of overtime compensation regulations in existence on a given date so long as not requiring administration of superseded regulations in 2004.

The fact that a limitation may indirectly interfere with an executive official's discretion by denying the use of funds was held not to destroy the character of the limitation where it did not otherwise amend existing law

and was precisely descriptive of functions or findings already required by law. Thus a limitation precluding funds for Federal agencies to file specified motions in civil litigation (all matters of public record and therefore known to responsible intervening Federal officials), was held a proper limitation in 2001.

Limitation on Total Amount Appropriated by Bill. Standing orders adopted beginning in the 110th Congress (and continued into the 113th Congress) enabled a point of order against motions that the Committee of the Whole rise and report appropriation bills back to the House in excess of the appropriate 302(b) allocation. If such a motion were defeated, one "proper" amendment bringing the bill into compliance was permitted, as well as pro forma amendments by the chairman and ranking minority member of the Committee on Appropriations.

Funding Floors; Transportation Obligation Limitations. Enactment of section 8101(3) of the Transportation Equity Act for the 21st Century in 1999 (Pub. Law No. 105–178) added Rule XXI clause 3 to preclude consideration of a measure or amendment thereto that would cause obligation limitations to be below the level for any fiscal year set forth in section 8103 of that law for highway or mass transit spending. Later that year, the Omnibus Consolidated and Emergency Supplemental Appropriations Act included the following provision: "Sec. 108. For the purpose of any rule of the House of Representatives, notwithstanding any other provision of law, any obligation limitation relating to surface transportation projects under that law (SAFETEA-LU; Pub. L. No. 105–178) shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within State program allocations." In keeping with standard statutory analysis, clause 3 and the subsequently enacted appropriation law were interpreted as not mutually inconsistent. In 2005, clause 3 was amended to conform the rule to the current law, which also provided that for the purposes of clauses 2 and 3 of Rule XXI it shall be in order to transfer funds, in amounts specified in annual appropriation acts to carry out SAFETEA-LU from the Federal Transit Administration's administrative expenses account to other mass transit budget accounts by law. In 2006, an amendment to an appropriation bill limiting funds for a transportation project (1) that was part of an aggregate, annual level of obligations limitation set forth in the cited law, (2) that was not covered by the "past practice" assumption, and (3) the funding for which could not be redirected elsewhere in the program, was ruled out as causing an obligation limitation to be below the minimal funding level required by clause 3. All of these exercises in rulemaking reflected an ongoing dispute

between the authorizing committee (Committee on Transportation and Infrastructure) which uniquely considered as its sole jurisdiction the inclusion of contract authority transportation spending, and the Committee on Appropriations, which defended its prerogative to appropriate annual contract-liquidating and administrative funds from the U.S. Treasury as well as to include annual negative limitations in general appropriation bills or amendments thereto denying funding for specific transportation projects. What emerged was a rule permitting the authorizing committee to set overall minimal floors on transportation spending below which an appropriation bill could not venture, in order to be in compliance with overall spending priorities enacted into law. At the same time, the Committee on Appropriations retained the traditional authority to limit expenditure of funds on specific projects so long as that amount could be reallocated to other projects in the same State and the total obligational floor was not violated. In 2000, the chairmen of the authorizing committee and the Committee on Rules inserted in the *Record* correspondence concerning points of order under clause 3. In the 112th Congress, the rule was amended to apply only to bills and resolutions, but not to floor amendments and to entirely shift the focus of the clause instead to diversions of amounts from the Highway Trust Fund for unauthorized purposes.

A similar minimal obligation floor for aviation programs was enacted into law in 1999 (49 USC § 48114) reported by the authorizing Committee on Transportation and Infrastructure as an exercise in rulemaking (although not directly amending Rule XXI clause 3), establishing points of order to guarantee certain prescribed levels of budget resources available from the Airport and Airway Trust Fund for several fiscal years, to restrict the uses of those resources, and to guarantee a certain level of appropriations for several fiscal years. That law was extended to 2007 and in 2012 again until 2015 under reduced floor levels.

Spending Reduction Accounts. Adoption of a standing order (section 3(j) of H. Res. 5) in 2011 required the inclusion of "lockbox" accounts in all general appropriation bills as the last section thereof, such sections not being subject to a point of order as containing legislation. The order permitted indivisible amendments *en bloc* if not containing legislation to reach ahead in the reading to reduce amounts of budget authority and to place reduced amounts in that account, and permitted the chairman of the Committee on Appropriations to add or modify such section in reporting the bill to the House.

In sum, several changes in the standing rules and orders in 2011 made it easier for individual Members to offer floor amendments to general appropriation bills to reduce but not to increase budget authority. They included

the standing order provided by section 3(j)(3) of H. Res. 5 which restricted any amendments proposing an increase in budget authority whether or not headroom existed under section 302(b) allocations. There were several rulings in 2011 which sustained points of order against amendments or motions to recommit which netted to an increase in spending over the level in the bill as "persuasively" estimated by the chairman of the Committee on the Budget. Under the standing order provided by section 3(a)(4) of H. Res. 5 in 2011 (carried forward from previous Congresses), a motion restricting the ability of the Committee of the Whole to finalize action where the bill exceeded the relevant section 302(b) allocation and permitting one amendment to conform to that allocation was made in order. As amended in 2011, floor amendments could reduce appropriations for highway and mass transit programs from the Highway Trust Fund below the obligational floor formerly protected in an earlier version of Rule XXI clause 3.

Chapter 27—Amendments.

The chapter of *Deschler's Precedents* currently comprising volume 9 extends through 1986. Rulings, practices, and forms from that date interpreted Rule XVI clause 6 (recodified from Rule XIX in 1999) and Rule XVIII clause 5 (the "five-minute rule"), as well as Section XXXV of *Jefferson's Manual* (Amendments). Rulings from the Chair interpreting those provisions were fewer in number since 1986 (and since the mid-1990s) than theretofore, both in the House and in Committees of the Whole. This trend was primarily based upon increased utilization of special orders reported from the Committee on Rules which "structured" the amendment process, often prohibiting the offering of amendments altogether or prescribing the precise order of consideration and voting on amendments regardless of their form, waiving the reading of the bill for amendment and the reading of amendments. At the same time, those "modified-closed" rules normally waived points of order against the amendments which were being made in order, thereby obviating rulings from the Chair as to their propriety. Much of this strategy was in the interest of promoting certainty of time, subject matter, and chances of final passage. Such structured special orders normally prohibited second-degree amendments, substitutes and amendments to substitutes (otherwise contemplated by Rule XVI clause 6) so that the once-traditional practice regarding the "filling of the amendment tree" was avoided on the floor. This was not the case in standing committee markups where only unanimous-consent agreements and not special orders or motions were in order to change the amendment process contemplated in the standing rules. The continuity of debate and votes on amendments was often disconnected once discretionary authority was conferred upon the chairman of the

Committee of the Whole to postpone and cluster requests for recorded votes on amendments.

During this period, preprinting requirements for amendments became more commonplace. Discretionary priority was also regularly stated in "open" special orders for recognition of Members printing their amendments in the *Congressional Record*, but went largely unobserved. The numbering of preprinted amendments was required to be in the order submitted in 1995. Some special orders such as "modified-open" rules carried some form of preprinting requirement, while not otherwise structuring the amendment process under the five-minute rule. Preprinting under a "modified-closed" rule was not a separate requirement, as it was accomplished by printing in the Committee on Rules report and then incorporated by reference in the special order.

Pro Forma Amendments for Debate. There was a gradual decline in usage of pro forma amendments, as special orders or unanimous-consent agreements governing the consideration of most bills in the Committee of the Whole increasingly structured all debate on amendments between a proponent and an opponent. This set aside the five-minute rule and often permitted only the manager(s) of the bill to offer pro forma amendments for the purpose of debate to obtain additional time, either during the pendency of a substantive amendment or when no amendment was pending. Despite the decline in the use of pro forma amendments to garner debate time, there have nevertheless been additional rulings regarding priority for recognition (as between pro forma amendments and substantive first- or second-degree amendments), the inability to reserve time on a pro forma amendment, and the Chair's role in alternating recognition between the majority and minority parties to offer pro forma amendments (rather than between sides of the question). A Member recognized on a pro forma amendment may not allocate or reserve time, though he may in yielding indicate to the Chair when he intends to reclaim his time, as in 1987 and in 1994.

Effect of Special Rule; Amending Special Rule. Special orders reported from the Committee on Rules and adopted by the House become the arbiter (subject to subsequent special orders or unanimous-consent orders) as to whether the standing five-minute rule (Rule XVII clause 5 and Rule XVI clause 6) would govern the amendment process on a particular measure in the Committee of the Whole. The term "modified-closed" or "structured" rule has come to describe the circumvention, in whole or in part, of the standing rule which otherwise guaranteed the offering of germane amendments, amendments thereto, substitutes therefor and amendments to substitutes, at the appropriate place in the reading of the measure.

A number of rulings in 1993 upheld the authority of the Committee on Rules to report special orders which expedited the amendment process, by

inclusion of the "hereby" or "self-executed" adoption of a Senate amendment, by the adoption of an amendment containing an appropriation on a legislative bill or containing legislation on a general appropriation bill, or providing that an amendment (whether or not germane) be considered as adopted in the House (and in the Committee of the Whole) when the bill was under consideration. The "self-execution" of amendments technique considerably expedited the amendment process in contravention of the five-minute rule, preventing the need for separate consideration and votes on amendments to the pending bill text in both the Committee of the Whole and in the House. Such amendments changed original text immediately upon adoption of the special order and prior to further consideration. Once adopted, the text so inserted was not read for subsequent amendment unless the special order so provided, as in 2002. Varying forms of special orders provided that in lieu of a reported committee amendment in the nature of a substitute printed in the bill, a specified amendment in the nature of a substitute included in the accompanying Committee on Rules report (often a compromise result of leadership negotiations) would be read as an original bill for amendment under the five-minute rule, or would be considered as adopted and then subject to further amendments.

The Committee of the Whole may not even by unanimous consent substantively restrict the offering of amendments in contravention of a special rule adopted by the House. Section 993 of the *House Rules and Manual* contained a long series of rulings by chairmen of the Committee of the Whole regarding attempts to change the procedures for consideration, debate and voting on amendments—all in support of the proposition that the Committee of the Whole cannot change procedures imposed by the House through a special order. Unanimous-consent orders (such as "universes of amendments" on appropriation bills) imposed by the House, like special orders, govern the subsequent Committee of the Whole amendment process and prevent substantive modifications there, whereas bills considered under the standing five-minute rule are subject to certain unanimous-consent modifications in the Committee of the Whole since the House has not imposed superseding orders.

A 1990 ruling permitted the member of the Committee on Rules calling up a privileged resolution on behalf of the committee to offer a (germane) amendment without the specific authorization from that committee. That ruling expedited leadership decisions on a variety of special orders by not requiring the Committee on Rules to formally meet again.

Priority of Recognition; Points of Order; Reading for Amendment. Rulings throughout this period reaffirmed certain principles regarding the amendment process related to priority of recognition to offer amendments,

the interaction between points of order and the offering of amendments, and the restrictions imposed when reading a bill by paragraph or section. For example, the traditional practice in the House, notwithstanding the Chair's unappealable power of recognition, of alternating recognition for offering amendments between the majority and minority parties (unless a special order prescribes a specified order for amendments) was adhered to, with priority for committee members in 2000. The general principle that points of order must be raised or reserved prior to debate on an amendment (or prior to the offering of an amendment if raised against the portion of the bill to be amended) was also reiterated in rulings from 1997 and 2004. A timely reservation of a point of order by one Member inured to the benefit of any other Member, as in 1990. Amendments may not be offered to text not yet read for amendment, or portions already passed in the reading, though unanimous-consent requests to waive this principle were agreed to in 2001. However, Rule XXI clause 2(f) permits *en bloc* consideration of amendments to a portion of an appropriation bill not yet read if the combined effect does not increase budget authority and outlays.

A Member recognized under the five-minute rule may not yield to another Member to offer an amendment, or yield blocks of time. While the Committee of the Whole may limit debate on amendments where the House has not imposed a time limitation, it may not restrict the offering without debate of amendments in contravention of a special order adopted by the House, as in 1985.

Offering Particular Kinds of Amendments; Priorities. Several rulings reinforced principles of the precedence of certain amendments depending on their form. For example, motions to strike were held in abeyance pending consideration of amendments to perfect the paragraph in 1992, 1995, and 1999. While perfecting amendments were pending to a section, a motion to strike it out could not be offered and if the motion to strike was first offered, it could be voted on so long as the provision sought to be stricken was not rewritten entirely, as in 1988 and in 1995. Conversely, where a motion to strike out was pending, it was in order to offer an amendment to perfect the language proposed to be stricken in 1996.

A rule was added in 1995 (Rule XVIII clause 11) by the Unfunded Mandates Reform Act permitting an amendment in the Committee of the Whole proposing only to strike an alleged unfunded mandate from the pending portion of the bill unless precluded by "specific" terms of a special order of the House. This rule was included as a further safeguard against inclusion of unfunded mandates, in addition to the unfunded mandate point of order and subsequent vote on the question of consideration of the bill. In 2005, that rule was held to permit a motion to strike out an alleged unfunded mandate

despite adoption of a special rule prohibiting amendments generally, where the special order did not specifically preclude such an amendment. On that occasion, the House had voted to consider a special order waiving all points of order (including unfunded mandates) against consideration of the bill, as permitted by section 425 of the Congressional Budget Act. Yet the lack of specific language in that special order prohibiting a motion to strike allowed that amendment to be offered, and subsequently led to use of "closed" or "modified-closed" special orders which specifically precluded motions to strike under Rule XVIII clause 11 until it was eliminated in 2011 as redundant.

Order of Consideration. Postponement and clustering of requests for record votes on amendments in the Committee of the Whole, were first permitted on an *ad hoc* basis by special orders of business and then permitted by standing rule (Rule XVIII clause 6(g)) in 2001. Absent authority conferred by special orders on the Chair prior to that date, unanimous consent in Committee of the Whole to permit clustering and postponement was not in order in 1995 and in 1998, and use of that authority when conferred was entirely within the discretion of the Chair in 1998. The Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending in 2000. Where further proceedings were postponed on the perfecting amendment, debate could continue on the underlying motion to strike in 1999.

Debating Amendments. The Member recognized during the five-minute debate may not yield blocks of time unless remaining on his feet (*e.g.*, 1998). In 1990, where debate on an amendment was limited or allocated by special order to a proponent and an opponent, the Members controlling the debate could yield and reserve time, whereas debate time on amendments under the five-minute rule could not be reserved.

The adoption of Rule XVII clause 3(c) in 1999 codified a variety of precedents that the manager of a bill (or reporting committee representative) defending the committee position, and not the proponent of an amendment, has the right to close controlled debate on an amendment. Section 959 of the *House Rules and Manual* documents many rulings under that rule which generally assured a manager in opposition to an amendment the right to close, as long as the final manager was part of an unbroken chain of committee managers in opposition. The Chair assumed that the manager of a measure was representing the committee of jurisdiction even where the measure called up was unreported in 1996 and in 1998, where an unreported compromise text were in order as original text in lieu of committee amendments in 1995, or where the committee reported the measure without recommendation in 1997. On the other hand, proponents of amendments

were permitted to close where the opposing Member did not derive that status as a committee manager in opposition. The Committee of the Whole may by unanimous consent (but not by motion) limit and allocate control of time for debate on amendments not yet offered, as in 1998.

Effect of Consideration or Adoption; Changes after Adoption. Rulings updated established principles regarding the effect of adoption of certain amendments on the subsequent offering or pendency of other amendments. In the 1990s, rulings affirmed the basic notion that amendments to portions already amended are not in order, unless also amending previously unamended portions as well. Two amendments to strike a section and insert alternative language may be pending simultaneously where the vote on the first has been postponed, and if both amendments were adopted, the second would supersede the first. In 2002, it was ruled that an amendment "self-executed" by the adoption of a special order was not subject to an amendment seeking to strike that provision.

Amendments in the Nature of a Substitute. With respect to concurrent resolutions on the budget, the House has since 1980 adopted special orders which permitted only designated amendments in the nature of a substitute, but not perfecting amendments under procedures permitting their consideration notwithstanding prior adoption of another such substitute amendment. On one occasion, the House adopted "Queen of the Hill" procedures making in order several amendments in the nature of a substitute regardless of the prior adoption of any such amendment, and providing that only the amendment receiving the greatest number of votes would be reported to the House, if offered to a proposed constitutional amendment for a balanced budget. On other occasions, "King of the Hill" procedures provided that the last such amendment adopted in the Committee of the Whole to a concurrent resolution on the budget would be reported to the House, regardless of the number of votes received on previously adopted amendments. Another variation permitted the offering of the Committee on the Budget's reported version as an amendment to be offered last regardless of the adoption of a prior amendment, in order that the committee version would receive the final potentially superseding vote. These procedures proved problematic and the House reverted back to "regular order" special orders providing that adoption of any amendment in the nature of a substitute would preclude the offering of any other such amendments made in order on budget resolutions (see chapter 41 of *Deschler's Precedents*).

