Special Issue:

THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION

Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as amended by section 7006 of the Omnibus Budget Reconciliation Act of 1986 and section 205 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987) sets forth the Byrd Rule:

SEC. 20001. (a) When the Senate is considering a reconciliation bill or a reconciliation resolution[982] pursuant to section 310[983] of the Congressional Budget Act of 1974, upon a point of order[984] being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution,[985] and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions

[982] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[983] *See supra* pp. 176-196.

[984] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 255 (regarding section 303(a)).

[985] 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 257 (regarding section 303).

to said Committee as defined in subsection (d)[986] shall be deemed stricken from the bill and may not be offered as an amendment from the floor. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section, as well as to waive[987] or suspend the provisions of this subsection.

(b) No motion to waive[988] or suspend the requirement of section 305(b)(2)[989] of the Congressional Budget Act of 1974, as it relates to germaneness[990] with respect to a reconciliation bill or resolution, shall be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on a point of order

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[986] *See infra* pp. 597-604.

[987] *See, e.g.*, 132 CONG. REC. S13,047 (Sept. 19, 1986).

[988] Section 904(c) of the Congressional Budget Act also requires the vote of 60 Senators to waive section 305(b)(2) generally. *See supra* p. 290.

[989] *See supra* pp. 136-153.

[990] For a discussion of germaneness, see *supra* note 304.

raised under that section,[991] as well as to waive or suspend the provisions of this subsection.

(c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.[992]

(d)(1)(A) Except as provided in paragraph (2),[993] a provision of a reconciliation bill or reconciliation resolution[994] considered pursuant to

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[991] Note that section 271(c) of Gramm-Rudman-Hollings also requires the vote of 60 Senators to appeal the ruling of the Chair on other points of order which themselves require 60 votes to waive. *See supra* p. 544.

[992] Section 205(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 extended this expiration date from January 2, 1988, to the current September 30, 1992. Pub. L. No. 100-119, 101 Stat. 754, 784 (Sept. 29, 1987). Contrast the expiration date of Gramm-Rudman-Hollings, found at section 275(b) of that Act (*see supra* p. 565), which section 106(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 extended to September 30, *1993*. Pub. L. No. 100-119, 101 Stat. 754, 780-81 (Sept. 29, 1987). No sound policy reason exists for the disparity. House staff, who objected to the Byrd Rule in general, objected to the further extension of the Byrd Rule in the conference for the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987.

[993] *See infra* pp. 601-603.

[994] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

section 310[995] of the Congressional Budget Act of 1974 shall be considered extraneous if such provision does not produce a change in outlays[996] or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected;

(B) any provision producing an increase in outlays[997] or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions;[998]

(C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title

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[995] *See supra* pp. 176-196.

[996] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[997] *See, e.g.*, 132 CONG. REC. S13,047 (1986); Senate Precedent PRL19860919-008 (Sept. 19, 1986) (LEGIS, Rules database).

Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[998] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 435 (regarding section 311(a)).

or provision shall be considered extraneous;[999]

(D) a provision shall be considered extraneous if it produces changes in outlays[1000] or revenues which are merely incidental to the non-budgetary components of the provision; and

(E)[1001] a provision shall be considered to be

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[999] Subsection (d)(3) provides exceptions to this paragraph. *See infra* pp. 603-604.

[1000] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[1001] Section 205(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subparagraph (E). Pub. L. No. 100-119, § 205(b), 101 Stat. 754, 784-85 (Sept. 29, 1987). The conference report accompanying that bill stated with regard to subparagraph (E):

> 6. Extraneous Provisions in Reconciliation Legislation
>
> *Current Law*
>
> Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), as amended by Section 7006 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), established a temporary rule in the Senate -- referred to as the "Byrd Rule" -- to exclude extraneous matter from reconciliation legislation. The rule specifies the types of provisions considered to be extraneous, provides for a point of order against the inclusion of extraneous matter in reconciliation measures, and requires a three-fifths vote of

(continued...)

extraneous if it increases, or would increase, net outlays,[1002] or if it decreases, or would decrease,

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[1001](...continued)
the Senate to waive or appeal the point of order. The rule expires on January 2, 1988.

Senate Amendment

The Senate amendment (Section 228) amends the Byrd Rule (which applies only in the Senate) to include in the definition of extraneous matter provisions which increase net outlays or decrease revenues during a fiscal year beyond those fiscal years covered by the reconciliation measure and which result in a net increase in the deficit for that fiscal year. The Senate amendment also extends the expiration date of the Byrd Rule to September 30, 1992.

Conference Agreement

The House recedes and concurs in the Senate amendment. This rule applies only in the Senate.

It is the intent of the conferees that expiration after the reconciliation period of a revenue increase or extension provided for in a reconciliation bill would not, of itself, be considered a revenue decrease for purposes of this provision. It could, however, contribute to a finding that a spending increase or a positive revenue decrease in that legislation violated this rule.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 65 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 765.

[1002] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution,[1003] and such increases or decreases are greater[1004] than outlay reductions or revenue increases resulting from other provisions in such title in such year.

(2) A provision shall not be considered extraneous under paragraph (1)(A)[1005] if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:

(A) the provision mitigates direct effects clearly attributable to a provision changing outlays[1006] or revenues and both provisions together produce a net reduction in the

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[1003] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[1004] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 435 (regarding section 311(a)).

[1005] Paragraph (1)(A) concerns provisions without deficit affect. *See supra* p. 597.

[1006] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

deficit;[1007]

(B) the provision will result in a substantial reduction in outlays[1008] **or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution;**[1009]

(C) a reduction of outlays[1010] **or an increase in revenues is likely to occur as a result of the provision, in the event of**

new regulation authorized by the provision or likely to be proposed,

court rulings on pending litigation, or

relationships between economic indices and stipulated statutory triggers pertaining to the provision,

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[1007] Section 3(6) of the Congressional Budget Act defines "deficit." *See supra* pp. 13-20.

[1008] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[1009] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[1010] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes;

(D) such provision will be likely to produce a significant reduction in outlays[1011] or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliable estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C)[1012] if

(A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or

(B) the provision states an exception to, or a special application of, the general provi-

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[1011] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 10.

[1012] *See supra* p. 598.

sion or title of which it is a part and such general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.[1013]

Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session)) applies the Byrd Rule to conference reports.

(c) When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution[1014] pursuant to section 310[1015] of the Congressional Budget Act of 1974, upon --

(1) a point of order being made by any Senator against extraneous material meeting

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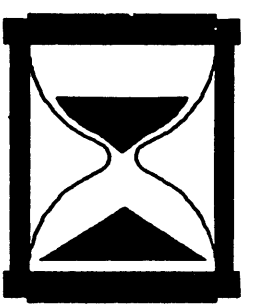
[1013] Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), *amended by* the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), *and amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205, 101 Stat. 754, 784-85 (Sept. 29, 1987).

