

## Chapter 54

### Unanimous-Consent Agreements

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#### Research References

4 Hinds §§ 3058–3060, 3155–3159  
7 Cannon §§ 758–763  
Deschler Ch 23 §§ 42–48  
*Manual* §§ 528, 872, 950, 956, 978, 993

#### § 1. In General; Effect of Agreement

##### Generally

A request for unanimous consent is in effect a motion to suspend the order of business temporarily. Granting the request permits some action that is not in dispute and to which no Member has any objection. *Manual* § 872; 4 Hinds §§ 3058, 3059; 8 Cannon § 2794. An objection by any Member terminates the request. Deschler Ch 23 § 45.6.

The practice of the House in allowing some action to be taken by unanimous consent began in the 1830's, when the House, responding to the increased pressure of legislative activity, unanimously agreed to a special order permitting it to consider a bill which was not in the regular order of business. 4 Hinds § 3155. This use has now become commonplace. In the modern practice of the House, many items of business are considered as a result of unanimous-consent requests. The device also is used to facilitate

consideration of measures by waiving the reading or limiting or extending the time for debate. §§ 7, 8, *infra*; see also CONSIDERATION AND DEBATE.

### **Availability in the Committee of the Whole**

Unanimous-consent requests are in order both in the House and, to a lesser extent, in the Committee of the Whole. For example, the Committee may by unanimous consent permit the withdrawal of an amendment under rule XVIII clause 5, limit debate other than general debate set by the House, or provide that a bill be considered as read and open to amendment unless in conflict with a House order or special rule. *Manual* § 993; 8 Cannon § 2553. However, unanimous consent may not be requested in the Committee of the Whole on matters properly cognizable only in the House. *Manual* § 993; Deschler Ch 23 §§ 48.15, 48.16; § 8, *infra*.

## **§ 2. Recognition of Members for Requests**

### **Generally; Speaker's Guidelines**

The recognition of Members to offer unanimous-consent requests is in the discretion of the Chair. Deschler Ch 23 § 45.4. A Member seeking unanimous consent must be recognized by the Chair for a stated purpose, and a Member so recognized may not seek the further consent of the House for some other purpose. Thus, a Member may not be recognized to consider a particular bill where he has been recognized only to proceed for one minute. Deschler Ch 23 § 48.3.

The Speaker has announced and enforced a policy of conferring recognition for unanimous-consent requests for the consideration of unreported bills and resolutions only when assured that the majority and minority floor and committee leaderships have no objection. This policy minimizes attempts to force Members to go on record as objecting to a variety of unanimous-consent requests. The policy has been extended to the following:

- Requests relating to reported bills.
- Requests for immediate consideration of matters (separately unreported) comprising a portion of a measure already passed by the House.
- Requests to consider a motion to suspend the rules and pass an unreported bill (on a nonsuspension day).
- Requests to permit consideration of (nongermane) amendments to bills.
- Requests to permit expedited consideration of measures on subsequent days, as by waiving the requirement that a bill be referred to committee for 30 legislative days before a motion to discharge may be presented under rule XV clause 2.
- Requests relating to Senate-passed bills on the Speaker's table, including one identical to a House-passed bill and a Senate concurrent resolution to correct an enrollment.

- Constituent parts of a single request combining final disposition of several separate measures.

*Manual* § 956. In addition, with respect to unanimous-consent requests to dispose of Senate amendments to House bills on the Speaker's table, the Chair will entertain such a request only if made by the chairman of the committee with jurisdiction, or by another committee member authorized to make the request. *Manual* § 956; Deschler Ch 21 § 1.23.

The Speaker's enforcement of this policy of recognition is not subject to appeal. "Floor leadership" in this context has been construed to apply only to the Minority Leader and not to the entire hierarchy of minority leadership, where the Chair had been assured that the Minority Leader had been consulted.

It is not a proper parliamentary inquiry to ask the Chair to indicate which side of the aisle has failed under the Speaker's guidelines to clear a unanimous-consent request, but the Chair may indicate his general cognizance of a failure of clearance for the *Congressional Record*.

