Appendix

On May 20, 2004 the author of this appendix[1] included in his letter of resignation the following paragraph:

"One need only refer to the prefaces of *Hinds'*, *Cannon's* and *Deschler's Precedents* to gain a sense of the extent of the procedural evolution in the House for the first 190 years of the Republic, and then compare with that documented history the nature and pace of more recent changes, to understand the enormity of contemporary developments. Along the way, important matters of constitutional separation of powers and continuity of government have occupied high profile status requiring the attention of my office. Numerous incremental changes have considerably altered the procedural landscape during my career. Examples include increased turnover in Membership, committee seniority status, budgetary disciplines, appropriations practices, an ethics process, televised proceedings, multiplicity of committee jurisdictions, oversight and authorization prerequisites, the impact of changing Senate processes, disposition of matters in conference, review of Executive actions, authorities to recess, to postpone and cluster votes and consolidate amendments, an issue-specific super-majority vote requirement, electronic capabilities, committee report availabilities, five-minute rule and other special rule variations, and the interaction between traditional spontaneity of the House's proceedings and trends toward relative predictability of time constraints and issues presented."

That retirement letter necessarily could not document or particularize the many described procedural changes covering a 40-year career. Thus it becomes important for the 41 chapters in the replacement volumes to publish those precedents—standing rules changes and rulings of presiding officers and other examples of recent custom, tradition, and practice ordered by the House or party caucus if affecting House practice, which comprise a record of both continuity and incremental or even abrupt change during the period covered by the replacement volumes. The prefaces to volume I of *Hinds'*, volume VI of *Cannon's* and volume 1 of *Deschler's Precedents* should be consulted for summaries of the procedural histories of the House during those covered periods. To that end, this appendix is a "snapshot" which will present an anticipatory overview of some of the many areas occurring up to the date of its publication, while not comprising a reference source in itself. The reader must await the subsequent precedent volumes' republication for further analysis beyond this "snapshot" and beyond that which will be contained in future updated versions of the *House Rules and Manual* and of *House Practice*. The appendix will include citations to the year of some

1. Commentary by Charles W. Johnson, III, J.D.

precedents to aid the reader's further research into those other sources. This narrative will highlight some of the contemporary procedural history of the House. It will anticipate and particularize many areas of significance without prejudice to subsequent editorial changes, in a general order consistent with numbering of replacement chapters. Throughout this appendix, references and cross-references to chapters, parts and sections within those chapters will conform to the table of contents derived from the current volumes of *Deschler*, *Deschler-Brown*, and *Deschler-Brown-Johnson Precedents*, subject to subsequent changes in the replacement table of contents.

Volumes 1–18 of *Deschler*, *Deschler-Brown*, and *Deschler-Brown-Johnson Precedents* were published over a thirty-five year period, reflecting precedents from approximately 1928 (or in the case of volume 18 from 1974) to their respective dates of publication. Thus the earlier volumes published in the 1970's will require more years of updating than the more recently published volumes. All the updates will, to the maximum extent possible, include relevant precedents up to the dates of republication. The new analyses, precedents and accompanying Parliamentarian's Notes will be expanded in the introductory portions of each existing chapter, part, or section. For example, numerous references to the Committee on Standards of Official Conduct should be understood to refer to the Committee on Ethics beginning in 2011.

The new materials will cross-reference to other chapters containing overlapping treatments, and the reader will see some suggested cross-references in this appendix. For example, matter relating to the Committee on Rules and special orders of business is currently included in chapter 17 on Committees and in chapter 21 on Special Orders. While in retrospect the organization of some of the original chapters might have been different, it is considered preferable based upon the pressing need for republication and continuity of citation to proceed from those existing formats (at the same time clarifying the content of many existing sections in the revised table of contents and adding a few new sections where not disturbing existing numbers). There were commitments made in some existing volumes that updates and more in-depth analyses will be subsequently provided (*e.g.*, "Party Organization" in volume 1).

Chapter 1—Assembly of Congress.

Chapters 1-6 of *Deschler's Precedents* address an array of precedents, customs, and procedures relating to the organization of the House. They include chapters on the assembly of Congress, enrolling of Members, party organization, House facilities and Capitol Grounds, the House Rules, Journal and *Congressional Record*, and House Officers, officials, and employees.

Meeting and Organization. Statutory and rules changes have been adopted since the terrorist attacks on September 11, 2001, that affect the assembly of Congress. Rules changes have accommodated the need for flexibility in establishment of times and places for meetings and have permitted adjustment of meeting times in event of emergency, alternative meeting places both within and outside the seat of government as authorized by resolution, or by concurrent resolution where necessary to comply with the constitutional requirement of two-House concurrence for convening outside of the District of Columbia (which the House has done in its organization in subsequent Congresses but which the Senate has not). Special *ad hoc* authorities contained in concurrent resolutions of adjournment for convening of both Houses during adjournment periods beyond three days either to a day certain or *sine die* by a joint decision of the Speaker and Senate Majority Leader became standard. The Speaker was given unilateral authority by both Houses to convene the House alone during an adjournment to a day certain after the House had adjourned in 1998 ostensibly to consider any reported articles of impeachment if and when reported by the Committee on the Judiciary. In 2010, the two Houses adopted separate concurrent resolutions providing for an "August recess," one for each House, and giving their presiding officers separate reconvening authority. The Speaker exercised that authority in August, 2010, to recall the House to consider a Senate amendment adopted after the House had adjourned, after the Senate Majority Leader had first exercised his authority to convene and amend the House bill.

In 2011, the House by resolution set up a schedule of pro forma sessions to convene every third day in lieu of an "August recess" adjournment to a day certain pursuant to concurrent resolution. On one of those scheduled days, the Senate convened in a 22-second pro forma session in a building outside the Capitol (the Postal Building two blocks away) out of concern for the effects of a sudden earthquake.

At the end of 2011, the two Houses again separately (the House by special order and the Senate by unanimous consent) established schedules of pro forma sessions to convene every third day the last two weeks of the first session and the first three weeks of the second session. The Senate's pro forma sessions (where no business was to be conducted) was intended to prevent the President from making recess appointments. Nevertheless, on December 23, 2011, the Senate reconvened and by unanimous consent "deemed" passed (when received) a House bill (on a matter in direct disagreement between the two Houses to that point) subsequently passed by the House that day, in spite of the Senate's previous standing order that the Senate could do no legislative business on any of those pro forma days.

The House permitted business at the Speaker's discretion, and established two legislative days on January 3 to comply with the three day and the convening requirements in the Constitution. The House also unilaterally empowered the Speaker to reconvene the House at any time during the remainder of that Congress other than that previously established during any daily adjournment where sudden changes in circumstances so warranted. That authority was invoked once in 2012 to reconvene the House on a Sunday, a day earlier than previously set near the end of the Congress, where the "public interest warranted" completion of legislation.

This standing order authority complemented authority conferred in Rule I clause 12 in 2003 for the Speaker to change the convening of the House within a three-day period when notified by the Sergeant-at-Arms of the imminent impairment of the place of meeting. The standing rule authority was twice invoked, once to an earlier time in 2009 prior to arrival of an impending snow storm, and once in 2012 to a later time on a pro forma day due to hurricane conditions. By contrast, the Senate convened at a later time that day in 2012 than previously ordered with no stated record of authority presumably granted by a resolution in a previous Congress.

In 2012, the two Houses returned to some use of concurrent resolutions for adjournments to days certain after the Senate and President came to an accommodation on the use of recess appointments, but following the filing of at least four lawsuits challenging the President's recess appointments that year to the National Labor Relations Board of three of its five members (See, *e.g.*, *National Ass'n of Manufacturers v. NLRB*), No. 12–05086 (D.C. Cir. 2012).

While the Clerk for the previous Congress serves as presiding officer for the convening of a new House, there were new rules adopted in 2003 (Rule I clause 8) permitting the Speaker, once elected, to name other sworn Members in a listed order, rather than the Clerk, who would serve as Speakers pro tempore in the event of vacancy in the office of Speaker, solely to preside over the election of a new Speaker—it being considered preferable to have a sworn Member preside wherever possible.

Election of Speaker and Opening Day. The election of Speaker in 1997 was challenged by an asserted question of privilege directing that the House elect a Speaker pro tempore during continuation of an ethics investigation of the majority party's candidate (the past Speaker) in the new Congress, but was held by the Clerk (sustained by tabling an appeal) not to take precedence under the statutorily and precedentially mandated election of a Speaker. Votes for candidates other than those nominated by the two-party caucuses were cast on several occasions, including votes for non-Members, since the Speaker need not be a Member of the House but must receive a majority of all votes cast for a person by surname.

In 2007, the first female Speaker in the history of the House was elected. Extended floor privileges and the participation of children were unique aspects of that historic occasion.

A separate heading was inserted in the opening-day *Congressional Record* documenting business conducted following *sine die* adjournment of the previous Congress and not included in prior editions of the *Congressional Record*. Such material is separate from business required by law or precedent to be conducted by the Speaker on opening day. This final business of the prior Congress includes resignations, referrals of communications, and appointments effective until noon on January 3 in the previous Congress.

With respect to the organizational and legislative business of opening day of a new Congress, there were many developments governing procedures applicable under general parliamentary law prior to adoption of the standing rules, including implicit application of decorum standards contained in those rules. Use of the electronic voting system by the Clerk became traditionally permitted on the quorum call by States and on other yea and nay votes prior to adoption of the rules. Minority party motions to commit the rules package to a new *ad hoc* select committee with instructions to report back to the House forthwith either an alternative set of standing rules or a perfecting amendment to those proposed by the majority, or a special order of business regarding specific legislation, were permitted with increased flexibility. In the past, such motions were required to specify a length of time to permit the select committee to actually consider the changes.

Beginning in 1993, minority attempts to preempt or prejudge the majority rules resolution with questions of privilege (*e.g.*, separately questioning the constitutionality of a proposed rule) were denied preferential status under the proposition that only one question of privilege—the majority rules package itself—could be pending at one time, to be governed by the Speaker's discretionary power of recognition. A vote on the question of consideration could symbolize constitutional concern about a portion of the rules package where no point of order would lie (*e.g.*, challenging the validity of the reduced quorum requirement in event of catastrophic disabilities in 2005). In 1993, 2011 and 2013 a permissible motion under general parliamentary law to refer the rules package to a select committee to examine a particular constitutional question therein (voting rights for Delegates in the Committee of the Whole) was offered without challenge immediately upon consideration of the resolution and was tabled without debate. The availability of this secondary motion established that the traditional motion to commit offered after the previous question was ordered was not the only motion available to refer the matter to an *ad hoc* select committee with instructions.

New majority parties in 1995 and in 2007 on opening day prior to adoption of standing rules brought special order resolutions from their respective

caucus or leadership to the floor as proper preliminary matters through the Speaker's power of recognition, which governed subsequent consideration of the rules package made in order thereby. The resolutions permitted divisions of the question on some new changes, and/or permitted immediate consideration of particular legislative business including bills newly introduced on that opening day, under closed rules preventing amendment. This technique has enabled the majority party to highlight its immediate legislative agenda without reliance on general parliamentary law or utilization of the Committee on Rules (created itself in the same resolution) to subsequently report special orders of business on those subjects. In 2011, a separate order in the rules package permitted a specific motion to suspend the rules on the next day, a Thursday, on a resolution reducing costs of operation of the House via Member, leadership and committee staff allowances.

Particularly unique was the introduction of the rules package on opening day in 2007 without the prior formal imprimatur of the majority caucus' recommendation. Rather, the organizing rules resolution emerged from the majority leadership's offices and was made in order by a special order called up by the presumptive chairman of the Committee on Rules (not yet established), establishing procedures for consideration of the rules resolution. Upon that special order's adoption, the rules package itself was offered by the Majority Leader, without there having been amendment opportunity in the majority caucus—a departure from the consistent tradition of majority caucus participation prior thereto. In 2011, the new Republican majority reverted to the traditional use of the party conference to recommend rules changes.

The rules resolutions began to recite the readoption of rules contained in laws previously enacted as exercises in rulemaking and applicable at the end of the previous Congress, where their provisions were intended to extend into subsequent Congresses. This covered expedited procedures in existing law on numerous subject including consideration of joint resolutions of disapproval of executive actions. Also concurrent resolutions on the budget which otherwise would expire with a Congress were carried forward by explicit language to avoid uncertainty until a new budget resolution was adopted. In 1999, recodification of the rules incorporated that recitation into Rule XXIX itself. In 2011, when no concurrent resolution on the budget had been adopted in the prior Congress, the chairman of the Committee on the Budget was given discretionary authority in the rules package to insert in the *Congressional Record* spending levels for the current fiscal year which would be considered binding on the House for the remainder of that year (see chapter 41 on Budget Process).

Chapter 2—Enrolling Members, Administering the Oath.

Two recent election contests were of major significance. In the 1985 contest of *McCloskey v. McIntyre*, neither candidate was sworn on opening day

pending a committee investigation despite contestee Rick McIntyre's possession of a certificate of election which was unimpeached by direct evidence from the certifying official, (the Secretary of State). The Majority Leader relied upon the 1961 election contest of *Roush v. Chambers* (discussed in *Deschler's Precedents* Ch. 9 § 59.1), also from Indiana, where neither candidate was sworn at the organization of the House pending a committee investigation and recount, because the House had received evidence from the Secretary of State himself prior to opening day that the certification of election showing George Chambers the winner by 12 votes had been improperly prepared by him and was not accurate. The 1985 action by the majority was thus not justified by a precedent squarely on point, as addressed in debate on that occasion, and represented a refusal to temporarily seat the contestee, who possessed an apparently regular certificate of election, while the committee conducted an investigation and recount. In both the 1961 and 1985 contests, the contestee with the certificate was never sworn, and the contestant—a majority party Member—was eventually seated after a complete recount by the House committee. In the *McCloskey* case, the minority party repeatedly posed questions of privilege in the House during the committee investigation, demanding that the contestee with the certificate be temporarily seated. When the House tabled those resolutions, the minority party walked out of the Chamber in protest. The House had not distinguished between final seating, where the House has the constitutional responsibility to determine the election result to the extent of possibly unseating the certified Member and seating the contestant, on the one hand, and temporary seating of the Member possessing a certificate valid under State law, pending a House inquiry, on the other.

In *Dornan v. Sanchez*, the 1996 contest brought by contestant Bob Dornan, a majority party candidate (and former Member), was not dismissed by the House for almost two years until the very end of the 105th Congress. The contest continued despite the failure of a prolonged committee investigation to reveal irregularities or fraud which would change the result, and despite repeated questions of privilege brought by the minority party calling for the dismissal of the election contest and final seating of the contestee. Debate recalling the partisan nature of those contests and the determination not to perpetuate residual ill-feeling led the House in 2007 to temporarily seat a certified Member-elect despite some compelling evidence of electronic voting irregularities. That evidence ultimately was not persuasive as the House upon report from the Committee on House Administration subsequently dismissed the contest rather than declare a vacancy.