[1014] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 183-184.

[1015] *See supra* pp. 176-196.

the definition of subsections (d)(1)(A)[1016] or (d)(1)(D)[1017] of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and

(2) such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a confer-



[1016] Subsection (d)(1)(A) concerns provisions without deficit effect. *See supra* p. 597.

[1017] Subsection (d)(1)(D) concerns provisions with deficit effects "which are merely incidental to the non-budgetary components of the provision." *See supra* p. 599.

ence report (or Senate amendment derived from such conference report by operation of this resolution), no further amendment shall be in order.[1018]

The Senate has struggled with the nature of a reconciliation bill. On the one hand, reconciliation presents an opportunity to bundle together in one bill much of the Congress's deficit reduction plan. Committees more willingly agree to take steps to reduce the deficit in areas within their jurisdiction if they know that other committees will also share the sacrifice.

As well, reconciliation allows the Congress to make changes in entitlement law by changing the underlying law. Without reconciliation, discretionary programs and the Appropriations process would be forced to bear a disproportionate burden of deficit reduction.

On the other hand, reconciliation is one of the few exceptions to the general rule in the Senate of unlimited debate. It is extremely difficult to amend the reconciliation bill. The Senate should be somewhat circumspect about what it allows itself to consider under these kinds of restrictions.

This tension between the good purposes of the reconciliation bill and the strict procedures governing it has led to efforts to prohibit what has been come to be known as "extraneous" matter on the bill.

Origins of the Byrd Rule

For example, as early as June 22, 1981, the bipartisan leadership offered an amendment to strike extraneous matter

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[1018] S. Res. 509, 99th Cong., 2d Sess, 132 CONG. REC. S16,415 (Oct. 16, 1986).

from the bill. On that day, during consideration of S. 1377, the Omnibus Reconciliation Act of 1981, Majority Leader Baker, offered the amendment for himself and Democratic Leader Robert C. Byrd, Budget Committee Chairman Domenici, and the ranking minority member of that committee, Senator Hollings. The debate that day included the following:

> Mr. BAKER. . . .
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> Aside from its salutary impact on the budget, reconciliation also has implications for the Senate as an institution. So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain non-budgetary amendments to substantive law, and still be protected under the Budget Act. That notwithstanding, I believe that including such extraneous provisions in a reconciliation bill would be harmful to the character of the U.S. Senate. It would cause such material to be considered under time and germaneness provisions that impede the full exercise of minority rights. It would evade the letter and spirit of rule XXII.[1019] It would create an unacceptable degree of tension between the Budget Act and the remainder of Senate procedures and practice. Reconciliation was never meant to be a vehicle for an omnibus authorization bill. To permit it to be treated as such is to break faith with the Senate's historical uniqueness as a forum for the exercise of minority and individual rights. For principally these reasons, I have labored with distinguished minority leader, with the chairmen and ranking minority member of the Budget Committee, and with other committee chairmen to develop a bipartisan leadership amendment. This amendment will strike from the bill subject matter

[1019] Rule XXII, regarding precedence of motions, includes the procedures for cloture. *See* STANDING RULES OF THE SENATE Rule XXII (1988).

which all these parties can agree is extraneous to the reconciliation instructions set forth last month in House Concurrent Resolution 115. What will remain in the bill is directly responsive to these instructions, has a budgetary savings impact, and plainly belongs in a reconciliation measure.

. . . .

Mr. ROBERT C. BYRD. Mr. President, if the reconciliation bill is adopted in its present form, it will do violence to the budget reform process. The reconciliation measure contains many items which are unrelated to budget savings. This development must be viewed in the most critical light, to preserve the principle of free and unfettered debate that is the hallmark of the U.S. Senate.

. . . .

The ironclad parliamentary procedures governing the debate of the reconciliation measure should by no means be used to shield controversial or extraneous legislation from free debate. However, language is included in the reconciliation measure that would enact routine authorizations that have no budget impact whatsoever. In other cases, legislation is included that makes drastic alterations in current policy, yet, has no budgetary impact.

. . . .

The reconciliation bill, if it includes such extraneous matters, would diminish the value of rule XXII. The Senate is unique in the way that it protects a minority, even a minority of one, with regard to debate and amendment. The procedures that drive the reconciliation bill set limits on the normally unfettered process of debate and amendment, because policy matters that do not have clear and direct budgetary consequences are supposed to remain

. . . .

The amendment offered by the majority leader and me omits several non budget related authorizations which should also be stricken from this bill. The fact that they were not included in this amendment should not be construed as accepting their inclusion in the bill.

. . . .

We have gone as far as we can go in this amendment, but we have not gone as far as we should go.[1020]

That day, the Senate agreed to the amendment by a voice vote.[1021]

Adoption of the Byrd Rule

On October 24, 1985, the Senate debated and adopted the Byrd Rule as an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985. Excerpts from the debate that day follow:

AMENDMENT NO. 878

Mr. BYRD. Mr. President, I send to the desk an amendment sponsored by myself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici.

[1020] 127 CONG. REC. S6,664-66 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database).

[1021] *See id.*

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from West Virginia [Mr. Byrd], for himself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici, proposes an amendment numbered 878:

> At the appropriate place add the following: When the Senate is considering a reconciliation bill upon a point of order being made and sustained by any Senator, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters.

Mr. BYRD. Mr. President, the amendment speaks for itself. I would just say that we are in the process now of seeing, if we have not seen earlier, the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate,

plus time on amendments and motions, to no more than 20 hours.

It was never foreseen that the Budget Reform Act[1022] would be used in that way.

So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate -- which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.

. . . .

Mr. Presiaent, the Senate is a deliberative body, and the reconciliation process is not a deliberative process. It not a deliberative process.[1023] Such an extraordinary process, if abused, could destroy the Senate's deliberative nature. Senate committees are creatures of the Senate, and, as such, should not be in the position of dictating to the Senate as is being done here. By including materal[1024] not in their jurisdiction or matter which they choose not to report as separate legislation to avail themselves of the nondeliberative reconciliation process, Senate committees violate the compact which created both them and the reconciliation process.

. . . .

The Senate must protect itself from this attack

[1022] Senator Byrd refers to the Congressional Budget Act.

[1023] This is so in the original; it should read "It is not a deliberative process."

[1024] This is so in the original; it should read "material."

by its own committees, and, if necessary, the reconciliation bill will be amended to the extent necessary to achieve a preponderance of nonreconciliation matters and thus return this bill to a nonprivileged status.