For a discussion of recognition for unanimous-consent requests to vary procedures in the Committee of the Whole governed by a special order adopted by the House, see *Manual* § 993; § 8, *infra*.

### § 3. Timeliness

Unanimous-consent requests must be timely. Deschler Ch 23 § 45.4. They cannot be entertained:

- In the House after the House has voted to go into the Committee of the Whole. 4 Hinds § 4727.
- When the absence of a quorum has been announced in the House. 6 Cannon §§ 660, 686, 689.
- During proceedings incident to securing a quorum of the Committee of the Whole. 8 Cannon § 2379.
- During the pendency of a unanimous-consent request by another Member. Deschler Ch 23 § 48.1.

An objection to a unanimous-consent request must be timely. It is ordinarily too late to object to a unanimous-consent request after the Chair has asked if there is objection and has announced that he hears none. Deschler Ch 23 § 45.3. Thus, when unanimous consent has been given for the consideration of a bill, amendments may be offered and may not be prevented by a subsequent objection of a Member. 5 Hinds § 5782.

#### § 4. Stating the Request; Withdrawal

A Member seeking the unanimous consent of the House on some matter should rise and address the Chair. One request may not include alternatives (6 Cannon § 709; Deschler Ch 23 § 43.2) or include a request made contingent upon another (6 Cannon § 709).

It is the Speaker's statement of the request as put to the House that is controlling, and he may refuse to recognize an objection to the request made before his statement of the request. Deschler Ch 23 §§ 43.1, 45.2.

A Member may withdraw a unanimous-consent request at any time before House action thereon, and unanimous consent to do so is not required. Deschler Ch 23 § 43.4.

#### § 5. Objecting to the Request

##### Generally

An objection to a unanimous-consent request terminates the request, even if the objecting Member attempts to subsequently withdraw his objection. Deschler Ch 23 § 45.6. Because a request for unanimous consent is in effect a request to suspend the order of business temporarily, a demand for the "regular order" may be made at any time while the request is being stated and requires the request to be disposed of immediately. *Manual* § 381; 4 Hinds § 3058.

An objection to a unanimous-consent request may be made by any Member, including the Speaker or the Chairman of the Committee of the Whole. 8 Cannon § 3383; Deschler Ch 23 §§ 42, 45.5. A Delegate may also object. *Manual* § 675; 6 Cannon § 241.

When objecting to a unanimous-consent request, a Member must rise from his seat and be identified for the *Congressional Record*. *Manual* § 872; 2 Hinds § 1137. If the Chair repeats the request, the objection is properly made to the request as put by the Chair, not as put by the Member making the request. Deschler Ch 23 § 45.2.

#### § 6. Reserving Objections

A Member may reserve the right to object to a unanimous-consent request and by so doing obtain the floor. Deschler Ch 23 § 42. However, recognition for this purpose is within the discretion of the Speaker, and he may refuse to permit debate under the reservation and put the question on the request. *Manual* § 872; Deschler Ch 23 §§ 46.1, 46.2.

A Member reserving the right to object to a unanimous-consent request holds the floor under that reservation subject to a demand for the regular

order by any Member or by the Chair. Deschler Ch 23 §46.6. A Member controlling the floor under a reservation of the right to object loses the floor if the request is withdrawn or if the regular order is demanded. 6 Cannon §§ 287, 288; Deschler Ch 23 §§ 46.3, 46.4. If the regular order is demanded by a Member standing on his feet, the reserving Member must either object or withdraw his reservation. Deschler Ch 23 § 46.6.

### **§7. Particular Uses Relative to Business of the House**

The unanimous-consent procedure is commonly used to change the regular order or waive the application of a particular rule. Under this practice, the House may waive the requirement of a rule unless the rule in question specifies that it is not subject to waiver, even by unanimous consent. Deschler Ch 23 §42. The unanimous-consent procedure is applied across a wide range of House business.