Amendments Pertaining to Monetary Figures. In recent practice, an amendment in an appropriation bill may be indirectly changed by inserting a parenthetical "increased by" or "decreased by" after the amount rather than by directly changing the number, in order to avoid being preempted

by the adoption of a direct amendment to the figure and to consider issues reflected in an amount which might be unrelated to other issues also subsumed in that amount.

Effect of Rejection; Equivalent Questions. The vote on an amendment as amended by a substitute was held in 1987 not equivalent to a direct vote on the reoffered original amendment if it would amend a different portion of the bill and not merely change a portion already amended. An amendment considered with others *en bloc* and rejected may be offered separately at a subsequent time, as in 1991.

House Consideration of Amendments Reported from Committee of the Whole—Demand for Separate Votes. Special orders were adopted beginning in 2009 which prohibited demands for separate votes on sundry amendments reported from the Committee of the Whole, requiring that they be voted upon *en bloc* in the House, thereby rendering separate reconsideration in the House inapplicable. That on one occasion (in 1996 on demand of a single Member) the House had conducted separate votes on 27 amendments reported from the Committee of the Whole may have temporarily prompted this response to avoid unforeseen delays, although it eliminated traditional separate reconsideration in the House upon demand in the order appearing in the bill. The restriction was discontinued beginning in 2011.

Order of Consideration. When demand could be made for separate votes in the House on several amendments adopted in the Committee of the Whole, the amendments were voted on in the House in the order in which they appeared in the bill in 1987 and in 1997, except when amendments were considered under a special rule prescribing the order for their consideration (the modern practice), in which case they were voted on upon demand in the order in which considered in the Committee of the Whole in 1993. Where a special rule "self-executes" an amendment as a modification of an amendment in the nature of a substitute to be considered as an original bill, that modification is not separately voted on upon demand in the House.

Additional rulings which reiterated that recommittal motions to change amendments reported from the Committee of the Whole and adopted by the House were in order under special rules permitting the motion "with or without instructions" in 1989 and in 1995.

Chapter 28—Germaneness of Amendments.

Volumes 10 and 11 of *Deschler-Brown Precedents* covered rulings on the question of germaneness of amendments from 1928 through the 100th Congress in 1988. The reader will also be able to refer to chapter 26 of *House Practice* (2011) and to sections 928–940 of the *House Rules and Manual* for citations to germaneness rulings more recent than those in this compilation.

The incidence of germaneness rulings declined as the result of the increased use of "modified-closed" or "structured" rules reported from the Committee on Rules. Amendments made in order under structured special orders, whether or not germane, ordinarily were protected by waivers of points of order, and were not amendable in turn. This diminished the opportunity for points of order and rulings by the Chair. Points of order against nongermane Senate matter in conference reports and against nongermane House amendments to Senate amendments were likewise not entertained, as special orders routinely waived all points of order against most conference reports and motions to amend Senate amendments. Some obviously nongermane amendments ruled out of order provoked record votes on appeals for political reasons. Otherwise, the progression of germaneness precedents reflected a continuity with past rulings rather than a departure therefrom. The constant and increasing advice rendered to the Committee on Rules and Members privately by the Parliamentarian as to the germaneness of amendments proposed to be made in order remained consistent with those precedents.

Motions to recommit, on the other hand, became the object of numerous points of order decided on the question of germaneness, since those minority motions were not required to be noticed in advance and were not protected by waivers of points of order. Some of those rulings reaffirmed that the test of germaneness of a motion to recommit is the relationship between the motion and the bill as a whole as modified by the House to that point, whether or not the motion suggested specific language or merely directed a committee to report back "promptly" on a described subject matter (a motion not permitted beginning in 2009), as in 1991, 1993, and 1996.

The PAYGO rule (Rule XXI clause 10) requiring revenue increases or spending offset provisions to be included in bills which increased direct spending (from its inception in 2007 until replaced by CUTGO in 2011) meant that on the question of the consideration of such direct spending bills (other than appropriation bills), the bills must contain offsets (either revenue increases or other spending reductions) in order not to require a waiver of that point of order. The resulting change in the breadth of the bill (to escape points of order) into one which sometimes contained totally unrelated provisions, however, greatly broadened the test of germaneness to be applied at the stage of motions to recommit with instructions, since the offsetting language if already part of the bill usually bore no relationship to the spending portion of the text other than to comply with the PAYGO rule.

Thus on several occasions, the Speaker exercised the authority now contained in Rule XIX clause 1(c) to postpone further consideration of such a bill pending the offering of a previously unnoticed and politically problematic motion to recommit. This obviated the need for rulings on the germaneness of the motions (which might have been germane to the bifurcated bill as a whole although unrelated to any particular portion of the bill).

In the 111th Congress, the PAYGO rule was amended to provide that offsetting measures to comply with that rule could be considered separately pursuant to a special order which then merged the nongermane text into the spending bill following final passage of both bills, to be scored as an offset while not broadening the test of germaneness beyond the separate texts of each bill. The ordinary rationale underlying the requirement of germaneness—that unanticipated and unrelated issues not be offered as amendments—had become diminished on bills containing so many unrelated propositions that there no longer was applicable the normal requirement that the amendment relate to at least some portion of such a bill or even to a common thread among all its provisions. That trend was clearly demonstrated in 1996, where to a bill amending an unrelated variety of existing laws within the jurisdiction of several committees, a motion to recommit conditioning the availability of fees under another law within the jurisdiction of one of those committees upon the status of minimum wage payments under a law not within any of those committees' jurisdictions was held germane as a discernible measure which did not directly or indirectly amend the latter law. The dilemma reflected by this unusual line of precedent and the consequent emasculation of the germaneness test, where the pending text was a combination of several unrelated provisions, remained unresolved. It was exacerbated by the growing complexity and diversity of bills pending before the House in recent Congresses in order to reach political compromises by combining otherwise unrelated provisions to meet statutory deadlines.

A special order directing that certain matter be added to the engrossment of a bill, by not operating until after passage of that bill, did not broaden the germaneness test for recommittal motions on each bill in 2008. The same impact under the germaneness rule remained in 2011, after the PAYGO rule became the CUTGO rule, permitting two engrossments to be merged into one to take advantage of offsetting spending cuts (but not revenue increases) after passage.

Introduction and Proposition to Which the Amendments Must Be Germane. A ruling in 2000 reiterated that the burden of proof was on the proponent of an amendment under the germaneness rule. A significant ruling on the applicability of the germaneness rule occurred in 1993 relating to the original text of "hereby" or "self-executing" special orders reported from the Committee on Rules providing for the immediate adoption of nongermane amendments upon adoption of the special order itself and prior to consideration of the measure being so amended. Rule XVI clause 7 (the germaneness rule) was held not to apply to such a special order, since the amendment was in the text of the resolution and not separately before the

House as an amendment thereto during consideration of the special order. Nor did a germaneness point of order lie subsequently during consideration in the House and in the Committee of the Whole, the amendment already having been adopted at that point.

The precedents generally reaffirmed the principle that one must first examine the breadth, purpose and jurisdictional basis of the underlying text being amended before venturing an opinion as to the germaneness of an amendment thereto. If a title within a bill is open to amendment at any point, the germaneness of an amendment perfecting one section therein depended on its relationship to the title as a whole and not merely to that one section in 1991.

The test of germaneness of an amendment offered as a substitute for a pending amendment is its relationship to the pending amendment and not to the underlying bill (*e.g.*, 1995). A motion to recommit must be germane even though its instructions do not propose a direct "forthwith" amendment but merely direct the committee to pursue an unrelated approach, as in 1991 (a form not permitted beginning in 2009 under Rule XIX clause 2(b)(2)).

General Relationship to the Subject Matter under Consideration. A number of rulings on motions to recommit were appealed despite their obvious correctness (*e.g.*, 2011, where to a joint resolution disapproving an agency regulation, a new section providing instead for the continuation of appropriations for the entire government was not germane).

Committee Jurisdiction of Subject Matter as Test. A number of rulings based upon committee jurisdiction over the subject of the amendment were also sustained on appeal, where the underlying bill was clearly within another committee's jurisdiction. These rulings were based on the premise that the measure to which offered was not so diverse as to diminish application of the committee jurisdiction test. One variation involved a diverse bill addressing unrelated programs within the jurisdiction of six committees, where a motion to recommit to condition applicability of another (unamended) law within the jurisdiction of one of those committees (only during periods when the minimum wage was at certain levels) was held in 1996 to be merely a discernible measure of availability and not an amendment to a law not within the jurisdiction of any of the committees with provisions in the bill.

Fundamental Purpose of the Amendment as Test. A historic ruling was the determination in 1998, sustained on appeal, that to a resolution impeaching the President (a constitutionally prescribed remedy toward removal from office), an amendment in the form of a motion to recommit censuring the President in lieu of impeachment had the fundamentally different purpose of punishment or opprobrium—a sanction not contemplated

in the Constitution—and was not germane. To a bill providing a temporary extension of government borrowing authority, an amendment accomplishing the same purpose by permanently raising the statutory debt ceiling was held germane in 1987 since both were based on projections of borrowing under which an increase in the debt ceiling would provide a necessarily temporal extension of such authority.

Several precedents focused on whether the amendment accomplished the purpose and result of the bill by a closely related method (*e.g.*, 1990, 1995, 1999, 2001, and 2002).

An individual proposition is not germane to another individual proposition, even of the same class. In section 9 of chapter 28, additional precedents affirmed that amendments enlarging the scope of the underlying specific or limited proposition are not germane. Noteworthy was the ruling in 2007 sustained on appeal that to a measure continuing appropriations for the current fiscal year for a specified period (eight days), an amendment making certain funds available beyond such delimited period for the entire fiscal year was not germane. This ruling took cognizance of the fundamental purpose of the bill as uniformly temporal, pending enactment of a further continuing resolution or full fiscal year appropriations, while the amendment variably addressed the full fiscal year beyond the temporary confines of the bill.

Specific amendments may be germane to broader or more general propositions of the same class. An example was a ruling in 1996 that to a bill addressing violent crimes, an amendment addressing a subset of that category (violent crimes involving the environment) was germane. To a Senate amendment covering a certain class of borrowers, a proposed House amendment redefining borrowers of the same class was held germane in 1987.

There were several rulings on the germaneness of amendments to appropriation bills, depending in part on whether the amendment was in the form of a limitation and was confined to the fiscal year covered by the bill, or was more permanent in scope as relating to "funds in this or any other act." Those rulings were at times also based on whether the amendment was legislation on an appropriation bill in violation of Rule XXI clause 2. An amendment in the form of a limitation on an appropriation bill restricting funds therein for activities unrelated to the functions of departments covered by the bill was held not germane in 2000.

Section 17 of chapter 28 covers precedents on the application of the germaneness rule to particular propositions, as to special orders of business providing for consideration of legislation. While no specific germaneness rulings in addition to those in 1980 and in 1982 were made (as the previous question was always ordered on special rules from the Committee on Rules

so as to preclude the offering of amendments), many debates on special orders focused on the minority party's attempt to offer amendments which would have waived germaneness and other points of order against the subsequent offering of amendments to the bill being made in order. Debates proposing alternative agendas were on several occasions ruled to be unrelated to the subject matter of the pending special order, but more often those debates were tolerated by failure to make relevancy points of order. An amendment waiving germaneness points of order against an amendment to be subsequently offered to the bill would itself normally be nongermane to the special order, unless that special order already sufficiently broached the issue of germaneness waivers on a sufficient variety of amendments.

Instructions in Motion to Recommit. A ruling in 1996 reiterated the proposition that the test of germaneness in a motion to recommit a bill with instructions was its relationship to the bill (amending an unrelated variety of laws) as a whole and not necessarily to any one portion thereof.

Amendments Providing Conditions or Qualifications. A ruling in 1993 determined that to a bill authorizing Federal funding of certain qualifying state programs, an amendment restricting the payment of Federal funds in a bill to States that enact certain laws relating to the activities being funded was germane. This ruling further enforced the line of precedent that the contingency must be related as a benchmark to the matter being authorized or restricted, and that it not require enactment or amendment of a separate law. A ruling in 2007 held that an amendment conditioning authorizations for one agency on appropriations for another agency was an unrelated contingency. To a bill naming an airport, an amendment conditioning the naming on approval by an entity without jurisdiction over the supervision of the airport was held not germane in 1998. To a bill relating to information to be furnished to the House, an amendment imposing relevant conditions of security on the handling of such information in committee for the period covered by the bill was held germane in 1991. To a bill imposing conditions on the granting of congressional consent to an interstate compact, an amendment stating an additional related condition while not directly amending the compact was held germane in 1997.

Relation of Amendment or Bill to Existing Law. To a bill proposing a temporary change in law, an amendment making permanent changes in that law was held not germane in 1991. A similar ruling in 2008 reaffirmed that to a temporary authorization bill prescribing the use of an agency's funds for two years, an amendment permanently changing the organic law governing that agency's operations was not germane. To a bill amending one law, an amendment changing the provisions of another law or prohibiting assistance under any other law was not germane in 1992. Conversely, to a

bill authorizing funding for the intelligence community for one year and also making diverse changes in permanent laws relating thereto, an amendment changing another permanent law to address accountability for intelligence activities was held germane in 1990. To an amendment adding sundry punitive sections to the Federal criminal code, an amendment creating an exception to the prohibition of another such section was held germane in 1991.

Chapter 29—Consideration and Debate.

Points of Order Against Consideration. In 2011, Rule XXI clause 11 was added to prohibit consideration of unreported bills and joint resolutions unless available (in electronic form) for three calendar days. In 2011, an unreported bill was held eligible on the third day electronically available (not counting weekends) to mirror the same restriction in Rule XIII clause 4 applicable to all reported measures.

Question of Consideration; Unfunded Mandates; Earmarks; PAYGO and CUTGO Emergency Designations. New procedures were put in place either expanding or limiting the raising of the question of consideration upon certain measures under Rule XVI clause 3 and under three new rules. For example, as most measures require consideration in the Committee of the Whole House on the state of the Union, initiation of such consideration was, by a rule change (Rule XVIII clause 2(b)) adopted in 1983, made in order upon declaration of the Speaker pursuant to an adopted special order permitting such a declaration when no question was pending. This declaration quickly became the normal method by which the House resolved itself into the Committee, replacing the use of motions and a vote of the House, thereby avoiding the question of consideration. Even some privileged business, such as general appropriation bills reported from the Committee on Appropriations, was made in order in the Committee of the Whole by the Speaker's declaration pursuant to a special rule, rather than by privileged motion, because those special rules also contained necessary waivers of points of order against consideration and against provisions in the reported bills. Frequently special orders were limited in scope to provide only for initial consideration of a measure, precluding further consideration beyond general debate absent a second special order, as in 1998.

It was held that the question of consideration, not being debatable, was not subject to the motion to lay on the table in 1994, and was not in order after the House had resolved itself into a Committee of the Whole in 2007. An affirmative vote on the question of consideration was held subject to a motion to reconsider in 1994.

Three procedures were established whereby the question of consideration was made dispositive of certain points of order. The Unfunded Mandates Reform Act of 1995 added a new part B (sections 423–426) to title IV of the

Congressional Budget Act, establishing a point of order to permit votes on whether to consider measures allegedly imposing intergovernmental mandates upon State or local governments above a specified threshold of $50 million per year. The initial vote on the question of consideration of a rule or order waiving such points of order (the question of consideration not otherwise being applicable to a special rule reported from the Committee on Rules) could be demanded and disposed of after 20 minutes of debate, prior to one hour of debate on the special order containing the waiver. It represented the first example of utilization of a specific vote on the question of consideration and limited debate to dispose of a point of order, rather than imposing on the Chair the duty of discerning the presence and amount of the intergovernmental mandate in ruling on that point of order. The rule's availability led to the repeal in 2011 as unnecessary of the standing rule permitting a separate subsequent motion to strike in the Committee of the Whole against any provision containing an unfunded mandate unless the motion was specifically rendered inapplicable.

A similar procedure related to "earmarks" (including limited tax and tariff benefits) whereby a point of order was to be resolved following 20 minutes of debate by a vote of the House on the question of consideration following the raising of the point of order was established under Rule XXI clause 9. The procedure followed the rationale underlying the Unfunded Mandates Reform Act of 1995 and established a point of order against consideration of measures for failure to disclose, or disclaim the presence of, certain defined "earmarks" with a similar mechanism for disposition of the point of order by vote of the House on the question of consideration, rather than by a ruling by the Chair. The "earmark" procedure was first put in place in the 109th Congress in 2006 as a standing order and then was added to the standing rules in 2007. That year, it was held under that clause that the point of order does not lie against consideration of an unreported measure where the chairman of the committee of initial referral has printed in the *Congressional Record* a statement that the measure contains no congressional earmarks, limited tax benefits or limited tariff benefits, or against consideration of a reported measure where the committee report contains such a statement. It was also held that the point of order is predicated only on the absence of a complying statement, does not contemplate a question of order relating to the content or sufficiency of such statement, and comes too late after consideration has begun. Where a point of order was sustained for failure of the report to designate the correct bill number, a supplemental report to correct the error was filed immediately in 2010.

