
the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment³⁵¹ that is not germane³⁵² to

³⁵¹ An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. Cf. *supra* note 295 (regarding section 303(a)).

³⁵² In summary, an amendment is germane *only* if it:

- strikes a provision,
- changes a number or date,
- states purely precatory language (such as findings, a sense of the Senate, or a sense of the Congress) within the jurisdiction of the Budget Committee (or in application to reconciliation, some reporting committee), or
- otherwise does not add any new subject matter or expand the existing subject matter.

The Chair uses precedents regarding germaneness under unanimous consent agreements to interpret this provision of the Congressional Budget Act, which uses the language used in unanimous consent agreements in the usual form. 127 CONG. REC. S3148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 353).

Recently, the Parliamentarian has modified the definition of germaneness, to some degree returning to older precedents. Consequently, in order to ensure that one has a correct understanding of the current law of germaneness, one must consult the Parliamentarian as particular cases arise. For more on the subject of germaneness of amendments, see ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 854-62 (1992). In *Riddick's Senate Procedure*, the Parliamentarian spells out some general guidelines:

Although the precedents of the Senate with respect to germaneness of amendments reflect various conclusions, it has generally been understood that germaneness is more restrictive than relevancy. However, in order to be germane, an amendment must at least be relevant. Therefore, while a simple restriction on the effect of a measure would generally be germane, a restriction subject to an irrelevant contingency would not be germane.

The Senate usually imposes a germaneness requirement when it decides to limit debate on a proposal. In this sense, the Senate enters into a contract whereby it promises to bring a measure to a vote in exchange for a

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promise that the measure to be voted on will consist of known and foreseeable issues. Since it is difficult to know in advance the limits what proposals might be relevant to a measure, the precedents interpreting germaneness have generally imposed a more restrictive standard than simple relevancy.

The following are among the questions that are considered in determining whether an amendment is germane: does it add any new subject matter? does it expand the powers, authorities, or constraints being proposed? does it amend existing law or another measure, as opposed to the measure before the Senate? does it involve another class of persons not otherwise covered by the measure? does it involve additional administrative entities? is it within the jurisdiction of the committee that reported the measure? and is it foreseeable?

Amendments fall into four classes for the purpose of determining germaneness. Amendments in the first two classes are considered germane *per se*. Class one consists of amendments that strike language without inserting other language. Class two consists of amendments that change numbers and dates. Class three consists of amendments that propose nonbinding language (such as sense of Senate or sense of Congress language). Under recent practice, if such nonbinding language is within the jurisdiction of the committee that reported the measure, the amendment is considered germane.

The fourth class consists of amendments that add language to a measure, but do not fall into either class two or three.

In determining whether an amendment is germane, the Chair first identifies in which of these four classes an amendment belongs. If an amendment falls within any of the first three classes, it will be considered germane. All other amendments are examined on a case by case basis to determine if they are germane. Such examination requires a detailed analysis of the amendment and the matter to be amended, and takes into account the principles and guidelines stated above.

Id. at 854-55.

During the 1980s, the test for germaneness flowed from a series of inquiries of the Chair clarifying the precedents on germaneness on April 22, 1982. *See* 128 CONG. REC. S3879-82 (1982). These inquiries spelled out a rather formalistic, but more predictable, test. The first headnote of the Parliamentarian's record of that precedent summarizes:

The germaneness test is much more severe in the Senate than a simple subject matter test. It is basically a technical amendment test, and adding language to a bill which expands the powers available under that bill has been ruled nongermane. Amendments which restrict powers granted by a bill have been

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ruled germane. In addition, amendments which propose to strike language in a bill regardless of their effect upon the powers granted in a bill are per se germane.

Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

The precedent arose in the Senate debate of the motion to proceed to S. 1680, the Criminal Code Reform Act of 1981. Senators McClure and Helms propounded a series of parliamentary inquiries of the Presiding Officer (Senator Cochran). *Id.*

In a series of inquiries and responses, Senator McClure and the Chair made clear than an amendment may permissibly restrict the meaning of a section, but could not broaden its effect:

Mr. McCLURE. Mr. President, I have the following parliamentary inquiry: Is the amendment . . . nongermane because it introduces a new word which changes the meaning of the amended section, in that it replaces, "interferes with, hinders, delays, or prevents," with "causes interference with, or hindrance, delay, or prevention of?"

The PRESIDING OFFICER. Changing the meaning of the section is permissible if the change does not broaden the effect of the section.

Mr. McCLURE. It would not be germane because it adds new language, if that new language does not change the meaning — excuse me — if it does not add new material in spite of the fact that it may change the meaning.

The PRESIDING OFFICER. It is permissible within the germaneness standard to change the meaning so long as you do not broaden the meaning.

Mr. McCLURE. Mr. President, I understand the words: I am not sure I understand the implication. I can change it but not broaden it. That is one of my concerns.

The PRESIDING OFFICER. The meaning could be restricted by the change.

Mr. McCLURE. It could be restricted but not broadened?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. And the addition of the word "causes" in that particular place — does that restrict or does that expand?

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The PRESIDING OFFICER. The original meaning included both a conduct and a result test. The new meaning only includes a result test.