Under the Budget Reform Act, other committees are mandated to make recommendations to the Budget Committee -- those committees make their recommendations to the Budget Committee, and the Budget Committee cannot add to or subtract from those instructions. It cannot amend the instructions. It cannot take from those instructions. It cannot add its own. It merely is to perform an administrative function -- and that is, to put all such recommendations into a single package which, when sent to the floor and taken up, is covered by an overall 20-hour time limit.

Normal cloture is but an infinite speck on the horizon as compared to this kind of cloture. Under normal cloture, we have 100 hours. Each Senator has 1 hour, theoretically. But under the restrictions of the Budget Act, 20 hours is all there is on a reconciliation bill.

We saw a moment ago how much time can be taken by one amendment. First there is the waiver. That is an hour. Then there is the amendment. That is 2 hours. Then there is an amendment to the amendment. That is another hour.

So, when all is boiled down, we have not only an abuse of the budget process by way of which other committees recommend to the Budget Committee any controversial bill they want -- repeal of the Hobbs Act, acid rain, you name it -- but also, when reconciliation comes to the floor, one or two Senators can offer an amendment, and consume at least 4 hours out of the 20 hours, if they want to take all the time that is

available with regard to the waiver, the amendment, the amendment to the amendment, quorum calls, and so on.

So, Mr. President, I have offered this amendment, which is being cosponsored by the other Senators whose names have been stated, in order to correct this abuse in the future.

This provides that if a point of order is raised and upheld against extraneous matter in the reconciliation bill or matter that has been recommended by a committee whch[1025] does not have jurisdiction over the subject matter, then all such matter that is in the bill will fall and is not subject to being offered as a further amendment thereto.

. . . .

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. JOHNSTON. I say I support very strongly what the Senator is trying to do,but for purpose of setting the legislative record, I would like to get an understanding what happens in some instances.

First of all, according to the amendment when a matter is not within the jurisdiction of the committee or is extraneous to the instructions, that matter shall be deemed stricken from the bill. Now the question is: Where you have a whole provision, some of which is germane and some of which is not, does the Parliamentarian go through that and excise those sentences

[1025] This is so in the original; it should read "which."

or clauses or subsections which are nongermane or extraneous and leave the rest, or does he excise the entire section as to which there is offending language?

Mr. BYRD. I am not sure I can answer that question with respect to what the Parliamentarian will do.

It might depend upon whether or not the language is divisible. I do not know. Perhaps the distinguished Senator would want to address his question to the Chair on this particular question.

Mr. JOHNSTON. When it says, "Any part of a bill not in the jurisdiction of the committee," I am just wondering what the intent of the authors is with respect to "any part of a bill." Does it mean the entire portion of the bill reported by a committee, or just as the offending extraneous or nongermane language?

Mr. BYRD. If it is any part of the bill that is not within the jurisdiction of the reporting committee, it would fall. If it is not within the jurisdiction of the -- --

Mr. JOHNSTON. When you say "part," if you have, let us say, a 30-page section of legislation as to which there is one subsection that is not germane, would you simply knock out the subsection or would you take the whole 30-page section?

Mr. BYRD. I think the Senator may be confusing -- let me say this: the Senator is talking about germaneness?

Mr. JOHNSTON. The Senator is correct.

Mr. BYRD. And also talking about legislation that has been reported by a committee which does not

have jurisdiction over the subject matter. So there are two different things.

The language, I think, would explain the answer. Any part of the bill not in the jurisdiction of the reporting committee, whether it is germane or not, any part that is not within the jurisdiction of the reporting committee, would fall.

Mr. JOHNSTON. For example, we usually put a severability clause in legislation which means that if any section of the bill is declared unconstitutional by the Court, then the rest of the bill does not fall.

I am asking, I guess, whether you intend for there to be, in effect, a severability clause here, or whether the whole section as to which there is any offending language falls.

Mr. BYRD. I say any part of the bill that is not within the jurisdiction of the reporting committee would fall.

Mr. JOHNSTON. You can take out that part and in effect rewrite the bill by striking sentences, clauses, subsections.

Mr. BYRD. That are not within the jurisdiction of the reporting committee.

. . . .

Mr. JOHNSTON. My final question has to do with the meaning of the word "extraneous" and what your intention is as to how that is interpreted. Frequently, in fact, usually directions are given by the Budget Committee in the very broadest of terms, and the authorizing committees report legislation which is detailed and which, in one sense, might contain matter

that is extraneous. It might be germane to the instructions, but extraneous in the sense that it is not specifically called for within the four corners of the instructions from the Budget Committee to the authorizing committee. Could the Senator tell me what he means by "extraneous" in this context of that question?

. . . .

Mr. JOHNSTON. If I may repeat it. The question is as to the meaning of the word "extraneous," as used in this amendment. . . .

. . . . But the question is: What is the meaning of the word "extraneous"? Do you mean that it must be contained within the four corners of the instructions from the Budget Committee, or may the Budget Committee supplement those instructions by filling out the spirit of the instructions within the jurisdiction of that committee and all within the germaneness rule, if the Senator understands the question?

Mr. BYRD. The word "extraneous" here would be interpreted in the future just as it is presently being interpreted. And I understand that, at the present time, "extraneous," in the context, is determined by whether or not the language contributes to reducing the deficit and balancing the budget; otherwise, it is extraneous. So the same interpretation that is now given to the word "extraneous" would continue to be given.

Mr. JOHNSTON. So, for example, a committee would be able to go beyond the instructions and save more money?

Mr. BYRD. Well, if such language does not serve to balance the budget or to reduce the deficit,

the language would be extraneous -- then it would be up to the Chair to determine whether or not the point of order is well taken.

. . . .

Mr. DOMENICI. Will the distinguished minority leader yield?

Mr. BYRD. Yes.

Mr. DOMENICI. First, let me ask the distinguished minority leader a question and then I would like to comment on what I think has developed and evolved as a definition of "extraneous material."

As I read the amendment, I say to the distinguished minority leader, the second part of this amendment -- "No motion to waive germaneness on reconciliation bills shall be agreed to unless," -- I understand that this applies to an amendment offered on the floor by a Senator. Is the Senator from New Mexico correct?

Mr. BYRD. The Senator is correct and I was incorrect.

. . . .

Mr. DOMENICI. Mr. President, I wish to ask one further question of the principal sponsor and drafter of the amendment, the distinguished minority leader. I wonder if he intended to include in the second part of the amendment, "no motion to waive germaneness." I wonder if he wanted that to be just germaneness, whereas before, when we were speaking of striking what a committee sent us, the Senator used two descriptions: he used germaneness and he used extraneous. It appears to me he might want, in the

second part, "no motion to waive germaneness or extraneousness," and then provide for the super-majority. Otherwise, you make extraneous material subject to a point of order, but the point of order could be waived by a simple majority.