Beginning in the 110th Congress, the House adopted a related standing order establishing a point of order against the consideration of conference

reports on general appropriation bills unless the joint explanatory statement contained a list of earmarks that were not committed to conference by either House in committee reports. A point of order against a rule or order waiving such provision was similarly to be decided by voting on the question of consideration of the special order. This order became Rule XXI clause 9(b)(4) in 2009.

A third procedure involved the PAYGO emergency exception designations under Rule XXI clause 10(c)(3) effective between 2007 and 2011, wherein emergency exceptions from PAYGO principles were expressly stated in bill text (not applicable to amendments) and the Chair was required on his own initiative to immediately put the question of consideration of the bill without debate and without awaiting a point of order from the floor. On one occasion in 2010, the inadvertent failure of the Chair to take the initiative to put the question of consideration on a measure containing an emergency designation was held to have been rendered moot by the vote on final passage. The rule was replaced in 2011 by the CUTGO rule which no longer contemplated revenue increases as a spending offset, or the question of consideration being automatically put by the Chair if the measure contained an emergency designation. Nevertheless, the Statutory Pay-As-You-Go Act of 2010 Act established a similar procedure that remained part of statutory law and applicable to consideration of bills containing emergency designations thereunder.

Questions Not Subject to Debate. Additional rulings affirmed that certain questions are not subject to debate, such as the motion to lay on the table and the motion to adjourn. Members may not preface the making of a motion to adjourn by remarks in justification thereof, as in 2002.

Right to Recognition; Speaker's Usages and Guidelines for Unanimous-Consent Consideration; Powers and Discretion of Speaker or Chairman. The notion that the Speaker's recognition for unanimous-consent business and debate is purely discretionary is not totally accurate beyond the unappealability of such a denial in certain situations. Additional guidelines for recognition were intended to assure that the proponent of a measure or motion holding the floor and having yielded time solely for the purpose of debate would himself not be forced to object to a unanimous-consent request by another Member to modify the matter unless he yielded for the purpose of propounding the request, but rather by not yielding would be able to prevent the request being put to the House, thereby sparing the Speaker the need to put such a unanimous-consent request to the House for disposition. For example, once the proponent of a pending motion has been recognized for debate, a unanimous-consent request by another Member to modify the motion may be entertained only if the proponent yields for that

purpose, as in 1996. In the case of motions to instruct conferees, a measure on which the previous question has been ordered without intervening motion, or on which time has been yielded under the hour rule solely for debate, another Member will not be recognized for a unanimous-consent modification without permission of the proponent of the motion.

When an order of the House made consideration of a measure in order, only a manager was recognized to bring it up in 2007. The principle that the Speaker will accord recognition only after inquiring "for what purpose does the Member rise?" was reaffirmed in 1992. For example, a Member's revelation to that query from the Chair that he seeks to offer a motion to adjourn did not suffice to make that motion "pending." Thus the Chair remained able to declare a short recess under Rule I clause 12 in 1997 and in 2003, and there was no appeal from denial of recognition for the motion to adjourn at the moment the declaration of a recess was made in 1992.

Recognition for Unanimous-Consent Requests; One-Minute and Special-Order Speeches. Changes occurred as a result of leadership efforts to assure greater predictability and certainty in the allocation of legislative and other debate time. One-minute speech allocations at the beginning of the day prior to legislative business were often limited in number by order of the Speaker. Leadership theme domination of one-minute time emphasizing party political issues, whereby leadership-chosen Members were recognized prior to other Members in the well, was a temporary trend that came (beginning in 1990) and then abated over several Congresses. A ruling in 2001 reiterated that such recognition was entirely within the discretion of the Speaker. The Speaker's policy of alternation of recognition for one-minute and special-order speeches between the parties was reiterated in 1995.

Prior to 1994, unanimous-consent requests for special-order speeches after business became problematic, as some Members sought political advantage by propounding such requests weeks ahead of the date of the speech in order to be recognized first on that day. Televised special-order speeches were permitted to range beyond midnight until all special orders scheduled by unanimous consent were recognized each day.

In 1994, the Speaker announced a new policy (the result of bipartisan negotiations) governing recognition for special-order speeches, in order to assure party alternation and to place responsibility upon the leaderships to arrange special orders within an overall time frame rather than force the Chair to confer recognition based on the date of entry of the request. There were a number of rulings since 1994 interpreting this announced policy. Until 2011, with respect to recognition for five-minute or shorter speeches, the Chair would recognize for such speeches first, before longer speeches,

and Members were not permitted to enter requests for five-minute special orders earlier than one week in advance. With respect to longer special orders, the Speaker announced a policy of recognition that would not depend on the Chair's discretion and orders by unanimous consent, but rather on lists submitted by the respective party leaders. Under that policy recognition would not extend beyond 10 PM (beyond midnight until 2011), and recognition would be limited to four hours (except Tuesdays) equally divided between the parties, time within each party to be allotted by a list submitted to the Chair by the respective leader and not to be extended beyond 10 PM except with permission of the Chair upon notice to the House. Recognition for the first hour was to alternate between the parties from day to day, with additional guidelines to be developed by each leader, and Members recognized for a five-minute special order were not to be recognized for a longer special order or an extension beyond five minutes on that day. Beginning in 2011, additional guidelines included a subdivision of the second hours for both parties into half-hour segments, and failure to claim all allocated times at the appropriate moment would result in their expiration. These policies were reinforced by several rulings including denial of recognition of a Member seeking a second one-minute speech, and those seeking to speak beyond midnight or beyond five minutes. Members recognized to control time (up to one hour) during special orders could, while remaining standing, yield to colleagues for such amounts of time as the Member may deem appropriate, but could not yield blocks of time to be enforced by the Chair. Recognized Members were to retain control of the duration of their yielding by reclaiming the time whenever they desired. Five-minute special orders were eliminated as of a date certain in 2011 by announcement of the Speaker.

Also in 1994, as part of the negotiated agreement (carried forward in each subsequent Congress by unanimous consent on opening day), a period of "morning-hour" debates was established to convene 90 minutes (one hour on Tuesdays) earlier than preestablished convening times on Mondays and Tuesdays of each week to permit each party to allocate one-half of the available time to Members for speeches up to five minutes. This was intended to partially compensate for the diminution of daily special order debates resulting from imposition of the midnight deadline and the four hour maximum daily limit. The unanimous-consent order required the termination of the morning-hour period no later than 10 minutes prior to regular convening time, and prohibited the conduct of any business during morning hour (including the Prayer, approval of the Journal, and the Pledge of Allegiance, or any unanimous-consent requests), all of which would be transacted upon convening of the regular session. Beginning in 2011, in conjunction with the elimination of five-minute recognitions after business, morning

hour was expanded by unanimous consent to cover four days each week and to extend from 60 or 90 minutes to two hours on those days.

A short-lived "Oxford style" debate format, permitted by unanimous consent in 1994, was an experiment in structured debate on a mutually agreeable topic announced by the Speaker. Three such debates were conducted in that year, in order to attract increased Member and public attention. As a precursor to those structured debates, special order time was used for a "Lincoln-Douglas style" debate on one occasion in 1993 involving five Members, with one Member acting as "moderator" by controlling the hour.

The Speaker has since 1981 developed "guidelines" for conferring recognition for unanimous-consent requests for the consideration of certain legislation only when assured that the majority and minority floor and committee leaderships have no objection. This policy, expanded upon from that date in various contexts was documented in section 956 of the *House Rules and Manual*. They included requests relating to: (1) consideration of both reported and unreported measures; (2) disposition of Senate measures on the Speaker's table; (3) disposition of Senate amendments where recognition is confined to a manager of the committee with jurisdiction; (4) consideration of an unreported measure under suspension of the rules on a nonsuspension day; (5) consideration of nongermane amendments to bills; and (6) expedited consideration of measures on subsequent days under the discharge rule. The policy was intended to prevent other Members on the floor, without that preliminary leadership and committee manager clearance, from being forced to go on record as objecting to such consideration. Under these guidelines, the Speaker declined recognition for an "omnibus" unanimous-consent request to dispose of several measures unless assured that the request and each component part thereof, was cleared under this policy in 2002. Floor leadership in this context was construed to apply only to the Minority Leader and not to the entire hierarchy of minority leadership, and the Speaker was not required to identify which party's leadership has failed to clear such a request in 1996 and in 2002, although the Chair may in his discretion indicate the source of objection for the *Record*, as in 1998. The Speaker's enforcement of these guidelines was not subject to appeal, and was a matter of discretionary recognition in the first instance.

In 2000, where the previous question was ordered to passage of a bill without intervening motion except recommittal, the Chair declined as an exercise in discretionary recognition to a Member other than the manager to entertain a unanimous-consent request to further amend.

Recognition for Parliamentary Inquiries. The Chair's discretion to recognize for parliamentary inquiries is unlimited, except where another Member has the floor in debate and refuses to yield for that purpose. The

Chair is permitted to take a particular inquiry under advisement, especially where not related to the pending proceedings. In 2010, the Chair made an extended statement on the process of entertaining parliamentary inquiries.

Recognition for Particular Motions and Debate Thereon. With respect to modes of consideration of relatively noncontroversial measures, a far greater reliance in modern Congresses was placed on motions to suspend the rules and pass measures or dispose of Senate amendments. Consideration of measures by unanimous consent or from the Consent and Corrections Calendars (both since eliminated) gave way to scheduling of suspension of the rules motions in order to expedite debates and to consolidate record votes at convenient times for Members. This placed control of the debate in the hands of the managers of the measure and not with the Member reserving the right to object. Unanimous-consent requests, when utilized, were usually confined to single measures, but during several Congresses were combined to request not only consideration but sometimes passage or adoption, so as to avoid the Chair putting the question to a vote. The House experimented in 2002 with *en bloc* unanimous-consent requests often covering several measures for simultaneous disposition under the Speaker's "guidelines." Similarly, disposition by unanimous consent of Senate amendments to House measures at the Speaker's table was often replaced by motions to suspend the rules to assure the same predictability and control. Unanimous-consent requests to switch control of some debate once underway from the Member(s) identified in the adopted special rule and initially recognized by the Chair to other Members and committees for convenience sake became routine. Recognition for motions to suspend the rules was extended to every Monday, Tuesday and Wednesday by standing rule in 2005, having been extended incrementally by unanimous consent and then by special order in 2003. Additional motions to suspend the rules on subsequent days during specified weeks were made in order by special orders with increasing frequency.

House rules requiring the availability of committee and conference reports for three days prior to consideration were routinely waived by utilization of special orders and suspension motions. Special orders reported from the Committee on Rules enabled subsequent filing of special rules by that committee on specified measures and same-day consideration without a two-thirds vote ("martial law").

The impact on spontaneity of debate based on the advent of televised proceedings and the changing application of the five-minute rule in the Committee of the Whole (restrictions on the right to offer first-degree and second-degree amendments, the bifurcation of debate on amendments and decisions thereon through the clustering and postponement of votes, and the right to close limited debate on amendments), was unmistakable.

Control and Distribution of Debate. Rulings reaffirmed that a majority manager of the bill who represents the primary committee of jurisdiction was entitled to close general debate as against another manager from an additional committee in 1998 or as against the subject of a disciplinary resolution in 2002. A number of rulings from 1981, cited in section 959 of the *House Rules and Manual*, supported the right of the manager from the primary committee of a measure to open and close general debate (in the reverse order of opening). With certain exceptions (where the control of opposition did not derive from the primary committee of jurisdiction) the same right was affirmed to close debate on amendments. Rule XVII clause 3(c) codified in 1999 the practice that the manager of a measure had the right to close controlled debate in the Committee of the Whole. It was established in 1999 that if an order of the House divided debate on an unreported measure among four Members, the Chair would recognize for closing speeches in the reverse order of the original allocation. Under such a multiple allocation, which was further fractionalized under a later order by unanimous consent, the Chair recognized for closing in the reverse order of opening, even where the manager who opened debate was opposed, as in the case of a measure reported adversely in 1998, 1999, and 2000. Time unused by a minority manager in general debate was considered as yielded back upon the recognition of the majority manager to close in 2002. Rule XVII clause 3(b), which prevents Members from speaking more than once on the same question except by leave of the House, was superseded in modern practice by special orders that vest control of debate in designated Members and permit them to yield more than once to other Members.

As codified in Rule XVII clause 3(c) in 1999, and reaffirmed thereafter, the manager of a bill or other representative of the committee and not the proponent of an amendment normally has the right to close controlled debate on an amendment. The Chair would assume that the manager of a measure was representing the committee of jurisdiction even if the measure called up is unreported (as in 1996 and in 1998), if an unreported compromise text was made in order as original text in lieu of committee amendments (as in 1995), or if the committee reported without recommendation (as in 1997). Managers named in a special order who do not serve on a committee of jurisdiction were entitled to close controlled debate in opposition to an amendment in 1997. A majority manager may close such debate without regard to the party affiliation of the proponent where the special order allocated control to "a Member opposed" in 1998. The right of a final opponent to close if derived by unanimous-consent reallocations must come from an unbroken line of committee affiliation in opposition to the amendment in 1997 and in 2003. A proponent of a "manager's amendment" may close

if a member of the relevant reporting committee did not claim time in opposition. Likewise a proponent may close if no committee representative or one deriving control directly by unanimous consent was in opposition, as in 1995, 1998, and 2003. The proponent of a first-degree amendment who controlled time in opposition to a second-degree amendment that favored the original bill over the first-degree amendment did not qualify as a "manager" under paragraph 3(c) in 2000.

Distribution; One-Third Time in Opposition: Suspensions, Conference Reports, Motions to Dispose of Senate Amendments. The 40 minutes of debate on motions to suspend the rules was divided between the mover and a Member opposed to the bill, unless it developed that the mover was opposed to the bill, in which event some Member in favor was recognized for debate, as in 2004. Where recognition for the 20 minutes in opposition was contested, the Speaker accorded priority first on the basis of true opposition, then on the basis of committee membership, and only then on the basis of party affiliation, the latter preference inuring to the minority party in 1991. The Chair will not examine the degree of opposition to the motion by the member of the committee who seeks time in opposition.

A rules change in 1993 made preferential to the motion to recede and concur, and separately debatable, a motion to insist on disagreement to a Senate amendment to a general appropriation bill if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a (legislative) committee of jurisdiction or a designee. On one occasion the rule was utilized that year to permit as preferential a motion to insist on disagreement to a Senate legislative amendment entitling Forest Service employees to separation pay, where offered by the chairman of the authorizing committee with jurisdiction (Post Office and Civil Service). From that date on, however, this provision giving authorizing committees the preferential option was not utilized because the Senate no longer proposed numbered amendments to general appropriation bills and they were not reported from conference in disagreement. Rather they were incorporated as part of an amendment in the nature of a substitute reported from conference, against which all points of order were normally waived.

Rule XXII clause 8(d) was adopted in 1985 to assure equal time for debate to the majority and minority parties on conference reports and amendments in disagreement, except where both were in favor of the conference report or motion, in which case one third of the debate would be controlled by a Member opposed. The Chair assumed that the minority manager supported the conference report if he had signed the report and was not immediately

present to claim the opposition. When time was divided three ways, the right to close fell to the majority manager preceded by the minority manager, preceded in turn by the Member in opposition—the reverse order of the recognition to begin debate. Debate on a motion in disagreement was likewise split three ways in 2002, but not in 1992 on separate debate on an amendment to such a motion, which was governed by the general hour rule.

Beginning in 1989, a similar three-way division of time was required by Rule XXII clause 9(d) on motions to instruct conferees, except on an amendment to such a motion where debate continued to be governed by the hour rule. The proponent of a motion to instruct conferees and not the manager of the measure has the right to close debate.

Losing or Surrendering Control. A Member recognized to call up a privileged resolution may yield the floor upon expiration of his hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour, as in 1998. Control of a motion to dispose of a Senate amendment reported from conference in disagreement passes to an opponent when the House rejects a manager's motion to dispose thereof, as in 1993.

Relevancy in Debate. Where parliamentary inquiries were utilized to raise the issue of relevancy in debate, the Chair in 2011 responded that a Member under recognition must confine his remarks to the pending legislation, and in 1999 cautioned Members not to "dwell" on another measure not before the House. The Member must maintain a "constant nexus" between debate and the subject of the bill. Often, however, the minority party's customary use of 30 minutes of debate on special orders of business ranged to their preferred alternate (unrelated) agenda in support of nongermane amendments that they proposed to offer to special orders upon possible rejection of the previous question. Such irrelevant debate was often tolerated and no point of order or parliamentary inquiry was raised, in part to avoid challenges to the Chair's rulings. Indeed, the majority frequently engaged in rejoinders to such unrelated debate, while reminding the House that any such amendment to a special order would likely be ruled out as nongermane if permitted to be offered.

The Chair accorded Members latitude in debating a series of amendments in the nature of a substitute to a concurrent resolution on the budget as in 1999. On a motion to suspend the rules, debate was confined to the subject of the motion and not permitted to range to the merits of a bill not scheduled for such consideration in 1999 and in 2002. Several rulings affirmed that debate on a special order providing for the consideration of a bill may extend to the merits of the bill to be made in order, because the

question of consideration of the bill was involved, but should not range to the merits of a measure not to be considered under that special order or to the rules of the House in general. Debate on a resolution providing authorities to expedite the consideration of end-of-session legislation may neither range to the merits of a measure that might or might not be considered under such authorities nor engage in personalities with respect to the official conduct of the Speaker even where, as in 1996, such conduct was asserted to relate to the question of granting the authorities proposed. Debate on a resolution electing a Member to a committee was confined to the election of that Member and could not extend to that committee's agenda in 1995.

