Points of Order

Section 4, chapter 3 of 5

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U.S. HOUSE OF REPRESENTATIVES

Points of Order

Section 4 chapter 3 of 5

Table of Contents

Introduction

This packet of materials on points of order in the House begins with a CRS report that introduces the subject, followed by an excerpt from a chapter of House Practice that discusses points of order in greater depth.

The packet ends with more in-depth treatment of a handful of the more complex points of order that a House staff person will frequently be called upon to understand as she participates in the legislative process in the House.

Points of Order, Rulings, and Appeals in the House of Representatives

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The Speaker usually does not take the initiative to prevent the House from considering proposals or taking actions that would violate the House's rules.[1] Instead, whenever a Member believes that the House's legislative procedures are being violated in some way, or are about to be violated, that Member may insist that the House's procedures be enforced by making a point of order against the alleged violation.[2] See http://www.crs.gov/products/guides/guidehome.shtml for more information on legislative process.[3]

Points of Order

A Member who wishes to make a point of order must do so at the appropriate time. For example, a point of order may be made against an amendment only after it has been read (or designated, if it does not need to be read) but before debate on the amendment has begun.[4] Once a Member begins to explain an amendment that he or she has offered, it is too late to make a point of order against the amendment.

Sometimes a Member will *reserve* a point of order, usually against an amendment, which also allows other Members to later insist on the point of order; the Member need not state the reason for reserving the point of order. Reserving a point of order defers action on the point of order until after there has been some debate on the amendment. A Member may reserve a point of order because he or she is not yet sure if a point of order lies against the amendment, or because the Member wishes to give the sponsor of the amendment an opportunity to explain it before the chair rules on the point of order. On the demand for the "regular order," however, the Member must either make his or her point of order at that time or lose the opportunity to do so.

If a Member does make a point of order at the appropriate time, the Speaker gives that Member an opportunity to explain precisely what rule or precedent is being violated, and why. The Member whose action is in question then may respond to the point of order. The Speaker may allow other Members to speak on the point of order; if the bill manager concedes the point of order, the Speaker need not entertain debate before ruling.[5] All debate on a point of order is at the discretion of the chair, and is only for the purpose of advising the chair on the procedural issue that the point of order raises.

Rulings

It is the responsibility of the Speaker to rule on each point of order that is made. The Speaker's rulings are based on information and advice provided by the House parliamentarian, and reflect the House's voluminous published precedents that document how Speakers ruled on

[1] What is said here about the Speaker applies equally to any Member presiding over the House as Speaker pro tempore and to any Member presiding as chairman of the Committee of the Whole. The right to make points of order described herein for Members also equally applies to Delegates and the Resident Commissioner.
[2] Points of order against measures may be waived in the House by unanimous consent, a special rule reported from the Rules Committee, or via suspension of the rules. See *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, by Wm. Holmes Brown and Charles W. Johnson (Washington: GPO, 2003), p. 670.
[3] This report was written by Stanley Bach, formerly a Senior Specialist in the Legislative Process at CRS. The listed author has updated this report in the 109th Congress and is available to respond to inquiries on the subject.
[4] For additional information on appropriate timing for raising points of order in specific circumstances (e.g., to enforce rules against appropriations on authorizing measures), see *House Practice*, p. 49.
[5] *House Practice*, p. 669.

similar questions in the past.[6] In turn, each new ruling by the Speaker becomes a precedent on which he and his successors may rely in the future. The Speaker is not required to explain the reasons for his rulings, but he often does so whenever the procedural question at issue is complex, difficult, or controversial. If the Speaker sustains a point of order on consideration of a measure, it is recommitted to either its previous place on the relevant calendar, or to the reporting committee. If a point of order is raised and sustained against specific language in a measure, the language is struck; sustained points of order against a portion of an amendment may invalidate the entire amendment.[7]

Appeals

In most cases, any Member who disagrees with the Speaker's ruling can challenge it and ask Members to decide by majority vote whether the House will agree to be bound by that ruling. Clause 5 of House Rule I states in part that the Speaker shall "decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner." Anyone wishing to invoke this right simply stands and announces, before any other business has taken place, that he or she appeals the ruling of the Chair.

Most appeals are debatable under Rule I, but it is unusual for there to be much debate on an appeal.[8] Debate is under the 1-hour rule in the House and under the 5-minute rules in the Committee of the Whole. However, the House can end the debate on an appeal by voting to order the previous question (or by voting to close debate, if in Committee of the Whole). Alternately, a motion to table an appeal is in order in the House, but not in Committee of the Whole. The Speaker puts the appeal to a vote by phrasing the question in the following way: "The question is, shall the decision of the Chair stand as the judgment of the House [or the Committee]?" Those supporting the ruling vote "aye"; those opposing it vote "nay."

In the House of Representatives, appeals from rulings of the chair are quite infrequent. In the 109th Congress, only eight appeals have been taken from rulings of the chair on points of order and none have been overturned. In fact, none have been overturned in a half century. At least two reasons account for the failure of the House to overturn a ruling. First, the Speaker's rulings are based on the Parliamentarian's advice which, in turn, is based on prior rulings on similar questions. Generally, the correctness of rulings is not in doubt. Second, most members of the majority party can be expected to support a ruling made by that party's elected leader or another Member whom he has designated to preside.

Points of order are to be distinguished from parliamentary inquiries. Parliamentary inquiries are questions that Members pose to the Speaker about the current parliamentary situation. The Speaker's replies to these inquiries are explanatory; they are not rulings, so they are not subject to appeal.[9] Further, some decisions of the chair are not subject to appeal. For example, no Member can challenge the way in which the Speaker exercises his discretionary power of recognition, nor can a Member appeal the Speaker's ruling that a proposed motion is not in order because it is dilatory.[10]

For additional information, see *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, by Wm. Holmes Brown and Charles W. Johnson (Washington: GPO, 2003), pp. 48-50 ("Amendments"), pp. 65-69 ("Appeals"), pp. 661-674 ("Points of Order; Parliamentary Inquiries"), and pp. 823-827 ("Rules and Precedents of the House"). It is also available electronically at http://www.gpoaccess.gov/hpractice/browse_108.html.

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[6] In addition, rulings on certain budget points of order require examination of estimates supplied by the House Budget Committee, which monitors the compliance of measure with the Congressional Budget Act of 1974 (P.L. 93-344). For more information on budget points of order, see CRS Fact Sheet 98-876 GOV, *Congressional Budget Act Points of Order*, by Bill Heniff, Jr.

[7] *House Practice*, p. 663.

[8] Quite often, a motion to table the appeal is offered; the ruling is sustained if the tabling motion is adopted. *House Practice*, p. 68.

[9] *House Practice*, p. 66.

[10] See *House Practice*, pp. 66-67, for other examples of chair decisions not subject to appeal.

Points of Order[11]

§ 1. In General; Form

Generally

A point of order is an objection that the pending matter or proceeding is in violation of a rule of the House. For a discussion of grounds for points of order, see § 7, infra. Any Member, Delegate, or the Resident Commissioner may make a point of order. 6 Cannon § 240. There have been rare instances in which the Speaker has insisted that a point of order be reduced to writing. 5 Hinds § 6865. However, the customary practice is for the Member to rise and address the Chair as follows:

> **MEMBER: Mr. Speaker (or Mr. Chairman), I make a point of order against the [amendment, section, paragraph].**
> **CHAIR: The Chair will hear the gentleman.**

It is appropriate for the Chair to determine whether the point of order is being raised under a particular rule of the House. A Member should state a point of order explicitly, identifying the objectionable language. Deschler-Brown Ch 31 §§ 2.2, 2.3. On occasion, a Member has incorrectly demanded the ''regular order,'' rather than make a point of order to assert, for example, that remarks are not confined to the question under debate. In such a case, the Chair may treat the demand as a point of order and rule thereon. *Manual* § 628.