Mr. BYRD. Mr. President, the distinguished Senator from New Mexico makes an excellent point. I agree with him and think it should be so strengthened and I modify my amendment so to accomplish that purpose.

Mr.. DOMENICI. Mr. President, will the distinguished minority leader permit me to respond to what "extraneousness" means thus far in its evolution in the Senate? Let me suggest that, going back to 1981, we have evolved these four definitions, and I believe they are used by minority and majority members of the committee now. I would just read them quickly:

> One, provisions that have no direct effect on spending and which are not essential to achieving the savings.
>
> Two, provisions which increase spending and are not so closely related to saving provisions that they cannot be separated.
>
> Three, provisions which extend authorizations without saving money, and which are not so closely related to saving provisions that they cannot be separated.
>
> Four, provisions which invade another committee's jurisdiction, whether or not they save money.

And I am not saying that is all inclusive, but, up

to this point, that is what we have been using. . . .

The PRESIDING OFFICER. The minority leader has a right to modify his amendment. If he will send it to the desk, the amendment will be so modified.

The amendment, No. 878, as modified, reads as follows:

At the appropriate place add the following:

> When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which supermajority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported from a committee.

Mr. JOHNSTON. Will the Senator from West Virginia yield for just one more question?

Mr. BYRD. Yes.

Mr. JOHNSTON. . . .

My question is, Can you appeal the ruling of the Chair, make a point of order, that a matter is not

extraneous, or is germane, have the Chair rule against you and then reverse that on a simple majority vote, and overruling the ruling of the Chair? Or do you mean for that also to be three-fifths?

Mr. BYRD. Would the Senator ask that question again?

Mr. JOHNSTON. The Parliamentarian strikes from the bill a matter which is extraneous or which is nongermane. I am interested in the matter, and I make a point of order that the matter is not extraneous or is germane to the bill. The Parliamentarian, the Chair, rules against me. I appeal the ruling of the Chair. Can we thereby overturn the Chair by simple minority vote?

Mr. BYRD. No.

Mr. JOHNSTON. Can you challenge the ruling of the Chair at all? If so, how?

Mr. BYRD. The Senator can appeal the ruling of the Chair.

Mr. JOHNSTON. Appeal the ruling of the Chair, but what vote would that require?

Mr. BYRD. Three-fifths.

Mr. JOHNSTON. I think in view of the earlier answer that this motion to waive germaneness applies only to amendments offered on the floor -- it would apply to both -- and committee action?

Mr. BYRD. Yes.

Mr. JOHNSTON. The automatic ruling out as well as an amendment offered on the floor?

Mr. BYRD. That is correct.

Mr. DOMENICI. I think the distinguished sponsor had answered previously that the supermajority requirement for a waiver applied only to committee reported language, but when we exchanged views here, he clearly indicated that it applies to waivers of the germaneness requirement or the extraneous language point of order or appeals to rulings of the Chair.

Mr. JOHNSTON. I wonder if this language is specific enough to apply to an appeal from the ruling of the Chair. It speaks in terms of a motion to waive germaneness of reconciliation. I think it might be rewritten a bit to make that clear.

Mr. BYRD. Mr. President, that is the intent of the sponsor. If I need to modify it to make it clear, I will do so.

Mr. McCLURE. Will the Senator yield?

Mr. BYRD. Yes.

Mr. McCLURE. I think the Senator from Louisiana has raised perhaps a good point because we have interchangeably talked here of the opportunity of a Member who does not like a ruling of the Chair being able to appeal the ruling of the Chair, and we have not clearly distinguished that from the opportunity to make a motion to suspend pursuant to the Budget Act. Maybe the answer to that question is to make certain that either an appeal from the ruling of the Chair or a motion with respect to germaneness should have to have a three-fifths vote.

I think that would make it clear because in our

practice here earlier today it was not an appeal from the ruling of the Chair. As a matter of fact, it was not even a ruling of the Chair. But I think the Senator is very clear in his explanation that it is intended to cover both. Perhaps we ought to make a further statement in the amendment to make certain that it states that.

. . . .

Mr. DOMENICI. Mr. President, I want to compliment the distinguished minority leader for the amendment. I think we have a suggestion for a further modification. We will talk with the Senator from Louisiana. We are working on it. I think there are a couple of words we ought to add.

. . . .

Mr. DOMENICI. Mr. President, as I was saying, I commend the distinguished minority leader. Frankly, as the chairman of the Budget Committee, I am aware of how beneficial reconciliation can be to deficit reduction. But I am also totally aware of what can happen when we choose to use this kind of process to basically get around the Rules of the Senate as to limiting debate. Clearly, unlimited debate is a prerogative of the Senate that is greatly modified under this process.

I have grown to understand that this institution, while it has a lot of shortcomings, has some qualities that are rather exceptional. One of those is the fact it is an extremely free institution, that we are free to offer amendments, that we are free to take as much time as this U.S. Senate will let us to debate, and have those issues thoroughly understood both here and across this country.

I do not like to see committees put amendments

on reconciliation that they have not been able to pass for years, or in the process of doing reconciliation just add untold numbers of amendments in order to be immune from unlimited debate.

. . . .

Mr. EVANS. Mr. President, I commend the majority and minority leaders, and the chairman and ranking member of the Budget Committee for what they are attempting to do. I think it represents a major step forward in correcting an evil we fell into today which is being well recognized. . . .

. . . . As I understand the language, and the minority leader . . . can correct me if I am in error, do I understand correctly that the proposal made, if it had been in the law prior to today, would have meant that the textile bill as proposed would have been ruled out of order from this proposal?

Mr. BYRD. If a point of order were made against that bill with respect to germaneness and if the point of order were upheld, then it would take a three-fifths vote to overrule the Chair, under my amendment.

. . . .

Mr. EVANS. I thank the minority leader.

Let me add briefly that this is a splendid move forward. If there had been any real progress made today, perhaps this is the best progress we have made for the long-term future of the Senate.

. . . .

Mr. BYRD. . . .

The amendment (No. 878), as further modified, is as follows:

> At the appropriate place add the following: "When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator, and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. This provision may be waived by three-fifths of the Senators duly chosen and sworn. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported by a committee."