#### **Unanimous-consent Requests Involving Consideration or Adoption or Passage of a Measure**

Unanimous consent may be used to provide for the consideration of a measure in the House, to vary the consideration of a measure in the House that is being considered under the general rules of the House or under an existing special order of business, or to adopt or pass a measure. For example, unanimous-consent requests may be used as follows:

- To call up for consideration a nonprivileged measure. Deschler Ch 23 §47.4.
- To consider a bill under the general rules of the House. Deschler-Brown Ch 29 § 3.4.
  - Note:* If on the Union Calendar, the bill will then normally be considered in the Committee of the Whole. However, the bill may be called up pursuant to the agreement and then by unanimous consent considered in the House as in the Committee of the Whole. 4 Hinds § 4923.
- To provide a special order for the consideration of certain business (such as motions to suspend the rules on a day not set aside for suspensions). 4 Hinds §§ 3165, 3166; 7 Cannon §§ 758–760.
- To alter the terms of a special order. 7 Cannon § 763.
- To transact other business on a day set apart for a special purpose. 5 Hinds § 7246.
- To agree to transact no business during a stated period. 7 Cannon §§ 760, 761.
- To take from the Speaker's table a House bill with Senate amendments and to consider those amendments in the House. *Manual* § 528a.

- To permit the House to recede from its own amendment to a Senate amendment before the stage of disagreement. 89–2, Apr. 18, 1966, p 8207.
- To permit consideration in the House on any subsequent day of a bill to be introduced by the Chairman of the Committee on Appropriations. 97–2, June 23, 1982, p 14989.
- To waive all points of order against consideration in the House of an unreported joint resolution providing further continuing appropriations for the current fiscal year, consider it as read for amendment, close it to amendment by ordering the previous question to passage without intervening motion except debate and one motion to recommit. 107–2, Sept. 26, 2002, p \_\_\_\_.
- To discharge the Committee of the Whole from further consideration of a bill being read for amendment under a special order, and provide that certain amendments be considered as agreed to. 98–1, Nov. 18, 1983, p 34160.
- To consider a measure on the Union Calendar in the House by waiving all points of order against consideration, self-execute a compromise substitute in lieu of the committee amendments, and close the measure to amendment by ordering the previous question on the bill, as amended, to passage without intervening motion except debate and one motion to recommit with or without instructions. 106–2, Apr. 13, 2000, p \_\_\_\_.
- To consider a measure on the Union Calendar in the Committee of the Whole under the five-minute rule, waive points of order against the committee substitute as original text. 106–2, Apr. 13, 2000, p \_\_\_\_.
- To adopt or pass, in a single request, several measures, including any amendments thereto. See, *e.g.*, 107–2, Nov. 14, 2002, p \_\_\_\_.
- To enlarge the time for debate on a motion to suspend the rules. 8 Cannon § 3414.
- To specify the time at which a measure is to be called up—either immediately or on a subsequent day. 106–1, July 22, 1999, p \_\_\_\_.

### **Unanimous-Consent Requests to Effect a Variety of Business of the House**

In addition to facilitating consideration of legislative matters, unanimous-consent requests may be used as follows:

- To swear in a Member-elect pending arrival of his credentials. 6 Cannon § 12.
- To increase the number of Members on a standing committee. 8 Cannon § 3381.
- To refer a bill for the payment of a private claim against the government to a committee other than the Judiciary or International Relations. Rule XII clause 2(d).
- To correct a reference to committee. *Manual* § 714.
- To permit a committee additional time to file a report. 8 Cannon § 2783.

- To insert extraneous material in the *Congressional Record* or to permit Members to revise and extend their remarks or to vacate such permission. 5 Hinds § 6990; Deschler Ch 23 § 47.11.
- To postpone consideration of a measure, such as a resolution from the Committee on Rules, or to postpone certain votes thereon. Deschler Ch 23 § 47.8.
- To entertain a proposition for a recess. 8 Cannon § 3357.  
*Note:* Rule I clause 12 permits the Speaker, without unanimous consent, to declare a “short” recess when no business is pending or an “emergency” recess when notified of an imminent threat.
- To suspend the order of business to permit the House to vacate an action taken on a bill. 6 Cannon § 711.
- To withdraw papers accompanying bills after they have been submitted to the House. 5 Hinds § 7259.
- To file a report or to file minority views while the House is not in session. 8 Cannon § 2252.
- To withdraw a report from a standing committee. 8 Cannon § 2312.
- To allow a Member to proceed in order after the Chair has ruled his words out of order. *Manual* § 961.
- To change unparliamentary words spoken in debate or to withdraw or delete such words from the *Congressional Record*. 8 Cannon §§ 2538, 2540; Deschler Ch 23 §§ 47.9, 47.10.
- To address the House for one minute before offering a motion. Deschler Ch 23 § 47.7.