The proper method for opposing a point of order is to seek recognition for that purpose at the proper time, not by making a point of order against the point of order. Deschler-Brown Ch 31 § 7.3.

Effect

Where a point of order against the *consideration* of a bill is sustained, the bill is recommitted to the reporting committee or to its place on the appropriate calendar. See, *e.g. ,Manual* § 841. However, if the defect were a technical error in the report, the measure could be returned to the calendar by the filing of a supplemental report pursuant to rule XIII clause 3(a)(2). *Manual* § 838; 7 Cannon § 869. If a bill is on the wrong calendar and the Chair sustains a point of order against it for that reason, the bill is placed on the appropriate calendar. 4 Hinds § 4382.

If, during the consideration of a bill, a Member raises a point of order against certain language in a pending measure and the Chair sustains the point of order, the language is automatically stricken from the measure. 7 Cannon § 2148.

Under the former practice it was necessary for a Member on the floor to reserve points of order against appropriation bills before resolving into the Committee of the Whole, but this

[11] Wm. Holmes Brown and Charles W. Johnson, "House Practice: a Guide to the Rules, Precedents and Procedures of the House", 108th Congress, 2003, p. 661-272 – Chapter 37, sections 1-12.

practice was eliminated in 1995 when the House adopted rule XXI clause 1. Under clause 1, points of order on general appropriation bills are ''considered as reserved,'' which permits the Committee to remove language in a bill referred to it by the House that violates House rules. *Manual* § 1035.

A point of order against any part of an amendment, if sustained, is sufficient to invalidate the entire amendment. 5 Hinds § 5784. A point of order may be directed against an entire section or paragraph of a bill (depending on whether the bill is read by paragraph or by section). It also may be precisely aimed at a subpart thereof. However, the entire section or paragraph is vulnerable; and if a point of order is sustained against a portion of a pending provision, the entire provision may be ruled out of order unless prevented by a special order. 5 Hinds § 6883; Deschler-Brown Ch 31 §§ 1.24, 1.25. The stricken provision's headings and subheadings are likewise eliminated. 8 Cannon § 2353. Provisions ruled out on points of order in the Committee of the Whole are not reported to the House. 4 Hinds § 4906; 8 Cannon § 2428.

Multiple Points of Order

The Chair may entertain simultaneously more than one point of order against a paragraph. Deschler-Brown Ch 31 § 1.8. As a rule the Chair will decline to decide a point of order raised against a proposition until all other points of order on the same proposition have been submitted. 8 Cannon § 2310. Indeed, the Chair may in his discretion require all points of order against a pending proposition for alleged violation of a particular House rule to be stated at the same time. This procedure allows the Chair to rule separately on each point of order in such order as he determines, or to permit the Chair to sustain one valid point of order without reaching the others. Deschler-Brown Ch 31 § 4.18. Thus, where several points of order are made against an amendment and the Chair sustains one of them, he need not rule on the remaining points of order, as the amendment is no longer pending. Deschler-Brown Ch 31 § 1.12. Where the Chair entertains two points of order against a provision, he may sustain only one of them, even though both points of order are conceded by the manager of the bill. *Manual* § 628.

Cross References

Points of order based on particular rules or against particular propositions are addressed elsewhere in many other chapters in this work, such as AMENDMENTS; APPROPRIATIONS; CONSIDERATION AND DEBATE; and GERMANENESS OF AMENDMENTS.

§ 2. Role of the Chair

Generally

Under rule I clause 5, the Speaker decides ''all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner.'' *Manual* § 627. When a Speaker pro tempore occupies the Chair, he decides questions of order. When the House is in Committee of the Whole, the Chairman decides most questions of order independently of the Speaker. 5 Hinds §§ 6927, 6928. At the organization of a new Congress, before the election of a Speaker, questions of order are decided by the Clerk. Rule II clause 2(a); 1 Hinds § 64.

The Chair may examine the form of an offered amendment to determine its propriety and may rule it out of order even where no point of order is raised from the floor. Deschler-Brown Ch 31 § 6.11. Ordinarily, however, the Chair will rule out a proposition only when a point of order is raised and only when he is required under the circumstances to respond to the point of order. Deschler-Brown Ch 31 § 1.6. It is not the duty of the Speaker to decide any question that is not directly presented in the course of the proceedings of the House. 2 Hinds § 1314; see CONSIDERATION AND DEBATE. However, it is the duty of the Chair to initiate the call to order of a Member who engages in improper references to the actions of the Senate, its Members, or its committees, or to the President. *Manual* §§ 374, 961.

The Speaker may decline to rule on a point of order until he has had time for examination and study. 3 Hinds § 2725; 8 Cannon §§ 2174, 2396. In reaching a decision on a point of order, the Chair may hear argument. *Manual* § 628.

Only on rare occasions has the Speaker submitted a question to the House itself for a decision, preferring to rule subject to appeal by any Member under rule I clause 5. *Manual* § 628; 4 Hinds §§ 3282, 4930; 5 Hinds § 5323.

Where the House has adopted an order permitting only certain amendments to be offered to a bill during its consideration in Committee of the Whole, the Chair is guided by the explicit unambiguous language of the rule, rather than by the intention of the Committee on Rules, in ruling whether a specific amendment is in the permitted class. *Manual* § 628. The Member offering an amendment in the Committee of the Whole pursuant to a special order of the House has the burden of proving that it meets the description of the amendment made in order. The Chair has advised the Committee that an amendment made in order was described by subject matter rather than by prescribed text and that the pending amendment fit such description. *Manual* § 993.

The Chair may consider argument on the meaning of an amendment in resolving any ambiguity in the language of the amendment when ruling on a point of order against it. Deschler-Brown Ch 31 § 8.9.

Consideration of Prior Rulings; Reversals

A decision by the Speaker or Chairman is a precedent in resolving subsequent disputes where the same point of order is again in controversy. In looking to precedents to resolve a point of order, the House is applying a doctrine known in the courts as *stare decisis*, under which a judge looks to earlier cases involving the same question of law. In the same way, the House adheres to settled rulings and will not lightly disturb rationales that have been established by prior decision of the Chair. 2 Hinds § 1317; 6 Cannon § 248. However, although the Chair will normally not disregard a decision previously made on the same facts, such precedents may be examined, distinguished, and even overruled where shown to be erroneous. 4 Hinds § 4637; 8 Cannon §§ 2794, 3435. Indeed, the Chair may after further argument reverse his own ruling on a point of order, for example, where existing law not previously called to the Chair's attention would justify the opposite ruling. 8 Cannon § 3435; Deschler-Brown Ch 31 § 1.5. The authoritative sources for proper interpretations of the rules are statements made directly from the Chair and not comments made by the Speaker in other contexts. *Manual* § 628.

§ 3. Reserving Points of Order

Generally

With certain exceptions, a point of order against a proposition may be held untimely if it is not made until after debate on the proposition has begun. § 4, infra. It is therefore not an uncommon practice for a Member to reserve a point of order against an amendment and then, after debate on the amendment, either press or withdraw the point of order. 8 Cannon § 3430. Reserving points of order against amendments, see AMENDMENTS.

The reservation of a point of order against an amendment is permitted at the discretion of the Chair and does not require unanimous consent. Deschler-Brown Ch 31 § 3.16. A Member wishing to reserve a point of order must rise and address the Chair. The Member may not reserve a point of order merely through private agreement with the Member in charge of the bill. 5 Hinds § 6867. The reserving Member need not specify the basis of his reservation. Deschler-Brown Ch 31 § 3.8. However, merely reserving the ''right to object'' to engage in a colloquy before making a point of order does not constitute the reservation of a point of order. 92–2, Apr. 18, 1972, p 3114.

Effect of Withdrawal

The reservation of a point of order being withdrawn, another Member may immediately renew it or press a point of order. Deschler-Brown Ch 31 §§ 3.21–3.23. Withdrawal of points of order generally, see § 11, infra.