Mr. McCLURE. Therefore, it is a restriction? Do I understand the Chair correctly?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. The second inquiry: Is the amendment on page 20 . . . nongermane because it introduces new subject matter not pertaining to criminal law in that it adds a new section bringing the bill into conformity with the Budget Act?

The PRESIDING OFFICER. That amendment restricts the power which would be otherwise available; therefore, it would be germane.

Mr. McCLURE. Is the amendment on page 3, line 2, nongermane because it adds new crimes to the list of exemptions from the inchoate offenses?

The PRESIDING OFFICER. If the amendment added a new crime to a list of crimes for which penalties could be assessed, it would be nongermane. This amendment adds a restriction on the bill; therefore, it is germane.

Mr. McCLURE. That is true because, Mr. President, it adds to a list of exemptions; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Is the amendment on page 12, line 4, nongermane because it adds a new section dealing with safety offenses to the bill?

The PRESIDING OFFICER. This indeed does add a new crime, and therefore would be considered nongermane.

Mr. McCLURE. Is the amendment on 21, line 1, nongermane because it references in a new section?

The PRESIDING OFFICER. This amendment expands the effect of the bill and therefore is nongermane.

Mr. McCLURE. Amendment No. 1287 . . . would prohibit funds

from the victims compensation program being used to perform abortions.

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Would that amendment be nongermane?

The PRESIDING OFFICER. This amendment appears to be a restrictive amendment, and therefore it would be germane.

128 CONG. REC. S3879 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). For additional authority for the proposition that an amendment that on its face restricts the effect of the bill or amendment is germane, see 128 CONG. REC. S15,711 (1982); Senate Precedent PRL19821219-002 (Dec. 19, 1982) (LEGIS, Rules database) (inquiry of Sen. Harry F. Byrd, Jr.); 128 CONG. REC. S11,844 (1982) (inquiry of Sen. Robert C. Byrd regarding Weicker amendment).

In another set of inquiries on April 22, 1982, Senator McClure and the Chair made clear that an amendment that would strike language is *always* germane:

Mr. McCLURE. . . .

Amendment No. 1285 would strike section 402. Since it would be an amendment to strike, it would not be subject to the germaneness test; is that correct?

The PRESIDING OFFICER. No amendment to strike, regardless of its effect, can be ruled nongermane.

Mr. McCLURE. Amendment No. 1288 would restore current law with respect to the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms and would affect the bill by removing several broad jurisdictional expansions, but it would add to the bill current law while restricting the bill with respect to the broadening of jurisdiction. Would that be nongermane?

The PRESIDING OFFICER. Amendment 1288, since it is fashioned as an amendment to strike, is *per se* germane.

Mr. McCLURE. Amendment No. 1290 would repeal the order of notice provisions which would allow businessmen to be ordered to notify customers to sue them. Would the amendment be in order?

The PRESIDING OFFICER. Since the amendment is an amendment to strike, it would be *per se* germane.

128 CONG. REC. S3879-80 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

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A third set of inquiries indicates that an amendment that changes a figure is germane:

Mr. McCLURE. Amendment No. 1289 would restore current law with respect to the general level of criminal fines and would remove the structure that has been created in the proposed legislation. Would that amendment be nongermane?

The PRESIDING OFFICER. The amendment appears to be an attempt to strike a figure and substitute in lieu thereof another figure and therefore would be germane.

Id.

In one inquiry, the continued utility of which is in question by virtue of the Parliamentarian's new interpretation of the precedents, Senator McClure and the Chair spelled out that an amendment that would substitute new language that is not restrictive of the bill would not be germane even if it dealt with the same subject matter:

Mr. McCLURE. . . . Amendment 1295 would restore current law with respect to first degree murder. Would that amendment be germane?

The PRESIDING OFFICER. This is another amendment that is in fact two amendments. The first is an amendment to strike, and would be germane. The second expands the effect of the bill, and would not be germane.

Mr. McCLURE. I might pursue that one step further, in that the subject matter to be added with respect to line 4 of the amendment, being the numeral 1111, is language that deals with the same subject matter but in a manner different from that contained in the bill, in the first half of the amendment, which would be stricken.

The PRESIDING OFFICER. The germaneness test has never been interpreted as a subject matter test. It is basically a technical amendment test, and even expanding the bill dealing with the same subject matter has been ruled nongermane.

Mr. McCLURE. I will not debate the issue with respect to this particular amendment. I simply wish to point out that that which is in 1111 is the same subject matter — does not expand the bill. It is a substitution for the bill language with respect to the law relating to first degree murder. If we get to that point, I might wish to discuss that a little further, because I am not certain in this instance that if you look past the number to what is contained in page 522, line 2, it would be discerned that 1111 is the same subject matter

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and not a broadening of the subject matter of the bill.

I might renew that parliamentary inquiry when, as, and if we get to the point when that becomes pertinent.

The PRESIDING OFFICER. The Senator has not propounded an additional inquiry?

Mr. McCLURE. No; I have not.

Id. at S3,880.