### § 8. Particular Uses Relative to Business of the Committee of the Whole

Unanimous-consent requests are frequently used in the House and in the Committee of the Whole to vary the rules governing consideration of a measure. However, the Committee of the Whole may by unanimous consent permit only minor variances from a special order of business adopted by the House. The variances must be congruent with the special order governing consideration of the measure in the Committee of the Whole. *Manual* § 993.

The following unanimous-consent requests may be considered in the Committee of the Whole:

- To dispense with the first reading of a bill. 8 Cannon § 2436.
- To dispense with the reading of an amendment. Deschler Ch 23 § 47.2.
- To withdraw a pending amendment. Rule XVIII clause 4; *Manual* § 978.
- To offer a perfecting amendment in the Committee of the Whole to an amendment that has already been agreed to. Deschler Ch 23 § 47.3.
- To return to a portion of a bill passed in the reading for amendment. 8 Cannon § 2929.

- To permit a supporter of an amendment to claim debate time allocated by special order to an opponent, where no opponent seeks recognition. *Manual* § 993.
- To shorten the time set by special order for debate on a particular amendment. *Manual* § 993.
- To lengthen the time set by special order for debate on a particular amendment under terms of control congruent with those set by the order of the House. *Manual* § 993.
- To permit one of two committees controlling time for general debate pursuant to a special order to yield control of its time to the other. *Manual* § 993.
- To permit the offering of pro forma amendments for the purpose of debate under a “modified-closed” special order limiting both amendments and debate thereon but not specifically preempting pro forma amendments. *Manual* § 993.
- To close debate on titles of a bill that have not been read. Deschler Ch 23 § 47.1.
- To close or limit debate under the five-minute rule and to modify that time limit. *Manual* § 987.
- To permit the reading of an amendment considered as read by special order. *Manual* § 993.

Unanimous-consent requests are limited in the Committee of the Whole because debate and the amendment process are normally restricted by the terms of a special order or by the standing rules of the House. The Committee may permit only minor variances that are congruent with the controlling special order of the House. Unanimous-consent requests for material alterations must be made in the House. *Manual* § 993. The following unanimous-consent requests are not in order in the Committee of the Whole:

- To change the scheme for control or duration of general debate specified by the House. *Manual* § 993.
- To entertain a motion to reconsider. Deschler Ch 23 § 39.12.
- To excuse a Member from voting in the Committee of the Whole. Deschler-Brown Ch 30 § 3.3.
- To permit an amendment to be offered to the underlying bill where a special rule permitted its consideration only as a perfecting amendment to a committee amendment. *Manual* § 993.
- To permit a substitute to be read for amendment by section where the special rule did not so provide. *Manual* § 993.
- To restrict “en blocking” authority granted in a special order. *Manual* § 993.
- To preempt the Chair’s discretion under rule XVIII clause 6 to postpone and cluster votes or to schedule further consideration of a pending measure to a subsequent day. *Manual* § 993.
- To postpone a vote on an appeal of a ruling of the Chair. *Manual* § 993.



- To permit an amendment to an amendment rendered unamendable by a special order or to permit an amendment to an amendment already adopted. *Manual* § 993.
- To permit consideration of an amendment out of the order specified in a special rule. *Manual* § 993.
- To permit consideration of an additional amendment or to authorize a supplemental report from the Committee on Rules in lieu of the original report referred to in the special order. *Manual* § 993.
- To permit another to offer an amendment vested in a specified Member. *Manual* § 993.
- To permit a division of the question on an amendment rendered indivisible by a special order. *Manual* § 993.
- To extend the time limitation for consideration of amendments beyond that set by a special order requiring the Chair to put the question on the pending amendments at the expiration of certain hours of consideration. *Manual* § 993.
- To prohibit the offering of an amendment otherwise in order. *Manual* § 980.