§ 4. Time to Raise Points of Order

Generally

Unless otherwise provided by the rules of the House, a point of order against a proposition should be made when the proposition is presented for consideration, not after such consideration has begun. 5 Hinds § 6888. This principle is applied to points of order against bills and resolutions as well as to points of order against various motions, such as the motion to recommit. A point of order against a motion to recommit a bill must be made after the motion is read and comes too late after there has been debate thereon. Deschler-Brown Ch 31 § 4.25. A point of order against a report involving the privileges of the House is properly raised after the report is read. Deschler-Brown Ch 31 § 4.5.

Under the rules of the House, certain points of order may be raised ''at any time.'' For example, a point of order may be raised ''at any time'' under rule XXI clause 4, which prohibits the inclusion of appropriations in a bill reported by a legislative committee. *Manual* § 1065. A point of order may likewise be raised ''at any time'' under rule XXI clause 5(a), which prohibits inclusion of a tax or tariff measure in a bill or joint resolution reported by a committee that does not have jurisdiction over such measure. *Manual* § 1066. Such a point of order may be directed against language in a bill or against an amendment containing such language. In the former case, the point of order should be raised during the reading for amendment under the five-minute rule. Deschler Ch 25 § 12.14. In the latter case, the point of order should be raised before disposition of the amendment. Deschler-Brown Ch 31 § 5.29.

Effect of Intervening Debate

A point of order against a proposition ordinarily will be ruled out as untimely if debate on the merits of the proposition already has begun. 5 Hinds §§ 6891–6901; 8 Cannon § 3440. However, the Chair will not permit brief debate to preclude a point of order by a Member who had diligently sought recognition for that purpose. 5 Hinds § 6906. The Chair may recognize for a point of order against language in a bill notwithstanding intervening debate where the Member raising the point of order was on his feet, seeking recognition, before debate began. Deschler-Brown Ch 31 § 6.39. Indeed, a Member who is on his feet seeking recognition at the proper time to make a point of order may be recognized by the Chair, even though the Clerk has read past the language to which the point of order applies. Deschler-Brown Ch 29 § 20.33. However, the mere fact that a Member was on his feet does not entitle him to make a point of order where he has not affirmatively sought recognition at the time the relevant language was read for amendment. Deschler-Brown Ch 31 § 5.25.

Effect of Intervening Amendments

A point of order against a proposition ordinarily is untimely if raised after an amendment to the proposition has been offered. 5 Hinds §§ 6907–6911; 8 Cannon § 3443. The point of order may be precluded even by a pro forma amendment. 8 Cannon § 3445.

Points of order against a bill or portion thereof are considered by the Chair before the Chair recognizes Members to offer amendments. Deschler-Brown Ch 31 § 5.1. If a bill is considered read and open to amendment at any point by unanimous consent, points of order should be stated before *any* amendments are offered. Deschler-Brown Ch 31 § 5.5.

Although the reservation of a point of order by one Member inures to all Members who may then make the point of order when recognized by the Chair, withdrawal of a reservation by

one Member requires other Members to either make or continue to reserve the point of order at that point, and a further reservation comes too late after there has been subsequent debate. Deschler-Brown Ch 31 § 3.24.

§ 5. Against Bills and Resolutions

Where a point of order against a measure would, if sustained, prevent its consideration, the appropriate time to make the point of order is when the measure is called up in the House or pending the motion or declaration to resolve into the Committee of the Whole, whichever procedure represents initial consideration of the measure. 8 Cannon § 2252. A Member may not insist on a point of order against the consideration of a bill where the manager of the bill withdraws the motion that the House resolve itself into the Committee of the Whole for consideration of the bill. The point of order must be made anew if and when the motion is again made to resolve into Committee for consideration of that bill. Deschler-Brown Ch 31 § 4.6.

Although uncommon, a point of order challenging, for example, the privileged status of a resolution may be raised when the resolution is called up and before it is read. Deschler-Brown Ch 31 § 4.1. A point of order relating to the manner in which a resolution should be considered should be made before such consideration begins. 5 Hinds § 6890. A point of order that the text of a privileged resolution does not reflect the action of the reporting committee comes too late after there has been debate on the resolution. Deschler-Brown Ch 31 § 4.4.

§ 6. Against Amendments

A point of order is properly made or reserved immediately after the reading of an amendment or following agreement to a unanimous-consent request that an amendment be considered as read. Deschler-Brown Ch 31 § 6.5. It should be disposed of before amendments to that amendment are offered. Deschler-Brown Ch 31 § 6.14. Once the amendment is agreed to in the Committee of the Whole and reported to the House, it is too late to raise a point of order against it, the proper time having been at the point the amendment was offered in Committee. 92–2, June 1, 1972, pp 19479, 19481, 19483. Generally, see AMENDMENTS.

§ 7. Application to Particular Questions; Grounds

A point of order ordinarily must be based on an objection that the pending matter or proceeding is in violation of some rule of the House. The Chair will ascertain and identify the particular rule being invoked when ruling on a point of order. 98–2, Oct. 2, 1984, p 28522. Although questions of order arising under the rules are determined by the Chair, the Chair does not:

- Recognize for requests to suspend the rule governing admissions to the floor. Rule IV clause 1; 5 Hinds § 7285.
- Rule on the sufficiency of committee reports or legal effect of language therein. Deschler Ch 19 § 7.17.
- Rule on questions of constitutionality, including the constitutional powers of the House. *Manual* § 628; 2 Hinds §§ 1255, 1318–1320; 8 Cannon §§ 2225, 3031, 3071, 3427; Deschler Ch 19 §§ 7.1–7.3, 8.10.
- Pass on the merits of a legislative proposition. Deschler Ch 19 § 7.4.
- Rule on the consistency of amendments or other proposed actions of the House. 2 Hinds §§ 1327–1336; 8 Cannon §§ 3237, 3458; Deschler Ch 19 §§ 7.5, 8.6–8.9.
- Construe the legislative or legal effect of a proposition. *Manual* § 628; 8 Cannon §§ 2280, 2841; Deschler Ch 19 § 7.16.
- Construe the general meaning or effect of an amendment or rule on whether it is ambiguous. Deschler Ch 19 §§ 8.1–8.5.
- Rule on hypothetical questions. 6 Cannon §§ 249, 253; Deschler Ch 19 §§ 7.6–7.8.
- Rule on the propriety or expediency of a proposed course of action. 2 Hinds §§ 1275, 1337.
- Consider contingencies that may arise in the future. 7 Cannon § 1409.
- Interpret a special order before it is adopted by the House. *Manual* § 628.

- Determine issues not presented in a point of order. Deschler Ch 19 § 6.1.
- Construe the result of a vote. Deschler Ch 6 § 4.28.
- Interpret the rules or procedures of the Senate. Deschler Ch 19 § 7.19.

The Speaker, and not the Chairman of the Committee of the Whole, rules on the propriety of amendments included in a motion to recommit with instructions. Deschler-Brown Ch 31 § 1.46

§ 8. Relation to Other Business

When a point of order is raised against a proposition, consideration of that proposition is precluded until the point of order is disposed of. The Chair should rule on the point of order before proceeding to other questions, such as the method of voting on the pending matter. 8 Cannon § 3432.

A timely point of order takes precedence over a parliamentary inquiry, and the deferral of a parliamentary inquiry gives no priority for that purpose, since recognition is in the discretion of the Chair. Deschler-Brown Ch 31 § 11.4.

An amendment may not be offered to a proposition against which a point of order is pending. 8 Cannon § 2824. The previous question may not be demanded on a proposition until the point of order is resolved. 8 Cannon §§ 2681, 3433. Debate on the merits of the proposition is likewise precluded. 5 Hinds § 5055; 8 Cannon § 2556.