Mr. DOLE. Mr. President, I want to thank my colleague. I think the debate we have had on this amendment has been very helpful. As I look at the votes today, if it had been in effect now, this amendment would not be pending and that would be an improvement on the reconciliation bill. It was never intended as the answer for every amendment whether it is the Hobbs Act, abortion, prayer in school, or anything else. Ordinarily, you just wait for the reconciliation bill to come up every year and put anything on reconciliation. Obviously, that was not the purpose

of the Budget Act.[1026]

The Senate went on to adopt the Byrd amendment by a unanimous vote of 96-0.[1027]

Application of the Byrd Rule to Conference Reports

On December 19, 1985, Senator Simpson, on behalf of Senators Armstrong, Roth, and Domenici, introduced a Senate Resolution -- S. Res. 286 -- to apply the Byrd Rule to conference reports. As agreed to that day, that resolution read as follows:

S. RES. 286

> RESOLVED, That when the Senate is considering a conference report or House amendment with respect to a reconciliation bill or reconciliation resolution pursuant to section 310 of the Budget Act, upon a point of order being made by any Senator against extraneous material meeting the definition of subsections (d)(1)(A) and (d)(1)(D) of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and such point of order is sustained, any part of such report or amendment containing such material shall be deemed stricken, but it shall be in order to continue consideration of the remainder under the Rules and practices of the Senate and applicable law. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this resolution, as well as to waive or

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[1026] 131 CONG. REC. S14,032-37 (Oct. 24, 1985).

[1027] *Id.* at S14, 038. Senators Eagleton, Hatfield, Simon, and Stennis were necessarily absent. *Id.*

suspend the provisions of this resolution.

The provisions of this resolution shall remain in effect until the date of termination of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985.[1028]

Senator Roth described the resolution:

Mr. ROTH. Mr. President, the purpose of this resolution is to remedy a possible unintended result of the Byrd amendment to the reconciliation bill, section 1201[1029] of the Consolidated Omnibus Budget Reconciliation Act of 1985.

That provision imposes a discipline upon this body which is not imposed on the other body. Basically, it requires that Senators not place extraneous provisions in reconciliation bills and resolutions.

However, if Members of the other body are free to load up their bills and resolutions with extraneous provisions, I fear that our body will be at a disadvantage within respect to the other body. Since we cannot tell the other body how to conduct its business, the solution is to create a new Senate procedure for handling extraneous material originating in the other body and coming to us as part of a House amendment or a conference report. The situation is analogous to that in the other body when we send provisions to them which would violate their rule on germaneness if offered there rather than here.

The other body's response to that situation has

[1028] 131 CONG. REC. S18,255 (Dec. 19, 1985).

[1029] This is so in the original. Senator Roth meant section 20001.

been to adopt clauses 4 and 5 of rule XXVIII of the House rules.[1030] The remedy proposed here is similar.

[1030] Clauses 4 and 5 of House Rule XXVIII provide:

4. (a) With respect to any report of a committee of conference called up before the House containing any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House, and which --

(1) is contained in any Senate amendment to that measure (including a Senate amendment in the nature of a substitute for the text of that measure as passed by the House) accepted by the House conferees or agreed to by the conference committee with modification; or

(2) is contained in any substitute agreed to by the conference committee; it shall be in order, at any time after the reading of the report has been completed or dispensed with and before the reading of the statement, or immediately upon consideration of a conference report if clause 2(c) of this rule applies, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in the report.

For the purposes of this clause, matter which --

(A) is contained in any substitute agreed to by the conference committee;

(B) is not proposed by the House to be included in the measure concerned as passed by

(continued...)

[1830](...continued)
the House; and

(C) would be in violation of clause 7 of Rule XVI if such matter had been offered in the House as an amendment to the provisions of that measure as so proposed in the form passed by the House;

shall be considered in violation of such clause 7.

(b) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(c) Notwithstanding the final disposition of any point of order made under paragraph (a), or of any motion to reject made pursuant to a point of order under paragraph (b), of this clause, it shall be in order to make further points of order on the ground stated in such paragraph (a), and motions to reject pursuant thereto under such paragraph (b), with respect to other nongermane matter in the report of the committee of conference not covered by any previous point of order which has been sustained.

(d) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be --

(continued...)

[1030](...continued)

(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected; or

(2) if the last sentence of paragraph (a) of this clause applies, whether to insist further on the House amendment.

If all such motions to reject are defeated, then, after the allocation of time for debate on the conference report as provided in clause 2(a) of this Rule, it shall be in order to move the previous question on the adoption of the conference report.

5. (a)(1) With respect to any amendment (including an amendment in the nature of a substitute) which --

(A) is proposed by the Senate to any measure and thereafter --

(i) is reported in disagreement between the two Houses by a committee of conference; or

(ii) is before the House, the stage of disagreement having been reached; and

(B) contains any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House;

(continued...)

[1030](...continued)
it shall be in order, immediately after a motion is offered that the House recede from its disagreement to such amendment proposed by the Senate and concur therein and before debate is commenced on such motion, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in such amendment proposed by the Senate.

(2) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(3) Notwithstanding the final disposition of any point of order made under subparagraph (1), or of any motion to reject made pursuant to a point of order under subparagraph (2), of this paragraph, it shall be in order to make further points of order on the ground stated in such subparagraph (1), and motions to reject pursuant thereto under such subparagraph (2), with respect to other nongermane matter in the amendment proposed by the Senate not covered by any previous point of order which has been sustained.

(4) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the motion to recede and concur shall be considered as rejected, and further motions --

(A) to recede and concur in the Senate

(continued...)

[1030](...continued)
amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);

(B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and

(C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(b)(1) With respect to any such amendment proposed by the Senate as described in paragraph (a) of this clause, it shall not be in order to offer any motion that the House recede from its disagreement to such Senate amendment and concur therein with an amendment, unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration.

(2) Immediately after any such motion is offered and is in order and before debate is commenced on such motion, it shall be in order to make a point of

(continued...)

[1030](...continued)
order that nongermane matter, as described in subparagraph (1) of paragraph (a) of this clause, which shall be specified in the point of order, is contained in the language of the Senate amendment, as proposed by to be amended by such motion, copies of which are then available on the floor.

(3) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(4) Notwithstanding the final disposition of any point of order under subparagraph (2), or of any motion to reject made pursuant to a point of order under subparagraph (3), of this paragraph, it shall be in order to make further points of order on the ground stated in subparagraph (1) of paragraph (a) of this clause, and motions to reject pursuant thereto under subparagraph (3) of this paragraph, with respect to other nongermane matter in the language of the Senate amendment, as proposed to be amended by the motion described in subparagraph (1) of this paragraph, not covered by any previous point of order which has been sustained.

(5) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this paragraph, the motion to recede and concur in the Senate amendment shall be considered as rejected, and further motions --

(continued...)