In the Committee of the Whole, where debate is normally confined to the subject by a special order, debate on a general provisions title when pending could relate to any agency funded by the bill in 1991. Remarks held irrelevant by the Chair may be removed from the *Congressional Record* only by consent of the House, as in 2002. The requirement of Rule XVII clause 1(b), that remarks be confined to the question under debate, was not always enforced, based on the consistent practice of the Chair not to take the initiative, as in 1990, 1995, and 2002 (except with respect to disorderly references to the Senate or the President), and on the reluctance of Members to make points of order against Members' irrelevant comments.

Disorder in Debate. On several occasions, minority Members staged organized temporary "walkouts" to protest alleged majority abuse of process, including refusal to seat a certified Member-elect temporarily, and the conduct of a vote on a motion to recommit (*e.g.*, 1985, 2007).

Various disruptive actions on the floor were ruled out of order as breaches of decorum. The Chair became more proactive in taking the initiative to admonish against the "trafficking in the well" of the House by Members while another Member was under recognition. In addition to opening-day statements, the Speaker on his own initiative made a comprehensive decorum announcement from the Chair when all Members were present in 2012. Other disruptions, including shouted interjections, hissing and booing during debate, were called to order. The Chair required a line of Members waiting to sign a discharge petition to proceed to the rostrum from the far right-side aisle and required the line not to stand between the Chair and Members engaging in debate in 1997. Beginning in 1993 and repeated in every subsequent Congress, Speakers' statements on decorum inserted in the *Record* on opening day became more detailed in proscribing certain conduct and more easily enforced standards reflecting usages to be followed by the Chair on a daily basis. They included Members' addressing the Chair rather than other Members such as "you" in the second person. For example, in

2007, the Chair took the initiative to caution a Member addressing others in the second person by the repeated reference "When in the name of all that is holy are you going to stop?". The Chair often took initiative when Members were addressing the television audience or others, as in 2005. The Chair directed the Sergeant-at-Arms to assist the Chair in maintaining decorum in 1997 and in 2012. The use of communicative "badges" worn by Members to convey a political message was ruled out on several occasions.

The 1999 recodification of the rules labeled Rule XVII clause 5 as "Comportment" in order to consolidate all provisions regarding Members' decorum in the House, extending beyond the propriety of debate. The prohibition against any use of personal electronic office equipment adopted in 1995 was interpreted to include the galleries in 1999. It was modified to cover only a wireless telephone or personal computer in 2003—an acknowledgment that the electronic age had brought new silent technology such as text messaging that would presumably not be disruptive of proceedings. Nevertheless, that exception brought into question the issue of the Chamber as a sanctuary from the intrusion of outside communications (the committee print report from the Subcommittee on Rules and Organization of the House (1997) addressed that issue). In the 112th Congress, acknowledging the advances of tablet devices, the rule was relaxed further to permit any electronic device to be used in the Chamber so long as not disruptive of decorum, with the Chair to determine in his discretion what might be either a breach per se or only in a particular instance. This change avoided the constant need to update the rule to keep pace with changing devices. On the opening day, the Speaker inserted in the *Record* a statement that any device for audio transmission would constitute a breach, as would any personal computer, but not other tablet devices such as iPads and Blackberries. Visual recordings and still photography would remain prohibited.

The prohibition against wearing hats in the Chamber was held to preclude "doffing" a hat in tribute to a group in 1993 and in 1996 and wearing a hooded sweatshirt in 2012. Admonitions from the Chair included reminders that proper attire was required whether or not the Member was under recognition. The ban against smoking in the Chamber was extended to smoking behind the rail in 1995. The decorum rule was held to extend to all persons having the privileges of the floor, including a former Member in 1997 who was banned from the floor by a question of privilege resolution until the resolution of a contested election to which he was party.

Disorderly Language. The Chair did not rule on the veracity of a statement made by a Member in debate in 1997 and in 2008. The truth of allegations involving unethical behavior of a Member was not a defense to a point of order that the remarks were unparliamentary in 1995. "Personalities"

were forbidden, even if the references could be relevant to the pending question in 1996. In 1984, the Speaker's use in debate of the term "the lowest thing" in describing the conduct of another Member was ruled out of order. Although accusing a Member of deceit engaged in personality in 2012, merely accusing another Member of making a mistake did not in 2000. Several rulings reaffirmed that personal attacks, such as accusations that an identifiable group of Members committed a crime, were out of order in 1998 and in 2004. On the other hand, references to political motivations for legislative positions in 1995, 1996, and 2008 or to the pending measure itself rather than to the measure's proponent, were permitted. A reference suggesting that another Member "did not have the nerve" to make a statement on the floor was ruled out as a personality in 1996. Various characterizations of Members as "the most impolite Member," "mean-spirited," "indecent," and the use of a Member's surname as an adjective for ridicule, were all ruled out of order as personalities. A general reference that "big donors receive access to leadership power and decisions" was held in order where it did not identify a specific Member as engaging in an improper "quid pro quo" exchange for legislative favors in 1997. Likewise general statements invoking racial stereotypes but not so inflammatory as to be a breach of decorum in 2003, or linking politics with armed conflict in an impersonal way in 2007, were not ruled out of order. It was affirmed that references in debate to extraneous material critical of another Member that would be improper if spoken in the Member's own words were also out of order in 1995 and in 1996. A mere reference to a Member's voting record did not form a basis for a point of order in 2002.

It was held on several occasions that Members should refrain from references to the official conduct of a Member if such conduct was not the subject then pending before the House as a question of privilege or report from the Committee on Ethics. This included references to a disciplinary resolution previously disposed of or to insinuations of misconduct. Notice of an intention to offer a resolution as a question of the privileges of the House under Rule IX does not render such resolution "pending" and thereby permit personal references to the Member proposed to be disciplined beyond allegations in the preamble of the resolution itself which were read to the House in 1996. The reading of a resolution's preamble by the Clerk was not subject to a point of order in 2005. This stricture against personalities was held not to apply to references to a former Member unless comparing such conduct with that of a sitting Member, as in 1995 and in 1996. Where a privileged ethics resolution is pending, however, debate may include personalities so long as not personally abusive. The Chair can take the initiative to prevent such breaches of decorum, especially where directed at the Speaker. Several

rulings reemphasized added protections afforded to the Speaker concerning personal references to him in 1995, and wider latitude as to the timeliness of points of order against such references was permitted. Prohibited debate was also held to include references to the motives of a Member filing a complaint, to the members of the Committee on Ethics, or to suggestions of courses of action for, or to reports by, that committee when not the pending business.

Reference to the Senate or Senators. From the 101st through the 108th Congress, Rule XVII clause 1 permitted only factual references in debate to the Senate that were a matter of public record, references to the pendency of sponsorship in the Senate of certain measures, factual descriptions concerning a measure under debate in the House, and quotations from Senate proceedings relevant to the making of legislative history on a pending measure. In the 109th Congress, clause 1 was amended to permit debate to include references to (including political criticisms of) the Senate or its Members but within the general stricture that required Members to avoid personality. Since the adoption of the new rule in 2005 the following references to Senators have been held unparliamentary: accusing Senate Republicans of hypocrisy; referring to Senate Democrats as "cowardly"; accusing a Senator of making slanderous statements, and of giving "aid and comfort to the enemy"; and referring to the Senate Majority Leader as "unethical." Even as the rule against references to the Senate was liberalized, the prohibitions against personal references to House Members remained in place for Senators. Disparaging characterizations (beyond political criticisms) made of the Senate as a body remained out of order.

References to the Vice President, President of the Senate. References in debate to the Vice President (as President of the Senate) were held to be governed by the standards of reference permitted toward the President both before and following adoption of the new rule in 2005. As such, a Member may criticize in debate the policies, or candidacy, of the Vice President but may not engage in personality, the many examples of which were very similar to references to the President mentioned below, (also including speculation that he might "pardon" the President, and innuendo suggesting that policy choices were made on the basis of personal pecuniary gain to the Vice President).

References to the President. Many rulings reflected the principle in *Jefferson's Manual* that personal references to the President or Vice President were not in order and that the Chair takes the initiative to enforce this stricture, even after other debate has intervened. Such rulings did not prohibit references which critically but not personally characterized political actions taken or to be taken by the President. Personal abuse, innuendo, or

ridicule of the President, on the other hand, was admonished on several occasions, including references to lying, dishonesty, intended deception (but not unintentional mischaracterization), obstruction of justice, hypocrisy, demagoguery, cowardice, sexual or criminal misconduct or other unethical behavior, arrogance, or personal mean-spiritedness. While debate on a proposition to impeach the President was permitted wide latitude when that issue was actually pending in 1998, it must refrain from language personally offensive. A Member may not read in debate extraneous material personally abusive of the President (or Vice President) that would be improper if spoken in the Member's own words, including the recitation of another Member's criticism of the President made off the floor, even as a rebuttal to such criticism. References to the President's family or to former Presidents are given greater latitude. The Speaker extended a minimal standard of propriety for all debate concerning nominated candidates for the Presidency, including a presumptive major-party nominee for President, whether or not those candidates were in office. In 2009, a shouted reference by an identifiable Member to the President during a joint session ("you lie") was collaterally challenged in the House as a question of privilege, and a resolution disapproving that conduct was adopted.

Procedure: Call to Order—Demand that Words be Taken Down. Rulings reaffirmed the practice that words spoken by a Member not under recognition (such as an interjection) were not to be included in the *Congressional Record*. This was also true with remarks uttered after a Member has been called to order, or when a Member fails to heed the gavel at the expiration of time for debate. Deletion of unparliamentary remarks from the *Record* was permitted only by consent of the House and not by the Member uttering the words under authority to revise and extend, as in 1990. That ruling was codified in Rule XVII clause 8(b) in 1995. Time consumed by proceedings incident to a call to order was not charged against the time of the Member under recognition in 1992.

The Chair continued to distinguish between engaging in personality toward another Member of the House, as to which the Chair customarily awaits a point of order from the floor in (although there have been initiatives taken by the Chair in extreme cases), on the one hand, and improper references to the Senate or to Senators which violate comity between the Houses, as to which the Chair normally takes initiative (even after intervening recognition), on the other. A Member may initiate a call to order either by making a point of order that a Member is transgressing the rules or by formally demanding that words be taken down under Rule XVII clause 4. A Member's comportment in debate was held in 1994 to constitute a breach of decorum even though the content of the Member's speech was not

itself unparliamentary. Except for naming the Member, the Speaker may not otherwise censure or punish him without an order of the House, but he may order the offending Member to take his seat or deny further recognition, subject to the will of the House on the question of proceeding in order. In 2009, the Chair established the practice of withdrawing further recognition (as the rule requires the Member to be seated) where a demand that such Member's words be taken down was made at the end of legislative business during special-order speeches and potentially postponing until the next day both the ruling and that Member's special-order speech. In effect, the Chair was delaying resolution by the House of the question of order so that subsequent special-order speeches could continue and a quorum would not be required to be assembled at a late hour to dispose of a question of order. This practice of withdrawing recognition was codified in the Speaker's opening-day policies in 2011. The Chair's rulings on the propriety of words taken down were subject to appeal, although the Chair's determination that a Member's time in debate has expired was not, as in 1996.

Timeliness of Point of Order. The Chair's ruling regarding the timeliness of a point of order may be appealed. A parliamentary inquiry concerning the propriety of words spoken in debate did not render untimely a demand that the words be taken down in 2004, although an improper parliamentary inquiry concerning the substantive content of the words did render such a demand untimely in 2005. While the rule forecloses a Member from being held to answer a call to order or being subject to censure if further debate or other business has intervened, a question of the privileges of the House collaterally challenging a Member's remarks in debate was permitted where the resolution alleged a breach of the code of conduct, as in 2005 and 2007. The Chair may, under Rule I clause 2, generally admonish Members to preserve proper decorum even after intervening debate.

Withdrawal or Expungement of Words. The period between the demand that words be taken down and the Chair's ruling often permits negotiations among Members which result in the withdrawal of offending words by unanimous consent without the Chair being required to rule. The demand for an apology sometimes became a condition for the granting of unanimous consent for withdrawal.

Expungement is often granted on initiation of the Chair by unanimous consent. In 1995, the House adopted Rule XVII clause 8 which mandates that the *Congressional Record* be a "substantially verbatim" account of debate and permits the deletion of unparliamentary remarks only by order of the House. The clause established a standard of conduct potentially to be investigated by the Committee on Ethics.

Proceeding in Order. If words are ruled out of order, the Member loses the floor and may not proceed on the same day without the permission of

the House and may not insert unspoken remarks in the *Record*, as in 1995. The offending Member will not lose the floor if the House permits him to proceed in order, and such permission may be at the initiative of the Chair by unanimous consent or by motion stated by the Chair, or may be implicitly denied absent such initiative, as in 2012. The motion is debatable within narrow limits and may be tabled. The Chair may deny the offending Member further recognition as a disposition of the question of order, subject to the will of the House on the question of proceeding in order, as in 1996. The ruling does not take the issue under debate off the floor and other Members may proceed to debate the same subject if still pending. The Chair either may invite the offending Member to proceed in order, or if such admonitions have been ignored, may deny the Member recognition for the balance of the time for which such Member was recognized, both subject to the will of the House on the question of proceeding in order. The resolution of that question permits the House to determine the extent of the sanction for a given breach. If an offending Member leaves the Chamber without permission to proceed in order, the Chair will not necessarily put that question to the House, as in 2012.

Duration of Debate in the House. A Member in charge of a measure can be recognized for unanimous consent to enlarge the time for debate. The Chair announced the policy of strict adherence to time limitations in 1995, with certain exceptions. The Chair may follow a tradition of the House to allow the highest-ranking elected leaders (Speaker, Majority and Minority Leaders) additional (unlimited) time to make their remarks in debate, as in 1998, 2004, and 2009. In 2009, the Minority Leader consumed almost one hour of debate upon being yielded one minute on a "climate change" bill. As on that occasion, in calculating the time to be taken by the Leaders, the manager yielding time often yielded only one minute to the Leader concerned, and the clock computation of that one minute was indefinite and did not affect remaining time, whereas the yielding of "such time as (s)he may consume" to the Leader resulted in a full deduction of all time consumed from the time remaining to the manager. It was also determined that while the Leader could (*e.g.* in a one-minute speech) himself consume a longer period, he could not yield to other Members to further expand his time beyond one minute. Otherwise, the Speaker announced his intention to strictly enforce time limitations on debate in 1995. With respect to unanimous-consent requests to insert remarks in the *Record*, the Chair did not deduct that request time from remaining debate to the manager yielding for that purpose so long as the request constituted a simple declarative statement of the Member's attitude toward the pending measure and not an embellishment, in which event the time was deducted from the manager. In 2009 and 2010,

a consecutive number of "embellishments" by Members recognized for such unanimous-consent requests resulted in more than two minutes being deducted from the control of the majority and minority managers of a special order reported from the Committee on Rules. A 2009 precedent underscored the practice that a Member reserving the right to object to such requests could not proceed to control time under his reservation in the face of a "demand for the regular order" by any other identifiable Member, but would then need to either object or to withdraw his reservation.

The Hour Rule. A Member recognized to call up a privileged resolution may yield the floor upon expiration of the hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour. It was reaffirmed in 1997 that a Member may not extend his time for a special-order speech beyond one hour, even by unanimous consent. Although the hour rule is a rule of general applicability when a question is pending, the limitation in Rule XVII clause 2 acknowledges that other provisions of that rule may permit control of debate beyond one hour, such as an additional hour for the right to close in clause 3. A manager of a measure may be recognized for unanimous consent to enlarge the time for debate, as in 2009. Where a standing rule specifically divided the hour between two Members, the manager could not move the previous question unless all time had been consumed or yielded back, as in 1989. A special rule may supersede this rule of general applicability, as by giving control of more than one hour of general debate on a question to designated managers, or by giving control to managers thereby permitting them to yield more than once to other Members, as in 2000. Consideration of a resolution as a question of the privileges of the House may include recognition for a separate (undivided) hour of debate on a motion to refer the resolution under Rule XVI clause 4 before the previous question is ordered, as in 1992 and 2006.

10-Minute, 20-Minute, and 40-Minute Debate. Although the 10 minutes of time for debate on a motion to recommit were not "controlled" and therefore Members could not reserve or yield blocks of time, they could yield to another while remaining standing. In 2009, the rule (Rule XIX clause 2) was amended to permit 10 minutes of debate on a straight motion to recommit as well as on a motion with instructions. An amendment to a motion to recommit offered after the 10 minutes was not debatable. In 1985, the rule was amended to permit the majority floor manager of the measure to extend debate on a motion to recommit to one hour, equally divided and controlled, but that option has not been utilized.