Chapter 3—Party Organization.

Various rules changes within the party caucuses supplemented the 1974 rules change effective in 1975 that made the composition of committees dependent on privileged resolutions offered by direction of the party caucus or

conference, and eliminated rules which had previously set overall committee sizes for each Congress (Rule X clause 5(a)). In 1983, membership on standing committees was made contingent on continuing membership in a party caucus or conference that nominated the Member, and a mechanism was formalized for the automatic vacating of a Member's election should his party relationship cease. The role of those party entities in both the initial nomination and continuation of Members on standing committees, in filling vacancies, and in changing the composition of committees, including potential removal once elected (made privileged in 1983) was thus made specific in standing House rules. For the first time in 2006, a party caucus brought a privileged resolution to the floor removing a Member from an "exclusive committee" (the Committee on Ways and Means), although retaining his position on a non-major committee. While any Member may offer a question of the privileges of the House to remove a Member from a committee if stated as a potential punishment for disorderly behavior, and while both party caucuses have rules suggesting the automatic replacement of indicted or convicted committee chairmen, subcommittee chairmen, or ranking minority party committee members, it marked the first occasion of a formal caucus recommendation for removal not based on a punishment of a Member under criminal indictment. (Rep. William Jefferson, of Louisiana, had not yet been indicted and was subsequently reelected to the succeeding Congress. In that Congress, he was elected to and not removed from another committee (Committee on Small Business) despite being indicted).

This appendix will only briefly summarize the considerable extent of caucus and conference rules changes since chapter 3 was first published, and their impact on comparable House rules changes over that period even prior to 1971 through the date of republication. Formalization of party organization procedures (primarily from the Democratic Caucus as the majority organizing party for most of that period) reflected an increasingly active and complicated role played by those entities in matters of organization (except in 2007 and 2009), procedure and policy. The "reform movement" of the Democratic Caucus, spearheaded by the Democratic Study Group, was primarily effective during the six-year period 1969–1975 in implementing caucus rule changes, some of which translated into House rules changes. Until the mid 1970s, chairmanships were often subject to an application of a seniority system, with appointment rather than election of subcommittees.

From the early 1970s through 1994, power in the House was spread more equitably and those who had power became more accountable. The revival of the long-dormant Democratic Caucus as the basic determinant of majority party policy and organization, its use to democratize House and caucus procedures and to achieve other reforms, and the assurance of greater accountability and responsiveness of those who gained power via the seniority system by requiring an automatic secret ballot vote on committee chairman at

the start of each Congress, were all keys to the reform movement. Term limits on committee chairmen imposed by a Republican majority beginning in 1995 and removal of the requirement for automatic secret ballots for chairmen nominated by the Steering Committee (instead permitting five Members to order secret voting - a procedure not utilized to date) restricted that trend.

Following the era of "King Caucus" from 1910 to 1920, the Caucus had gradually fallen into disuse and the seniority system had taken hold. Thus during the 1950s and 1960s the Caucus met only for a brief pro forma session at the beginning of each Congress to elect the Democratic leadership and other House Officers, and to adopt a resolution designating the Democratic members of the Committee on Ways and Means as the majority's Committee on Committees. That party nominating committee would then recommend the filling of committee vacancies and bring committee membership lists, with the senior-most Member designated as chairman and other members then listed by length of consecutive service on the committee directly to the House floor for pro forma official ratification. Caucus rules were changed in January, 1969, to require monthly meetings of the Caucus, giving individual Members the right to bring matters before the Caucus for debate and action, and reestablishing Caucus control over committee assignments by requiring that the Committee on Committees receive Caucus approval of committee assignments before taking them to the House floor. These changes permitted use of the Caucus to win many other reforms which altered the power structure, opened committee meetings, and gave rank-and-file Members a greater voice in the legislative process. For example, the Caucus established the Committee on Organization, Study and Review in 1971 to study the seniority system and other party and House procedures. In turn, recommendations from that Caucus subunit requiring an automatic secret ballot vote on committee chairman were implemented and had immediate impact. Some long-time chairmen became more responsive to members of their own committees and to Members generally. Others were replaced by secret ballots beginning in 1975. The autocratic powers of committee chairmen also were curbed by reform of committee operations and procedures. For example, instead of the chairman deciding who would be subcommittee chairmen and members, election of subcommittee chairman by the Democratic (majority) members of each committee caucus was required; members were further enabled to choose their own subcommittee assignments. A so-called "bill of rights" was adopted to secure the power and authority of subcommittees and their chairman, assuring them of a staff member of their own choosing and an adequate budget.

Other Democratic Caucus reforms were designed to strengthen the leadership. These included creation of a Steering and Policy Committee chaired

by the Speaker, with the power to nominate committee chairmen and make committee assignment nominations (an authority taken away from Committee on Ways and Means Democrats), and giving the Speaker sole power to nominate the majority members and chairman of the Committee on Rules so that they would be fully responsive to the leadership.

A review of Republican Conference rules and procedures during the comparable period is less revealing, as that party organization remained in the minority from 1955 until 1995 and was less proactive in suggesting reform of party and House procedures and organization. It did adopt comparable secret ballot and committee assignment limitations during the same time frame, roughly mirroring changes in the Democratic Caucus rules. The Republican Steering Committee was given similar authority to the Democratic Steering and Policy Committee to bring standing committee nominations to the full party body, subject to possible secret ballots (if demanded by five members) and ratification there. A significant Republican organizational reform came in 1995, when the new majority party in its conference rules and in House rules, imposed term limits of six years on committee and subcommittee chairmen. A separate four-term limit on the office of Speaker was later repealed in 1999. An exception for the Committee on Rules chairman was made in 2005 and again in 2011. The Democratic Caucus, then the minority party, made no comparable attempt to change its rules to term-limit its own full and subcommittee ranking minority members, and House rules did not address ranking minority status from 1995 forward. When the Democratic party regained the majority in 2007, it retained the standing House term-limit rule which had been in place during the twelve years of its minority status, but its own Caucus rules remained silent on the issue. In 2009, the Democratic rules package repealed the House rule on term-limits for chairmen. In 2011, the Republican rules package reinstated the House rule on three-term limits for chairmen of full and subcommittees (again including the Committee on Rules exception), and in its Conference rule required the counting of that service to include consecutive service as ranking minority members.

At its organizational meeting in 2006 and in 2007, the Democratic Caucus did little to formally change its rules beyond technical changes to adapt them to majority status. Combined with the majority caucus' declination in 2007 to consider and to ratify a proposed House rules package which had emanated from elected leadership offices prior to formal presentation to the House on opening day, control by elected leaders on matters of party and House organization was enhanced. Nevertheless, the importance of the early organizational caucus and conference had been formally recognized beginning in 1994, when the House adopted a resolution subsequently enacted

into permanent law providing funding for Members-elect and staff to attend those meetings at any designated time between the election and beginning of the new Congress, and to conduct orientation programs.

Both parties formalized and enlarged their campaign committees—the Democratic Congressional Campaign Committee and the National Republican Congressional Committee—as part of the party caucus and conference rules.

Various informal organizational entities (some bipartisan in nature) came into existence and later were terminated or lost congressional staffing, office space, and funding. With the elimination of the Consent Calendar in 1995, and then the Corrections Calendar in 2005, (which had replaced the Consent Calendar and actually was given an "office" by resolution), the "Official Objectors" who oversaw those calendars were discontinued. The Official Objectors for the Private Calendar were retained (with the exception of the 111th Congress), since that calendar remained in House rules.

Informal party groups which had come into existence from 1979 through 1994 such as the Democratic Study Group and the Republican Study Committee, and other "Legislative Service Organizations" such as the Congressional Black and Hispanic Caucuses, the Congressional Caucus on Women's Issues, and the House Travel and Tourism Caucus, lost public funding in the House beginning in 1995, when the new Republican majority in its rules package prohibited the use of Members' office allowances to be contributed toward such groups. Instead, former regional, ethnic, and other special interest LSOs were allowed to convert their operations into informal networks of Members with no separate personnel, office space, or funding as congressional Member organizations (CMOs), which could share existing official staff resources but were regulated by the Committee on House Administration.

Floor Leaders. While the election of floor leaders by secret ballot in both party caucuses and the announcement of their elections to the House at its organization remained basically unchanged since the publication of volume I, there were various enhancements of their respective roles. Both parties' rules required the step-aside of the floor leader (like committee chairmen) upon indictment for a felony, and removal from that office upon conviction. Procedures for replacements in those circumstances were put in place.

In the 1970s, the positions of elected floor leaders were nowhere mentioned in the standing House rules. As the rules subsequently evolved, the roles of floor leaders as official members of the Bipartisan Legal Advisory Group were formalized, as were their consultative roles with the Speaker on committees' oversight plans at the beginning of each Congress, and their roles as recipients of information (with the Speaker) about catastrophic

quorum failures. Special prerogatives not enjoyed by other Members (*e.g.*, to offer resolutions as questions of privilege without advance notice, to be recognized for longer periods of debate despite time limitations, and to offer or designate to offer preferential motions to rise and report general appropriation bills in order to prevent limitation amendments), have been embodied in rules or established by custom. The Minority Leader or his designee was given preference in recognition to offer proper motions to recommit with instructions which could not be limited by the Committee on Rules.

Various statutes enhanced the authority of the Minority Leader to make appointments to boards and commissions which the Speaker was not free to ignore. House rules now specifically refer to the presence of an unspecified number of party leadership floor staff on the House floor upon approval by the Speaker.

Since 1994, the allocations of time for special-order speeches, including "morning-hour" five-minute speeches, were placed in the control of the floor leaders by order of the House in each Congress subject to the Chair's recognition. Five-minute speeches at the end of the day requested by individual Members were discontinued in 2011 and were replaced by longer "morning hours." Majority floor leaders were from time to time appointed by the Speaker beyond ceremonial roles to legislative select and conference committees to a greater extent than previously noted, such as to chair a Select Committee on Homeland Security. All of these enhancements elevated the roles of Majority and Minority Leaders in the standing rules and orders. In two Congresses (1988 and 2004), minority leaders from each party published "Minority Bills of (Procedural) Rights" to complain of unfairness by the majority.

Majority Leader's Scheduling of Legislative Business. In 2011, the Majority Leader's office began to circulate "legislative protocols" to be followed by the leadership in the scheduling of business in the House. While not printed in the *Congressional Record* and while constituting merely informal guidelines for the consideration (not the introduction) of legislation, they were noteworthy for their procedural precision. For example in the 112th Congress, the protocols covered such subjects as: (1) a "sunset requirement" date certain for ending of a program; (2) "borrowing justification" to be furnished during debate; (3) "elimination" of "such sums" discretionary authorizations; (4) "cut-go for discretionary authorizations" requiring termination or reduction of a current program of equal or greater size; (5) "availability of measures considered under suspension of the rules" for three days electronically whether or not reported; (6) "Member presence during consideration of sponsored measures" on the floor; (7) "commemoratives" prohibiting consideration of parochial celebration measures under suspension of

the rules in conjunction with a party conference rule; (8) "debate on constitutionality of proposed measures" permitting 50 Members to petition Committee on Rules to include separate 20-minute debate on constitutionality of a measure under a special order; (9) "availability of major amendments self-executed ("hereby adopted") by the Committee on Rules" requiring three-day availability of such major policy amendments electronically, before special order is considered, indicating sponsor; (10) the "Armey protocol" on appropriations requiring explanation of waivers in special orders protecting legislation within jurisdiction of authorizing committee; and separately (11) reiteration of party conference rule 28 guidelines on scheduling under suspension of the rules.

A significant change in party leadership selection was the election of Majority Whip beginning in 1987. Previously the Majority Whip was appointed by the Majority Leader after consultation with the Speaker. The position of Minority Whip remained an elected one in each party as it had been the minority party leadership equivalent of Majority Leader. Both parties' rules began to require secret ballot elections to those positions, and they became more independent sources of political power. In turn, both parties' rules provided an elaborate system of deputy and regional whips as well. The House standing rule (Rule II clause 8, first adopted in 1993), provided a role for the Bipartisan Legal Advisory Group for the "majority and minority leaderships" which has been interpreted to include the two elected party whips.

The five party-elected leaders of the House became entitled to greatly enlarged office staffing allowances consisting of certain statutory positions as well as lump-sum appropriations. The growth of leadership staff, especially compared to committee staff, was part of a recentralization of power within those leadership offices.

Chapter 4—House Facilities and Capitol Grounds; Capitol Visitor's Center.

The use of the Capitol Grounds for specified non-profit, non-political events was the subject of a policy statement emanating from the House Committee on Transportation and Infrastructure, the committee of jurisdiction over various concurrent resolutions governing the use of the grounds adopted during the covered period.

The use of the Hall of the House for joint House-Senate religious ceremonies was suggested by the House in 2001 in the wake of the September 11 terrorist attack, but the concurrent resolution authorizing a joint religious reconciliation ceremony was changed by the Senate and then adopted by the House to convert the venue to the Capitol Rotunda—a more proper venue considering the Senate's involvement and what would have been a departure from policies dating back to the 1830s which precluded use of the

Hall of the House for religious purposes and even precluded the Speaker from entertaining a suspension of that rule.

Classified briefings in the Chamber were permitted by Speakers during recesses of the House to which all Members who had signed the oath of secrecy as required by a specific House rule were invited. Several recent secret sessions of the House were held through adoption of a motion under Rule XVII clause 9 or by unanimous consent (the first since 1830).

Members have access to the Hall of the House during recesses and adjournments, but could not use that facility to conduct "rump" sessions simulating the House in session or as caucuses without the Speaker's approval. On two occasions, in 1995 (during a partial government "shutdown" for lack of appropriations) and in 2008 (during the August recess), minority Members remained on the floor during a recess or adjournment without the necessary permission of the Speaker to conduct impromptu caucuses as symbolic protests against failures to conduct business. In 2011, minority Members attempted to demand recognition on a pro forma day after the Speaker had left the Chair. On these occasions, television cameras, microphone amplification, and television lights were turned off consistent with House rules. The Speaker's chair has been considered off limits during all recess and adjournment periods since 1995 following its improper use to simulate a presiding officer or an inappropriate caricature of the Speaker. While no official record was kept of those gatherings, private or media recording devices were improperly utilized. The Speaker's use of his/her authorities under Rule I to prevent the Chamber from being used other than for actual sessions and party caucuses as provided in Rule IV was thereby affirmed. Beginning in 2009, the "static display" condition of the Chamber when the House was not in session was announced as part of the Speaker's decorum statement to ban any image, *ad hoc* accounts, or composition of events which might be perceived to carry the imprimatur of the House.