§ 9. Debate on Points of Order; Burden of Proof

In General; Recognition

Recognition for debate on a point of order is extended at the discretion of the Chair.[12] 8 Cannon §§ 3446–3448. Members seeking to be heard must address the Chair separately and may not engage in ''colloquies'' on the point of order. Deschler-Brown Ch 31 § 7.17. The time allowed for debate on a point of order is likewise within the discretion of the Chair. A Member speaking on a point of order does not control a fixed amount of time that he can reserve or yield. 5 Hinds § 6919. Where a point of order is conceded by the manager of the bill, the Chair may sustain the point of order without debate. Deschler-Brown Ch 31 § 7.20.

Scope of Debate

The rule that debate on questions of order must be relevant is strictly construed. 8 Cannon § 3449. Debate is limited to the question of order and may not go to the merits of the proposition being considered. *Manual* § 628.

The Chair will not entertain unanimous-consent requests to permit Members to revise and extend their remarks on points of order. Deschler-Brown Ch 31 § 7.21. However, by unanimous consent, a Member may be allowed to revise and extend his remarks *to follow* the ruling on the point of order. *Manual* § 628.

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[12] Note that this section of House Practice describes the process of debating a point of order that is disposed of by a decision of the Chair. By the terms of some rules, points of order are disposed of not by striking language or barring consideration of the measure or amendment, but by giving the House a vote on the question of consideration – a vote on whether to consider the measure notwithstanding the possible violation. Indeed, under these provisions, the Chair never rules on the point of order.

In these instances, the Chair does not have the same discretion to allow or disallow debate. The rules specify that 20 minutes of debate are controlled by and divided evenly between the Member initiating the point of order and an opponent. Following this debate, the House votes on the question of consideration.

Points of order disposed of by a question of consideration are the point of order available under clause 9(b) of rule XXI prohibiting consideration of special rules that waive the earmark rule; the point of order available in the 110th Congress under H.Res. 491 against so-called "airdropped" earmarks; and the point of order available under §425 of the Budget Act against unfunded mandates. All three of these points of order are discussed below, under "Selected Points of Order in Depth."

Burden of Proof

The proponents of an amendment have the burden of proof where a point of order is raised against the amendment on the grounds that it is not germane or that it proposes an unauthorized appropriation. 7 Cannon § 1179; 8 Cannon § 2995. Under House practice, those defending an item in an appropriation bill have the burden of showing the law authorizing it. 4 Hinds § 3597; 7 Cannon §§ 1179, 1276; 8 Cannon § 2387. Thus, a point of order having been raised, the burden of proving the authorization for language carried in an appropriation bill falls on the managers of the bill as proponents of the language. Deschler Ch 26 § 9.4. Similarly, the proponent of an amendment carries the burden of proving that the amendment does not increase levels of budget authority or outlays within the meaning of clause 2(f) of rule XXI. 107–1, Oct. 11, 2001, p ll.

Where a point of order is raised against consideration of a bill on the ground that the report thereon does not adequately reflect all changes in existing law as required by rule XIII clause 3(e)—the Ramseyer rule—the proponent of the point of order has the burden of proof and must cite the specific statute that will be affected by the pending bill; in the absence of such citation the point will not be entertained. 8 Cannon § 2246.

§ 10. Waiver of Points of Order

Generally

A point of order is effectively waived when it is not timely raised. Where a motion that might have been subject to objection is, in the absence of a point of order, agreed to, it represents the will of the House and governs its procedure until the House orders otherwise. Deschler Ch 11 § 3.2. Points of order may be waived by unanimous consent, by special rule, or by consideration of a measure under suspension of the rules. Deschler-Brown Ch 31 § 9.

By Special Rule

Special ''rules'' or resolutions from the Committee on Rules providing for the consideration of a bill often contain provisions expressly waiving points of order against the bill or certain language therein or amendments to be offered thereto. 7 Cannon § 769. A resolution waiving points of order against a certain provision in a bill has been agreed to by the House, even after general debate on the bill has concluded and reading for amendment has begun. Deschler Ch 21 § 23.29. Such waivers are not implied merely by the fact that the special rule provides for consideration of the bill. 98–1, Mar. 22, 1983, p 6502.

A special rule may limit its waiver to a single point of order against consideration of a measure or against its provisions, or it may be so drafted as to constitute a blanket waiver of all points of order. Where a resolution providing for the consideration of a bill specifies that ''all points of order against said bill are hereby waived,'' the waiver is applicable only to the provisions of the bill and not to amendments. Deschler-Brown Ch 31 § 9.10. A special order providing for consideration of a measure may waive all points of order against provisions of the bill except specified text. Such a special order may include language to prevent a point of order against the vulnerable text from being applied to the remainder of a paragraph or section. See, *e.g.*, 107–1, H. Res. 192, July 17, 2001, p ll.

A special rule containing a waiver of section 425 of the Congressional Budget Act (unfunded intergovernmental mandates) is subject to a point of order under section 426 of that Act.

For further discussion, see SPECIAL ORDERS OF BUSINESS. See also CONSIDERATION AND DEBATE.

§ 11. Withdrawal of Points of Order

A point of order may be withdrawn at any time before the Chair rules. 8 Cannon § 3430. Once withdrawn, the point of order may immediately be renewed by another Member. 5 Hinds §§ 6875, 6906; 8 Cannon §§ 3429, 3430. As a rule, a point of order must be pressed, or further reserved, when the Chair inquires whether the objecting Member wishes to insist upon it, and comes too late after that Member has stated that he does not insist on, or continue to reserve, his point of order, and further debate has intervened. Deschler-Brown Ch 31 § 3.14.

§ 12. Appeals

Under rule I clause 5, a ruling of the Chair on a point of order may be subject to challenge through an appeal by a Member. *Manual* §§ 627, 629; 5 Hinds §§ 6938, 6939. An appeal also may be taken from the ruling of the Chairman of the Committee of the Whole on a point of order. Deschler-Brown Ch 31 § 13.3. However, a decision on a question of order is not subject to an appeal if the decision falls within the discretionary authority of the Chair. For a complete discussion of appeals from rulings of the Chair, see APPEALS.

Selected Points of Order in Depth

The specific points of order that may lie against a bill, its consideration or amendments thereto are too numerous to explain individually in this report. However, some of the points of order that are frequently discussed and debated in committee and on the House floor deserve special attention.

Discussed below are points of order against earmarks and PAYGO violations, points of order specified in the Congressional Budget Act (including the Unfunded Mandates Reform Act), and the point of order concerning germaneness of amendments.

Disclosure of Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits[13]

Section 404 of H.Res. 6 amended Rule XXI by adding a new clause 9 to prohibit the consideration of legislation unless congressional earmarks, limited tax benefits, and limited tariff benefits are disclosed, including the name of the requesting Member (or sponsor) of each, prior to its consideration.[14]

The new rule effectively requires that any bill, joint resolution, amendment,[15] and conference report[16] must be accompanied by a list of congressional earmarks, limited tax benefits, and limited tariff benefits contained in the legislation, accompanying committee report, or joint explanatory statement (with regard to a conference report). Such list must also include the name of the Member requesting each item. The list may be included in the committee report for a reported bill, printed in the *Congressional Record* for an unreported bill or amendment, or included in the joint explanatory statement for a conference report. If the legislation, its accompanying report, or joint explanatory statement does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits, a statement stating as such must be printed in the accompanying report, the *Congressional Record*, or joint explanatory statement.[17]

Under subsection (c) of the new clause 9 of Rule XXI, the new rule is enforced based only on whether or not the required list or statement was printed in a report, the *Congressional Record*, or the joint explanatory statement. If a point of order is made, the Chair is required to base his or her ruling only on the existence of a list (or statement), and is not empowered to make

[13] Bill Heniff Jr., "House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress", CRS Report: RL34149, August 30, 2007, p. 4-7.
http://www.congress.gov/erp/rl/html/RL34149.html

[14] In the 109th Congress, on September 14, 2006, the House agreed to a free-standing rule (H.Res. 1000) that provided a similar point of order.