Twenty minutes of debate were permitted where a point of order was raised against an unfunded Federal intergovernmental mandate under section 425 of the Congressional Budget Act in 1995, 10 minutes by the Member making the point of order, and 10 minutes by a Member in opposition.

Following that format, a point of order under Rule XXI clause 9 against consideration of a matter for the inclusion of congressional earmarks was likewise debatable for 20 minutes equally divided.

Forty minutes of debate on a motion to suspend the rules were equally divided between the mover and a Member opposed to the motion, unless it developed that the mover was opposed to the measure, in which event some Member in favor was recognized for 20 minutes, as in 2004. The Chair will not examine the degree of opposition to the motion by a member of the committee who seeks time in opposition and debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day.

Forty minutes of debate were also permitted after the previous question was ordered on an otherwise debatable proposition on which there has been no debate.

Duration of Debate in the Committee of the Whole—General Debate. Time unused by the minority manager in general debate was considered as yielded back upon recognition of the majority manager to close general debate in the Committee of the Whole in 2002. The Chair as a matter of recognition managed the sequence in which committees used their time for general debate under a special rule and recognized any member of the committee who was filling the role of manager under the governing special rule in 2005. A majority manager of a bill who represents the primary committee of jurisdiction was entitled to close general debate, as against another manager representing an additional committee of jurisdiction in 1998. If the House has fixed the general debate time, the Committee of the Whole may not extend it even by unanimous consent.

In recent Congresses, special orders have been adopted providing for initial consideration of a measure in the Committee of the Whole for general debate only, with the Committee rising automatically at the end of that debate and subject to a subsequent order of the House, in order to allow consideration to begin while reserving time for the Committee on Rules to recommend an amendment process in a subsequent special order.

Five-Minute Debate. As codified in Rule XVII clause 3(c) in 1999, the manager of a bill or other representative of the committee (including a minority manager), even on an unreported measure or one reported without recommendation, and not the proponent of an amendment, has the right to close controlled debate on an amendment. The majority manager was recognized to control time in opposition to an amendment and to close debate thereon without regard to the party affiliation of the proponent where the special order allocated control to "a Member opposed" in 1998. This codification simplified the myriad of precedents which had accumulated up to that

time regarding the right of management opponents to close limited debate on amendments in both the House and in the Committee of the Whole. That right devolved to a member of the committee of jurisdiction who derived debate time by unanimous consent from a manager who originally had the right to close. The right did not go to an opponent who derived such control from a noncommittee Member, because that right could be transferred under that rule only where there has been an unbroken line of committee affiliation in opposition, as in 1997 and 2003. As well, the proponent of a first-degree amendment who controlled time in opposition to a second-degree amendment thereto that comparatively favored the original bill did not qualify as a "manager" in 2000. The Committee of the Whole may by unanimous consent (but not by motion) limit and may allocate control of time for debate on amendments not yet offered.

Under certain circumstances, however, the proponent of the amendment was permitted to close debate either if representing the reporting committee (as for example the proponent of a "managers" amendment made in order by a special order) if a committee member did not claim time in opposition.

Effect of Limitation; Distribution of Remaining Time. Various discretionary options to allocate remaining limited debate time on amendments once traditionally utilized by the chairman of the Committee of the Whole, including the allocation of equal time among all Members standing seeking to speak, or continuation of recognition for the remaining time under the five-minute rule, gave way to recognition of proponents and opponents equally for the remaining time to be yielded by them. This was accomplished either at the Chair's discretion to relieve him of the need to subdivide the time, or as the result of "modified-closed" special orders wherein the House predetermined available time on amendments to be equally divided and controlled. There was a general diminution of the normal five-minute rule whereby each Member could seek his own recognition for debate and amendment. Consequently nondebatable motions to limit debate on amendments were less frequent. Special orders and unanimous-consent orders placed control of debate from the outset of consideration of amendments in the hands of one proponent and one opponent (usually the manager of the bill). The Chair retained, however, discretion to reallocate to conform to the limit by unanimous consent of the Committee of the Whole, as in 1995.

Reading Papers and Displaying Exhibits; Use of Improper Exhibits. With the advent of televised proceedings in 1978, a variety of presentations in debate by Members utilizing charts, graphs, photographs and other props proliferated. On many occasions the Chair admonished Members utilizing exhibits to address the Chair and not to directly address the television audience, whether or not the Chair could personally observe the exhibit. At the same time, traditional rules requiring the permission of the

House upon demand of any Member for the reading of any paper (not only those to be voted upon) derived from the British Parliament and were embodied in an earlier form of Rule XVII clause 6. They were utilized as filibuster techniques for immediate votes and brought about rules changes which took those decisions away from the House. In 1993, Rule XVII clause 6 was amended to address the use of exhibits in debate rather than the reading from papers, thereby eliminating the antiquated need for permission of the House for a Member to read a speech. It established the rule until 2001 that an objection to the use of an exhibit (even a blank chart) automatically triggered a vote by the House on its use. The Member objecting was not required to state the basis for the objection and the Chair automatically put the question without debate, and a second consecutive demand invoking the provision was held not dilatory in 1996. As such, an objection was not a point of order, and could be resolved either by withdrawal of the exhibit or by a vote of the House, as in 1995 and 1996. It was not a proper parliamentary inquiry to ask the Chair to judge the accuracy or authenticity of the content of an exhibit. The Chair retained the authority to preserve decorum under Rule I to direct the removal from the well of the House of a chart that was either not being utilized during debate or was otherwise disruptive of decorum. The Speaker's responsibility to preserve decorum required the disallowance of exhibits that would be demeaning to the House or to any Member. The Speaker has disallowed the use of a person (including children) on the floor as a guest of the House as an "exhibit." In 1998, it was held not in order to request that the voting display be turned on during debate as an exhibit. Similarly, in 2005, audio or other electronic devices could not be used as exhibits or props.

Although congressional pages (high school students employed by the House) could assist Members to manage the placement of an exhibit on an easel, in 2003 it was held not appropriate to refer to the page or to use the page as though part of the exhibit. In 2003, the Chair distinguished between using an exhibit in the immediate area of the Member addressing the House as a visual aid for the edification of Members, and staging an exhibition, such as having a number of Members accompany him into the well, each carrying a part of his exhibit. The Chair took preemptive steps in 1990 to prevent exhibits under the decorum rule (all photographs) based upon the more pertinent constitutional conferral upon the House to adopt its own rules, despite an inapposite claim not internally pertinent to House debates of First Amendment rights of free speech. The Speaker permitted the display of an exhibit in the Speaker's lobby during debate on a measure in 1999, but prohibited a bumper sticker being attached to the lectern in the House Chamber in 1989. A caricature of the Speaker was held out of order

in 1995. An appeal may be taken from a ruling of the Chair on the propriety of an exhibit.

In 1995, at the request of the Committee on Standards of Official Conduct, the Speaker announced that: (1) all handouts distributed on or adjacent to the floor must bear the name of the Member authorizing the distribution; (2) the content of such handouts must comport with the standards applicable to words used in debate; (3) failure to comply with those standards may constitute a breach of decorum and thus give rise to a question of privilege; (4) staff were prohibited in the Chamber or in adjoining rooms from distributing handouts and from attempting to influence Members with regard to legislation; and (5) Members should minimize the use of handouts to enhance the quality of debate. The Speaker has reiterated these policies in subsequent Congresses.

In 2001, the rule governing exhibits was further amended to give the Chair the discretion to submit the question of the use of an exhibit to the House and to take away from Members the automatic right to object and to demand a vote. Thus, the presumption in favor of the unimpeded use of exhibits absent the Chair's exercise of discretion was established, and time-consuming votes on the use of exhibits were eliminated.

Secret Sessions. A privileged motion for a secret session having been defeated in 2007, a Member offered a second motion on the same legislative day asserting additional communications to make, and that motion though not debatable was subject to the motion to lay on the table. The motion for the secret session was not debatable; otherwise the very purpose of the motion would be compromised. In 2008, the House by unanimous consent authorized the Chair to resolve the House into secret session pursuant to Rule XVII clause 9, debate therein to proceed without intervening motion for one hour equally divided between party leadership, and at the conclusion of debate the secret session be dissolved and the House to stand adjourned. On that occasion, the Speaker declared a recess to make necessary preparations, and then made a series of announcements regarding staff access and secrecy requirements. Under the authority in Rule I clause 3 regarding use of the Chamber, the Speaker may convene a classified briefing for Members on the House floor during a recess or when the House is not in session, as in 1999. In all, there were sporadic attempts toward more secret sessions (not all successful).

Chapter 30—Voting.

Chapter 30 of *Deschler-Brown Precedents* includes precedents from 1928 through 1996. The updated chapter will include precedents from the 105th Congress in 1997 to the date of republication and will also include some rulings in 1995–1996 omitted from that earlier compilation.

Introduction. The notion that unanimous consent could dispose of any legislative matter without a vote, while accurate, had not been utilized prior to 1997 to accomplish the passage of bills and conference reports, but merely to permit consideration which would then result in a vote. Unanimous consent for final disposition on resolutions and Senate amendments was more commonplace after 1996. Unanimous-consent requests infrequently began to cover passage of bills or adoption of conference reports, even to the extent of passage of several measures *en bloc* in 2002.

Tie Votes; Supermajority Votes. In 1995, the House adopted a unique standing rule requiring a supermajority (three-fifths) vote to pass a bill, joint resolution, amendment, or conference report on a defined specific subject matter (Federal income tax rate increases), to politically demonstrate a higher threshold for enactment of such matter. The only precedent applying the original form of this rule was included in section 5.7 of chapter 30. In 1995, the Chair held that a provision repealing a ceiling on total tax liability attributable to a net capital gain was not subject to the original version of Rule XXI clause 5(b). The rule was thereafter waived on several occasions by special orders providing for consideration of measures potentially containing such provisions. In 1997, the rule was amended to clarify the definition of "Federal income tax rate increase" as limited to a specific amendment to one of the designated subsections of the Internal Revenue Code. That modification was held to comprise three elements: (1) an amendment to a pertinent section of the Internal Revenue Code of 1986; (2) the imposition of a new rate of tax thereunder; and (3) an increase in the amount of tax thereby imposed. Measures that did not fulfill even the first element were held in 2007 and 2011 not to comprise a Federal income tax rate increase. The rule was also held not to apply to a concurrent resolution in 1995. The Speaker ruled on the applicability of this rule only pending the question of final passage of a bill or joint resolution alleged to carry the increase, and not in advance upon adoption of a special order rendering the paragraph inapplicable in 1995.

Two-thirds votes required on motions to dispense with the call of Calendar Wednesday were eliminated in 2009.

Rule XV clause 6 was adopted in 1995 to create a "Corrections Calendar" requiring three-fifths votes for passage of the presumably noncontroversial reported measures placed on that calendar. It was repealed in 2005 but had no issue-specific application requiring interpretation by the Chair during its existence.

Finality of Votes Once Cast. The Speaker declined to entertain unanimous-consent requests to correct the Journal and *Congressional Record* on votes taken by electronic device, based upon the system's presumed infallibility under established precedent. The one exception was a request to delete a vote that was not actually cast in 2000. That electronic anomaly became the subject of an informal investigation by the Committee on House

Administration pursuant to its oversight responsibility over the Clerk. The chairman of that committee verbally reported to the House that the electronic malfunction was indeed an anomaly. On that basis, the Chair announced three days later that the presumed infallibility of the electronic system would continue to be honored by the Chair and that correction of the Journal and *Record* by unanimous consent on that occasion based upon a certification of circumstances by the Clerk would not be considered a precedent permitting other corrections of electronic tallies (*Deschler-Brown Precedents* Ch. 30 § 32).

It was also held in 2008 that a recorded vote or quorum call may not be reopened once the Chair has announced the result. However, the Speaker may announce a change in the result of an electronic vote required to account for a submitted but not tabulated voting card, as in 2008.

In order to avoid the possibility of a constitutional demand by one-fifth of Members present for the yeas and nays in the House immediately following the conduct of a recorded vote on the same question ordered by one-fifth of a quorum under Rule XX clause 1, that clause was amended in 1997 to provide that a recorded vote taken thereunder would be considered a vote by the yeas and nays to prevent such duplication. A recorded vote may be had in the House on an amendment adopted in the Committee of the Whole on which a recorded vote had been refused there in 1998. Although the request for a recorded vote once denied may not be renewed, the request remained pending where the Chair interrupted the count of Members standing in favor of the request in order to count for a quorum pursuant to a point of order in 2003. Where both a division vote and a recorded vote were requested, the Chair first counted for a recorded vote in 2003. A demand for a recorded vote was held untimely in 2007 even though the body had not moved on to other business where a lengthy pause intervened. A demand for a recorded vote on an amendment was untimely in 2005 where the Chair has recognized for the next amendment or where considerable time has elapsed after the Chair's announcement of the voice vote, as in 2006. A motion to vacate a pending vote by electronic device was not in order.

In the Committee of the Whole under modern practice, recorded votes are normally ordered even with very few Members in the Chamber where it assumed that the Chair will make an unassailable count of at least 25 Members standing in order to avoid a time-consuming "regular" or "notice" quorum call to first gain the attendance of Members. This expectation was usually relevant at a time when the Committee resumed unfinished business on the first of a series of amendments postponed and clustered by the Chair, since in Committee the Chair may postpone further proceedings merely on the request for a recorded vote and need not ascertain those supporting the demand at that time. This tacitly assured greater certainty to

Members of the time and order of voting on postponed and clustered votes to be subsequently conducted, without the necessity of an intervening quorum call. Under Rule XX clause 7, points of order of no quorum are considered as withdrawn when a vote is postponed, as the question is no longer pending. There were few rulings demonstrating this practice because all Members have come to accept the certainty of the Chair's count ordering a recorded vote as the price for avoiding a preliminary quorum call when the question is pending. This understanding was symbolized in 2001 where the chairman of the Committee of the Whole, having announced an insufficient number of Members to have "apparently" risen, and having refrained from stating the conclusion that a recorded vote was refused, nevertheless entertained a point of no quorum, tacitly treating the request for a recorded vote as not yet finalized and the question to still be pending.

There were decisions governing the procedures for demanding and ordering a record vote in the House and in the Committee of the Whole. The yeas and nays may be demanded in the House if the Member seeking the yeas and nays was on his feet and seeking recognition for that purpose when the Chair announced the result of the voice vote, as in 1991 and in 2005. The Speaker's count of one-fifth of those present to support a demand for the yeas and nays may not be challenged on appeal and need not be the subject of a parliamentary inquiry. In 1997, acknowledgment that yea and nay votes and "recorded" votes in the House, though separately requiring either one-fifth of Members present or one-fifth of a quorum respectively, were essentially the same record vote and not to be duplicated once either was conducted, was embodied in Rule XX clause 1.

Yeas and Nays and Other Record Votes. In a 1995 proceeding (carried in *Deschler-Brown Precedents* Ch. 30 § 31.18), the House, by unanimous consent, vacated proceedings of a prior day on a recorded vote conducted in the Committee of the Whole and required a vote *de novo*, it being alleged that Members were improperly prevented from being recorded. On that occasion, the Chair, by relying on the results shown on a tally "slip" already handed up by the Tally Clerk indicating a one-vote margin, had refused to permit two minority Members already in the Chamber and proceeding to the well to submit voting cards. In the dispute that ensued, the threat to obstruct any business of the House prompted the unanimous-consent order, and the vote was taken *de novo* in the Committee of the Whole the next day. The Chair's announcement, while technically in order since reliant upon a tally slip submitted by the Clerk, was vacated by the unanimous-consent accommodation reflecting a sense of comity in the House. In 2012, on request of the Majority Leader, the Committee of the Whole vacated proceedings on a recorded vote on an amendment upon complaint of its unrecorded minority-

party sponsor, and a re-vote was taken at the end of the stack of postponed votes, resulting in a change from the first result.

Discussion of the Chair's role in conducting votes in a fair and impartial manner received added attention, and became the subject of collateral challenges by questions of privilege in 2007 and 2008. A resolution adopted by the House on August 3, 2007, established a Select Committee to Investigate a Voting Irregularity which had occurred on the previous day. On that occasion, the Chair did not rely upon a tally slip submitted by the Clerk but rather prematurely read the result depicted on the electronic voting board in the Chamber while the Clerk was processing vote changes made by card in the well but not yet entered into the electronic system. The Chair's announcement of the numbers (based on the electronic display's reading of a tie) and premature rejection of a motion to recommit was immediately followed by several changes in results on the electronic display—the first indicating adoption of the motion and the second and final display indicating rejection as more change cards were processed by the Clerk. The Chair permitted those changes and then announced (again) final result without the benefit of tally slips from the Clerk. The occupant of the Chair subsequently revealed in testimony before the select committee investigating the irregularity that he had been guided by his own misinterpretation of the new rule which mandated that he could not hold an electronic vote open solely to give time to change the result. The Chair had not relied on a tally slip from the Clerk nor on advice from the Parliamentarian. The investigation revealed that a tally slip was never produced, notwithstanding the unbroken tradition with both electronic and yea and nay voting by rollcall prior to that occasion. Immediately following that vote, the House first adopted a motion to reconsider the disputed vote offered by the Majority Leader, but then rejected the motion to recommit, this time by voice vote, and then passed the bill on a record vote. The next calendar day, the House adopted by voice vote a resolution offered as a question of privilege by the Minority Leader establishing a select committee to investigate the voting irregularity and to report to the House. The resolution was divided for separate votes on the resolution and then on the preamble which recited allegations of impropriety. The preamble was rejected by voice vote. All this followed the Majority Leader's offer and then withdrawal of a privileged resolution referring the matter to the Committee on Standards of Official Conduct, during the debate on which the Member who had been in the Chair as Speaker pro tempore apologized to the House for his premature announcement of the vote. Other questions of privilege pertaining to the Chair's conduct of the proceedings following that disputed vote and prior to the ultimate establishment of the select committee (including the Chair's count of the yeas and

nays on approval of the Journal and the malfunction of the electronic system resulting in vacating a recorded vote on a motion to adjourn) were laid on the table.