A significant change in House rules and procedures was the advent of radio and television coverage of House proceedings, including their impact on the spontaneity of House proceedings, Members' conduct and the resulting information flow to the media and the public. In 1977, the House adopted a privileged resolution reported from the Committee on Rules to provide a system of closed-circuit viewing of House proceedings and for the orderly study and development of a broadcasting system under the Speaker's control. Under Rule V adopted in 1979 as the result of the Speaker's directive of 1978, the Speaker directs the unedited audio and visual broadcasting and recording of the proceedings of the House, to be conducted by employees of the House, and not to be utilized for commercial or political purposes. On one extraordinary occasion in 1984, the Speaker directed periodic wide-angle

television coverage of all special-order speeches at the end of legislative business, with captioning to show the completion of legislative business. This decision was held to be within the Speaker's authority, although implemented without notice in response to partisan utilization of televised coverage by rhetorical speeches and gestures suggesting to the viewing audience that legislative business was being conducted without the participation of unwilling Members, who were in fact absent. Beginning again in the 103d Congress the Speaker prohibited wide-angle "panning" coverage except during votes but continued the caption at the bottom of the screen indicating that legislative business had been completed, but to be cut off at midnight or after four hours, whichever was earlier. In 2011, the cut-off time was shortened to 10:00 p.m., while time for five-minute morning-hour debate was extended.

Rules were adopted restricting former Members' admission to the floor of the House during its sessions if they were lobbyists or had personal or pecuniary interest in any matter pending before the House or its committees. One former Member was banished from the floor on a question of privilege for a breach of decorum, even though he was the contestant in a pending election contest in 1997. Limits were placed in Speakers' opening-day decorum statements of policy on the number of leadership, committee and individual Members' staff (only during the pendency of the Member's amendment) permitted on the floor, and identification badges were required.

The use of all personal electronic office equipment on the House floor was formally prohibited in 1995, codifying past Speakers' rulings in response to the proliferation of electronic communications into and out of the Chamber. That rule was modified in 2003 to prohibit only the use of wireless telephones or personal computers, thereby permitting for the first time the use of text-based message receiving and sending devices. The rule was modified again in 2011 to permit some personal devices but not personal computers or audible electronic devices, all at the Speaker's discretion as a decorum matter. To that extent, the tradition that the House floor should not only be a place for proper decorum, but also should remain a "sanctuary" for Members to enable their deliberations to be uninterrupted by outside persons, was affected.

House Galleries and Buildings. In response to a disruptive demonstration in the gallery, the Chair noted for the *Congressional Record* the disruptive character of the demonstration and enlisted the Sergeant-at-Arms to remove the offending parties in 2002. The Speaker may quell demonstrations in the gallery before the adoption of the rules as in 1995. Admonitions from the Chair regarding manifestations of approval or disapproval of proceedings by visitors in the gallery were reiterated (*e.g.*, 1990).

Naming and utilization of two adjacent buildings as the "O'Neill" and "Ford" House Office Buildings, named after former Speaker Tip O'Neill and former Minority Leader and President Gerald R. Ford began in 1990. The Ford Office Building remains in use, but the O'Neill building was demolished in 2002. Subsequently a law passed in 2012 named another federal building on the House side of the Capitol the Thomas P. O'Neill, Jr. Federal Building.

On December 2, 2008, a ceremony was held in the Capitol Visitors' Center on the occasion of its opening led by the leadership of both Houses. The 110th Congress had adjourned *sine die*, and the proceedings were not printed in the *Record*. The planning and construction of the Capitol Visitor's Center on the East Front of the Capitol and its supervision was the subject of various statutory enactments.

Chapter 5—House Rules.

In the 106th Congress, the standing rules of the House were recodified for the first time, reorganizing their sequence and reducing their number (without substantive change) from 52 to 28 rules. The recodification was included in the adoption of the rules resolution on January 6, 1999, as the work product of a bipartisan task force and the Parliamentarian, and was separately adopted to demonstrate their nonpartisan formulation prior to substantive rules changes recommended by the majority party conference considered immediately thereafter. The recodified format arranged the rules by addressing the organization and operation of the House as follows: the duties of Officers and Members (Rules I–III), administration of the House (Rules IV–VI), institutional prerogatives (Rules VII–IX), committees (Rules X–XI), consideration of legislation (Rules XII–XXIII), conduct of Members, Officers, and employees (Rules XXIV–XXVII), and Rule XXVIII—the "Gephardt" rule. The latter rule had required automatic passage of a joint resolution changing the public debt limit upon adoption of a concurrent resolution on the budget, but was repealed in 2011 and the number left vacant. Rule XXIX was amended in 2009 to eliminate gender specific references and incorporated relevant provisions of law into that 111th Congress's rules. Many references were changed in the recodification to incorporate accepted understandings without substantive change. For example, the concept of a "privileged question" or "privileged motion" was regularized, replacing sundry references to matters "of highest privilege," "in order at any time," or "shall always be in order."

Beginning in 1975, the *House Rules and Manual* was expanded by adding section 1130, to textually include statutorily enacted rules changes and relevant precedents where under Congress from time to time reserved to itself

an absolute or limited right of review by approval or disapproval of certain actions of the executive branch or of independent agencies. Those laws envisioned some form of congressional action falling into one of three general categories: (1) action by both Houses of Congress on a bill or joint resolution requiring presidential signature; (2) action by one or both Houses on a simple or concurrent resolution; and (3) action by a congressional committee. Although provisions in the first category which remain viable were carried forward each Congress in Rule XXIX, provisions in the latter two categories should be read in light of a landmark Supreme Court decision of *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). In that case, a law, contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House, was held unconstitutional as in violation of the presentment clause of article I, section 7 of the Constitution and the doctrine of separation of powers.

Many "legislative procedure" or "congressional disapproval" statutes prescribe special procedures for the House (and/or Senate) to follow when reviewing executive actions. These procedures, termed "privileged procedures" technically are rules of the House or Senate enacted expressly or implicitly as an exercise of the House or Senate's rulemaking authority. At the beginning of each Congress, it has become customary for the House to reincorporate by reference in the resolution adopting its rules (and now in Rule XXIX itself) such "legislative procedures" as may exist in current law. Nevertheless, as either House may change its rules at any time, the Committee on Rules may report a resolution varying the statutorily prescribed procedures for the House. Many of the carried statutes provide expedited procedures in the Senate, which is within its standing rules less able than the House to waive or change its rules.

To continue other jointly adopted rules in place, it also became customary to readopt provisions contained in concurrent resolutions in effect at the termination of the preceding Congress, primarily the concurrent resolution on the budget if there was one in effect, in order that its levels and other prescribed procedures may, as an exercise in rulemaking, remain applicable in accordance with the Congressional Budget Act of 1974 until the adoption of a subsequent budget resolution or some other specific House action.

Beginning near the end of the 20th century, the House began to incorporate standing order, separate order or special order paragraphs or sections in the opening day rules package to include directives or procedures for that Congress not suitable for inclusion in the standing rules or on an experimental basis. These included procedures (some subsequently incorporated in standing rules) to enforce budget disciplines for spending reduction, authorities to make appearances in court proceedings, adjustment of numbers of

subcommittees, and special orders for structured consideration of specified legislation prior to organization of the Committee on Rules. That trend proliferated to the date of this writing.

In 2011, Congress enacted the Budget Control Act which created a Joint Select Committee on Deficit Reduction, empowered to recommend legislation to both Houses by a date certain for expedited consideration without amendment, but also providing that any changes to House rules or to Senate standing rules recommended by that joint committee which might become law (such as the establishment of another joint committee under similar expedited procedures) should be considered merely advisory. That joint committee never filed a report during its existence.

Judicial Authority with Respect to Rules. The limited role of the Judiciary under the doctrine of "political questions" in construing the rules of the House was involved in the case of *Michel v. Anderson*, 14 F.3d 623 (D.C. Cir. 1994). In that case, a Federal court granted minority Members of the House standing to contest the constitutionality of a new rule in 1993 which permitted Delegates and the Resident Commissioner from Puerto Rico to vote in the Committee of the Whole. The rule (which was repealed in 1995, reinstated in 2007, and repealed again in 2011 upon change in party majorities) was held valid, as it required an immediate reconsideration of any vote to be cast only by Representatives in the full House where the collective vote of the Delegates was decisive in the Committee of the Whole. The issue of standing, where the effect of Members' votes might be diluted, was an important exception from the general proposition that the courts would not grant Members standing to collaterally challenge either House's exercise in rulemaking unless it ran afoul of other constitutional provisions bearing on the operation of Congress and on Members' responsibilities.

Another Federal court of appeals decision held that the establishment in House rules of the Office of Chaplain in the House did not violate the First Amendment as an establishment of a religion, relying in part upon the House rule which specifically removes the opening prayer from business of the House requiring a quorum and therefore makes Member attendance at the opening prayer purely voluntary (*Murray v. Buchanan*, 729 F.2d 689 (D.C. Cir. 1983)).

Continuing variations of the Committee on Rules' exercise of its authority to recommend rules changes following adoption on opening day were demonstrated. The evolution of overlapping jurisdiction as between the Committee on Rules and the Committee on the Budget over the congressional budget process, and the relationship between statutory enactment of rules, especially in areas of congressional review of executive actions, and the ongoing constitutional right of the House to change those rules unilaterally as

they relate to House procedures, were pertinent examples. Rules changes considered by unanimous consent and House reaffirmation of free-standing directives contained in simple House resolutions adopting rules and standing orders from the preceding Congress were later codified into the standing rules, such as Rule XXI clause 9 on earmarks being cognizable by the Committee on Ethics (Rule XI clause 3).

Beginning in 1975, the Committee on Rules was required to include in any privileged report on a resolution proposing to amend (but not merely to temporarily waive) a standing rule a "Ramseyer" showing a comparative print of the present rule and the proposed change (Rule XI clause 3(g)). Since 1995, Rule XII clause 6(g) required the Committee on Rules in its reported special orders to specify "to the maximum extent possible" in the resolution the object of any waiver—a rule normally not observed as special orders usually contained general waivers of all possibly applicable points of order. At times general waivers included specified exceptions where the leadership did not want waivers to appear to be avoiding fiscal disciplines such as the "earmark" rule (Rule XX clause 9), and the PAYGO rule (Rule XXI clause 10, adopted in 2007 and amended in 2011 to become the CUTGO rule). The Committee on Rules' authority to recommend that amendments to bills be prohibited in the Committee of the Whole was limited from 1995 to 2011 with respect to motions strike out unfunded mandates, to the extent that the Committee was required under former Rule XVIII clause 11 in 2005 to specifically prevent those amendments and not merely to contain a general prohibition against amendments. That rule was repealed in 2011. The restriction on the Committee on Rules' authority to dispense with Calendar Wednesday was removed in 2009 and its authority to limit motions to recommit with instructions was narrowed to only guarantee minority instructions to bills and joint resolutions with "forthwith" amendments.

Regarding the role of the Chair in construing House rules and orders, several recent precedents reiterated that the Chair would not construe a pending special order or rules change, leaving it to the House in debate to construe its proposed terms and confining the Chair's interpretation to rules already adopted so as not to render anticipatory or hypothetical rulings. Where waivers of points of order against amendments were accomplished by the "self-executing" adoption of those amendments upon adoption of the pending special order from the Committee on Rules and in advance of actual consideration of the (amended) bill, rulings in 1993 held that it was possible to avoid points of order against the special order itself for accomplishing the waiver (since the self-executed amendment was not then separately before the House to enable its consideration to be challenged), even though its subsequent separate consideration as an amendment to the bill and a point of order at that stage was also avoided.

Journal. Under the rule (Rule I clause 1) in effect from the 92d through the 95th Congress, any Member could offer a privileged nondebatable motion that the Journal be read pending the Speaker's announcement of his approval and before agreement by the House. Beginning in 1977, no such motion became admissible unless the House first rejected the Speaker's approval of the Journal, and in the event that the motion to read was then adopted, the Journal was then open to amendment which was debatable under the hour rule. In modern practice, while a vote on the Speaker's approval of the Journal can be postponed until any time on that day as chosen by the Speaker, the vote whenever taken is almost always for a strategic purpose (*e.g.*, as a delaying tactic, or by the party demanding it to ascertain a quorum or to use the voting time for whipping on the floor), and not to force an actual amendment of the Journal.

Since the advent of televised proceedings in 1978, no court determination about the primacy of the Journal as the official record of business of the House has been rendered.

Beginning in the 104th Congress in 1995 upon election of a new party majority for the first time in forty years, a new Rule XVII clause 8 was adopted requiring that the *Congressional Record* be "a substantially verbatim account of remarks made during the proceedings of the House, subject only to technical, grammatical, and typographical corrections authorized by the Member making the remarks." This verbatim requirement resulted in several rulings and new policies and orders that the Official Reporters strictly observe compliance. Clause 8 required that unparliamentary remarks can only be deleted by permission or order of the House and not by the Member uttering them, so that words "taken down," read to the House and ruled out of order, would be deleted from the portion of the speech in which uttered upon subsequent order of the House, but would remain in the *Record* as part of proceedings conducted by the Chair. The clause established a standard of conduct cognizable by the Committee on Ethics. These precedents included a limit on the Chair's own ability to revise a ruling for precedential accuracy. A unanimous-consent request to revise and extend remarks permitted only technical corrections. Inclusions of additional remarks not actually uttered must appear in a distinctive typeface (replacing a temporary "bulleting" format) so that a Member making any substantive correction would find both versions in the *Record*, but a Member may not remove remarks actually uttered absent an order of the House. Several recent rulings demonstrated that the Chair would not entertain unanimous-consent requests for insertions of colloquies into the *Record* as if spoken, or even in distinctive type style, requiring instead that each participating Members must separately utter or insert statements. Remarks held irrelevant by the

Chair may be removed from the *Record* by unanimous consent only, but remarks uttered while not under recognition (such as when a Member fails to heed the gavel at the expiration of debate time or interjects without being recognized), would not appear in the *Record*. To ensure that the arguments recorded on a question of order were those actually heard by the Chair before ruling, the Chair would not entertain a unanimous-consent request to permit a Member to revise and extend remarks on a point of order in the *Record*.

Records of the House. In the 101st Congress, the House adopted Rule VII regarding retrieval of noncurrent records. That rule provided special procedures supervised by the Committee on House Administration for the public availability from the National Archives of House records after 50 years, if related to the personal privacy of a living individual, personnel records, or closed committee hearings, and after 30 years for other records. In 1991, an order of the House was held to be required for the release of noncurrent records of the House not otherwise covered by specific orders for availability.