### § 9. Limitations on Requests; Grounds for Denial of Recognition

It cannot be assumed that the House has authority to waive any rule by unanimous consent. Sometimes the rule itself contains a specific provision that it cannot be suspended by unanimous consent. The rules specifically prohibit the use of the unanimous-consent procedure as follows:

- To permit unauthorized persons to be admitted to the House floor. Rule IV clause 2.
- To bring to the attention of the House an occupant of the galleries. Rule XVII clause 7.
- To delete the name of the first sponsor of a bill or resolution. Rule XII clause 7(b)(2).

In addition, there are many rules that are not subject to waiver by unanimous consent under the practice of the House. Deschler-Brown Ch 29 § 11.1. For example, the following unanimous-consent requests are not in order in the House:

- To permit a Member to have his vote recorded after the announcement of the result. Deschler-Brown Ch 30 § 36.1.
- To extend a five-minute special-order speech or to extend a special-order speech beyond midnight. *Manual* § 950.
- To permit a Member to give a second one-minute speech. *Manual* § 950.
- To revise and extend arguments in the *Congressional Record* on points of order (it being essential that the Chair's ruling be responsive to arguments actually made). *Manual* § 628.

- To insert in the *Congressional Record* a colloquy between Members that did not actually occur. *Manual* § 692.

### **Requests Denied Recognition at the Speaker's Discretion**

The Speaker may decline to recognize for a unanimous-consent request which is improper or inappropriate under the particular circumstances, as where proper notice cannot be given to interested Members. Deschler Ch 23 § 48.2. He may do so by exercising his discretionary power of recognition. Deschler Ch 23 § 42. Thus the Speaker may decline to recognize for a unanimous-consent request:

- To permit a Member to address the House on a private bill being considered on the Private Calendar. Deschler Ch 23 § 48.8.
- To permit the House to rerefer a bill to a committee whose chairman has not been consulted on the matter. Deschler Ch 23 § 48.5.
- To consider a measure after the Members have been informed that there will be no further legislative business for the day. Deschler Ch 23 §§ 48.6, 48.7.
- To reduce to five minutes the time for the first vote in a series of postponed votes, because the bell and light system would not give adequate notice of the initial five-minute vote. *Manual* § 1030.
- To direct the clerk of a committee, without its approval, to bring to the well of the House certain documents in the custody of that committee. Deschler Ch 23 § 48.4.

For a discussion of the Speaker's guidelines for conferring recognition for unanimous-consent requests for the consideration of certain measures, see § 2, *supra*.

### **§ 10. Modification or Revocation of Agreement**

An agreement entered into by unanimous consent may be modified or vacated by unanimous consent at the pleasure of the House. 7 Cannon § 946. Thus, by unanimous consent, the House may vacate a previous unanimous-consent agreement permitting all Members to revise and extend their remarks on a particular measure. 98-1, Nov. 15, 1983, p 32746. A unanimous-consent agreement also may be revoked pursuant to a majority vote on a resolution reported from the Committee on Rules as to the order of business. 8 Cannon § 3390.

It has been held that a so-called "gentleman's agreement"—that is, a unanimous-consent agreement *not* to take up a bill during a particular period—is not subject to subsequent revision, even by unanimous consent. Such agreements are said to be observed "with scrupulous care," especially when Members have left the floor with the understanding that the bill will

not be considered in their absence. 6 Cannon § 710a. In the modern practice of the House, however, the Speaker will not entertain a unanimous-consent request to preclude him from recognizing for consideration of a certain matter. Agreement to such a request would render the restriction an order of the House. The Speaker prefers to retain the scheduling of legislation as the prerogative of the majority leadership, subject to the Speaker's guidelines for unanimous-consent requests as discussed in section 2, *supra*.