[15] The rule explicitly prohibits "an amendment to a bill or joint resolution *to be offered at the outset* of its consideration for amendment *by a member of a committee of initial referral*" (emphasis added), suggesting that a substitute offered by a committee member would be subject to the rule but an amendment offered after the beginning of consideration of the bill would not be subject to the rule. Some Members, however, have complied with the requirement even though they did not meet the explicit qualifications set forth in the rule. See, for example, the statements in the following entries in the *Congressional Record*, daily edition, vol. 153: March 19, 2007, p. H2672; April 17, 2007, p. H3478; and May 22, 2007, p. H5623.

[16] Subsequently, on June 18, 2007, the House agreed by unanimous consent to H.Res. 491, which prohibits the consideration of a conference report to accompany a regular appropriations bill unless the joint explanatory statement includes a list of congressional earmarks, including the name of the requesting Member, "not committed to the conference committee by either House, not in a report on such bill, and not in a report of a committee of the Senate on a companion measure." Like the new clause 9 of Rule XXI, the resolution prohibits the consideration of a special rule that waives this point of order. In addition, unlike the new clause 9 of Rule XXI, H.Res. 491 provides that any point of order under this resolution against a conference report shall be disposed of by the question of consideration. Consequently, under this free-standing rule, if a point of order under this rule is raised against a conference report, the House will proceed, after 20 minutes of debate equally divided between and controlled by a proponent and an opponent of the point of order, to a vote on whether or not to consider the conference report (one motion to adjourn also would be in order). See *Congressional Record*, daily edition, vol. 153 (June 18, 2007), pp. H6622-H6623.

[17] For an example of such a statement, see *Congressional Record*, daily edition, vol. 153 (January 9, 2007), p. H253.

a ruling based on the contents of the list.[18] As a result, a point of order under the new rule may be sustained only if the required list or statement was not printed.[19]

The new rule also prohibits the consideration of a special rule that waives the new point of order. If a special rule waives the new rule, a point of order against the consideration of the special rule shall be disposed of by the question of consideration. That is, if a point of order is raised against such a special rule, the House will proceed, after 20 minutes of debate equally divided between and controlled by a proponent and opponent of the point of order, to a vote on whether or not to consider the special rule even though it waives the new disclosure rule (one motion to adjourn also would be in order).

Subsections (d)-(f) of the new disclosure rule provide definitions of what constitutes a congressional earmark, a limited tax benefit, and a limited tariff benefit for purposes of the rule. The text of those definitions is provided in **Table 2**.

Table 2. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits As Defined in Clause 9 of Rule XXI

Item	Definition
Congressional earmark	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.
Limited tax benefit	(1) Any revenue-losing provision that — (A) provides a federal tax deduction, credit, exclusion, or preference to 10 or fewer beneficiaries under the Internal Revenue Code of 1986, and (B) contains eligibility criteria that are not uniform in application with respect to potential beneficiaries of such provision; or (2) Any federal tax provision which provides one beneficiary temporary or permanent transition relief from a change to the Internal Revenue Code of 1986.
Limited tariff benefit	A provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

Finally, as part of the new disclosure rule, Section 404(b) of H.Res. 6 amended Rule XXXIII by adding clauses 16 and 17, both relating to congressional earmarks, limited tax benefits, and limited tariff benefits. The new clause 16 prohibits a Member[20] from conditioning the inclusion

[18] For an example of the application of the point of order, see *Congressional Record*, daily edition, vol. 153 (January 31, 2007), pp. H1088-H1090.

[19] Some Members have objected that the new rule prevents the Chair from sustaining a point of order against a matter if the list of earmarks is not comprehensive. See, for example, the parliamentary inquiry posed by Rep. Jeff Flake and the Chair's reply in *Congressional Record*, daily edition, vol. 153 (May 10, 2007), pp. H4861-H4862. In other words, they argue that the rule is insufficient because the committee need only provide a partial list of earmarks to protect the measure from a point of order. On the other hand, others could argue that to make a ruling based on the content of the list would leave considerable discretion in the hands of the Chair to determine what constitutes an earmark. Such discretion is not typically given to the Chair, who is expected to enforce the rules and procedures of the House and, based on several precedents, "does not decide on the legislative or legal effect of propositions." U.S. Congress, *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, H.Doc. 108-241, 108th Cong., 2nd sess. (Washington: GPO, 2003) (hereafter *House Rules and Manual*), p. 341.

[20] Both clauses 16 and 17 apply to Delegates and the Resident Commissioner as well.

of a congressional earmark, limited tax benefit, or a limited tariff benefit in legislation on any vote cast by another Member. The new clause 17 requires any Member requesting a congressional earmark, limited tax benefit, or limited tariff benefit to submit to the chair and ranking minority Member a written statement containing the following items:

- the name of the Member;
- for congressional earmarks, the name and address of the intended recipient or intended location of the activity;
- for limited tax or tariff benefits, identification of the individual or entities "reasonably anticipated to benefit" to the extent known by the Member;
- the purpose of the congressional earmark, limited tax benefit, or limited tariff benefit; and
- a certification that the Member or spouse do not have any financial interest in the requested item.

The rule also requires committees to maintain this information, and make available "for public inspection" the written disclosures for congressional earmarks and limited tax or tariff benefits included in any measure reported by the committee or conference report filed by the chair of the committee or any subcommittee.[21]

Pay-As-You-Go (PAYGO) Rule[22]

Section 405 of H.Res. 6 [the opening day rules package in the 110th Congress] amended Rule XXI by adding a new clause 10, referred to as the pay-as-you-go (PAYGO) point of order, to prohibit the consideration of legislation affecting direct spending and revenues that is projected to have the net effect of increasing the deficit or reducing the surplus in either of two time periods: (1) the six-year period consisting of the current fiscal year and the five ensuing fiscal years (currently FY2007-FY2012); and (2) the 11-year period consisting of the current year and the 10 ensuing fiscal years (currently FY2007-FY2017).[23] Any projected increase in direct spending or reduction in revenues resulting from such legislation must be offset by an equivalent amount of direct spending cuts, revenue increases, or a combination of the two.[24]

Direct spending, also referred to as mandatory spending, generally is provided in laws other than appropriations acts, generally continues without any annual legislative action, and provides spending authority for programs such as Medicare, unemployment compensation, and federal retirement programs.[25] It is distinguished from *discretionary spending*, which is controlled through the annual appropriations process. Furthermore, direct spending is under the jurisdiction of the respective authorizing committees, while discretionary spending is under the jurisdiction of the House and Senate Committees on Appropriations. *Revenues*, which are under the jurisdiction of the House Committee on Ways and Means and the Senate Committee on Finance, are the funds collected from the public primarily as a result of the federal government's exercise of its sovereign

[21] It is worth noting that this public availability requirement does not pertain to requests for such items not granted (i.e., not included in legislation, a report, or a joint explanatory statement).
[22] Bill Heniff Jr., "House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 110th Congress", CRS Report: RL34149, August 30, 2007, p. 7-9.
[23] The rule explicitly defines the two periods as (1) "the current fiscal year and the five fiscal years beginning with the fiscal year that ends in the following calendar year;" and (2) "the current fiscal year and the 10 fiscal years beginning with the fiscal year that ends in the following calendar year." Taken literally, between October and December of any given year, the requirement would cover the five- and 10-year periods, instead of the six- and 11-year periods.
[24] For more detailed information on the new House PAYGO rule, see CRS Report RL33850, *The House's "Pay-As-You-Go" (PAYGO) Rule in the 110th Congress: A Brief Overview*, by Robert Keith.
[25] While the new House rule does not explicitly define "direct spending," the term is defined in Section 250 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; 2 U.S.C. 900 et seq.), commonly known as the Gramm-Rudman-Hollings Act. Section 250(c)(8) states that "'direct spending' means -- (A) budget authority provided by law other than appropriations acts; (B) entitlement authority; and (C) the food stamp program."

powers.[26] They consist of receipts from individual income taxes, social insurance taxes (or payroll taxes, such as Social Security and Medicare taxes), corporate income taxes, excise taxes, duties, gifts, and miscellaneous receipts.