In 1992, the House adopted a resolution called up as a question of privilege authorizing executive session testimony before a Select Committee on Covert Arms Transactions with Iran in a prior Congress to be released to a Federal criminal court in a perjury prosecution in response to a subpoena duces tecum. In 2012, the House adopted a resolution authorizing back-up audio records of the Official Reporters of Debates of an open committee hearing to be made available to the court upon request of the Department of Justice in its prosecution of alleged perjury, false statements and obstruction of Congress during a committee investigation of use of steroids in professional sports in a prior Congress. (*U.S. v. Clemens*, No. 10–223 (D.D.C. 2012)). These were two examples of affirmative formal House responses to requests for noncurrent House documents.

Chapter 6—Officers, Officials and Employees.

The Speaker. In 2003, a symposium on "The Changing Nature of the House Speakership: The Cannon Centenary Conference" sponsored by the Congressional Research Service and the Carl Albert Congressional Research and Studies Center was held in the Cannon Caucus Room. Those proceedings were printed as House Document 108–204 by the adoption of H. Con. Res. 345 in the 108th Congress. The proceedings document the institutional and political evolution of the speakership from Carl Albert (1971–76), Thomas P. "Tip" O'Neill (1977–86), James Wright (1987–1989), and Thomas S. Foley (1989–1994), through Newt Gingrich (1995–1998) and include comments of J. Dennis Hastert (1999–2006) and the participation of the latter

four Speakers along with commentary from former Members and others. These documents demonstrated a rapid evolution of the speakership away from the institutional role of presiding officer (most recent Speakers seldom presiding over proceedings), and toward a combined emphasis on party leadership, agenda setting, public relations, and fundraising.

The resignation of Speaker Jim Wright in June 1989, followed an investigation by the Committee on Standards of Official Conduct into allegations of his official misconduct but prior to any report to or action by the House. It was the first resignation of a Speaker to "be effective upon the election of his successor," and on that occasion the Speaker entertained nominations for Speaker and, following the roll call by surname, declared the winner of the election "duly elected Speaker." A rule was adopted in 2003 for filling the Office of Speaker when there is a vacancy (defined to include physical inability to discharge the duties of office), particularly the requirement for a list of Members prepared by the Speaker in the order in which each shall act as Speaker pro tempore in the case of a vacancy solely to preside over proceedings for election of a new Speaker.

Beginning in 1995, a four-term limit was imposed on the Office of Speaker, but that restriction was removed in 1999. The official conduct of the Speaker was questioned on several occasions, resulting in the resignation of Speaker Jim Wright and in the reprimand of and imposition of reimbursement of a portion of the cost of the investigations of Speaker Newt Gingrich by the Committee on Standards of Official Conduct and the Select Ethics Committee in 1997. On other occasions, questions of the privileges of the House were raised but immediately laid on the table with respect to the conduct of the Speaker: (1) in conducting a three-hour vote in 2003; (2) in authorizing the improper inclusion of a provision in a conference report; (3) in not addressing known errors in the engrossment of a bill which were ignored in 2006; and (4) failures to act on learning of a Members' misconduct regarding congressional pages in 2006 and of a Member's sexual harassment of staff in 2010. On one occasion, the Speaker's alleged revelation of classified material while serving on the Permanent Select Committee on Intelligence as Minority Leader was held not to constitute a question of privilege in 2007.

The adoption of several rules also broadened the Speaker's recess authority. Since 1993, the Speaker has used authority under Rule I clause 12 to declare recesses for a short time when no question is pending. Rule I, clauses 12(b)–(d), adopted in 2003, authorized the Speaker to declare emergency recesses and to change the time and place of convening at the seat of government within a three-day period "upon imminent impairment to the place of reconvening." Broad authority to postpone measures in the House

to a later time was granted to the Speaker by special orders of business beginning in 2007, and made part of the standing rules (Rule XIX clause 1(c)) in 2011. Also in 2011, the House adopted a special order permitting the Speaker to reconvene the House at any time, regardless of an emergency. It was first exercised at the end of 2012.

Rule I clause 9 adopted in 1997 authorized the Speaker to implement a system for drug testing in the House. Since 1975, Rule I clause 10 authorized the Speaker to designate Members to travel on the business of the House within or outside of the United States on vouchers signed solely by the Speaker.

Beginning in 1977, the Speaker was authorized to administer a system for closed circuit coverage of House proceedings, and in 1978 a system of complete and unedited audio and visual broadcasting and recording of the proceedings accessible to the news media. That authority now contained in Rule V was held to authorize periodic wide-angle television coverage of all special-order speeches at the end of legislative business in 1984, a decision taken by the Speaker without consultation and criticized at the time in noteworthy debate. On that occasion, the Speaker engaged in debate from the floor in defense of such an action he had ordered as Speaker. In so doing, his words (describing the actions of another Member who had utilized rhetorical comments and gestures during special orders to suggest that absent Members were declining to participate in debate as "the lowest thing" he had seen in 32 years of politics) were ruled out of order upon demand that they be "taken down" as a personality toward another Member. That wide-angle coverage policy was continued in effect until 1994 when the Speaker prohibited wide-angle coverage but continued captioning at the bottom of the screen during non-business special orders and morning-hour debates.

Speakers' participation in debate both in the House, where Speakers have chosen not to preside but to appoint Speakers pro tempore, and in the Committee of the Whole, showed a marked increase in recent Congresses, with liberalized time for recognition, reflecting emphasis on their party leadership roles. In modern Congresses, Speakers have with increasing frequency chosen to vote on certain questions in the House and in the Committee of the Whole, further demonstrating their role as party leaders.

In 1978, the Speaker lost direct appointment authority over the Official Reporters of Debates, it being transferred to the Clerk, but remaining subject to direction and control of the Speaker. Beginning in 1981, the Speaker was given responsibility in Rule VIII to notify the House of the receipt by any Member, Officer, or employee of subpoenas relating to official House functions and to temporarily authorize compliance during extended adjournments. In 1993, the Speaker was authorized in Rule IX to designate within

two legislative days the time for consideration of questions of privilege of the House noticed by any Member, other than party leaders who retained the right to immediate recognition without notice.

An important change in the Speaker's nonpartisan responsibilities as presiding officer materialized from the adoption in 1975 of Rule XII requiring the Speaker to refer all introduced measures (with discretion to include Senate bills and amendments) to all committees with jurisdiction, and not merely to the one primary committee as had been the practice until that point. The Speaker was given discretion to make those referrals jointly to several committees (while designating a primary committee in all but extraordinary cases), to split measures for referral, or to make sequential referrals once the initial committee(s) have reported— all referrals (since 1977) potentially with discretionary time limits. This had the effect of empowering the Speaker to unilaterally discharge the nonreporting committee following those dates. There have been many variations of the exercise of this authority by Speakers since 1975. In making multiple referrals, the Speaker, by delineating each referral to be "for the consideration of such provisions as fall within those committees' respective jurisdictions," establishes an enforceable point of order in committees against markup consideration of bill text or amendments containing matter extending beyond those Rule X jurisdictions as interpreted by the committee chairman in consultation with the Parliamentarian.

The Speaker's discretionary authority in Rule XV to recognize for motions to suspend the rules was extended to every Monday and Tuesday beginning in 1977, and further to Wednesdays beginning in 2003. It was given greater efficacy with the gradual abolition (beginning in 1977 and extended in 1991) of the need for the ordering of a second by tellers.

With respect to other discretionary recognition authority, the Speaker was empowered in Rule XVI clause 4 to entertain highly privileged motions to fix for that day the time and date (within three days) to which the House would adjourn in 1973, and to recognize for motions to declare recesses in 1991. The authority to declare recesses "for a short time" without motion when no question was pending, conferred upon the Speaker by Rule I clause 12(a) in 1993, superseded the need for a motion and was often utilized to promote scheduling efficiency. This was combined with authority to postpone record votes (Rule XX clause 8 being expanded in 1979 to authorize the Speaker to postpone and cluster certain votes) and to postpone legislative business indefinitely despite the ordering of the previous question (pursuant to Rule XIX clause 1(c), added in 2009). By special order, the Speaker was given unilateral authority to reconvene the House after consultation with the Minority Leader prior to the next scheduled day of meeting where required in the public interest. By this combination of authorities, the Speaker

was enabled to suspend much business of the House subject to the call of the Chair for periods sometimes lasting many hours, in order to allow the leadership to adjust the schedule as the result of the exigencies of the moment.

Several recent decisions have expanded the Speaker's authority to maintain decorum by taking initiatives during debate, in order to forestall improper references to the President, Vice President, the Senate and its Members, as well as the improper use of exhibits. The Speaker was authorized in his discretion to submit the question of use of exhibits to the House rather than rule directly in 2001, thus changing the previous rule (Rule XVII clause 6) requiring a vote on use of exhibits on demand of any Member. The Chair in his discretion awaits points of order from the floor when the improper debate involves personal references to other Members of the House. In turn, improper references to the Speaker during debate on several occasions (*e.g.*, 1995) led to a reiteration of the additional respect due that office from all Members.

Three experiments with so-called "Oxford-style" debates in the 103rd Congress under direction of the Speaker, all in 1994, were discontinued thereafter. The format included a "moderator" Member who, upon recognition by the Speaker, would in turn "yield" to an equal number of Members on either side of a pre-determined issue for statements and rebuttals.

The Speaker, beginning in 1981, announced and enforced a policy (Speaker's "guidelines") of conferring recognition for unanimous-consent requests for the consideration of certain legislation only when assured that the majority and minority floor and committee leaderships have no objection. This exercise of discretionary recognition authority (from which there is no appeal) was to prevent individual Members from being forced to go on record as objecting to unanimous-consent requests which had not been cleared by the Speaker and other leaders, and for the *Congressional Record* to reflect the Speaker's denial as a matter of institutional practice and not as having taken a political position on the matter.

While the Speaker has announced his intention to strictly enforce time limits for debate, relaxation of those limits has been accorded by custom to the Speaker and to the Majority and Minority Leaders by the Chair when participating in debate. Beginning on opening day of the 101st Congress and in subsequent Congresses, the Speaker inserted in the *Record* a general statement concerning decorum in the House (reiterated from the Chair in 2012) under his authority to preserve decorum, where the comportment of Members in the Chamber had over time deviated from traditional standards of formality.

In 1983, the Speaker was authorized by Rule XVIII clause 2(b) to declare the House resolved into the Committee of the Whole House on the state of

the Union, without motion, at any time when no question was pending before the House, pursuant to special orders from the Committee on Rules adopted by the House allowing that declaration on a particular measure. This discretion conferred on the Speaker expedited the agenda-setting authority and eliminated votes on motions to resolve into the Committee, and thereby prevented the question of consideration (although not points of order) from being raised once the special order is adopted.

Special orders from the Committee on Rules began to confer on the Speaker discretionary authority (customary through the 110th Congress in all special orders of business) to temporarily withdraw pending measures from consideration in the House notwithstanding the ordering of the previous question to final passage, subject to resumption of consideration at a time later designated by the Speaker. This authority has been interpreted to permit virtually indefinite postponements (*e.g.*, during the pendency or following adoption of motions to recommit). It was made a standing rule beginning in the 111th Congress in 2009.

Since 1973, the Speaker was given discretion to conduct record votes by roll call (or by tellers) rather than by electronic device. On a number of occasions he exercised the roll call option when the electronic system was totally inoperative. In the 110th Congress in 2007, the Speaker's discretionary authority to hold an electronic vote open beyond the guaranteed minimum of 15 minutes was restricted so as not to permit votes to be held open for the sole purpose of reversing the outcome (Rule XX clause 2(a)). This was in response to a decision by the Chair in a previous Congress in 2003—challenged days later on a question of privilege that was tabled—to hold an electronic vote open for approximately three hours to reverse the result although all Members except one had already voted. Subsequently, when the rule was still in effect, the Chair ruled that where the intent was not to hold a vote open solely for that purpose, but rather to accommodate Members arriving to vote or changing their vote (or the Clerk in recordation thereof), the rule was inapplicable. The rule was repealed in 2009.

During the period since electronic voting began in 1973, Speakers have issued rulings and policies with respect to the conduct of electronic votes, including electronic or ballot card vote changes and requests to hold votes open for arriving Members. Beginning in 2009, the Speaker announced on opening day in response to select committee investigative report on a voting irregularity which occurred in 2007, that electronic vote results should be based on certification by the Clerk, and not on temporary displays from the electronic panel.

Beginning in 2005, the Speaker's announcement under Rule XX clause 5 (c) that a catastrophic circumstance has required a provisional quorum of

Members responding to the call (following extended quorum calls and consultation), was authorized and rendered not subject to appeal, as was his announcement of the whole number of the House upon any change in membership (Rule XX clause 5(d)).

In 1974, the Speaker ruled that he was prohibited by Rule XX clause 7 from entertaining a point of order of no quorum unless he was putting a pending question to a vote (*e.g.*, during debate which was no longer to be considered business of the House requiring the presence of a quorum). At the same time the Speaker was granted unappealable discretionary authority to entertain a motion for a call of the House at any time.

In 1979, the Speaker was given authority now contained in Rule XX clause 8 to postpone to designated and redesignated times within the next two legislative days, record votes on a number of specified questions, and on the approval of the Journal until later the same day. That discretionary authority, made further applicable to other specified postponable questions in subsequent Congresses, has enabled the Speaker to control the daily business of the House by clustering record votes to be conducted as unfinished business at subsequently determined times, to reduce with notice the minimum time for all but the first clustered vote to five minutes (reduced to two minutes in the Committee of the Whole beginning in 2011 and in the House beginning in 2013) if no other business has been introduced, and thereby to expedite the order and duration of business requiring Members' presence in the Chamber (while also providing time availability to party whips). In addition, beginning in 1979 the Speaker was authorized to utilize five-minute electronic votes with notice on questions arising immediately following 15-minute votes. In Rule XX clause 7(c) beginning in 1989, the Speaker was given discretion to postpone noticed motions to instruct conferees following twenty days (and concurrently ten legislative days) in conference to the next legislative day. Beginning in 2013, the Speaker was authorized to permit an initial five-minute vote in the House (*e.g.*, on a motion to recommit) following report from a Committee of the Whole despite 10 minutes of debate on the motion if in his discretion it immediately followed a previously recorded vote either in the House or in Committee of the Whole where Members had remained present in the Chamber.

The Speaker has been given several joint (bipartisan) appointment authorities with respect to the Director of the Congressional Budget Office and within the House of the Offices of Compliance and Inspector General. Under the rule, the Speaker in 1995 obtained joint authority with the Majority and Minority Leaders to appoint an Inspector General and under Rule II clause 7 to appoint the Office of the Historian, eventually replacing the Speaker's management of the Office for the Bicentennial of the House established in

1982. In 1993, the Speaker was authorized in Rule II clause 8 to appoint the Office of General Counsel. Beginning in 2008, the Speaker was authorized by standing order to appoint members (with the concurrence of the Minority Leader) of the Office of Congressional Ethics.