The notion that the Chair could not hold open a recorded vote "solely to reverse the outcome," notwithstanding the fact that standing rules only imposed a minimum time for electronic voting and not a maximum (which would be determined at the Chair's discretion), became a rule in the 110th Congress in 2007 in order to demonstrate the new majority's commitment to procedural fairness. That majority (while in the minority) had collaterally but unsuccessfully challenged as a question of the privileges of the House in 2003 a vote held open for two hours, fifty minutes. That rule, premised on the Chair's "sole" intent in holding a record vote open, was later held to be impossible of direct enforcement on a point of order in 2008 and repealed.

The report of the Select Committee (H. Rept. 110–885) was filed in 2008 following a 13-month inquiry. It recommended repeal of the rule which prevented the Chair from holding a vote open "solely" to change the result. The rationale underlying that recommendation observed the impossibility of discerning the Chair's sole intent. The Select Committee, while declining to recommend that the portion of Rule XX clause 2 which requires the Clerk to conduct record votes, be amended to require that the Chair always rely on certification by the Clerk, nevertheless suggested in the report that the "best practice" in the House would so require. In the next Congress, the House followed the Select Committee's recommendation and repealed the rule. The Speaker's statement of practices to be followed, also made at the beginning of the 111th Congress and in subsequent Congresses, recited the recommendation of the Select Committee as the "best practice" to be followed by all occupants of the Chair.

Time to Respond on a Vote, Postponing and Clustering Votes; Reduced Voting Time. Rule XX clause 8 provided that the Chair may at his discretion reduce the time for a second and subsequent record vote in the House to a minimum of five minutes where conducted without intervening business following a 15-minute vote in a clustered series or on motions immediately incidental to a 15-minute recorded vote (such as reconsideration and laying on the table a motion to reconsider, or on clustered amendments reported from the Committee of the Whole). On several occasions, the House by unanimous consent or by special order permitted clustered votes after the first to be two-minute minimum votes in the Committee of the Whole, as in 2006 and 2009. In 2011, the House in Rule XVIII clause 6(f) permitted all clustered votes after the first in the Committee of the Whole to be two-minute minimum votes at the Chair's discretion. In 2013, all clustered votes

immediately after a regular quorum call were likewise permitted to be two-minute votes. The House also permitted designated postponed and clustered votes in the Committee of the Whole to be conducted beyond the two legislative-day limit permitted under that clause. In 2013, the Speaker was given discretion to conduct a five-minute vote on a motion to recommit if immediately following other votes in the House or in Committee of the Whole or even following 10 minutes of debate on the motion.

The Speaker announced a policy that the Chair would give a verbal warning when two minutes remained in the conduct of any electronic vote. The policy began in 1995 and was repeated in succeeding Congresses. It included the admonition that Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive. It also reiterated that the Chair will not close a vote while a Member was in the well attempting to vote.

Several rulings reaffirmed the proposition that the 15-minute requirement was a minimum, and that the Chair in his discretion (not subject to a point of order) could allow additional time for Members to record their presence or to vote before announcing the result, as in 2003 and 2004. When an emergency recess under Rule I clause 12(b) occurred during an electronic vote in 2005, the Chair extended the period of time in which to cast a vote by 15 additional minutes when the House resumed business.

On an extraordinary occasion in 2003, a record vote on a conference report was held open for two hours and fifty minutes by the Chair (far longer than on any prior occasion since the advent of electronic voting) in order to enable the majority leadership to lobby Members to change their votes, eventually sufficient to overcome a tally of 216–218 which had remained in place for most of that time and resulting in a majority vote adopting the conference report. Following that event, a resolution alleging intentional misuse of House practices and customs in holding a vote open for the sole purpose of circumventing the will of the House and directing the Speaker to prevent further abuse was held (in 2003 and 2005) to constitute a question of privilege but was laid on the table, later resulting in 2007 in the short-lived rule precluding votes to be held open "solely" to change the result.

The "scoreboard" components of the electronic voting system are for information display only, such that when the clock setting on the board reads "final" the Chair may continue to allow Members in the well to cast votes or enter changes, as in 2007.

Announcement of Member Pertaining to His Own Vote; Pairs. The practice of announcing general pairs ("Rep. X for, with Rep. Y against") was discontinued in 1999 by the recodification of the rules in the 106th Congress. That change acknowledged the irrelevance of the practice while retaining the ability of all absent Members to announce how they would have

voted by submitting signed announcements compiled in the cloakrooms for inclusion in the *Record* immediately following the vote or by making floor statements to that effect. The announcement of "live" pairs, though rarely used, was still permitted under Rule XX clause 3. By agreement with the absent Member, the voting Member announces the "live pair" before the result of the vote is announced, withdraws his vote and records himself by ballot card as "present" in the electronic system. The last live pair was in 2003.

Division of the Question for Voting. In the modern practice, special orders of business from the Committee on Rules have greatly circumscribed demands for a division of the question on amendments which are otherwise divisible, while conversely permitting certain indivisible questions (such as concurring in Senate amendments) to be automatically divided for separate votes. Where the rule (Rule XVI clause 5) was permitted to operate so as to permit a division of the question on matters which were substantively and grammatically divisible, recent rulings have, for example, permitted a division of the question on a resolution with one resolving clause separately certifying the contemptuous conduct of several individuals in 2000. A resolution of impeachment presenting discrete articles may be divided as in 1998 and in 2009.

A rules change in 1995 permitted amendments to general appropriation bills to "reach ahead" to provide only for transfer among amounts as offsets in portions of the bill not yet read so long as not providing a net increase in budget authority or in outlays therein, to compensate for changes in amounts in the pending paragraph (Rule XXI clause 2(f)), and declared that such *en bloc* amendments were not subject to a demand for a division of the question. In 2011, a standing order (sec. 3(j) of H. Res. 5) extended the indivisibility of amendments to those offered *en bloc* placing funds in a spending reduction account ("lockbox").

It was reiterated that while a motion to recommit with instructions is not divisible, an amendment reported forthwith pursuant to instructions contained in a successful motion to recommit may be divided on the question of its adoption if composed of substantively and grammatically distinct propositions (*e.g.*, 1993, 2010).

The motion for the previous question, if applied to a resolution and to an amendment thereto, was not subject to a demand for a division of the question in 1990.

The Order of Voting on Divided Questions. Where neither portion of a divided question remains open to further debate or amendment, the question may be first put on the portion identified by the demand for division and then on the remainder. Where the question on adopting an amendment

is divided by special rule, rather than on demand from the floor, the Chair puts the question on each divided portion of the amendment in the order in which it appears. In modern practice, special orders of business have occasionally precluded separate votes in the House on sundry amendments adopted in the Committee of the Whole, requiring them to be voted on *en bloc* in an effort to expedite proceedings. This has had the effect of preventing a demand for a division of the question and for reconsideration in the House of votes on separate adopted amendments, except on those on which Delegates' votes were decisive and were immediately reconsidered in the House (until that rule was repealed in 1995 and again in 2011).

Postponing and Clustering Votes; Reduced Voting Time; Separate Votes. Rule XVIII clause 6(g) was added in 2001 to permit the chairman of the Committee of the Whole to postpone requests for recorded votes and to reduce the voting time on the second and subsequent clustered votes to five minutes (then to two-minute minimums beginning in 2011). Until that time, the chairman of the Committee could not entertain a unanimous-consent request to reduce the time or to postpone and cluster votes, as that constituted a change in procedures imposed by the House on the Committee of the Whole. Rather, the House would be required to grant that authority to the Committee either by unanimous consent or by special order. Use of that authority was held to be entirely within the discretion of the Chair in 1998.

A request for a recorded vote on an amendment on which proceedings had been postponed could either be withdrawn by unanimous consent during other business before proceedings resumed on the request as unfinished business, or by right when those proceedings did resume, in which case the amendment stood disposed of by the voice vote (*e.g.*, 2000) unless the request proposed that the Chair put the question *de novo* (*e.g.*, 2004). That rule and the prior practice did not permit the Chair in 2000 to postpone a vote on an appeal of a ruling of the Chair (even by unanimous consent). The Committee of the Whole could by unanimous consent vacate postponed proceedings, thereby permitting the Chair to put the question *de novo* in 2000. The Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending in 2000.

While parliamentary inquiries relating to the conduct of a vote are not such intervening business as to require another 15-minute vote, unanimous-consent requests to permit intervening business such as announcements, one-minute speeches or moments of silence are required and are frequently instigated by the Chair and granted to permit five-minute or two-minute voting to continue. Flexibility for five-minute voting on a motion to recommit even after 10 minutes of debate was conferred on the Speaker in 2013.

Delegate Voting. In 2007, the House readopted the rule which was first adopted in 1993 and then repealed in 1995 (Rule III clause 3(a) and Rule XVIII clause 6(h)). The rule was repealed again in the 112th Congress in 2011. Motions to refer the opening-day rules package, which called upon a select committee to investigate the constitutionality of that repeal, were tabled in 2011 and in 2013. When operative, the rule permitted the Delegate from the District of Columbia, the Resident Commissioner from Puerto Rico and the Delegates from four territories (the Northern Mariana Islands having become a territory) to vote in the Committee of the Whole, subject to an immediate reconsideration in the House on any question on which their votes were collectively decisive in the Committee of the Whole. This was accompanied by adoption of the rule permitting Delegates and the Resident Commissioner to preside over the Committee of the Whole (Rule XVIII clause 1). The Chair's count in applying the "decisiveness" ("but-for") test under the rule was held not to be subject to appeal in 2007. The Chair's announcement did not differentiate between Members and Delegates in announcing the result of a record vote, and they were counted in establishing a quorum in the Committee of the Whole in 2007. Voting was held not to include the right to sign a discharge petition, a right confined to Members under the discharge rule in 2003.

In 2007, the House passed a bill (not enacted into law) giving the Delegate from the District of Columbia full voting rights in the House, based on the constitutional conferral in article I, section 8, clause 17 of the Constitution to Congress to "exercise exclusive legislation in all cases, whatsoever, over the District of Columbia." The constitutional question of whether that provision in article I superseded another provision in article I, section 1 which defines the House of Representatives as composed of Members chosen every second year "by the People of the several States," was debated on those occasions.

Statutory Requirements for Voting by Day Certain. A variety of statutes contemplated House and Senate action by a date certain or by a number of days as a contingency to achieving a certain result. They were enacted as exercises in joint rulemaking acknowledging the constitutional ability of either House to change its rules. To be distinguished from such procedures, Congress also enacted several laws requiring both Houses to vote by a date certain on a specified matter, and not merely as a contingency for a specified outcome. Beginning in 1977, certain Federal pay increases (2 USC § 359; Pub. L. No. 95–19) required recorded votes in each House within 60 days following presidential recommendation. The War Powers Resolution required votes in both Houses within three calendar days following reporting or discharge of bills or resolutions relating the use of military force unless otherwise determined by the yeas and nays. The National

Emergency Act (50 USC §§1601–1651) repeated that requirement for joint resolutions to terminate a national emergency declared by the President. Under the "fast-track" procedures in the Trade Act of 1974, the two Houses were required to vote within 15 (calendar) days of reporting or discharge of an implementing bill or approval resolution. Questions relating to the mandatory nature of those voting requirements on or before the expiration of the final day of the relevant time limit were not definitively raised such that a ruling from the Chair was required. In 2011, the Budget Control Act required a vote in both Houses by the end of that calendar year on an unspecified constitutional amendment requiring a balanced Federal budget. Conducting that vote was a condition for subsequent debt limit increases to be considered under an expedited procedure. Both Houses failed to pass the joint resolution by a two-thirds vote in the permitted time.

Chapter 31—Points of Order; Parliamentary Inquiries.

There were new developments since 1996 relating to the role of the Chair and matters relating to the basis, timing, and effect of points of order as new rules were put in place and as new rulings and practices emerged.

Ordinarily, the Chair would rule on a proposition only when a point of order was raised and only when he was required under the circumstances to respond. It was not the duty of the Chair to decide any question that was not directly presented in the course of the proceedings, such as the admissibility of an amendment not yet offered in 2000. While Rule XVII clause 4 would seem to impose a mandatory duty on the Chair at all times, in practice the Chair's initiatives were confined to improper references to the Senate, President, or Vice President, or to the gallery or the television audience as infringements of decorum. The Chair would not declare judgments on the propriety of words taken down before they were read to the House in 2001. An objection to the use of an exhibit under Rule XVII clause 6 was not a point of order on which the Chair must rule. Before the rule was rewritten in the 107th Congress, it required that the Chair put the question whether the exhibit may be used, but after that merely permitted the Chair to put such question in his discretion.

Rulings reiterated the Chair's reluctance to rule on constitutional questions, including the constitutional competency of proposed legislation in 1998, and the authority of the House to propose a rule of the House, such matter appropriately being decided by way of the question of consideration or disposition of the proposal in 2005. The Chair's traditional reluctance to issue advisory opinions on hypothetical or anticipatory questions made him decline to interpret a special order of business while pending.

The Chair seldom initiated rulings on relevancy of debate, or on personal references to other House Members, preferring to await points of order from

the floor and advice from the nonpartisan Parliamentarian. In modern practice, the Chair does not submit a point of order directly to the House. For example, pending a point of order against an amendment to an impeachment resolution, the Chair followed precedent in declining to submit the point of order directly to the House for its decision in 1998.

Under section 312 of the Congressional Budget Act, the Chair was required to treat as "authoritative" an estimate from the Committee on the Budget in ruling on points of order involving estimates of levels of new budget authority, outlays, direct spending, new entitlement authority and revenues. In 2011, a new standing rule (Rule XXIX clause 4) enabled the chairman of the Committee on the Budget (not necessarily "the committee") to supply such estimates including for purpose of "CUTGO" points of order (Rule XXI clause 10).

Manner of Making Point of Order. A Member may raise multiple points of order simultaneously, and the Chair may hear argument and rule on each question individually or sustain only one of the points of order raised, as in 1998. Where, in 1996, the House decided not to consider one motion to recommit with instructions as a disposition sustaining a point of order under the Unfunded Mandates Reform Act (after the Chair overruled a germaneness point of order against that motion), one valid motion to recommit remained in order. A ruling on a point of order can interrupt the reading when Chair has heard enough to rule on the point of order, as in 2009.

Timeliness. Points of order may be raised either against the consideration of a measure or matter, or against a portion of a pending measure, based on a specific rule of the House which prohibits its consideration or inclusion. Examples of points of order against consideration included violations of rules requiring availability and inclusion of certain matters in accompanying reports (inapplicable if the measure was not reported but rather discharged from committee), or under provisions of standing rule or law which enabled points of order against consideration of certain bills, amendments, resolutions or conference reports. Generally such points of order must be raised when the measure or matter was first called up for consideration, and come too late after consideration has begun. Beginning in the 112th Congress in 2011, Rule XXI clause 11 required three-day (printed or electronic) availability of any unreported measure. Budget Act points of order against consideration of a measure must be made in the House pending the outset of consideration pending a motion (or declaration) resolving into the Committee of the Whole.

Multiple points of order against a conference report—one alleging a Budget Act violation and another the nongermaneness of a Senate provision

therein under Rule XXII clause 10—will be disposed of in the order in which the effect of sustaining the point of order would have on the conference report. If the point of order would vitiate the entire report the Chair will rule on it before ruling on germaneness, which would merely trigger a separate vote on motion to reject nongermane portion.

Examples of points of order against provisions within measures, which must be made when those offending provisions are separately being read, include legislation or unauthorized items in general appropriation bills, appropriations in legislative bills, and tax or tariff provisions in bills by a committee other than the Committee on Ways and Means. Points of order against nongermane amendments must be raised or reserved when the amendment is first considered, and come too late following some debate on the amendment. The underlying notion that points of order, while presumptively necessary to assure regular order in the House, could be waived if not made or reserved at the outset of consideration, incorporates the principle of *laches*. It assured that the time of the House will not be wasted on objectionable matter, by requiring that objections must be disposed of as consideration begins, while also requiring the Member raising the point of order to be on his feet seeking recognition at the appropriate moment. That requirement was also embodied in the rule that objectionable debate must be challenged immediately upon utterance, before any subsequent debate intervenes. By precedent, the timeliness of points of order on most other matters is similarly confined to the moment of initial consideration. For example, by unanimous consent a portion of a general appropriation bill being open to amendment at any point, the Chair queries for points of order against any of that portion before entertaining amendments and will not permit reservations of points of order to be later disposed of, so that the text of the measure to be amended is known before amendments are offered.