Under the new rule, each measure affecting direct spending and revenues must not increase the deficit or reduce the surplus in either of the two time periods specified.[27] That is, to comply with the rule, each measure projected to increase direct spending or reduce revenues must also include changes to existing law that would result in a reduction in direct spending, an increase in revenues, or both, by equivalent amounts. The projected reduction in the deficit or increase in the surplus in a measure previously passed by the House or one to be subsequently considered by the House could not be used to offset an increase in the deficit or a reduction in the surplus in another measure.

The rule specifies that a determination of the effect of direct spending and revenue legislation on the deficit or surplus is to be based on estimates made by the House Committee on the Budget relative to the most recent baseline estimates provided by the Congressional Budget Office (CBO). In producing its baseline estimates, CBO projects revenues, spending, and deficit or surplus levels under existing law (i.e., assuming no legislative changes). Under the rule, such baseline estimates are to be consistent with Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177, as amended; 2 U.S.C. 900 et seq.).[28]

The establishment of a PAYGO rule in the House follows several years of a similar rule in the Senate.[29] First established in 1993 and modified several times since then, the Senate PAYGO rule also has generally prohibited the consideration of direct spending and revenue legislation that is projected to increase the deficit or reduce the surplus in the same time periods as the House rule.[30]

Budget Act Points of Order in the House of Representatives

In the introduction to their annotated document on the budget process, the Senate Budget Committee described the relevant layers of law and precedent as similar to "sediment" due to the manner in which the legal tools, Congressional rules, and precedent have built up over time to form the framework of the Congressional budget process. One key element of these layers is budget enforcement, which in the House and the Senate is based upon a series of points of order, specified in the Congressional Budget and Impoundment Control Act of 1974 (Budget Act) and incorporated into the procedures of the House and Senate. Most points of order contained in the Budget Act prohibit or restrict certain Congressional action in order to enforce budgetary decisions such as the timing of House consideration of certain legislation and staying within certain budgetary limits when considering spending and revenue legislation. The parameters that are enforced using the points of order framework are established each year when Congress adopts its budget resolution. Points of order are not self-enforcing, but rather a Member must raise a point of order against a specific Congressional action prior to or during its consideration. At that time, the Chair will rule on whether to sustain the point of order. If sustained, the House is prevented from proceeding with the matter at hand. Points of order in the House can be waived with the adoption of a special rule by a majority vote of the full House. This

[26] Other legislative committees may have jurisdiction over legislation affecting a small portion of revenues.
[27] The rule does not provide any allowance for even a *de minimis* increase in the deficit or reduction in the surplus. The rule presumably applies to appropriations bills containing provisions affecting revenues. It is less clear that the rule applies to appropriations acts containing provisions affecting direct spending because spending authority provided in an appropriations act would not be considered direct spending under the definition of direct spending contained in Section 250 of the Deficit Control Act (see fn. 18, above).
[28] Section 257 sets forth rules for calculating the baseline levels of direct spending and revenues (as well as discretionary spending). Until the expiration of this section at the end of FY2006, CBO was required to follow the provisions of Section 257 in producing its baseline projections. At the beginning of 2007, CBO indicated that it will follow these practices until directed otherwise by Congress. See CBO, *The Budget and Economic Outlook: Fiscal Years 2008 to 2017*, p. xi, fn. 1.
[29] For additional information on PAYGO rules, see CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr., and CRS Report RL31943, *Budget Enforcement Procedures: Senate's Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr.
[30] Most recently, as part of the FY2008 budget resolution, the Senate modified its PAYGO rule to be generally consistent with the House PAYGO rule (see Section 201 of S.Con.Res. 21).

document reviews only those points of order, other than unfunded mandates, that are contained in the Budget Act and applicable in the House of Representatives.

Points of Order Relating to Timing

Section 302(c): Suballocations before appropriation bills. Prohibits consideration of any measure within the jurisdiction of the Appropriations Committee that provides new budget authority for any fiscal year until the committee makes it required suballocations to its subcommittees.

Section 303(a): Adoption of Budget before consideration of Budget-related legislation. Prohibits consideration of legislation providing new budget authority, an increase or decrease in revenues or an increase or decrease in the public debt limit for a fiscal year until a concurrent resolution on the budget for that fiscal year has been agreed to. (Does not apply after May 15 to appropriations bills).

Section 309: Approval of regular Appropriation bills. Prohibits consideration of an adjournment resolution for more than three days during July until the House has approved all regular Appropriation bills for the upcoming fiscal year.

Section 310(f): Completion of Reconciliation process. Prohibits consideration of an adjournment resolution for more than three days during July unless the House has completed action on any required reconciliation legislation, if the budget resolution requires reconciliation.

Points of Order Relating to Spending and Revenue Levels

Section 302(f)(1): Spending must remain within allocated levels. Prohibits consideration of legislation providing new budget authority for any fiscal year that would cause the applicable allocation of new budget authority to be exceeded.

Section 311(a)(1): Budget-related legislation within appropriate levels. Prohibits consideration of legislation that would cause new budget authority or outlays to exceed or revenue to fall below the levels set forth in the budget resolution.

Point of Order Relating to Reconciliation

Section 310(d): Limitation on amendments to Reconciliation. Prohibits consideration of amendments to reconciliation that would increase the deficit or reduce the surplus either by increasing outlays or reducing revenues.

Points of Order Relating to Mandatory Spending

Section 401(a): Controls on budget-related legislation not subject to Appropriation. Prohibits consideration of legislation providing new contract authority, borrowing authority or credit authority not limited to amounts provided in Appropriation acts.

Section 401(b): Legislation providing new Entitlement Authority. Prohibits consideration of legislation providing new entitlement authority to become effective during the current fiscal year.

Points of Order Relating to Social Security

Section 310(g): Social Security and Reconciliation. Prohibits consideration of reconciliation legislation that contains recommendations (changes or amendments to) with respect to Social Security.

Section 13302(a) Budget Enforcement Act: Protection of Social Security Trust Funds. Prohibits consideration of legislation that would provide for a net increase in Social Security benefits or decrease in Social Security taxes in excess of .02 percent of the present value of future taxable

payroll for a 75-year period or in excess of $250,000,000 for the first five-year period after it becomes effective.

Point of Order Relating to the Jurisdiction of the Budget Committee

Section 306: Budget legislation must be handled by Budget Committee. Prohibits consideration of matters within the jurisdiction of the Budget Committee if the matter has not been reported by that committee or if that committee has not been discharged from consideration of the matter.

Unfunded Mandates[31]

§ 1. In General
§ 2. Definition of Mandate
§ 3. Committee Responsibilities
§ 4. Points of Order
§ 5. Disposition of Points of Order
§ 6. Motions to Strike

Research References
Deschler-Brown Ch 31 § 1.57
Manual §§ 790, 843, 845, 910, 991, 1081, 1127
Congressional Budget Act of 1974, §§ 421–428 (2 USC §§ 658–658g, 1502, 1515)

§ 1. In General

Part B was added to title IV of the Congressional Budget and Impoundment Control Act of 1974 by the Unfunded Mandates Reform Act of 1995. These provisions were enacted to require an assessment and full consideration of the impact of legislative and regulatory proposals on public and private sectors. H. Rept. 104–1. The Act explicitly declared that Part B was enacted as an exercise of congressional rulemaking powers. *Manual* § 1127; 2 USC § 1515.

§ 2. Definition of Mandate

The Unfunded Mandates Reform Act defines a ''Federal intergovernmental mandate'' as (1) 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 (2) a provision which compels State and local spending for participation in an entitlement program under which at least $500 million is provided to States and localities annually. *Manual* § 1127; 2 USC § 1502.

A ''Federal private sector mandate'' is defined 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. *Manual* § 1127; 2 USC § 1502.