With respect to conferee appointments, Speakers have asserted greater flexibility in the timing of their appointment following agreement of the House to go to conference, sometimes delaying their announcement until a subsequent time. The Speaker's unilateral authority to appoint additional conferees or to replace conferees following the original appointment and to remove Members from select or conference committees once appointed was first established in 1993 in Rule I clause 11. Speakers have since 1975 exercised their broadly stated authority to appoint conferees in a number of ways to include Members representing leadership, and various committees or issues committed to conference without those appointments being construed as jurisdictional precedent for subsequently introduced legislation. Speakers have also announced their intention to simplify appointments of conferees to the maximum extent possible.

As a party caucus rule matter, Speakers from both parties have been empowered since the 1970s to nominate the majority party members (nine of thirteen under a ratio negotiated between the parties) to be elected to the Committee on Rules without going through the nominating process of the Steering Committees in the party caucus or conference. This change coincided with the demise of the seniority system which had virtually assured that Members with consecutive Committee on Rules service would be renominated by the party caucus or conference. The Speaker's nominating authority was extended to majority membership of the Committee on House Administration in both parties in recognition that the jurisdiction over internal House matters of those two committees should reflect its members' commitments directly to the party leadership.

In Rule X, the Speaker has been given additional authorities with respect to the composition of select committees and subunits. In 1974 the Speaker was empowered with the approval of the House to appoint special *ad hoc* committees for consideration of specific bills (an authority exercised three times), and since 1995 to conduct oversight on matters within the jurisdiction of more than one standing committee (an authority not yet exercised). In 2007, the Speaker was authorized in Rule X clause 4(a)(5) to appoint a select Intelligence Oversight Panel of the Committee on Appropriations (combining for the first time authorization and appropriations committee members on one panel, but with predominant membership (10-3) and authority given to the Committee on Appropriations reflecting the need for the Permanent Select Committee on Intelligence to have some input on the intelligence budget). That rule was repealed in 2011. It was followed that year

by an Permanent Select Committee on Intelligence rule that authorized the chairman and ranking minority member and staff of the Appropriations subcommittee having jurisdiction over the National Intelligence Program to participate in discussions regarding budget-related information.

Beginning in 1997, the Speaker and Minority Leader were each authorized to name ten Members to investigative subcommittees of the Committee on Standards of Official Conduct. In 1983, the Speaker's appointment of all Members to select or joint committees was made contingent upon that Member's continued membership in the party caucus or conference.

Beginning in 1989, the Speaker was authorized to attend meetings and have access to the records of the Permanent Select Committee on Intelligence, and in 1995 the Speaker, together with the Minority Leader, became non-voting ex-officio members of that committee.

Speakers have provided more detailed decorum announcements and more enforcement in recent Congresses. These notable rulings to preserve decorum on the House floor have included an admonition of a Member who had utilized House pages to demonstrate with signs a debatable matter. On one occasion in 1972, the Speaker ordered the galleries to be temporarily cleared when a number of protestors throughout the gallery disrupted the proceedings of the House. In 2012, the Speaker made an extensive announcement from the Chair when all Members were present reiterating proper decorum requirements.

Pursuant to Rule I clause 8 as amended in 1985, the Speaker was authorized with approval of the House to designate a Member as Speaker pro tempore, or more than one in the alternative, to sign enrolled bills for a specified period of time without the need to elect a Speaker pro tempore. Beginning in 2009, those appointments covered the entire Congress.

House Officers. The Office of Postmaster was abolished in the 102d Congress and the Office of Doorkeeper was abolished in the 104th Congress, the responsibilities of the latter being transferred to the Sergeant-at-Arms. The Office of Chief Administrative Officer was established in 1995, evolving from the former Director of Non-legislative and Financial Services (an officer appointed jointly by the Speaker and Majority and Minority Leaders from 1992 through 1994). The authority of the Speaker, as well as the House, to remove the elected officers except for the Chaplain was established in 1992. In 2001, Rule X clause 4(d)(1) was amended to remove the requirement that the Committee on House Administration provide policy direction to the Sergeant-at-Arms and Chief Administrative Officer while retaining that role over the Inspector General and giving oversight responsibility over those Officers and officials. Resolutions electing officers of the House when vacancies occurred were considered as privileged. The Speaker's statutory

authority to temporarily fill vacancies in all those elected offices was exercised on various occasions. The Speaker in 2000 appointed the first Roman Catholic Chaplain of the House after taking the floor as a question of personal privilege. This followed a dispute over the selection of candidates for election to that office.

As Party Defendant or Witness. The privileges and responsibilities of Officers, officials, and employees as parties defendant or witnesses in court proceedings involving their official duties were addressed in the context of the adoption of Rule VIII and its predecessors beginning in 1977. Until the 95th Congress, whenever an Officer or employee (and Members) received a judicial or administrative subpoena, the House would decide by adopting a resolution granting authority to the person to respond. This case-by-case approach was changed in the 95th and 96th Congresses when general authority was granted to respond to subpoenas and a procedure was established for automatic notice to the House, consultation with the General Counsel, and possible compliance without the necessity of a House vote (unless the House determined not to permit or to condition compliance by adoption of a resolution raised as a question of privilege).

Employment. Materials with respect to other employment issues are contained in a "Model Employee Handbook" on the website of the Committee on House Administration. Statutory and rules changes such as the Congressional Accountability Act applied anti-discrimination laws to congressional employees. The House Classification Act of 1964 provided a classification system for the equitable establishment and adjustment of rates of compensation of positions in the offices of the Officers of the House and press galleries. New standing rules addressing code of conduct standards (*e.g.*, nepotism), shared positions, compensation, and other House orders and materials establishing employment positions and standards were adopted.

In the 112th Congress, the House twice reduced committee staff budgets to symbolize internal reductions in Federal spending by adopting resolutions (the first at the beginning of the Congress under suspension of the rules covering a five-percent cut for all staffs, and then on February 1, 2012, on a resolution reported from the Committee on House Administration covering a further six-percent cut for committee staffs).

A number of House Officials and Offices were created, discontinued, or redefined. They include the Offices of Law Revision Counsel (1974), Technology Assessment (funding discontinued in 1996), House Counsel (1993), Historian (1989), Inspector General (1995), Compliance (1995), Interparliamentary Affairs (2003), Congressional Ethics (2008), House Democracy Partnership (2005), the Tom Lantos Human Rights Commission (2008), and Emergency Planning, Preparedness and Operations (2002), as well as joint

offices such as the Congressional Budget Office (1974) and changes in the selection process for the Architect of the Capitol and policy review of that office, including the Capitol Preservation Commission (1988), and the Office of Congressional Accessibility Services (2008) under the Architect of the Capitol.

Chapter 7—Members.

The question of Members' standing as plaintiffs to bring causes of action in Federal court to contest the constitutionality of executive actions, congressional statutes or internal legislative exercises in rulemaking was judicially addressed. The U.S. Supreme Court in *Raines v. Byrd*, 521 U.S. 811 (1997) dismissed a suit brought by six Members of Congress who had voted against the Line Item Veto Act (later declared unconstitutional in the case of *Clinton v. City of New York*, 524 U.S. 417 (1998)). In *Raines*, the U.S. Supreme Court vacated the judgment of the lower court that the act was unconstitutional, and remanded with instructions to dismiss the complaint, based on the conclusion that the Member plaintiffs lacked standing because their complaint did not establish that they had suffered an injury that was personal, particularized and concrete. The decision was the first ruling of the Court on the issue of standing of Members who assert an injury to their institutional authority as legislators rather than a personal injury (*e.g.*, loss of salary as in *Powell v. McCormack*, 395 U.S. 486 (1969)). The Court was willing to find an institutional injury to be sufficient if that injury amounted to nullification of a particular vote and if the plaintiffs' votes would have been sufficient (outcome determinative) to pass or defeat a specific bill, but not where the impact on the plaintiff Members' votes was potentially less than a full nullification. Several Federal courts of appeals decisions, both prior and subsequent to *Raines*, examined the issue of Members' standing as plaintiffs. By contrast, the D.C. Court of Appeals decision in *Michel v. Anderson*, 14 F.3d 623 (D.C. Cir. 1994) established Members' standing as plaintiffs where their votes could be directly nullified by a House rule.

The diminution of seniority rights of Members has been largely the result of party caucus and conference rules changes and not by any direct action by the House (other than by ratification of standing committee elections submitted from the party organizations). In that respect, the House on several occasions adopted resolutions called up as privileged from the party caucus or conference adjusting Members' committee seniority for reasons other than continuous consecutive service on the committee (*e.g.*, to elect a Member who switched parties by resolution from his new party caucus taking into account previous service on that committee, sometimes as a member of the other party, or based upon other political commitments).

Status of Delegates and the Resident Commissioner. The adoption of Rule III clause 3 (repealed in 1995, adopted again in 2007 and repealed again in 2011 upon shifts in House majorities) gave the Delegates and Resident Commissioner voting and all other procedural prerogatives in the Committee of the Whole (*e.g.*, authority to preside over that forum). The District Court opinion in *Michel v. Anderson*, 817 F.Supp. 126, affirmed by the D.C. Court of Appeals, 41 F.3d 623 (D.C. Cir. 1994), upheld the constitutionality of that rule. *Michel* upheld the rule's constitutionality on the merits—the D.C. Court of Appeals relying on the provision in the rule requiring an immediate revote in the House (without Delegates' participation) on any recorded vote in the Committee of the Whole on which the Delegates' and Resident Commissioner's votes had been collectively decisive (*i.e.*, "but for" those vote the outcome would have been different).

Congress has by law established the Offices of Delegate for the Territory of American Samoa and for the Northern Mariana Islands. The authority in Rule III clause 3(b) for Delegates and the Resident Commissioner to be appointed to select and conference committees evolved from 1974 and was expanded in 1979 and in 1993. A unanimous-consent request was not entertained in 2003 that would have allowed Delegates to sign a discharge petition. However, Delegates were counted toward the establishment of a quorum in the Committee of the Whole from 1993–1995 and from 2007 until the rule was again repealed in 2011.

Compensations and Allowances. The Twenty-seventh Amendment to the Constitution was ratified in 1992. It provides that "no law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened." Subsequent Federal court cases have upheld congressional cost-of-living adjustments for Members under the Ethics Reform Act of 1989 as having arisen under a formula prescribed in the 1989 Act and not under any law passed by Congress following the completed ratification of the Twenty-seventh Amendment. The present rate of compensation of Members, Delegates, and the Resident Commissioner is established by law (2 USC § 31) subject to annual cost of living adjustments (2 USC § 31(2)), with an additional amount per annum to assist in defraying expenses (2 USC § 31(b)). Congress has passed laws from time to time denying Members cost-of-living increases for a particular calendar year notwithstanding the COLA automatic adjustment formula. (See, *e.g.*, Pub. L. No. 111–165, denying annual COLA adjustment.) Congress has also enacted a "permanent appropriation" providing funds "effective beginning with fiscal year 1983 and continuing each fiscal year thereafter" from the U.S. Treasury to pay Members' salaries at rates tied to presidential recommendations for Federal employees for each calendar

year (Pub. L. No. 97–51, section 130(c)), in order to avoid the need to annually appropriate those funds (and to render ineffective any limitation amendments to annual general appropriation bills absent waivers of points of order against such legislative language). Beginning in 1992, the authority of the Sergeant-at-Arms to disburse salaries of Members was transferred to the Director of Non-legislative and Financial Services and then to the Chief Administrative Officer when that office was created in 1995. A law passed in 1977 provided that the residence of a Member for purpose of imposing State income tax laws shall be the State from which elected and not the State in which the Member maintains an abode for the purpose of attending sessions of Congress (4 USC § 113).

A variety of rules and laws affecting Members' travel were put in place. The Speaker's authority (Rule I clause 10) to designate Members, Officers and employees to travel on business of the House on vouchers solely approved by the Speaker was adopted in 1975. Also adopted at that time was Rule X clause 8 giving each committee separate authority to authorize committee members' official travel and to clarify the availability of local currencies for travel outside the United States. "Lame duck" prohibitions against retiring or defeated Members' travel were also added in 1977. Earlier restrictions on the number of reimbursable round trips a Member could make to his district each year (24 and then 36) were eliminated with the establishment of the Members' Representational Allowance. Reimbursement for Members-elect travel to early organizational caucuses began in 1974.

Rule XXIV clause 4 as adopted in 1977 and expanded in 1991 to establish restrictions on the use of the frank and mass mailings. In 2005, that clause was amended again to make mass mailings not frankable within 90 days before an election (expanded from 60 days). The *House Ethics Manual* of the 110th Congress contained details of this rule.

The consolidation of Members' Representational Allowances (MRAs) for all official expenses of Members' offices was enacted as 2 USC § 57b and was included in the Members' Congressional Handbook. In the 92nd Congress, a resolution authorizing the Committee on House Administration to adjust allowances of Members and committees without further action by the House was enacted into permanent law (2 USC § 57), but the 94th Congress adopted a subsequent resolution later enacted into permanent law stripping the committee of that authority and requiring House approval of the committee's recommendations, except in cases made necessary by price changes in materials and supplies, technological advances in office equipment, and cost of living increases (2 USC § 57a). The Committee on House Administration retained authority under the earlier statute to independently adjust amounts under those specified conditions. In 1995, the Committee on House

Administration promulgated an order abolishing separate allowances for Clerk Hire, Official Expenses, and Official Mail, to be replaced by the MRA.

Qualifications and Disqualifications. Article I, section 5 of the Constitution provides that each House shall be the judge of the elections, returns and qualifications of its own Members. The U.S. Supreme Court ruled in *Powell v. McCormack*, 395 U.S. 486 (1969), in judging the qualifications of its Members, that the House may not add qualifications to those expressly granted in the Constitution.

Regarding the authority of the States to add to Members' qualifications, the U.S. Supreme Court ruled in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), in a 5-4 decision that the States may not enlarge the qualifications for membership to the U.S. House of Representatives. In 1995, 23 States by amendments to State constitutions had limited the number of terms that Members of Congress may serve. The Court determined that the qualifications clause established exclusive qualifications for Members that may not be added to either by Congress or the States, because the Constitution did not delegate to the States the power to prescribe qualifications for Members. The States therefore did not have any such power (the four dissenting Justices argued that the States could add to qualifications). Six years later, the Supreme Court relied on *Thornton* to invalidate a Missouri law requiring that labels be placed on ballots alongside the names of congressional candidates who had "disregarded voters' instruction on term limits" or declined to pledge support for term limits (*Cook v. Gralike*, 531 U.S. 510 (2001)).