[1030](...continued)

> (A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);
>
> (B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and
>
> (C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur in the Senate amendment with an amendment as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(c) If, on a division of a motion that the House recede and concur, with or without amendment, from its disagreement to any such Senate amendment as described in paragraph (a)(1) of this clause, the House agrees to recede, then, before debate is commenced on concurring in such Senate amendment, or on concurring therein with an amendment, it shall be in order to make and dispose of points of order and motions to reject with respect to such Senate amendment in accordance with applicable provisions of this clause

(continued...)

It would permit a point of order to be raised against the extraneous material in House amendments or conference reports. With respect to a House amendment, if such point of order is sustained, the effect will be like that of a successful motion to strike out the offending language, and the Senate will be able to consider and act upon the remainder, if any, of the amendment.

With respect to a conference report, if such point of order is sustained, the effect will be like that under rule XXVIII of the House rules; the Senate will be able, for example, to request further conference or to insist on its disagreement or to recede and concur in the House amendment with an amendment incorporating the remainder of the text of the conference report or any other permissible variation which does not revive the provision deemed stricken by the successful point of order.

It should be noted that points of order may be made only with respect to two of the four categories of extraneous material in section 1201. This is because the two categories omitted are not applicable to matters to be transacted between the Houses. Moreover, it is intended that the remaining two categories be applied without reference to any instructions that may have been given to committees. Thus points of order may be raised against a provision which does not; produce a change in outlays or revenues or which produces a change which is merely incidental to the non-

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[1030](...continued)
and to effect final determination of these matters in accordance with such provisions.

RULES OF THE HOUSE OF REPRESENTATIVES Rule XXVIII(4) & XXVIII(5) (1988).

budgetary components of the provision.

> I believe that this resolution is a necessary step to protect the prerogatives of this body. With this protection, the Byrd amendment will be able to achieve a necessary reform without disadvantaging this body.[1031]

The Senate then agreed to the resolution by a voice vote.[1032]

On October 16, 1986, Senator Simpson introduced another Senate Resolution, on behalf of Senators Roth, Domenici, and Chiles, modifying the earlier resolution. That resolution read as appears above.[1033]

Again, Senator Roth explained the resolution:

> Mr. ROTH. Mr. President, on December 19, 1985, the Senate adopted Senate Resolution 286, which I authored. The purpose of Senate Resolution 286 was to extend the prohibition against extraneous matter in reconciliation bills and resolutions, popularly known as the Byrd rule after its distinguished author, to House language coming over to us either in a conference report or as a House amendment. But for Senate Resolution 286, the Senate would have been in a position of imposing a much needed discipline on itself while facing the prospect that the House could load down reconciliation bills and resolutions with all kinds of extraneous matter.
>
> When the Senate considered Senate Resolution

[1031] 131 CONG. REC. S18,255 (Dec. 19, 1985).

[1032] *See id.*

[1033] *See supra* pp. 604-606.

286, I noted its similarity to rule XXVIII of the House rules by which the House seeks to protect itself against Senate provisions that would violate House rules on germaneness if offered there. Under Senate Resolution 286, when the point of order against extraneous matter is made and sustained, the offending language is deemed stricken and the Senate is permitted to consider the remainder "under the rules and practices of the Senate and applicable law."

In contrast, in the analogous situation under rule XXVIII of the House rules, after the offending language is deemed stricken, the opportunity to debate and to make further amendments is restricted under the rule and the practices of the House. In practical terms this means that one making a point of order does not have to overcome the burden that his or her success might unravel all the negotiations that led up to the conference report or amendment in question.

Therefore, on reflection, it is my considered opinion that Senate Resolution 286 needs to be amended so that successful points of order intended to surgically remove offending language, do not provide the occasion for unraveling the remaining language of conference reports which Senate conferees have worked out in conference.

The amendment to Senate Resolution 286 would preserve the original purpose of that resolution but would further refine the implementation, in the case of conference reports or House amendments, by limiting debate and, in the case of conference reports, by precluding amendments.

Conference reports as such are not subject to amendment. It would be highly inappropriate, therefore, to allow such language to become amendable once extraneous matter is removed by a successful

point of order. Unfortuantely,[1034] that result would occur without the adoption of the pending resolution because a conference report falls as a matter of parliamentary law when a successful point of order is made against it. And when the conference report falls, the last amendment or amendments are before this body subject to further debate and further action.

But this result is contrary to the special purpose of Senate Resolution 286. Such a result would make it more difficult to police our policy against extraneous matter. For if a Senator desiring to make a point of order against extraneous matter realizes that his success could cause the entire conference agreement to become amendable, then he would be inclined to go forward guided more by his position on the substance of the conference agreement than by his desire to enforce Senate policy on extraneous matter. That would be unfortunate.

The pending resolution would change that result. It would allow a successful point of order to excise the offending language in a conference report and would, in effect, treat the remaining language in the same way we treat conference reports, that is, as not subject to amendment.

House amendments, like conference reports, would be subject to the provision limiting debate. However, House amendments would be subject to further amendment since, unlike a conference report, they have not been agreed to by the Senate.

The resolution also treats the situation where the House has sent us an amendment containing extraneous matter and the Senate is considering a Senate

[1034] This is so in the original; it should read "Unfortunately."

amendment to the House amendment containing such extraneous matter. This kind of Senate amendment is included within the phrase "amendment between the Houses" in the pending resolution. This kind of Senate amendment to a House amendment would be subject to the same procedure as would the House amendment.

It should also be noted that more than one point of order may be made against a conference report or amendment between the Houses. In the case of Senate consideration of conference reports, it should be noted that a second point of order would be made against the resulting Senate amendment created by operation of this resolution upon a successful point of order being made. It cannot be made against the conference report because it is no longer before the body. That is why the phrase "Senate amendment derived from such conference report by operation of this resolution" is included in the resolution; such amendments are basically treated under the procedure for conference reports. This means they are not amendable.

In my opinion, the procedural refinements contained in the pending resolution are necessary to implement the original purpose of Senate Resolution 286 and should be adopted.[1035]

The Senate then agreed to that resolution by a voice vote.[1036]

[1035] 132 CONG. REC. S16,415 (Oct. 16, 1986).