§ 3. Committee Responsibilities

Under the Act, the Congressional Budget Office (CBO) must provide an authorizing committee with a detailed cost estimate for each bill reported by such committee containing mandates that have an annual aggregate impact of $50 million or greater on the public sector (*i.e.*, State and local government) or $100 million on the private sector. A committee must publish this CBO estimate in the committee report or in the *Congressional Record* before consideration of the legislation on the House floor. 2 USC § 658b.

[31] Wm. Holmes Brown and Charles W. Johnson, "House Practice: a Guide to the Rules, Precedents, and Procedures of the House." 108th Congress, 2003, p. 897-899 – Chapter 56, sections 1-6.

A committee report also must include:

- An assessment of the costs and benefits of the mandate.
- A statement of the degree to which the Federal funding of an intergovernmental mandate would disadvantage the private sector.
- A statement of the amount of assistance authorized to pay for the mandate.
- A statement whether the committee intends that the mandate be unfunded.
- A statement whether the legislation intends to preempt State and local law. 2 USC § 658b.

§ 4. Points of Order

It is not in order to consider a bill or joint resolution reported by a committee containing an intergovernmental mandate unless the committee has published a CBO estimate. 2 USC § 658b. There is no point of order against consideration of a measure containing a private sector mandate, even though CBO must provide, and committees must publish, similar cost estimates for private sector mandates as they do for intergovernmental mandates. See § 3, supra.

A point of order also would lie on the floor against consideration of a bill, joint resolution, amendment, motion, or conference report that imposes intergovernmental mandates over $50 million on State and local governments unless the legislation:

- Funds the mandates through new budget authority or new entitlement authority;
- Includes an authorization for appropriations for the direct costs of the mandate; and
- Provides for an evaluation of and reaction to the direct costs of the mandate by the relevant Federal agency and expedited procedures in the Congress to address such evaluation.

Manual § 1127; 2 USC § 658d.

A point of order under the Act may not be raised against an appropriation bill or an amendment thereto, with certain exceptions. *Manual* § 1127; 2 USC § 658c. The Act not only establishes a point of order against consideration of a measure containing an unfunded intergovernmental mandate (2 USC § 658d), but it also establishes a point of order against a resolution providing a special order of business that waives a point of order against a measure, or self-executes the adoption of an amendment, containing an unfunded intergovernmental mandate (2 USC § 658e).

§ 5. Disposition of Points of Order

A point of order against consideration of a bill is properly raised pending the Speaker's declaration that the House resolve into the Committee of the Whole for such consideration. A point of order against consideration of a resolution providing a special order of business must be made when the special order is called up and comes too late after the resolution has been adopted. *Manual* § 1127; 2 USC § 658e.

In order to be cognizable by the Chair, each point of order must specify the precise language on which it is premised. A point of order may be raised against more than one provision. *Manual* § 1127; 2 USC § 658e. In the case of a special order of business, the precise language subject to the point of order is normally the waiver of points of order against consideration of the underlying measure.

Each point of order raised is separately debatable for 20 minutes, equally divided between the Member initiating the point of order and an opponent. Debate on the point of order against a special order is on the question whether the House should consider the measure. The Members controlling debate on the point of order may reserve time, and a manager of a measure who controls time for debate against the point of order has the right to close debate. *Manual* § 127; 2 USC § 658e.

After debate the Chair puts one question of consideration with respect to the proposition that is the subject of the points of order. The Chair puts the question of consideration without

intervening motion except one motion that the House adjourn. Disposition of the question of consideration of a bill or resolution shall be considered also to determine a like point of order against an amendment made in order as original text. *Manual* § 1127; 2 USC § 658e.

§ 6. Motions to Strike

Rule XVIII clause 11 provides for an amendment in the Committee of the Whole proposing only to strike an unfunded mandate from a portion of a bill then open to amendment unless specifically precluded by a special order of the House. *Manual* § 991; 2 USC § 1514.

The Unfunded Mandate Point of Order in Practice

> **MEMBER**. *"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 in the nature of a substitute to the bill, H.R. 2000. 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 when the committee chairman does not publish, prior to floor consideration, a CBO cost estimate of any unfunded mandate in excess of $50 million annually for State and local entities or in excess of $100 million annually for the private sector. Sections 100 and 200, on pages 10 through 20 of the amendment in the nature of a substitute to H.R. 2000, contain violations of section 425 of the Congressional Budget and Impoundment Control Act. Therefore, I make a point of order against consideration of this amendment."*
>
> **THE CHAIR**. *"The gentleman from Georgia 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. Under section 426(b)(4) of the act, the gentleman from Georgia and a Member opposed to the point of order each will control 10 minutes of debate on the question of consideration."* Pursuant to section 426(b)(3) of the act, after debate on the question of consideration, the Chair will put the question to wit: *"Will the Committee now consider the amendment?"*
>
> *"The gentleman from Georgia is recognized for 10 minutes, and the gentleman from New York who is opposed, will be recognized for 10 minutes. The Chair recognizes the gentleman from Georgia."*
>
> (After 20 cumulative minutes of debate on the question of consideration)
>
> **THE CHAIR**. *"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?"* The question was put to the Committee; and the Chairman announced that the noes appear to have it.
>
> **MEMBER**. *"Mr. Chairman, I demand a recorded vote."*

The Germaneness Rule[32]

Clause 7 of Rule XVI states in part that "no motion or proposition on a subject different from that under consideration shall be admitted under color of amendment."

This brief clause constitutes the germaneness rule — a rule that is simple and straightforward in principle, but complex and sometimes difficult to apply in practice. Indeed, determining whether an amendment is germane can be the most challenging, and even

[32] Christopher M. Davis, "The Amending Process in the House of Representatives", CRS Report: 98-995, Updated May 31, 2007, p. 11-15. http://www.congress.gov/erp/rl/pdf/98-995.pdf

perplexing, task in interpreting the House's legislative procedures. The four-line rule is accompanied by 28 pages of commentary and explanation in the *House Rules and Manual* for the 109th Congress, and discussions of precedents on this subject consume all the 1,957 pages of volumes 10 and 11 of *Deschler's Precedents of the House of Representatives*.[33]

The principle underlying the germaneness rule is that the House should consider one subject at a time. While debating authorizations for military weapons systems, for example, the House should not be distracted by amendments concerning food safety, mass transit, or other unrelated subjects. The object of the rule is not simply orderliness. If not for the germaneness requirement, Members could offer amendments on any subject of their choice, thereby bypassing the standing committee system and depriving the House of the committees' expert appraisals, recommendations, and reports. Furthermore, Members could be compelled to vote on unanticipated questions without adequate time for preparation. In sum, the germaneness rule is designed to encourage systematic and thoughtful legislative decisions.

Germaneness is a requirement that applies to all amendments originating in the House, whether proposed by individual Representatives or recommended by House committees. Because the rule prohibits amendments on a new subject, it does not apply to the provisions of measures themselves; anything contained in a bill or resolution is immune to challenge on grounds of germaneness. Also, Members generally may not make points of order against nongermane Senate amendments until the House has reached the stage of disagreement with the Senate over a measure — and usually when the House begins to consider a conference report.[34]

In determining whether an amendment proposed on the House floor is germane, the chair normally is concerned with the relationship between the amendment and the text it proposes to amend. In general, a second-degree perfecting amendment or a substitute for an amendment must be germane to the amendment it would affect. So it may be ruled nongermane even though it could be germane to the underlying text of the bill. And a first-degree amendment to a section or title of a bill must be germane to that section or title; the chair may rule it nongermane even though it might be germane to some other portion of the bill.[35] On the other hand, an amendment proposing to add a new section or title at the end of a measure may be subjected to a broader test: whether it is germane to the text of the measure as a whole.