A significant decision of the House was taken in 1981, when the House declared vacant by majority vote the seat of a Member-elect (Gladys Spellman, Maryland). Ms. Spellman was unable to take the oath of office because of incapacitating illness, where the medical prognosis showed no likelihood of improvement to permit the Member-elect to take the oath required by the Constitution or assume the duties of a Representative. In that resolution, the House declared that the ability and willingness to take the oath was a constitutional qualification (article VI, section 3), and that the inability or unwillingness of a Member-elect to take the oath should be treated as a disqualification to be judged by a majority vote. Beginning in 2005, Rule XX clause 5(c) addressed Members' incapacity resulting from catastrophic circumstances in determining a provisional quorum of the House.

Immunities of Members and Aides. Jurisprudence since 1973 addressed the "Speech or Debate" protection accorded Members by article I, section 6 of the Constitution. The U.S. Supreme Court held in *U.S. v. Helstoski*, 442 U.S. 477 (1979), that neither evidence of nor references to legislative acts of a Member may be introduced by the government in a prosecution under the official bribery statute, unless there has been an explicit

and unequivocal waiver of that protection by the individual Member or by the House (which had not been indicated merely by a voluntary grand jury appearance or the enactment of a Federal bribery statute).

The Court held in *Hutchinson v. Proxmire*, 443 U.S. 111 (1979) that the Speech or Debate clause did not protect transmittal of allegedly defamatory material issued in press releases and newsletters by a Senator, as those publications were not essential to the deliberative process of the Senate. A complaint against an Officer of the House relating to the dismissal of an Official Reporter of Debates was held nonjusticiable on the basis that her duties were directly related to the due function of the legislative process (*Browning v. Clark*, 789 F.2d 923 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 996 (1986)). There was no distinction between the members of a (Senate) subcommittee and its chief counsel insofar as complete immunity was provided for the issuance of a subpoena pursuant to legitimate legislative inquiry (*Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975)). Members and their staffs were given immunity for the dissemination of a congressional report (*Doe v. McMillan*, 412 U.S. 306 (1973)). Other Federal cases indicated that the clause provided no protection for "political" or "representational" activities because they were not "an integral part of the deliberative and communicative processes" by which Members participate in legislative activities. The clause protected certain contacts by Members with the executive branch, such as investigations and hearings related to legislative oversight of the executive, but did not protect others, such as assisting constituents in securing government contracts and making appointments with government agencies (*U.S. v. McDade*, 28 F.3d 283 (3d Cir. 1994); *cert. denied*, 514 U.S. 1003 (1995)).

A misperception of the extent of Speech or Debate protection, expressed off the floor by Speaker Newt Gingrich in a press conference to the effect that under that clause Members are free to say "virtually anything on the House floor," was properly circumscribed by the Chair. On that occasion in 1995, the Chair responded to a parliamentary inquiry that the freedom of speech or debate guarantee of the First Amendment was not an impediment to the enforcement within the House of a rule prohibiting personalities in debate, as the Constitution only proscribed a Member from being questioned in any other place and did not obstruct an internal rule of the House (*e.g.*, against personal criticisms of the Speaker)—the authority for the adoption of which rule derived directly from article I of the Constitution.

Several additional Federal cases emerged as landmark decisions involving the extent of Speech or Debate protections to Members. The first involved the execution of a search warrant on the Rayburn House Office of Rep. William J. Jefferson. The search was conducted as part of the Federal Bureau

of Investigation's investigation of Rep. Jefferson to determine whether he and other persons were involved in criminal activity, including bribery and other felonies. Such an action—obtaining a search warrant by court order but without the court scrutinizing the seized materials (relying instead upon a team of executive branch officials separate from the prosecution team)—was unprecedented in U.S. history and raised significant constitutional questions with respect to potential intimidation and diminution of the independence of the legislative branch and its integral legislative functions protected by the Speech or Debate Clause. Although Rep. Jefferson lost his initial legal request to have the seized documents (entire office computer files) returned, the Court of Appeals for the D.C. Circuit later held (*U.S. v. Rayburn House Office Building Rm. 2113*, 497 F.3d 654 (D.C. Cir. 2007), *cert. denied*, 128 S.Ct. 1738) the search to have been a violation of the Speech or Debate Clause. The clause extended not only to the eventual use of seized material in court proceedings, but also to initial examination of legislative materials by the executive (an argument supported by a bipartisan amicus brief submitted by the General Counsel to the trial court). The appeals court determined that Rep. Jefferson should be afforded an opportunity to make his claims of privilege ex parte and in camera to the court with Jefferson's attorney present (before the same Federal judge that originally ruled against that petition). The Department of Justice's writ of *certiorari* on the question of the constitutionality of the seizure was denied by the Supreme Court in *Rayburn House Office Building*, as was a collateral writ stemming from his criminal trial involving grand jury evidence (*U.S. v. Jefferson*, 546 F.3d 300 (4th Cir. 2008), *cert. denied* 129 S.Ct. 2383 (2009)), thereby resolving the issue in favor of the constitutional protection. The case ultimately proceeded to criminal trial and to conviction based on separately gathered non-legislative evidence of crimes, following judicial decisions on other interlocutory Speech or Debate claims based on staff conversations with the defendant Member.

Another Speech or Debate Clause development concerned claims of employment discrimination brought against Members' offices pursuant to the Congressional Accountability Act of 1995. Both the Court of Appeals for the Tenth Circuit in *Bastien v. Office of Senator Ben Nighthorse Campbell*, 390 F.3d 1301 (10th Cir. 2004) and the Court of Appeals for the D.C. Circuit in the case of *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1 (D.C. Cir. 2006), ruled that the clause did not automatically prevent such suits from proceeding. The U.S. Supreme Court rejected an appeal in the Tenth Circuit case on the grounds that the Court lacked jurisdiction to decide the case (the defendant Senator no longer being in office). The rationale of the Court of Appeals for the D.C. Circuit and of the Court of Appeals for the

Tenth Circuit established that there was a distinction between "legislative" acts and "non-legislative" acts (*e.g.*, duties not central to the legislative process such as informal information gathering, purely administrative responsibilities or constituent case work) performed by employees. The trial courts were instructed to receive evidence in assessing defenses claimed by the Member defendant in lawsuits under the Congressional Accountability Act (CAA) claiming discrimination in employment.

The *Fields* decision suggested that the Speech or Debate clause did not require the dismissal of all suits brought under the CAA, but that such cases could go to trial to receive evidence on the question of whether the particular activity performed by the employee was a "legislative" act on behalf of the Member. There were many functions performed by Members which were not entirely or primarily legislative in nature beyond the tendency to enhance the Member's reelection. Thus, where a claim is made that the employing Member has discriminated against the employee, the nature of that employee's function in the office becomes relevant as to whether a Speech or Debate protection should immunize the employing Member in that personnel action.

A third area of Speech or Debate jurisprudence emerged from conflicting D.C. appellate court decisions on the question of the availability of a Member's testimony given before the Committee on Standards of Official Conduct. In *Ray v. Proxmire*, 581 F.2d 998 (D.C. Cir. 1978), the court ruled that such testimony was legislative activity required by internal rules and could not be questioned in court, while the same appellate court ruled in *U.S. v. Rose*, 28 F.3d 181 (D.C. Cir. 1994) that testimony of a Member before the Committee on Standards of Official Conduct regarding his personal misconduct (loan acceptance) was not protected legislative activity. In 2009, a D.C. Federal appellate court panel in *In re Grand Jury Subpoenas*, 571 F.3d 1200 (D.C. Cir. 2009) supported the *Ray* ruling and held such testimony to be protected from prosecution by the Speech or Debate clause and invited reexamination of *Rose*.

In 2007, the first civil privacy action was brought by one Member against another in *Boehner v. McDermott*, 484 F.3d 573 (D.C. Cir. 2007). Rep. Jim McDermott had claimed a First Amendment freedom of speech protection (rather than an article I Speech or Debate protection since his conduct was not a legislative act) against a privacy action seeking compensatory and punitive damages under the civil liability provisions of the Electronic Communications Privacy Act for the illegal disclosure of the contents of a telephone conference call among other Members, the defendant Member knowing it to have been illegally intercepted. The Court essentially reversed its earlier ruling which had found a First Amendment free speech protection based on

an analogous U.S. Supreme Court decision. It ruled that Rep. McDermott acted improperly in giving reporters access to an audio tape given to him by a Florida couple who had recorded a cell phone call on a police radio scanner involving Rep. John Boehner and other party leaders discussing the pending ethics case against then-Speaker Newt Gingrich. McDermott, then a senior minority member of the House Committee on Standards of Official Conduct, leaked the tape to two newspapers, which published articles on the case in January, 1997. Rep. Boehner claimed that McDermott had violated his privacy rights by the intentional release to the press of those illegally recorded conversations and sought compensatory and punitive monetary damages. The issue of Rep. McDermott's First Amendment right of free speech was in question, and the matter went to the Supreme Court which initially remanded to the Court of Appeals in McDermott's favor, finding a free speech protection which trumped privacy protections under the Federal statute. Boehner then was permitted to amend his complaint and the Supreme Court ultimately determined (by denying *certiorari*) that as restated, the First Amendment free speech argument was not applicable because McDermott knew that the tapes had been illegally obtained in violation of Federal law, had also been released in violation of an internal House rule proscribing release by members of the Committee on Standards of Official Conduct, and that its disclosure was unprotected "conduct" rather than protected "speech." This appellate decision reversed the Federal trial court which had applied the First Amendment protection based on the truthful disclosure of the materials, the fact that McDermott had lawfully obtained the tape recording despite its illegal initial interception, and that it contained information on a matter of substantial public concern. The court majority evidently was persuaded that the violation of the internal House rule against disclosure, over which it had no cognizance, was nevertheless relevant in ruling on the legality of McDermott's conduct.

Beyond the Speech or Debate protections of article I of the Constitution, the Federal courts have denied Members' defenses of common-law immunity as not being analogous to case law protecting judges and some members of the executive for official acts for which branches of government there is no comparable constitutional Speech or Debate protection. The Federal courts have found unavailing defenses of common law immunity in cases involving defamation suits against Members of Congress for conduct beyond the protected legislative sphere, despite the escalating volume of non-legislative, constituent-related case work argued by defendant Members to warrant the same protection as "purely legislative" functions (See *Williams v. Brooks*, 945 F.2d 1322 (5th Cir. 1991) (denying immunity protection for statements made in a press conference), *cert. denied*, 504 U.S. 931 (1992); *Chastain v.*

Sundquist, 833 F.2d 311 (D.C. Cir. 1987) (denying immunity for statements in a letter to the Attorney General), *cert. denied*, 487 U.S. 1240 (1988)).

Following denial of protection to Rep. Jack Brooks under the common law doctrine of official immunity, he asked the Department of Justice to substitute the United States for him as defendant under the Federal Tort Claims Act as amended in 1988. At that time, the Federal Employees Liability Reform and Tort Compensation Act of 1988 ("Westfall Act" 28 USC § 2679), amended the law to include Officers and employees of the legislative and judicial branches, as well as the executive branch, as offices under the United States which could not be sued for defamation without its consent under the doctrine of sovereign immunity. In *Williams v. U.S.*, 71 F.3d 502 (5th Cir. 1995), the court construed the amended Federal Tort Claims Act to protect "official" acts of Members of Congress against lawsuits under the doctrine of sovereign immunity, where those acts (remarks in a press interview) were within the scope of employment. The plaintiff in that case, had the burden of proof in Federal court that the Member's conduct was not within the scope of employment so as to prevent substitution of the United States for the defendant. That statute also permitted the United States to be substituted for Rep. Donald Sundquist and for Rep. Cass Ballenger regarding their public statements. The latter case, *Council on American-Islamic Relations v. Ballenger*, 444 F.3d 659 (D.C. Cir. 2006), involved a press interview in the Member's office commenting on his marital separation as having been caused by his wife's feeling that their neighbor was "the fundraising arm for Hezbollah," a designated foreign terrorist organization. Ballenger's response in this press conference was certified to be an action within the scope of employment, as there was a "clear nexus between the congressman answering a reporter's question about his personal life and his ability to carry out his representative responsibilities effectively" (citing *U.S. v. Rostenkowski*, 59 F.3d 1291 (D.C. Cir. 1995)).

The trial court had dismissed the lawsuit under which the United States was found to have been substituted as the party defendant for lack of subject matter jurisdiction because the United States had not waived its sovereign immunity under the "Westfall Act." *Sundquist* and *Ballenger*, where a Representative's allegedly defamatory remarks in an interview were held to be within the scope of employment for purposes of the Tort Claims Act, were relied upon in *Chapman v. Rahall*, 399 F.Supp. 2d 711 (W.D. Va. 2005) where a Representative's "remarks made to the media to ensure his effectiveness as a legislator, can fairly and reasonably be deemed to be an ordinary and natural incident or attribute of his job as a legislator."

The "Westfall Act" was held to immunize a Member of Congress (Rep. John Murtha of Pennsylvania) for alleged defamation of plaintiff Wuterich

arising from comments to a reporter about a private citizen, overruling the lower court's permission for discovery by deposition to determine whether the remarks were within the scope of employment. The Department of Justice, representing the Member, successfully appealed the trial court's order for discovery, arguing that it could identify no circumstance in which speaking to the media is not within the scope of a Member's employment and that the United States should automatically be substituted as defendant and the suit dismissed where sovereign immunity was not waived. (*Wuterich v. Murtha*, 562 F.3d 375 (D.C. Cir. 2009)).

Chapter 8—Elections and Election Campaigns.

Apportionment. Federal jurisprudence on the issue of apportionment of congressional districts included mid-decade reapportionments. On at least two occasions following the 2000 census, States enacted reapportionment legislation reconfiguring for the second time congressional districts to the advantage of the majority political party in that State following a shift in political majorities in the State legislature earlier in that decade. In *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), the U.S. Supreme Court largely upheld a Texas congressional redistricting plan that was drawn by the State legislature in mid-decade three years after a traditional reapportionment (court ordered) following the decennial census. While not ruling out the possibility of a claim of partisan gerrymandering being within the scope of judicial review under the equal protection clause of the Fourteenth Amendment, the court was unable to find a "reliable" standard for making such a determination. The court also decided that the fact of mid-decade redistricting alone is not a sure indication of unlawful political gerrymanders based purely on partisan motives. At the same time, the Court voided the creation of one congressional district as in violation of the Voting Rights Act of 1965 improperly diluting the voting strength of Latinos. Under article I, section 4, of the Constitution, Congress could, but has not, enacted legislation which would limit States that had been redistricted once from being redistricted again until after the next subsequent census. In *Perry v. Perez*, 565 U.S. ____ (2012), the Supreme Court remanded to a three-judge panel in Texas the question of validity under the Voting Rights Act of a redrawn interim district map regarding the reapportionment of four newly gained congressional seats.