Similarly, another precedent indicates that an amendment that adds nonrestrictive language is not germane, even if the amendment is relevant to the bill. 131 CONG. REC. S17,507 (1985); Senate Precedent PRL19851212-001 (Dec. 12, 1985) (LEGIS, Rules database). In the precedent of December 12, 1985, the pending bill, S. 1396, provided for the settlement of claims relating to trust allotments of land granted to certain Native Americans and for judicial review of compensation findings by the Secretary of the Interior relating to those claims. A unanimous consent agreement required that amendments be germane and relevant. On a point of order by Senator Durenberger, the Chair ruled not germane a Melcher amendment that required the United States to provide legal assistance to allottees or heirs regarding the merits of their claims under the bill. *Id.*

A ruling of December 3, 1985, provides another precedent for the proposition that an amendment that adds nonrestrictive language to a bill is not germane. 131 CONG. REC. S16,735 (1985); Senate Precedent PRL19851203-010 (Dec. 3, 1985) (LEGIS, Rules database). The pending bill then (S. 1884, the farm credit system bill) governed by a unanimous consent agreement that required that amendments be germane, provided for three members of a board to be elected by farm credit banks and two members to be appointed by the Chairman of another board. *Id.* Senator Boren's amendment proposed to reduce from three to two those members to be elected by farm credit banks, and provided that one member be appointed by the Secretary of Agriculture. *Id.* The Chair ruled as follows:

The PRESIDING OFFICER (Mr. Gorton of Washington). germaneness of the amendment is required by the unanimous consent agreement. The amendment of the Senator from Oklahoma does add new language which does not restrict powers contained in the bill and it is, therefore, not germane. The point of order is sustained.

Id.

An amendment that would have limited a proposed increase in a tax contained in a bill, but also proposed to increase another tax not contained in the bill was not germane. 128 CONG. REC. S8884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (point of order by Sen. Dole to Thurmond amendment to (continued...))

^{xx}(...continued)
the Tax Reconciliation Act of 1982).

Once the Senate has stricken language, that language can no longer form the basis for germaneness. 128 CONG. REC. S3880 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). Senator McClure and the Chair set this precedent on the same April 22, 1982, set of inquiries noted above:

Mr. McCLURE. . . .

Amendment No. 1296: The amendment would strike section 1325.
Is that amendment germane?

The PRESIDING OFFICER. This amendment is two amendments. The first is an amendment to strike, and would be germane. The second appears to expand the effect of the bill, and therefore would not be germane.

Mr. McCLURE. If, as a matter of fact, the language contained in "1503, 1505," referred to in line 4 of the amendment, is more restrictive than the language being stricken in the first half of the amendment, would it then survive the germaneness test?

The PRESIDING OFFICER. Once language has been stricken, it no longer sets the parameters for germaneness.

Mr. McCLURE. Even though it is in the same amendment?

The PRESIDING OFFICER. The Chair has observed that this is not one amendment but two amendments.

Id.

The Chair will consider germane *per se* amendments reported by or offered by authority of the committee of jurisdiction, and such amendments may form part of the basis for determining germaneness. 128 CONG. REC. S9014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982). The Chair will consider germane an amendment that is germane to an amendment reported by a committee, even if the committee amendment itself contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. 128 CONG. REC. S8702-04 (1982); Senate Precedent PRL19820720-002 (July 20, 1982) (LEGIS, Rules database) (debate on reconciliation bill). It follows, then, that the Chair will consider *per se* germane an amendment reported by a committee even if the committee amendment contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. *See id.*

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the provisions of such concurrent resolution shall be received.³³³ Such leaders, or either of them, may, from

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A Senator may offer again on behalf of the committee that had reported the measure an amendment that the Chair had ruled out of order as nongermane when offered by the Senator in the Senator's individual capacity. *See* 128 CONG. REC. S9014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (Dole amendment to the Tax Reconciliation Act of 1982).

The Chair will consider germane an amendment that is germane to an amendment for which the Senate has waived the germaneness requirement of the Congressional Budget Act. 132 CONG. REC. S12,986 (1986); Senate Precedent PRL19860919-004 (Sept. 19, 1986) (LEGIS, Rules database); 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

A motion under section 904(b) to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

Setting the time or sequence for a vote on an amendment does not implicitly waive the germaneness requirement. *See* 129 CONG. REC. S1807 (1983); Senate Precedent PRL19830301-001 (Mar. 1, 1983) (LEGIS, Rules database) (inquiries of Sens. Metzenbaum, Byrd, and Baker regarding cloture).

The germaneness requirement does not apply to a motion to recommit a reconciliation bill with instructions to report back forthwith a specific amendment that would bring a committee into compliance with the reconciliation instructions in the budget resolution. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); *see also infra* note 446.

In contrast to the germaneness test, the test for relevance is a looser, subject matter test. *See infra* note 1722.

Also in contrast to the germaneness test, the test for extraneousness (in the context of reconciliation) depends on another set of criteria regarding, among other things, whether the provision in question reduces the deficit. *See* section 313 (sometimes called the "Byrd Rule") *infra* pp. 198-245.

³³³ The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. 127 CONG. REC. S3148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database). On April 1, 1981, the following debate took place before time on the amendment had expired:

(continued...)