[1036] *See id.*

The New Stringency

On October 13, 1989, the Senate evinced a new stringency in the application of the Byrd Rule. Majority Leader Mitchell, on behalf of himself and Senators Dole, Sasser, Domenici, Byrd, Bentsen, and Packwood, offered a leadership amendment to strike extraneous provisions from the reconciliation bill (S. 1750). The amendment went further than the text of the Byrd Rule in its definition of extraneousness. The debate proceeded as follows:

> Mr. MITCHELL. Mr. President, the purpose and effect of this amendment may be summed up in a single sentence. The purpose of the reconciliation process is to reduce the deficit. I repeat, the purpose of the reconciliation process is to reduce the deficit.
>
> The amendment is lengthy, consisting of many pages, words, and numbers, but it has that fundamental objective. As I said when I addressed the Senate a week ago Thursday, the reconciliation process has in recent years gone awry. The special procedures included in the Budget Act as a way of facilitating deficit reduction items became a magnet to other legislation which is unrelated to the objective of reducing the deficit.
>
> . . . .
>
> But it is time now to restore the reconciliation process to its original objective. That is what this amendment does. It asks sacrifice of every Senator. It asks discipline of every Senator. It asks that the regular legislative process be restored to the dignity it once had.
>
> . . . .
>
> Mr. DOLE. . . .

. . . .

The bottom line, as I see it, is discipline. Do we have the will to be responsible, to really reduce the Federal deficit or do we undercut the process by piling on important programs, taxes, and other legislative goodies that cost the taxpayers millions in the name of deficit reduction? Many of these provisions have never even had a hearing, never had a hearing, and not one witness from anyplace came in to testify for or against most of the provisions.

. . . .

So [the Caucus] in affect directed the leader to have the staff put together something that went beyond the Byrd rule; something that extended -- I guess you would call it an extension of the Byrd rule. . . .

. . . .

I believe the proposal such as the rural health care package and others are meritorious in their own right and can withstand the test of the normal legislative process, and they should. Reducing the deficit is a priority; the deficit keeps climbing, and we have not had much success in getting it down. I am not certain everybody in America understands all the inside baseball that goes on around here, whether they understand reconciliation and conference committees and motions to strike, but I do believe the American people recognize responsibility when they see it, and tonight they are seeing responsibility in action.

That is the whole purpose of this amendment. The authors will oppose any effort to add back individual provisions, and I certainly urge our colleagues to

support those efforts. That does not mean that a provision that some Senator might have -- and I will speak to this side of the aisle -- will not be picked up in another revenue bill or in a separate piece of legislation. We are not here to pass judgment on what Senators may have in mind as far as legislation is concerned. On this package, it is going to be a reconciliation bill in the finest sense of the word.

. . . .

Mr. SASSER. Mr. President, with this amendment we are firing a shot, I believe, for fiscal responsibility, a shot that I think will be heard throughout the corridors of this Congress. . . . With this amendment, we are putting a deficit reduction bill back in the category of being a deficit reduction bill. It is an amendment that sets this body's priorities straight.

What we are seeking to do is to remove from this reconciliation vehicle, all extraneous matter, everything that does not either reduce Federal spending or raise Federal revenues will be stricken. That is the purpose of a reconciliation bill. Extraneous matters have been accumulating on these reconciliation bills now for a number of years, to the point that they are on the verge of sinking the reconciliation bill, and in so doing, defeating the budget process.

At some point in the not too distant future, if we continue down the path that we have been going, the Parliamentarian, on a point of order, will be forced to rule that a so-called reconcilation[1037] bill is not a reconcilation[1038] bill at all, that it is simply a vehicle for so much extraneous matter that deficit reduction has

[1037] This is so in the original; it should read "reconciliation."

[1038] This is so in the original; it should read "reconciliation."

become a subordinate and wholly incidential[1039] purpose for which a so-called reconciliation bill will be offered in the future. I do not say that to impugn the worth of many extraneous matters on this reconciliation bill.

. . . .

Mr. DOMENICI. . . .

. . . .

There are a few things about the U.S. Senate that people understand to be very, very significant. One is that you have the right, a rather broad right, the most significant right, among all the parliamentary bodies in the world to amend freely on the floor. The other is the right to debate and to filibuster.

When the Budget Act was drafted, the reconciliation procedure was crafted very carefully. It was intended to be used rather carefully because, in essence, Mr. President, it vitiated those two significant characteristics of this place that many have grown to respect and admire. Some think it is a marvelous institution of democracy, and if you lose those two qualities, you just about turn this U.S. Senate into the U.S. House of Representatives or other parliamentary body.

. . . .

. . . . If the House Rules Committee clears a bill, it makes no difference to them whether it is on reconciliation or freestanding. They set the rules for debate in that institution then and there. We do not

[1039] This is so in the original; it should read "incidental."

have that. The only Rules Committee we have is the floor of the U.S. Senate and a relatively new one called reconciliation.

Today we have met the enemy. As Pogo says "We met the enemy and he is us." We are going to use the process available under the Budget Act to strip from this bill not only those matters which the Parliamentarian would call extraneous but also those which were never intended because they are not pure deficit reduction matters. Thus, they are broader than the Byrd rule, irrelevant and extraneous,and we are going to strike them.

. . . .

Mr. GORTON. . . .

First, we are doing what we ought to do. As the distinguished majority leader said earlier during the course of this debate, the purpose of a reconciliation bill is to reduce the budget deficit. . . .

Second, and equally important, by this course of action this evening we are not doing what we ought not to do. The distinguished minority leader pointed out that many of the extraneous elements in this resolution before this amendment include good legislation. From a brief review of that legislation, I know this Senator agrees with well over half of those pieces of substantive legislation. But all of them, whether this Senator agrees with them or not, share one feature in common: They have not been debated on the floor of the Senate and cannot be effectively debated as a part of a reconciliation bill. They cannot effectively be amended as a part of a reconciliation bill.

Thus, their inclusion, whether they are good,

bad, or indifferent, would utterly destroy the very purpose of the Senate of the United States, as so eloquently described by the President pro tempore last Sunday. It is absolutely essential that, even with this legislation, we have the right to debate and the right to amend.

. . . .

Mr. RUDMAN. . . .

I would say it was informally advanced beyond the Byrd rule by what we have now adopted. I guess I would call it an informal Dole-Mitchell-Sasser-Domenici-Packwood-Bentsen amendment which simply said: If it does not raise revenue or save money, we do not want it in here.

I wish the distinguished President pro tempore might offer that as a formal amendment. It would save us a lot of grief in the coming years.

Mr. President, there ought to be a lesson in what happened here today and yesterday and last week. . . .

. . . .

The net result of that, Mr. President, is what the distinguished President pro tempore said on Sunday about this body, which has the ability to debate and amend and consider legislation. I will tell my colleagues, if there is a great disappointment to this Senator in my 8 years here, it is that some of the most important issues we can discuss we never have the chance to debate and amend on this floor because we are totally immersed in this budget process from January to December; maybe this year shorter.

. . . .

Mr. BYRD. Mr. President, John Stuart Mill said, "On all great subjects, much remains to be said." This is a great subject, the reconciliation bill, and much remains to be said. . . .

I have seen the Senate many times when it gave me reason to be concerned about its future. I have also seen it on some occasions when it gave me reason to be proud. . . .