Certain State redistricting practices, particularly the mid-decade redistricting of Texas has led to the suggestion that Congress must assert further regulation over House districts, citing article I, section 4 (the Elections Clause) of the Constitution as the requisite authority for such actions. U.S. Supreme Court decisions establishing limitations on the national government's power under the Tenth Amendment to coercively compel ("commandeer") the States into enacting congressionally-mandated regulations

could impact upon the question of whether Congress can by law (as in the 1967 statute requiring separate congressional districts to be created by State law in all States, instead of an at-large system) "commandeer" the States into enacting such laws by directing the States to repeal at-large districts, for example, without Congress itself fully preempting the issue. (See *Branch v. Smith*, 538 U.S. 254 (2003); *U.S. Term Limits*, 514 U.S. 779 (1995)).

In 2007, the House passed a bill (never enacted into law) creating a voting Representative for the District of Columbia, rather than proposing a constitutional amendment as the House had done in 1967. The prevailing argument in the House that Congress may by law enact such legislation for the District, over which it has "exclusive jurisdiction" under article I, section 9, clause 17 of the Constitution, was countered by the contention that the House of Representatives is defined by article I, section 2 to consist only of Representatives elected by people from the States.

Time, Place, and Manner of Elections. In 2005, Congress enacted a law to require States to hold special elections for the House within 49 days after a vacancy is announced by the Speaker in the extraordinary circumstance (assuming a catastrophe) that vacancies caused by death (but not by disability) in representation from the States exceed 100 (2 USC § 8). On one occasion in 2005, the House rejected a proposed constitutional amendment providing for the immediate "appointment" of temporary Representatives to fill vacancies in the case of catastrophe pending special elections, an approach based on the premise that Congress could not pass a law to that effect.

Article I, section 2, clause 4 of the Constitution states that "when vacancies happen . . . the Executive Authority shall issue Writs of Election to fill such vacancies." Several States' laws permit general elections of Representatives to the subsequent Congress to simultaneously constitute special elections to fill vacancies in the House if the vacancy occurs near the date of the general election (to avoid the costs of a separate election), even where a vacancy may not exist on the date of the election, but only prospectively. For example, Oklahoma permitted a vacancy on election day in 1994 to have occurred even where the incumbent Representative had submitted his resignation to be effective only upon his election (on the same day) to the Senate—a matter not finally determined until after election day. Nevertheless, a certificate of election to fill the "vacancy" was issued to the Representative-elect (Steve Largent) and he was administered the oath of office at a "lame duck" session the next week, despite constitutional misgivings about whether a vacancy existed at all on the day of election. The House inconclusively acknowledged this concern by referring the question of his final right

to the seat to the Committee on House Administration (which did not report on the matter in the one month remaining in the 103d Congress). Statutes in other States have permitted special elections to be held to fill vacancies which, by the terms of the letters of the resigning Member, did not actually exist until after the date of the special election. For example, in 2002, a special election was held before the effective date of the resignation. On one occasion the House allowed a Member to withdraw his resignation in the case of defective resignation transmitted to an improper State official in 1997. On another occasion the resigning Member included a statement in his letter declaring his resignation on a future date to be "irrevocable."

Campaign Practices. While fraudulent conduct in past elections may not be a basis for the House to judge a subsequent election, it may bear on the ethics of the returning Member potentially cognizable for investigation and punishment for up to three Congresses by the Committee on Ethics (the limit for examination of past conduct under Rule XI clause 3(b)(3) unless past conduct was ongoing into more recent Congress). In the 105th Congress, Rep. Jay Kim pleaded guilty in criminal court to accepting illegal campaign donations, including one-third of all donations to his 1992 campaign. He was sentenced to two months of house arrest and was defeated for renomination to the House. The House took no action against Rep. Kim. In 2012, the Supreme Court declined to review a Federal criminal bribery conviction of former Rep. Jefferson based on findings that culpable "official misconduct" had occurred prior to his becoming a Member of the House—during his campaign leading up to his original election. This left in place the rationale of the Kim case that prior illegal or unethical official conduct during a campaign for an initial election to the House remained cognizable by the courts and by the House.

The "Special Committee to Investigate Campaign Expenditures" established at end of each Congress by privileged resolution reported from the Committee on Rules, was not continued beginning in the 94th Congress. This symbolized a recognition of the ongoing authority of the standing Committee on House Administration to conduct investigations during adjournment and report at the end of a Congress to the next Congress. However, a Member's resignation in 1977 during a Committee on House Administration investigation of an election effectively terminated the investigation, as the committee had no further jurisdiction in the matter thereafter.

While unanimous consent is normally granted to administer the oath of office to a Member-elect despite the lack of an official certificate where no question or contest has arisen, that permission was broadened to include the pendency of a mooted lawsuit brought by the winning candidate in 2011.

Buckley v. Valeo, 424 U.S. 1 (1976) (discussed in section 10 of chapter 8), addressed campaigns for Federal office, including congressional campaigns,

and restrictions on spending limits under the Federal Election Campaign Act of 1974 as "free speech" infringements. The Supreme Court decision in *Citizens United v. Federal Elections Commission*, 558 U.S. 50 (2011), overruling *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990) and earlier precedent, by another 5-4 decision conferred upon corporations and labor unions (and eventually on so-called "super PACs") the First Amendment rights of free speech as "persons" who could fund the broadcast of "electioneering communications." Those communications are defined as a broadcast, cable, or satellite "issue" communication that mentioned a candidate for Federal office within 30 days of a primary election or 60 days of a general election (but were not direct contributions to candidate campaigns or political parties), thereby invalidating a portion of a Federal law (the 2002 Bipartisan Campaign Reform Act—McCain-Feingold—2 USC § 441b) restricting such expenditures.

Chapter 9—Contested Elections.

Several questions of privilege were offered and tabled in 1985 to temporarily seat a Member-elect with a certificate of election (*McIntyre v. McCloskey*) notwithstanding referral on opening day of the question of final right to the seat to the Committee on House Administration and the House's refusal to temporarily seat either candidate pending that inquiry. That contest resulted in partisan animosity which culminated in the contested election case of *Dornan v. Sanchez* in 1998. Of particular interest in the latter contest were the repeated attempts by the minority party to offer as questions of privilege resolutions dismissing the contest prior to a report by the Committee on House Administration, which ultimately recommended dismissal. All (37) of the election contests from the 93rd through the 111th Congress other than *McIntyre v. McCloskey* in the 99th Congress were dismissed by the House on report from the committee or withdrawn by the contestant for various reasons. The reasons included: lack of evidence; a determination that voting irregularities, fraud or misconduct was insufficient to affect the results of the election; failure to sustain the burden of proof necessary to award the contested seat to the contestant; and improper initiation of a contest or other procedural failures. The enactment of the Federal Contested Election Act in 1969 greatly reduced challenges to certified Members-elect being sworn on opening day, as most contests were initiated by notice and referral to the Committee on House Administration as provided by that law. That option was emphasized in responses to parliamentary inquiries on opening day in 1997.

In *Roudebush v. Hartke*, 405 U.S. 15 (1972), the U.S. Supreme Court held that a State may conduct a recount of votes without interfering with the

authority of either House under article 1, section 5 of the Constitution which provides that each House shall be the (ultimate) judge of the elections, returns and qualifications of its own Members. The determination by the House as to the right to a seat was final, being considered a nonjusticiable political question, but did not foreclose a preliminary State recount.

Chapter 10—Presidential Elections; Electoral College.

The historic and extraordinary proceedings in the 2000 election of President George W. Bush involved the Federal statute (3 USC §§ 1–18) governing the count of the electoral vote, proceedings in the Joint Session of the two Houses on January 6, 2001, and the U.S. Supreme Court decision in *Bush v. Gore*, 531 U.S. 98 (2000). In that case, the 5-4 majority ultimately set aside the Twelfth Amendment—which makes the count of electoral votes and the possible election of the President by the House a political question committed to Congress, by first finding (7-2) a denial of equal protection of the laws by the Florida Supreme Court which had ordered a partial recount of the popular vote in that State (while at the same time declaring that the decision was not to be considered a precedent). The role of Vice President Al Gore (also the losing presidential candidate), as presiding officer during that Joint Session, and the potential conflict of interest had Gore been called upon to make rulings under unique procedures requiring the two Houses to separately consider objections upon objection by at least one Member of each House, lend credence to the "extraordinary" characterization. As a result of the U.S. Supreme Court decision, Vice President Gore had informally asked that no Senator object to the counting of the Florida electoral votes, and so the individual objections of several House Members were insufficient under the statute to trigger separate House and Senate consideration of the objections to counting Florida certificates. Proceedings in the Joint Session of January 5, 2005, to count the electoral vote in the reelection of President Bush over Senator John Kerry, and of separate House and Senate consideration of challenges, where at least one Representative and one Senator did object to the count of the electoral votes from Ohio, came four years later.

Proceedings under the Twenty-fifth Amendment utilized for the confirmations of vice-presidential nominations by the President of Gerald R. Ford in 1973 and of Nelson Rockefeller in 1974 in both Houses were the only examples since ratification of that Amendment.

Chapter 11—Questions of Privilege.

There was an increase of the use of Rule IX to attempt to bring propositions to the immediate attention of the House as preferential to the ordinary business of the House. There were also changes in the procedures for

raising those questions. Resolutions which were ruled to constitute proper questions of privilege included: (1) the judging of elections and qualifications of Members (*e.g.*, the initial or final right of Members to their seats); the declaration of a vacancy where a Member-elect was physically unable to fulfill a qualification for office (*i.e.*, to take the oath of office, as in 1981); (2) the constitutional prerogatives of the House to originate revenue measures, including the origination in a conference report on a general appropriation bill of a new revenue provision not in either the House or Senate version (the House in that instance declining to assert its prerogative and an unprecedented resolution returning the measure to conference was tabled by one vote in 2000); (3) an assertion of the House's traditional authority to originate appropriations measures (as discussed in section 20 of chapter 13); (4) impeachment of the President or Vice President of the United States and resolutions incidental thereto; (5) presidential assertions of "pocket veto" authority during an intersession adjournment; (6) legal issues invoking House prerogatives (*e.g.*, establishment of the Office of House Chaplain), and the development of Rule VIII (beginning in 1981) to provide uniform procedures for House responses to subpoenas, requiring timely notifications to the Speaker and the House and automatic compliance, without the need for a House vote absent a notification or a question of privilege providing an alternative response; (7) the conduct of Members, Speakers, Officers and employees, including the investigation or punishment of specific or unnamed Members or offices (House Bank and Post Office in the 102d Congress) and the ethical propriety of remarks uttered in debate; (8) the integrity of House proceedings, including (a) the constitutional question of the vote required to pass a joint resolution extending the State ratification period of proposed constitutional amendment; (b) supervision of televised coverage; (c) length and other irregularities of specific electronic votes; (d) conduct of a former Member admitted to the House floor; (e) the accuracy of the *Congressional Record* and other House documents, and access to House records; (9) the integrity of committee proceedings, such as intentional violations of House or committee rules by committee chairmen (*e.g.*, "disapproving" release of subpoenaed documents and conduct of committee markups in 1998, and "disapproving" behavior of chairman in the conduct of an investigation in 2012, allegations that majority committee members had improperly withheld committee records from minority members in 2007, disapproving a committee chairman's conduct of a markup session in excluding minority members from committee rooms and refusing to recognize timely objections in 2003, improper dismissal of committee staff in 2005, refusing a proper request for a minority day of hearings, improper characterization in a committee report of amendments offered in 2005, and directing the Sergeant-at-Arms to alert

House personnel to dangers of electronic security breaches of committee computer and information systems in 2008); (10) comfort and convenience of Members, including proper attire, and structural and fire safety of the Capitol; and (11) alleged partisan determinations by the House Franking Commission in 2009.

Several precedents involved the Chair's denial of resolutions as questions of privilege based upon attempts to change House rules or upon mere assertions of constitutional authority of Congress to enact legislation. In particular a question of privilege was repeatedly denied to question the fairness and delay the implementation of an adopted rule or to prescribe a special order of business for the House or in committee, as otherwise any Member could attach privilege to any legislative measure or issue merely by alleging impact on the dignity of the House based upon House or committee action or inaction (See, *e.g.*, 2010). The proliferation of appeals from such proper rulings of the Chair suggested a departure from the narrow question of the propriety of the Chair's ruling and onto the merits of the matters sought to be made in order. In 2009, a resolution creating a select subcommittee of the Permanent Select Committee on Intelligence to investigate the Speaker's statement that she had not been properly briefed when Minority Leader by intelligence officials on enhanced torture techniques and contradicting those agencies' assertions, was held not to constitute a question of privilege since it merely questioned the opinion or statement of the Speaker, did not allege official misconduct or deception on her part, and implicitly called for an investigation of an outside agency.

Numerous rulings upheld the landmark precedents set by Speakers Thomas Brackett Reed and Frederick Gillett in 1890 and in 1921 that neither the enumeration of legislative powers (including declaration of war) in article I, nor the prohibition in the seventh clause of section 9 of that article against any withdrawal from the U.S. Treasury except by enactment of an appropriation, renders a measure purporting to exercise or limit the exercise of those powers as an order of business a question of the privileges of the House. Rule IX is concerned not with the privileges of the Congress as a legislative branch, but only with the privileges of the House as a House, and legislative business should be left to disposition under ordinary application of the standing rules of the House. Those rulings all served to distinguish between "questions of privilege of the House" and "privileged questions" relating to order of business.

Likewise, assertions in the guise of orders of business that congressional action or inaction is a matter of the dignity of the House's proceedings were held not to constitute questions of privilege. In the 111th Congress, there were denials of privilege to several resolutions complaining of special orders

adopted by the House denying individual Members the right to offer amendments and resolving that those amendments be made in order, and in 2010, on a resolution determining not to conduct legislative business during a "lame duck" session.

A change in Rule IX and a number of rulings clarified the procedural priority and renewal of questions of privilege over ordinary legislative business. In the 103d Congress, Rule IX was revised to authorize the Speaker to designate a time within a period of two legislative days for the consideration of a resolution to be offered from the floor by a Member (other than the Majority or Minority Leader, or as a revenue origination prerogative), as a question of privileges of the House after that Member has announced to the House his intention to do so and the content of the resolution. The rules change also divided the time for debate between the proponent and one of the party leaders or designees as determined by the Speaker. A Member recognized only on the question of whether a resolution qualifies as a question of privilege was not recognized to debate such resolution in 2005. The motion to refer such a resolution, although debatable under the hour rule, was not subject to a division of time in 1992 and 2006. The notice requirement served to reduce the element of surprise in the offering of questions of privilege except where a party leader insisted upon immediate consideration, and gave the Speaker flexibility in the announcement of timing of consideration so that the House would be on notice of the text of the resolution and ordinary legislative business could take precedence until the designated time prior to the end of the two day period. A variety of rulings established the priority of recognition on a question of privilege being immediately considered over ordinary legislative business. They included renewal on subsequent days of questions of privilege previously tabled, precedence over reports from the Committee on Rules and over motions to suspend the rules before consideration of that business has begun (although once those privileged business matters were pending, serve notice of intent to offer but not by consideration of questions of privilege themselves). The Speaker may, pursuant to his power of recognition, determine the order as between two questions of privilege. The Speaker may entertain unanimous-consent requests for "one-minute speeches" pending recognition for a question of privilege, since such requests, if granted, temporarily waive the standing rules of the House relating to the order of business. Several rulings reiterated the applicability and timeliness of ordinary motions to table (*e.g.*, following the reading of the resolution but prior to separate recognition for debate thereon), or of the motion to commit under Rule XIX clause 2 even following the ordering of the previous question on the question of privilege. Recent rulings also reiterate the Speaker's discretion to directly rule on whether resolutions

constitute questions of privilege at the time the resolution is called up (subject to possible appeal), rather than submitting those questions to the House.