In 2008, the Chair ruled that a point of order during proceedings on a record vote regarding the Chair's conduct of that vote, which could invite a possible appeal from the Chair's ruling and a "vote within a vote" which the electronic system could not accommodate, would not be entertained. The Chair indicated that the matter could be collaterally challenged as a question of privilege vacating the vote thereafter.

Reserving Points of Order. As a protection against the need to immediately rule on points of order against amendments, or to allow the proponent of the amendment and others to temporarily debate its merits, the Chair may in his discretion permit the reservation of a point of order at the outset, which would be subsequently disposed of upon the insistence of the Chair while the matter remains pending.

Only two points of order in the House were stated by rule to be so sacrosanct as to be exceptions from the general requirement for timeliness for

the making or reservation of a point of order immediately upon consideration of the offending matter. Beginning in 1983, Rule XXI clause 5(a) was adopted to permit points of order to be raised "at any time" during the pendency of a portion of a reported bill not reported from the Committee on Ways and Means or an amendment thereto which contains a tax or tariff. That clause mirrored the provisions of Rule XXI clause 4 (adopted in 1920) in order to protect the jurisdiction of the Committee on Ways and Means (just as Committee on Appropriations had been protected by clause 4) against encroachments discovered in measures reported from other committees or against amendments thereto. To that end, where the reporting committee was the Committee on the Budget on reconciliation bills pursuant to section 305 of the Congressional Budget Act, and the Committee on Ways and Means had only submitted tax or tariff recommendations to that committee for packaging without change but had not actually reported the bill to the House, the Committee on Ways and Means was not considered to have been the reporting committee in 1985 and in 1989. Thus, an anomaly emerged under Rule XXI clause 5(a) by not protecting matter approved by the Committee on Ways and Means, to permit points of order against tax and tariff provisions in or amendments to such Committee on the Budget reported reconciliation bills although recommended by the Committee on Ways and Means. Both "at any time" points of order under clauses 4 and 5(a), however, have been held inapplicable where the legislative bill under consideration was unreported. Similarly where a pending special order reported from the Committee on Rules "self-executed" the adoption in the House of an amendment containing an appropriation into a bill not reported by the Committee on Appropriations, the Chair ruled that the amendment was not separately before the House and the special order was not subject to an "at any time" point of order in 1993. Subsequently, when that reported bill was under consideration and already contained the appropriation, the Chair ruled that the "at any time" point of order did not apply, as the amendment had already been adopted by the House by adoption of the special order.

In 2007, Rule XXI clause 8 was added to permit points of order under title III of the Congressional Budget Act whether or not the offending bill had been reported from committee, in order to remove the point of order distinction between reported and unreported bills in title III.

Debate. The Chair may decline to rule on a point of order until he has had time for examination, and he may in his discretion hear argument on any point of order. Such debate must be confined to the point of order and may not go to the merits of the underlying proposition or to other parliamentary business. Members may not yield to each other, may not revise

their arguments for the *Record*, and must be separately recognized by the Chair, who may decline further recognition when ready to rule, as in 2011. A number of rulings documented in section 628 of the *House Rules and Manual* reiterated that colloquies are not permitted and that Members must address the Chair directly and may not revise their remarks or gain separate debate time by offering pro forma amendments pending the point of order.

Burden of Proof. The Chair will not apply a "fairness" test by judging the advisability of the proposition in applying Rule XXI clause 2 or any other rule where the burden of proof on the point of order is not met, as in 2012. Where two arguments are made in support of a point of order alleging separate violations of the Budget Act, the Chair may sustain it based on one correct argument, as in 1998.

Waivers; Disposition of by Debate and Vote on Unfunded Mandates, Earmarks, or Waivers Thereof. The Chair is barred by rule and practice from entertaining unanimous-consent requests to waive or suspend certain rules, including constitutional requirements which constitute basic rules (such as points of order of no quorum on votes or a demand for the yeas and nays). Also rules on admission to the floor or references to persons in the gallery may not by their terms be waived, even by unanimous consent, and are thus always enforceable on the Chair's initiative or on points of order from the floor. Otherwise, the House may by proper means—by unanimous consent, by special order, by a motion to suspend the rules, or by forbearance or a lack of timeliness—waive any point of order which would otherwise impact the consideration of a measure or matter.

In the contemporary practice of the House (as noted earlier), several points of order are disposed of not by a ruling from the Chair, but instead by the House voting upon the question of consideration. These include points of order raised against measures allegedly containing unfunded intergovernmental mandates, and points of order related to earmark disclosure requirements. Debate on such points of order is limited to 20 minutes, equally divided between the proponent and an opponent. Similarly, the former House PAYGO rule (replaced by the CUTGO rule in the 112th Congress) required an automatic question of consideration to be put to the House for measures containing emergency designations (*i.e.* exemptions from certain budgetary constraints). Such question was decided without debate. Although the current CUTGO rule has no comparable provision, the Statutory Pay-As-You-Go Act still requires the question of consideration to be put for measures containing emergency designations, in the same manner as the prior House PAYGO rule.

Appeals. In chapter 31 of *Deschler's Precedents*, it was asserted that "appeals from rulings of the Chair have been infrequent, and the only issue

presented by an appeal is the propriety of the Chair's ruling under the rules and precedents, and not on the merits of the proposition to which the ruling applies." Nevertheless, the proliferation of appeals from rulings of the Chair since that time was pronounced. While that description of the precise question on appeal remains accurate, it became increasingly evident that most appeals from correct rulings of the Chair were taken to prompt recorded votes thereon in order to politically characterize those votes as decisions on the merits of a matter not made in order (and often to express frustration at the restrictive nature of a special order adopted by the House).

A Member cannot secure a recorded vote on a point of order absent an appeal and the Chair's putting the question thereon. Appeals were not entertained from decisions on recognition 1999 and in 2006, on the count to order a recorded vote in 2000, on the call of a voice vote in 1994, or on the determination of remaining debate time in 1996. Although the timeliness of the Chair's recognition of a Member to offer a motion to table an appeal was not subject to appeal in 2006, the Chair's ruling on timeliness of a Member's demand that words be taken down was subject to appeal in 2007.

A new rule (Rule XX clause 5), adopted in 2005 required the Speaker to announce the whole number of the House upon death, resignation, expulsion, disqualifications or removal of a Member, and to announce the content of a catastrophic quorum failure report triggering a reduced quorum requirement by not counting incapacitated Members, which announcements were not subject to appeal. These provisions were added to prevent record votes on appeals which might otherwise establish the absence of a quorum if the revised number required were not yet finalized because of the appeal.

An appeal could be withdrawn at any time before action by the House thereon, as where (*e.g.*, 2004) the Chair has not even stated the question on appeal. An appeal of a ruling of the Chair could be withdrawn in the Committee of the Whole as a matter of right. It was reiterated in 2003 that debate on an appeal in the Committee of the Whole is under the five-minute rule and cannot be tabled there.

Parliamentary Inquiries. Recognition for parliamentary inquiries was in the discretion of the Chair. However, parliamentary inquiries cannot interrupt another Member having the floor without his yielding. A Member under recognition for a parliamentary inquiry may not yield to another Member. The Chair responds to parliamentary inquiries relating in a practical sense to the pending proceedings (*e.g.*, pending consideration of a bill and its relationship to a second budget resolution's impact if subsequently adopted in 1984), but does not respond to requests to place them in historical context. The Speaker may entertain a parliamentary inquiry during a record vote if it relates to the vote. The Chair would not explain the exercise

of discretion to hold a vote open beyond the minimum time prescribed under Rule XX clause 2, even where in the 110th Congress that rule prohibited the Chair from holding a vote open "solely" to change the result (although the Chair did on occasion explain his motivation during votes in 2007–2008). That rule was repealed in the 111th Congress. The Chair would not respond to a parliamentary inquiry to state the vote tally as it stood upon expiration of the minimum time.

In 2010, the Chair made an elaborate statement outlining the proper parameters for parliamentary inquiries. The Chair did not respond to improper parliamentary inquiries of the following types: (1) to judge the propriety of words spoken in debate pending a demand that those words be taken down in 1995; (2) to judge the veracity of remarks in debate in 1996 and in 2004; (3) to judge the propriety of words uttered earlier in debate in 2000 and in 2007; (4) to reexamine and explain the validity of a prior ruling in 1995, 2005, and 2008 (although the Chair did clarify a prior response to a parliamentary inquiry in 1996); (5) to anticipate the precedential effect of a ruling in 1998; (6) to judge the accuracy of the context of an exhibit in 1995; (7) to indicate which side of the aisle has failed under the Speaker's guidelines to clear a unanimous-consent request; (8) to respond to political commentary in 1998, 2001, and 2004; (9) to comment on the effect of time consumed on a pending amendment as a tactic to prevent the offering of other amendments under a special order adopted by the House in 2000; (10) to anticipate whether bill language would trigger certain executive actions; (11) to otherwise interpret a pending proposition in 1998 (although the Chair may explain the application of the procedural status quo to a pending proposal to change the standing rules, as in 2006); (12) to judge the appropriateness of Senate action in 2003; (13) to characterize committee proceedings in 2006; (14) to speculate as to the operation of committee rules in 2007; or (15) to rule on the propriety of specified words not yet uttered in debate in 2012. The Chair confirmed (in 2007 and 2008) that the adoption of a motion to recommit with instructions to report "promptly"—a motion no longer permitted beginning in 2009—did not necessarily suspend the operation of any rule of the House or of a committee regarding the need for subsequent meeting and action by the committee. The Chair also confirmed that adoption of a pending motion to suspend the rules and concur in a Senate amendment would waive all House rules, including the PAYGO rule in Rule XXI clause 10 in 2007.

Chapter 32—House-Senate Relations.

In all, the frequency of the utilization of special orders to "ping-pong" (directly dispose of) amendments between the two Houses, in lieu of the more

traditional disposition of differences by conference committees, was the result of several factors influenced by the rules and practices of both Houses. The extent to which special orders reported from the Committee on Rules at the leadership's direction could short-circuit conferences was demonstrated. Such special orders could not only dispense with the need for separate committee-ordered motions to go to conference, but could avoid all of the following procedural steps: initial (minority priority) and 20-day privileged motions to instruct House conferees; the holding of formal open conference meetings; the production of a joint explanatory statements of managers; three-day availability of the conference report; the requirement that House (and Senate) managers remain within the scope of differences, and the availability of a (minority) motion to recommit in the House where acting first on the conference report.

Messages Between the Two Houses. An instance in 1998 supplemented sections 1.10 and 1.11 of chapter 32 regarding anticipatory or "deemed" House or Senate action which by unanimous consent was made contingent upon receipt by the Clerk or Secretary of a message from the other House transmitting the official papers in a prescribed form in order to avoid waiting for the message. This included "deeming" a bill not yet passed by the Senate in an amended form to be sent to conference upon receipt by the Clerk of a message to that effect. Those instances are aberrations from the requirement that action should await actual receipt by messenger as stated in *Jefferson's Manual*.

In 2006, the House adopted a conference report containing, *inter alia*, the specified number "13" as part of legislative text. The Senate then rejected the conference report and instead amended the original House-passed amendment to the Senate bill, intending inclusion of "13" but instead providing "36" by an error affecting the bill's substance in the engrossed Senate amendment messaged to the House (which message thus became the official Senate position). The House by special order concurred in the incorrect Senate amendment, the Senate not having asked the House to return the papers so that it could correct its depiction of its final action. This was done in the House to avoid a separate vote on any request by the Senate for return of the message, or subsequently on any concurrent resolution correcting the final enrollment. Nevertheless, the Secretary of the Senate in preparing the final enrolled parchment then changed the number back to the intended number "13" without authority of either House, in order to correct her previous error, and the presiding officers signed the enrollment as "truly enrolled." The entire procedure was collaterally but unsuccessfully challenged in the House by a question of privilege calling upon the Committee on Standards of Official Conduct to investigate the matter. The procedure was

also unsuccessfully challenged in court (*e.g.*, *Public Citizen v. Clerk of the U.S. District Court for the District of Columbia*, 451 F.Supp. 109 (D.D.C. 2006)), relying on the U.S. Supreme Court decision in *Field v. Clark*, 143 U.S. 649 (1892), that the courts will not as a matter of separation of powers look behind the signatures which certify the true enrollment of the measure into the procedure.

On two occasions in 2011, the House took extraordinary steps to textually anticipate possible Senate action or inaction either: (1) in the bill itself being made in order (making in order bill language merely to (re)pass a previously-passed House bill if the Senate has not acted on it by a day certain by incorporating its terms by reference); or (2) to delay final enrollment of a bill if passed by both Houses unless the Senate first conducted votes on two concurrent resolutions to be adopted by the House separately correcting that enrollment (whether or not adopted by the Senate).

Disposing of Amendments Between the Houses. Section 6 of chapter 26 explains the trend away from the use of numbered Senate amendments and toward amendments in the nature of a substitute. On October 5, 1978, the House was considering a numbered Senate amendment reported from conference in disagreement, and a motion to recede from disagreement and concur in the Senate amendment was made by the manager of the bill. The Chair ruled that the motion could be divided and the House thereupon receded without debate. In response to parliamentary inquiries, the Chair then stated that had any Member sought timely recognition, one hour of debate, equally divided between majority and minority parties, would have been permitted on the initial question of receding and then separately on the question of concurring if the House had receded. Following confusion in the House regarding the status of the pending motions, the House by unanimous consent vacated such proceedings to permit the motion to recede and concur to be reoffered and divided and the question of receding to be separately debated all over again.

Rule XXII clause 4 was added in 1999 as part of a recodification to emphasize that motions in the House to dispose of Senate amendments requiring Committee of the Whole consideration or House amendments thereto are privileged only after the stage of disagreement has been reached. In modern practice, the House normally disposes of Senate amendments prior to the stage of disagreement either by unanimous consent, by suspension of the rules, or by a special order from the Committee on Rules. Section 528 of the *House Rules and Manual* includes discussion of the various forms and interpretations of special orders providing for disposition of Senate amendments both before and following the stage of disagreement. Since the 1990s, conferees on general appropriation bills in modern practice seldom go to conference on numbered Senate amendments containing legislation or unauthorized items in disagreement for disposition by separate vote. Rather the

Senate normally amends all such House bills with amendments in the nature of a substitute, and not by numbered amendments, and the Committee on Rules then recommends a waiver of all points of order against resulting conference reports although they contain disposition of Senate amendments containing legislation or unauthorized appropriations otherwise requiring consideration in the Committee of the Whole. That change in practice developed incrementally in both Houses and has had profound impact on consideration of appropriation bills in both Houses, giving conferees greater authority to include provisions for one vote which otherwise had required separate votes on discrete motions.

Effect of Special Rules. There was a proliferation of efforts to circumvent the standing rules and traditional procedures of the House and Senate in order to expedite consideration and disposition of matters between the two Houses as indicated by relevant rulings interpreting special orders, representing expanded use of the authority of the Committee on Rules to vary "regular order." In 1996, the chairman and ranking minority member of the Committee on Rules inserted in the *Congressional Record* an exchange of correspondence regarding the authority of that committee to report special orders disposing of Senate amendments while not providing for a motion to recommit—that minority protection only being applicable to a special order providing for initial consideration of a bill or joint resolution. For example, the Committee on Rules has reported special orders which permit two or more amendments to a Senate amendment in order to divide some of the Senate text for separate votes by unamendable motions. Special orders have provided for the consideration of a single indivisible motion to concur in sundry Senate amendments, or to concur in a Senate amendment with an amendment printed in the accompanying Committee on Rules report, or to consider any motion offered by the Majority Leader to dispose of any Senate amendments.

In 2010, during the health care debate, the House utilized one special order to expedite consideration of the initial House bill by a "modified-closed" rule, and also permitted "closed" consideration of a second health care bill to be merged after separate passage. After Senate amendment of that bill, the House in one special order adopted that Senate amendment by a single subsequent motion, and then immediately considered a separate House bill under a "closed" rule as "reconciliation" which would make agreed-upon budgetary changes in the soon-to-be-enacted law. The Senate treated that bill as "reconciliation" but invoked the "Byrd" rule (see chapter 41 on Budget Process) to strike out an extraneous provision. The House finally self-executed the adoption of that Senate amendment by a final special order.

In 2010, the House adopted a special order permitting the Committee of the Whole consideration of a specified amendment to a Senate amendment but not permitting amendments thereto or any other amendments, before voting on a motion to concur in the House if that amendment were rejected in Committee of the Whole. Rather than suggest the preferential status of the motion to concur with amendment over the motion to concur in the House, the special rule was intended to appear more "open" by suggesting initial Committee of the Whole consideration.

Degree of Amendments. Special orders were utilized making in order House amendments broaching the third degree between the Houses notwithstanding the constraint in *Jefferson's Manual*.