Tonight I think that we should pause to reflect upon this institution to which Gladstone, that great English statesman who lived during the long reign of Queen Victoria and who was Prime Minister of England four times, referred when he spoke of the U.S. Senate as "that remarkable body, the most remarkable of all the inventions of modern politics." That is what this institution is. . . .

. . . .

The U.S. Senate is the centerpiece of the great compromise. It is the masterpiece of the men who wrote the Constitution. . . . They were wise men, and they saw the need for a system of checks and balances, and the Senate was the balance wheel of that system. The Senate was given extraordinary powers . . . . But the basic cement that was the very foundation of this balance wheel were two in number, the right to debate and the right to amend. The other body may amend, but the other body may also issue a rule which, if agreed to, will confine amendments to one in number or two in number or three or none and direct that a certain Member will be the only Member who will offer that one amendment or those two amendments.

The House has the previous question, but not the Senate. The Senate allows unrestricted debate.

We now and then restrict ourselves through the cloture motion, which first was created in 1917. But the right to debate and to amend is why we should be proud of this institution, why we should revere it.

The Constitution, in section 7 of article I, says that measures that raise revenues shall begin in the House of Representatives, but it also says that the Senate may propose or concur with amendments as on other bills. So there is a constitutional right reposed in the Senate to amend ever[1040] revenue bills.

The Senate and the House have their tensions between them, as do the executive and the legislative, all these with the built-in tensions that the forefathers took great care to fashion in order to make this a system of checks and balances.

But in the reconciliation bill, we were about to inflict our own mortal wound, as Brutus did with the same dagger that he had plunged into Caesar's blood, bringing a bill of such magnitude here which contained scores of measures, on any one of which the Senate should have had the opportunity to debate at full length and to amend. What hidden pieces of legislation might come to the floor in a package of this size? What hidden legislation we might vote upon and come to regret at a later time?

This is an institution for the protection of minorities, an institution in which the minority can put a bridle on the majority for at least a while until the country can be awakened to the mistakes that might otherwise be visited upon the people. We should not view this Senate lightly, and never should be party to weakening this institution, with which we have been

[1040] This is so on the original; it should read "even."

blessed.

Yes, there were limitations on debate in 1919 in the League of Nations debate, and in 1926 in the World Court debate, limitations through the cloture rule, but their price was substantial concessions by the majority.

The Senate is . . . the only forum in which minorities are protected against the sudden waves of passion that might sweep over the Nation.

A reconciliation bill is a super gag rule, the foremost ever created by this institution. Normal cloture is but an infinite speck on the distant horizon when compared with a reconciliation bill. Cloture may be invoked on any measure, motion, or matter. Sixteen Senators sign a cloture petition; parts of 3 days transpire before cloture is invoked; and when it is invoked, it is invoked on only one matter or one measure or one motion. Then there are 30 hours of debate. The provision is within that rule that that time may be extended by a three-fifths majority vote to whatever -- 40 hours, 50, 75 or 100 hours. But not so with reconciliation. Reconciliation comes to the floor. There is no opportunity to debate a motion to proceed, whereas, under cloture, an attack can be made by the minority even on the motion to proceed. The minority ought to be zealous in protecting that right; the minority may be on this side of the aisle tomorrow, as it was yesterday.

Under reconciliation there is no motion provided to extend that time beyond 20 hours, but there is a motion that is nondebatable and can be invoked by only a majority of Members to reduce the time, and it can be reduced to 10 hours or to 5 hours or to 2 hours or to 1 hour without debate. Only a majority vote is needed to reduce it to no time:

Mr. President, I move that the time remaining on reconciliation be reduced to no time. What can you do about it? Weep. Reconciliation is one real beartrap.

And so it has been with sorrow that some of us have seen what has been happening on reconciliation. It is a process which has gotten out of hand and, if continued, it will undermine the deliberative nature of the institution.

It is a process by which committees of the Senate may dictate to the Senate. You take what we give you. There is not a thing you can do about it. Oh, yes, you can strike. But you take what we give you.

And within those committees that determination is made by a majority. There is a 17-member committee, and 9 members of the committee can determine that.

Send that to the Budget Committee, and the Budget Committee has no alternative but to send it to the Senate, and here we are faced with a super, super, colossally super, gag rule.

So we ought to take the utmost care in handling this legislative weapon.

Mr. President, I have had my faith renewed in this institution in these recent hours. . . .

. . . .

Yes, there were important measures wrapped into this reconciliation bill. But I hope that this is the beginning of the end of the abuse of the reconciliation process. I hope that it will be a lesson learned by all

of us that we might in the future take heed, and remember not to put that measure that is so dear to our hearts into the reconciliation package. . . .

Mr. President, I close by saying, as I began, that human ingenuity can always find a way to circumvent a process. And reconciliation is a process. It has been abused terribly. But I have regained my faith. We are told in the Scriptures:

> Remove not the ancient landmark, which thy fathers have set.

The Constitution is the old landmark which they have set. And if we do not rise to the call of the moment and take a stand, take a strong stand against our own personal interests or against party interests, and stand for the Constitution, then how might we face our children and granchildren[1041] when they ask of us as Caesar did to the centurion,

> How do we fare today?

And the centurion replied,

> You will be victorious. As for myself, whether I live or die, tonight I shall have earned the praise of Caesar.

I not only compliment, but I also thank Members who have risen in this moment to do the responsible thing. We are going to look back on this day. So when you go with pride to meet the other body in conference, go with strong hearts, with confidence, and a determination that you are going to uphold the principles that our forefathers, men of this institution,

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[1041] This is so in the original; it should read "grandchildren."

stood for. Yours is an equal body -- the Senate.

When Aaron Burr walked out of the Old Senate Chamber on March 4, 1805 after had sat in the Chair, and presided over the impeachment trial of Supreme Court Justice Samuel Chase -- Burr had killed Alexander Hamilton in a duel at Weehawken, NJ. He sat in that chair as though nothing had ever happened. Warrants had been issued in the State of New Jersey and New York for his arrest. But he presided over that trial with a degree of fairness that was commended by friend and foe alike.

As Burr bade goodbye to the Senate over which he has presided for 4 years, this is what he said. And I close with his words because I think they may well have been written for a moment like this. He said:

> This House is a sanctuary; a citadel of law, of order, and of liberty, and it is here --
>
> It is here --
>
> in this exalted refuge -- here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God averts, its expiring agonies will be witnessed on this floor.[1042]

The Senate went on to adopt the leadership amendment by a voice vote.[1043]

[1042] 135 CONG. REC. S13,349-56 (Oct. 13, 1989).

[1043] *See id.* at S13,557.