Also, an amendment must be germane to the text it would amend as that text reads *at the time* the amendment is proposed. Thus, it is not sufficient that an amendment be germane to the bill as originally introduced (or to the first-degree amendment as originally proposed). Instead, the amendment must be germane to the bill (or amendment) as it already may have been amended. By its votes on amendments offered earlier during its consideration, the House may have broadened or narrowed a bill (or amendment) in ways that affect the germaneness of other amendments that Members then propose. This situation adds to the difficulty of anticipating, evaluating, and protecting against germaneness challenges. The parliamentarian and his associates can offer a Representative expert advice on the germaneness of a prospective amendment. But by the time the Representative actually offers the amendment on the floor, the House may have amended the bill (or amendment) in ways that change the relationship on which the germaneness ruling is based — the relationship between the proposed amendment and the text it proposes to amend.

The concept of germaneness is akin to that of relevance or pertinence, but more restrictive. The mere fact that the House is considering a tax bill, for instance, does not necessarily mean that any amendment affecting federal taxes is germane. Instead, case by case,

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[33] For a more digestable selection of recent precedents on germaneness, see *House Practice*, ch. 26, pp. 525-585.

[34] The standing rules of the Senate do not require floor amendments to be germane except when proposed to general appropriations measures, when a rule making statute requires it, and after cloture has been invoked. On the other hand, the Senate sometimes imposes a germaneness requirement on itself, by unanimous consent, during consideration of individual measures. House procedures for dealing with nongermane Senate amendments appear in clauses 9 and 10 of Rule XXII. See also "Sources of Additional Information," and Stanley Bach, "Germaneness Rules and Bicameral Relations in the U.S. Congress," *Legislative Studies Quarterly*, vol. VII, no. 3, August 1982, pp. 341-357.

[35] *House Practice,* ch. 26, sec. 3, p. 529.

the House has gradually developed an extensive body of precedents to assist and guide the chair in ruling on points of order that particular amendments are not germane. No other question of order arises so often, and no other rulings can be as difficult for Members and staff to predict. The precedents on germaneness are voluminous and often based on fine distinctions, distinctions that the chair explains in making rulings but that are not always obvious from the concise way in which the rulings have been summarized in print.

Thus, although new rulings are always based on earlier ones, it is often possible to develop from the precedents plausible arguments both for and against the same point of order on germaneness. However, while germaneness decisions may appear to be contradictory if only the published headnotes are studied, there is more apparent consistency if the factual situations are carefully reviewed.

To help Members and staff understand how the germaneness rule has been interpreted and applied, the parliamentarian's commentary in the *House Rules and Manual* identifies three "tests" of germaneness: subject matter, fundamental purpose, and committee jurisdiction.

First, to be germane, "[a]n amendment must relate to the subject matter under consideration." For example, "[t]o a bill seeking to eliminate wage discrimination based on the sex of the employee, an amendment to make the provisions of the bill applicable to discrimination based on race...." was ruled to be nongermane. In this case, the chair evidently held that the subject matter of the bill was not wage discrimination in general, but sex discrimination in particular.[36] Thus, the amendment to extend the coverage of the bill to race discrimination proposed to raise a different subject and, therefore, was nongermane.

Second, "[t]he fundamental purpose of an amendment must be germane to the fundamental purpose of the bill." More specifically, "an amendment must not only have the same end as the matter sought to be amended, but must contemplate a method of achieving that end that is closely allied to the method encompassed in the bill or other matter sought to be amended...." Among amendments that have met this test, the parliamentarian cites the following example: "to a proposition to accomplish a result through regulation by a governmental agency, an amendment to accomplish the same fundamental purpose through regulation by another governmental agency...." was held germane. On the other hand, "to a bill to aid in the control of crime through research and training an amendment to accomplish that result through regulation of the sale of firearms...." was held not germane. In the first case, the method of action proposed by the amendment was "closely allied" to that of the bill; in the second case, it was not.

Third, "[a]n amendment when considered as a whole should be within the jurisdiction of the committee reporting the bill...." This test is most likely to be applied when the jurisdictional issues are clear cut — when the pending text is entirely within one committee's jurisdiction and the amendment offered to that text falls entirely within another committee's jurisdiction. For instance, "[t]o a bill reported by the Committee on Government Operations (now Government Reform)[37] creating an executive agency to protect consumers, an amendment conferring on congressional committees with oversight over consumer protection the authority to intervene in judicial and administrative proceedings (a rule-making provision within the jurisdiction of the Committee on Rules)...." was ruled not germane. But committee jurisdiction is not the sole or exclusive test of germaneness, especially in cases in which "the proposition to which the amendment is offered is so comprehensive (overlapping several committees' jurisdictions) as to diminish the pertinency of that test" or "the amendment does not demonstrably affect a law within another committee's jurisdiction...," or "where the portion of the bill also contains language, related to the amendment, not within the jurisdiction of the committee reporting the bill...."

As this last statement suggests, no one of these three tests is always conclusive, nor is one of them necessarily more controlling than the others. An amendment may satisfy one test but not one or both of the others, so the chair must look to the particular case in deciding how much

[36] The remaining quotations in this section are taken from the annotations to Rule XVI, clause 7 in the *House Rules and Manual* for the 109th Congress.
[37] In the 110th Congress, this committee was renamed the Committee on Government Oversight and Reform.

weight to give to each of them. Moreover, even when these three tests are taken together, they do not constitute a complete standard of germaneness. “[A]n amendment and the matter to which offered may be related to some degree under the tests of subject matter, purpose, and jurisdiction, and still not be considered germane under the precedents.”

To help understand this conclusion, the parliamentarian’s commentary on the rule elaborates other principles of germaneness, of which three are particularly explicit. The essence of these three principles turns on the relationship between the scope of the amendment and the scope of the matter to be amended. First, “[o]ne individual proposition may not be amended by another individual proposition even though the two belong to the same class....” For example, “[t]o a bill proposing the admission of one territory into the Union, an amendment for admission of another territory” was not germane. Similarly, “to a proposition to appropriate or to authorize appropriations for only one year (and containing no provisions extending beyond that year), an amendment to extend the authorization or appropriation to another year....” was not germane. The first bill applied to only one territory; the second concerned only one fiscal year. Extending either bill to another item in the same class — a second territory or a second fiscal year — violated the prohibition against amending one individual proposition with another, even though the amendments may have met one or more of the three tests discussed above.

Second, “[a] specific subject may not be amended by a provision general in nature, even when of the class of the specific subject....” Under this principle, which applies to amendments that would expand the general applicability of measures that are limited in scope, the following illustrate the kinds of amendments that would not be germane: “to a bill relating to all corporations engaged in interstate commerce, an amendment relating to all corporations...; to a bill proscribing certain picketing in the District of Columbia, an amendment making the provisions thereof applicable throughout the United States...; and to a bill authorizing funds for radio broadcasting to Cuba, an amendment broadening the bill to include broadcasting to all dictatorships in the Caribbean Basin....”

These two principles limit the amendments that satisfy the germaneness rule; the third, related principle, on the other hand, provides a basis for holding amendments germane. “A general subject may be amended by specific propositions of the same class....” “Thus, the following have been held to be germane: To a bill admitting several territories into the Union, an amendment adding another territory...; to a bill providing for the construction of buildings in each of two cities, an amendment providing for similar buildings in several other cities...;” and “to an amendment prohibiting indirect assistance to several countries, an amendment to include additional countries within that prohibition....” Generally, if a bill already deals with several items in a class, amendments to add additional items in the same class may be germane under this principle.

Germaneness rulings may be based on a combination of two or more of these tests and principles, or perhaps others. Because individual amendments may differ in so many respects, the application of these tests and the relationships among them cannot be reduced to a formula or obviously predictable standard. Furthermore, the illustrative examples quoted above are clear and simple ones; they do not fully reflect the difficulties and subtleties that can arise in applying these six tests and principles. A bill may amend so many provisions of an existing law, for example, that an amendment affecting any other provision of that law may be germane, but there is no simple test to determine when this threshold is reached. Thus, germaneness determinations often are difficult to make and even more difficult to anticipate.