In the Senate, an amendment to Senate Rule XXVIII in 2007 imposed a strict prohibition on the inclusion of new matter not committed to conference by either House (the "air-drop" rule), absent a three-fifths waiver in order to retain the offending new matter. The proliferation of filibusters requiring cloture votes at several stages of getting to conference and of disposition of the conference report sometimes suggested that conferences be avoided where the Majority Leader could offer preemptive motions to "fill the amendment tree" to foreclose other motions or amendments by other Senators. On several occasions, the Senate Majority Leader, being assured of priority of recognition at every stage, could offer either a motion to concur in the final House amendment or a motion to further amend (if not in the third degree). He could then offer an amendment to his own amendment in the nature of a substitute, during the pendency of which further amendments were not in order (substitutes for the original amendment of the Majority Leader and amendments to substitutes not being in order in the Senate) and adoption of which would preclude further amendments. While one cloture vote requiring three-fifths majority was still required, the numerous filibusters at several stages of Senate proceedings each potentially requiring three-fifths waivers could be avoided.

Chapter 33—House-Senate Conferences.

There were important trends in this area beginning in 1999, such as: (1) reduced utilization of conference committees in favor of "ping-pong" direct votes on amendments to resolve differences between the two Houses; (2) increased complexity and variety of conferee appointments (especially in the House); and (3) the impact of Senate rule changes governing inclusion of new matter in conference reports.

Motions, Resolutions and Requests for Conference. Rule XXII clause 1 was codified in 1999 to reflect a 1994 ruling that privileged motions to go to conference must be authorized by all reporting committees of initial

(but not sequential) referral. On a Senate bill with a House amendment consisting of the text of two corresponding House bills that were previously reported to the House, the motion must be authorized by the committees reporting those corresponding bills, as in 1998. Some committees' rules provide advance authority to move to go to conference at the Chair's discretion so that *ad hoc* votes in committee on each bill are not required. Rule XI clause 2(a)(3) was added in 2005 to empower committees to adopt rules to authorize the chairman to move to go to conference whenever appropriate.

Conferees. With respect to changes in the Speaker's appointment of conferees, unilaterally permitted since 1993, the Speaker modified an initial appointment by removal, by substitution of one conferee for another, and by expansion of the specification of provisions on which a conferee had been appointed. While conferee appointments in the House generally became more complex, including both general conferees and additional conferees on specified portions, conferees on general appropriation bills continued to be limited to members of the Committee on Appropriations (sometimes with different subcommittees represented on portions of the Senate amendment). There were noted examples of very limited naming of conferees by the Speaker in 2001 and 2005, as only three (two majority and one minority) conferees including the chairman and ranking minority member of the relevant committee and the Majority Leader were named. On those occasions, it was apparent that informal negotiations with Senate leadership by the majority leadership in the House would take place prior to a formal conference meeting sometimes without the participation of the minority, and that only one formal open conference meeting would then take place to merely ratify the informal compromise and to sign the signature sheets. In 2012, the Minority Leader refused to recommend minority conferees to the Speaker, who appointed only majority conferees until the end of the conference. On another occasion, the Speaker appointed a Minority Member as a conferee among the majority names without consultation with the Minority Leader.

Instructions to Conferees. Rule XXII clause 7(c) was amended in 2003 to require that the motion to instruct conferees after 20 calendar days of conference appointment in both Houses was only in order after ten legislative days, running concurrently, so that the 20-calendar day period could not alone render timely a motion when elapsing during an adjournment. In 2012, the House adopted a special order providing that pro forma sessions held every third day during a "recess" period would not count toward the computation of the 20- or 10-day period. In 2001, clause 6(d) was added to provide that instructions to House conferees may not include argument, but must reference only proposed legislative language without stating a reason therefor. The motion may be repeated after one day's notice.

Points of order under the Congressional Budget Act have been determined to be inapplicable to motions to instruct conferees, since there may be no available legislative text to score, and because those motions are not binding and there is therefore no need at that stage to obtain estimates from the Committee on the Budget (chair) on the advice of the Congressional Budget Office.

The motion to adjourn was in order while a motion to instruct conferees was pending, and if adopted the motion to instruct was rendered unfinished business on the next day without need for further notice. The managers' filing of a conference report in the House precluded further proceedings on noticed 20-day motions to instruct, including postponed votes thereon even following debates in 1999, 2003, and 2004.

A motion to instruct conferees on a general appropriation bill may not instruct the conferees to include either a funding limitation or a change in income tax law not contained in the House bill or Senate amendment. Such motion also may not instruct managers to include funding for a program above or below both of the respective amounts in the House bill and Senate amendment for that program, as in 2005.

Conference Reports—Contents of Report; Corrections. Two instances demonstrated the importance of the sanctity of official papers and the possibility of collateral ethics challenges as questions of privilege. In 2005, as indicated in debate, the Majority Leader of the Senate, accompanied by the Speaker of the House, importuned the staff director of the House Committee on Appropriations (who was about to file in the House a conference report already containing the requisite number of signatures) to insert language into the report which had not been agreed to by the conferees when they signed the signature sheets, and without the knowledge and consent of the conferees. The conference report subsequently was considered and adopted in the House on the same day pursuant to a special order waiving all points of order. In 2006, a question of privilege calling upon the Committee on Standards of Official Conduct to investigate the alleged impropriety was entertained after the fact but laid on the table.

Another irregularity occurred when the House adopted a conference report containing a certain figure, and the Senate, by operation of the "Byrd" rule (see chapter 41 on Budget Process), then rejected the conference report and instead amended the original House-passed amendment to the Senate bill, intending that its amendment should contain the same figure as in the House-passed conference report. By inadvertence, the Senate's engrossment of its amendment contained a different figure. As the best evidence of the content of the Senate amendment was the engrossment of that amendment in the official papers messaged to the House, the final Senate action became

the changed figure. The Senate did not ask the House to return the papers so that it could correct its depiction of its final action. The House, its leadership having knowledge of the error in the Senate message, nevertheless concurred in the Senate amendment with the incorrect figure, to avoid a separate vote on any request by the Senate for return of the message, or subsequently on any concurrent resolution correcting the final enrollment. The Senate enrolling Secretary in preparing the final enrolled parchment then changed the number to that originally intended, without the authority of either House. That version was enacted into law, followed by unsuccessful attempts in the House to collaterally challenge the impropriety by a question of privilege in 2006 and by unsuccessful lawsuits in Federal courts.

In 2006, a conference report on a highway authorization bill adopted by both Houses was improperly changed by the House enrolling clerk at the behest of the lead House conferee to include in the enrollment a provision not in either bill which provided a highway project financially benefiting a political donor to that Member's campaign fund. There was no concurrent resolution authorizing correction of the enrollment. In the next Congress, that provision became the focus of a Senate amendment added to a subsequent House-passed highway bill in 2008. The amendment directed the Department of Justice to investigate allegations of impropriety surrounding the earlier enrollment change. During debate on the amendment in the House, the Member who was to be the focus of the investigation suggested incorrectly that such changes were proper if informally supported by bipartisan agreement (the Department of Justice discontinued its investigation two years later but the FBI, in 2012, released detailed information regarding potentially improper diversion of campaign funds for personal use).

Signatures. A revision in the Parliamentarian's analysis in section 18.8 of chapter 33 will change the statement that "the accepted practice in the House, and in the Senate, is for the managers to either sign a conference report without qualification, to show that the matters in conference have been reconciled, or to refuse to sign if total agreement has not been reached." The Senate Parliamentarian has taken the view that although its conferees are permitted to sign a report with exceptions or conditions, nevertheless even such qualifying signatures are counted per capita toward a majority of the total although not having agreed to all matters in the report. In the House, the practice correctly continued that qualified signatures of Senate or House conferees will not be permitted to count toward a majority, the report being a signed agreement on all matters therein and not containing exceptions or minority views. Also in the Senate, its additional conferees (and House conferees) appointed only on certain matters committed to conference are nevertheless counted by the Senate Parliamentarian toward a majority on the entire report per capita, while in the House the correct practice continued that limited conferees are counted only toward a majority on those issues. In the House, separate majorities must be obtained

on each of the issues committed to conferees which are identified in the Speaker's appointment and on the signature sheets by specified provisions in the House or Senate version (counting both general conferees appointed on all matters and additional conferees where relevant).

Scope. On one occasion, in 2002, a conference report was held to exceed the scope of conference, the joint statement of managers conceding that the report contained new matter not committed to conference by either House (or beyond the precise range of differences), and against which points of order had not been waived. The report was vitiated, after which a privileged motion to recede and concur in the Senate amendment with an amendment incorporating by reference the text of an introduced bill (consisting of the text of the conference report with one deletion) was offered. The form of the motion—incorporating text by reference to another numbered measure rather than specifying text—was irregular but was used to avoid the reading of the lengthy amendment by the Clerk in the interest of time.

On virtually every other occasion all points of order were waived against the consideration of conference reports and against their provisions, either by unanimous consent, by virtue of consideration under suspension of the rules, or most frequently by special orders reported from the Committee on Rules. In fact, when such special orders were called up, the manager of the rule often described such waivers as "usual," "customary," or "necessary."

The Senate adopted its "air-drop" rule (new Rule XLIV) in 2007, which indirectly impacted the House and its committees. While normally changes in Senate rules and precedents are beyond the scope of this work, section 19.4 of chapter 33 contained a Parliamentarian's Note which analyzed the development through 2000 of treatment of scope of conference points of order in the Senate under its Rule XXVIII. The general Senate scope rule applicable to all conference reports was also amended to require three-fifths votes for waiver under either rule.

The "not entirely irrelevant" test of scope of conference espoused by the Senate Parliamentarian at the time of that note in 2000 has been informally modified to become a "common-sense relevancy" test. Under that test applicable to all points of order, rather than a strict scope test as applied in the House, a more flexible standard is utilized in the Senate taking into account the relevancy of proposed new provisions to at least some provision in the House or Senate version.

By adding new Rule XLIV, the Senate imposed a three-fifths waiver requirement on a point of order against any "earmark" provision in a spending (appropriation) bill conference report constituting "new directed spending" added for the first time by the conferees. That was defined to include "a specific level of funding for any specific account, specific program, specific

project, or specific activity, when no such provision was provided in the measure originally committed to the conferees by either House.” Several rulings in the Senate since 2007 demonstrated the applicability of the rule. In the event the point of order was sustained and not waived by a three-fifths vote, the conference report on the spending bill was considered rejected in the Senate and the pending question was on the remainder of the conference report as a proposed Senate amendment to the House text (a procedure comparable to the “Byrd” rule (see chapter 41 on Budget Process) governing extraneous matter in conference reports on budget reconciliation bills). This process has directly impacted subsequent House proceedings where, although the House had previously adopted the appropriation conference report, the House was required to act again on the proposed new Senate amendment. To avoid this point of order in the Senate, the two Houses resorted to “ping-pong” disposition of amendments between the Houses rather than going to conference, through utilization of special orders in the House permitting motions to concur in Senate amendments with amendments reflecting informally negotiated compromises. Beginning in 2011, there was a return to the use of conferences on some appropriation bills, but with earmarks prohibited in both Houses (in the Senate by standing rule and in the House by party conference rule); the Senate “air-drop” rule was not invoked.

Joint Statement of Managers. In 1998, when the House by unanimous consent permitted the chair of a House committee to insert in the *Record* extraneous material to supplement a joint statement of managers, the Chair announced that the insertion did not constitute a revised joint statement of managers since not agreed upon in the Senate. Rules changes regarding matters to be included in joint statements include the Unfunded Mandates Reform Act of 1995 which requires the Director of the Congressional Budget Office to prepare a statement with respect to the unfunded costs of any additional Federal mandate in the conference agreement.

Rule XXI clause 9(a)(4) as added in 2007 (first imposed as a standing order in 2006) required joint statements of managers either to include a list of congressional earmarks, limited tax benefits and limited tariff benefits and the name of any Representative or Senator who submitted a request to the House or Senate committees of jurisdiction for inclusion, or to state that the report contained no such earmarks. Paragraph 9(b) further required that joint statements accompanying conference reports on general appropriation bills also list and identify the sponsorship of new earmarks inserted in the report which were in neither the House nor Senate version of the bill committed to conference. No conference reports in violation of this rule may be considered in response to points of order unless special orders

waiving the rule are permitted to be considered by a separate vote of the House following 20 minutes of debate.

On at least one occasion, the joint statement of the managers included only a recitation of the procedural disposition proposed to be made of the amendments between the Houses, without describing the contents of the conference report. Under earlier precedents the Chair would normally submit the question of the sufficiency of the report to the House rather than rule directly under Rule XXII clause 7(d) (5 *Hinds' Precedents* §§ 6511–13). However, where there was no required substantive explanation informing the House of "the effects of the report on matters committed to conference," the Chair could sustain the point of order absent a waiver of all points of order against consideration of the conference report.

Consideration and Disposition of Conference Reports—Waiving Points of Order. Beginning in the 1990s, it became a regular practice to waive the three-day rule requiring printing of conference reports in the *Congressional Record* prior to eligibility for consideration. When the waiver of that point of order was contained in a special order reported from the Committee on Rules, the special order was subject to the one-day availability requirement in Rule XIII clause 6 unless consideration was permitted by a two-thirds vote (the "same day reported") or contained in a special order "only" waiving the three-day availability requirement (Rule XXII clause 8). In calculating the second "legislative day" requirement, numerous special orders were filed by the Committee on Rules following its meeting which often came soon after the filing of the conference report. While the Committee on Rules' policy was to insist on filing of the conference report in the House before it would meet, and on the availability of report text to the committee, that period often was measured by a matter of hours, as the committee informally received an electronic text, convened during a recess of the House, reported the special order waiver, and the House then reconvened for the filing of the rule and for adjournment of the House until the next legislative day at the previously set time, which could be the same calendar day within hours or even minutes as the day of filing. In the 112th Congress in 2011, the *Congressional Record* printing requirement was supplemented to provide that electronic availability on a proper website of the signed conference report would begin the three-day count.

Recommittal. A motion to recommit a conference report may not instruct House conferees to exceed the scope of differences by expanding definitions to include classes not committed to conference or by otherwise including new matter.

Chapters 34–40.

These chapters were separately published as volume 17 of *Deschler-Brown-Johnson Precedents* in 2011 covering a period 1928–2006. For example, in chapter 34 (Constitutional Amendments), a law, the Budget Control

Act of 2011 (Pub. L. No. 112–25, sec. 201), separately treated in chapter 41 in this volume, required a vote in both Houses by a date certain (December 31, 2011) on an unspecified joint resolution proposing a balanced budget amendment. The Act did not alter the procedures for taking up such a measure in the Senate, and therefore that body was not required to vote on passage of a constitutional amendment unless the support of 60 Senators could be secured to begin consideration. That vote was taken but was not successful in either House. Failure of both Houses to pass the joint resolution to be submitted to the States for ratification triggered the second of two conditions under which the Budget Control Act would permit an additional increase of the debt ceiling, (the other being an expedited procedure for disapproval of a presidential submission).

In chapter 36 (Ceremonies and Awards), beginning in 2011 and 2013 readings by Members during a session of the Constitution in full were made in order by standing order adopted on opening day.

House-Senate Adjournments for Differing Periods. The two Houses for the first time in 2010 adopted separate concurrent resolutions of adjournment on different days for the "August recess," with separate recall authority conferred on the Speaker and Senate Majority Leader respectively, where it appeared that the Senate might not clear a combined concurrent resolution including its own adjournment in time for the House's earlier adjournment. The Speaker exercised the recall authority and the House was reconvened for a one-day session in 2010. The Senate Majority Leader then exercised his own recall authority and the Senate was reconvened for a one-day session two days later. In 2011, the two Houses adjourned for an "August recess" to meet pro forma every fourth day but not to conduct legislative business, in order to prevent the President's "recess appointments" during a formal Senate adjournment for that period. In 2012, another series of Senate pro forma sessions at the end of the first session prompted the President to assert that the Senate had "adjourned" since it could conduct no business for a month, and to submit several controversial executive "recess appointments." Litigation ensued and the Speaker together with the Senate Minority Leader submitted an amicus brief challenging the President's recess appointments to the NLRB in 2012 (*NAM v. NLRB*, case no. 12–05086 (D.C. Cir. 2012)). In 2012, the two Houses returned to utilization of a concurrent resolution of adjournment for an "Easter recess," following informal agreement that there would be no "recess appointments" during that period by the President. Nevertheless, the House rejected a Senate adjournment resolution providing for an August adjournment in 2012, and was forced to meet pro forma until the matter was resolved by adoption of a new Senate resolution at a pro forma session several days later.

Sine Die; Where Required or Prohibited by Law. In a precedent in 1985 also contained in chapter 41, the Chair held that a *sine die* adjournment concurrent resolution offered from the floor by a minority Member which conditioned *sine die* adjournment upon adoption of a (second) budget resolution by both Houses was not privileged. In 2012, the House in the second session of the 112th Congress adjourned sine die without motion pursuant to declaration of the Chair, at four minutes prior to the expiration of the constitutional term (the Senate having adjourned sine die by motion on the previous day).

Chapter 41—Budget Process.

This chapter accompanies the publication of this appendix. It covers a period beginning in 1974—the date of the enactment of the Congressional Budget Act—through the end of the 112th Congress. Its precedents, forms and Parliamentarian's analysis over that entire period need not be further previewed in this appendix.