Questions of Personal Privilege Involve the Rights, Reputation or Conduct of Individual Members. Such questions were held not in order during the pendency of questions of the privileges of the House, or in the Committee of the Whole, and the Speaker insisted upon advance examination of the material allegedly giving rise to the personal privilege question. Rulings confined those questions to specific allegations against individual Members, and not to general corruption in the House. Other rulings reiterated the distinction between words spoken in debate, which were not collaterally challengeable by personal privilege, on the one hand, and press accounts of one Member's remarks, on or off the floor, that impugned the character or motives of the Member claiming personal privilege, on the other. Three Speakers took the floor on questions of personal privilege to discuss allegations concerning their official conduct. On one occasion in 2008, a Member was recognized on a question of personal privilege to respond in advance to a reported censure resolution, prior to recognition of the Committee on Standards of Official Conduct chairman to offer a question of the privileges of the House proposing to censure that Member.

Chapter 12—Conduct or Discipline of Members, Officers, or Employees.

The change in the name of the standing Committee on Standards of Official Conduct to the Committee on Ethics was made in 2011. There was a series of rules of conduct changes generally applicable to all persons covered by the Code of Official Conduct, and of investigations and sanctions brought against such persons. There were changes in the standards of official conduct, in the procedures for enforcing those standards, and in the composition, jurisdiction and procedures of the Committee on Standards of Official Conduct, especially those adopted by the House in 1997 emanating from a task force on ethics reform.

In 1970, the Committee on Standards of Official Conduct was given legislative jurisdiction over lobbying activities as well as those involving the raising, reporting, and use of campaign funds. Subsequently in the 94th Congress, jurisdiction over campaign contributions was transferred to the Committee on House Administration. In the 95th Congress, jurisdiction over lobbying was transferred to the Committee on the Judiciary, and jurisdiction over House rules changes relating to all aspects of official conduct other than the Code of Official Conduct itself (now Rule XXIII), was transferred to the Committee on Rules. These additional rules addressed "Limitations

on use of Official Funds" (Rule XXIV), including official and unofficial accounts, use of the mailing frank and use of funds by Members not elected to the succeeding Congress, and "Limitations on Outside Earned Income and Acceptance of Gifts" (Rule XXV), including honoraria, copyrights, travel and other gifts. A separate rule on "Financial Disclosure" was amended in 1977 and then incorporated by reference from title I of the Ethics in Government Act of 1978 as Rule XXVI in 1979. While legislative jurisdiction over those rules beyond the Code of Official Conduct itself was transferred to the Committee on Rules, the Committee on Standards of Official Conduct (now Committee on Ethics) retained investigative, adjudicatory and advisory jurisdiction over application of those rules.

The Committee on Standards of Official Conduct (now Committee on Ethics) assumed investigative jurisdiction over these additional rules of conduct and was authorized to maintain the public financial disclosure reports (together with the Clerk) filed by Members, Officers, and employees. In addition, a Select Committee on Ethics was established to assist in the implementation of the new rules but only during the 95th Congress.

In 1977, a resolution establishing the House Select Intelligence Committee authorized the Committee on Standards of Official Conduct to investigate any unauthorized disclosure of intelligence-related information and report to the House on any substantiated allegations. Then in 1977, after the enactment of amendments to the Foreign Gifts and Decorations Act of 1966, the Committee on Standards of Official Conduct was designated as the "employing agency" for the House and authorized to issue regulations governing the acceptance of gifts, trips, and decorations from foreign governments.

In 1978, government-wide public financial disclosure requirements were mandated with the enactment of the Ethics in Government Act (Pub. L. No. 95–521). In 1979, with the adoption of House rules in the 96th Congress, the provisions of the House financial disclosure rule were replaced by those of the Ethics in Government Act and incorporated by reference in Rule XXVI clause 2 into House rules. The role of the Committee on Standards of Official Conduct was confined to review, interpretation and compliance of financial reports that henceforth were to be filed with the Clerk of the House.

Subsequently, the Ethics Reform Act of 1989 (Pub. L. No. 101–194) amending the Ethics in Government Act included a variety of ethics and pay reforms for the three branches of government that further expanded the responsibilities of the Committee on Standards of Official Conduct, including enforcement of the Act's ban on honoraria, limits on outside earned income, and restrictions on the acceptance of gifts. These reforms were coupled with

an automatic cost of living salary adjustment formula mechanism in the same law. The committee was also given the responsibility for consideration of any requests for a written waiver of the limits imposed by the House gift ban rule.

The House in the 105th Congress adopted a new Rule XXV clause 5 banning most gifts to Members, Officers, and employees. On the opening day of the 106th Congress, the House amended its gift rule to conform to the Senate gift rule which had been in effect since 1996, to allow covered persons to accept any gift of $50 or less in a calendar year or a gift with a cumulative value of $100 from any one source in a calendar year, not counting gifts of $10 or less toward the $100 annual limit.

In 2007, four new clauses barring official acts to influence private employment decisions on the basis of partisan political affiliation, use of any funds, with exceptions, for aircraft flights (subsequently amended in 2013 to permit certain private flights), conditioning "earmarks" on votes cast by another Member, and written statements supporting earmarks identifying intended recipients, were added to the Code of Official Conduct. In 2013, clause 8 was amended to include grandchildren of Members in the nepotism restriction.

Committee on Standards of Official Conduct (Now Committee on Ethics). Changes in the composition and procedures governing the Committee on Standards of Official Conduct were similarly extensive. The Ethics Reform Act of 1989 mandated a number of changes in the committee's organization and operation. The Committee established the Office of Advice and Education as part of the Committee but separate from its enforcement functions. Its staff provides recommendations to Members, Officers, and employees on standards of conduct applicable to their official duties. The 1989 Act also: (1) provided for the "bifurcation" within the committee of its investigative and adjudicative functions; (2) required that the committee report to the House on any case it has voted to investigate and that any Letter of Reproval or other committee administrative action be issued only as part of a final report to the House; (3) prohibited committee initiation of an investigation of alleged violations occurring prior to the third previous Congress unless related to a continuous course of conduct in recent years; (4) included a guarantee that any Member who is the respondent in any committee investigation may be accompanied by one counsel on the House floor during consideration of his case; and (5) imposed a limit of committee service of no more than three out of any five consecutive Congresses. The 1989 Act also increased the size of the committee's membership from 12 to 14, but that was superseded by the 1997 reforms that reduced the size of the committee from 14 to 10 members (always an equal number from each party).

Other changes in the committee's procedures included: (1) a House rule adopted effective in 1975 to permit a majority vote (instead of 10 of the then

12 members) to approve committee reports, recommendations, advisory opinions and investigations; (2) a House rule adopted in 1977 permitting a member of the committee to disqualify himself from participating in an investigation upon submission of an affidavit under oath; and (3) a House rule adopted in 1979 to prohibit information, testimony, the contents of a complaint or fact of its filing from being publicly disclosed unless specifically authorized by the full committee. Reforms adopted in 1997 granted discretion to the chairman and ranking member to make public statements about matters before the Committee, subject to consultation with each other and to the authority of the full committee, resulting in the availability of more information to the public. The authority of the ranking minority member to publicize a legal memorandum prepared by Committee on Standards of Official Conduct staff evaluating the relationship between that committee and a proposal to create an Office of Congressional Ethics became the subject of a question of personal privilege in 2008 where the issue of consultation between the chairman and ranking minority member was factually disputed.

In 1997, after seven months of study, the House adopted with amendments the recommendations of the Ethics Reform Task Force which had been established informally by the Majority and Minority Leaders in February of that year. The bipartisan 10-member task force was mandated to review the existing House ethics process and to recommend reforms. During the time of its deliberations, the House by unanimous consent approved a 65-day moratorium on the filing of new ethics complaints (but not questions of privilege) to enable the task force to conduct its work "in a climate free from specific questions of ethical propriety." The moratorium was extended several times prior to adoption of its recommendations. The major changes in the ethics process adopted in 1997 included: (1) changing the way non-Members file complaints with the Committee on Standards of Official Conduct by requiring them to have a Member of the House certify in writing that the information was submitted in good faith and warrants consideration by the committee; (2) decreasing the size of the committee from 14 members to 10; (3) establishing a 20-person pool of Members (10 from each party) to supplement the work of the Committee on Standards of Official Conduct as potential appointees to investigative subcommittees that might be established by the committee; (4) requiring the chairman and ranking member to determine within 14 calendar days or five legislative days, whichever comes first, if the information offered as a complaint meets the committee's requirement; (5) allowing an affirmative vote of two-thirds of the members of the committee or approval of the full House to refer evidence of law violations disclosed in a committee investigation to the appropriate State or Federal law enforcement authorities (prior to which only a

vote by the full House permitted such referrals); (6) providing for a nonpartisan, professional committee staff; (7) allowing the ranking minority member to have an equal opportunity to place matters on the committee's agenda; and (8) decreasing the maximum service on the committee from six to four years during any three successive Congresses and requiring at least four members to rotate off the committee at the end of each Congress (a requirement changed back in the next Congress in 1999 to the 1989 requirement eliminating the off-rotation requirement and extending service back to three Congresses out of five).

In 2005, the House for the first time adopted rules changes recommended only by the majority party conference on opening day affecting the Committee on Standards of Official Conduct's procedures in handling allegations against a covered person. The House mandated adoption of committee rules by requiring dismissal of a complaint rather than automatic forwarding to an investigative subcommittee following the full committee's being equally divided (or other inaction) for 45 days. Three months later, the changes were dropped when the House, following extended partisan recriminations, deleted all amendments to the committee's procedures that had been adopted on opening day. The emphasis in all these rules additions and changes was to adjust acceptable standards of official conduct as circumstances revealed improprieties or appearances of improprieties, "conflicts of interest," or the need for disclosure of finances.

Numerous actions and investigations were undertaken by the committee and by the House. Since virtually all of the Committee on Standards of Official Conduct's activities transpired since the publication of chapter 12, a more complete history of that committee and of House disciplinary actions are further referenced in the *House Ethics Manual* republished in the 110th Congress and in that committee's subsequent activities reports. The Committee on Standards of Official Conduct developed rules providing several options at the conclusion of any formal investigation. It has either recommended no further action, or has issued a "Letter of Reproval" or a "Letter of Admonition" without recommending action by the full House, or has recommended one or more sanctions if it determines a rules violation has occurred. In several Congresses the committee issued public "Letters of Reproval," a sanction created by the committee and first used in 1987 as an expression that the conduct was improper but that no further action is required by the House. The 1989 Act required that such letters be publicly carried as part of a final report to the House. The committee has resolved several complaints by means of a letter to a respondent without a formal investigation. The first such letter of admonishment was sent to the Majority Leader in 2004 at the conclusion of a formal investigation of allegations

related to proceeding during a vote on a conference report in 2003. Other letters of admonishment include one to a Member in 2009 who was further investigated for other alleged ethics improprieties in 2010 resulting in a censure by the House.

The sanctions recommended by the Committee on Standards of Official Conduct since 1975 included expulsion, censure, reprimand or admonishment, a fine, and may include denial or limitation of any right, privilege, or immunity of the Member that is permitted under the Constitution, or any other sanction deemed appropriate by the committee. Since the Civil War, two Members have been expelled by the House by the constitutionally required two-thirds vote. One Member was expelled by the House in 1980 following his criminal conviction in the Federal Bureau of Investigation's Abscam sting operation for bribery and conspiracy, and one Member was expelled in 2002 following his criminal conviction for bribery, racketeering, fraud, and tax evasion.

Five Members have been censured since 1975. Those proceedings included the Speaker's reading of the committee's finding and censure pronounced to the Member standing in the well. In the 96th Congress, two Members were censured by the House as follows: (1) for unjust enrichment by kickbacks from employees' clerk-hire payments, that Member was also ordered to repay the amount with interest; and (2) for transferring campaign funds into official and personal accounts. In the 98th Congress, two Members were censured for improper relationships with House pages in a prior Congress. In the 111th Congress, in a "lame duck" session in 2010, a Member who had previously received a letter of admonition was censured upon recommendation of the Committee on Standards of Official Conduct on eleven findings including nondisclosure of financial assets, use of official letterhead for personal gain, failure to pay Federal income tax, and improper arrangement for rental properties. That action followed rejection of an amendment proposing reprimand in lieu of censure.

Nine Members have been reprimanded, beginning in 1976, where the adoption by the House of the committee's report constituted that punishment. Those actions included: a failure to report certain financial holdings in the 94th Congress; three reprimands in the 95th Congress following an investigation of improper acceptance of things of value from the Republic of Korea; "ghost voting" and "ghost employees" by a Member in the 100th Congress; seeking dismissal of parking tickets and for misstatement of a personal friendship. In the 105th Congress, the Speaker was reprimanded and ordered to reimburse a portion of the costs of the Committee on Standards of Official Conduct's investigation. In 2012, a Member was reprimanded for use of congressional staff for campaign fundraising, a violation of statute and House rules.

The committee has also noted infractions not meriting sanctions by at least ten Members. Approximately 20 Members of the House have resigned after court convictions, after inquiries were initiated by the committee or after charges were reported before House action could be completed. For example, in 1998, a report from the Committee on Standards of Official Conduct on the conduct of Rep. Jay Kim of California which did not recommend a House sanction but was merely informational, was filed through the hopper with the Clerk rather than from the floor as privileged. That Member had pleaded guilty to violations of Federal election campaign laws in prior campaigns waged before he became a Member and had been sentenced to "house arrest" enforced by an electronic tracking device worn on his ankle even while carrying out his duties as a Member. In the Committee on Standards of Official Conduct report, it was acknowledged that the House could investigate some conduct engaged in prior to the respondent becoming a Member.

In the 98th Congress, the committee conducted an investigation of alleged improper alterations of House documents. In the 99th Congress, the committee investigated allegations of improper political solicitations. No Members were implicated in these cases.

The full House itself referred several cases to the Committee on Standards of Official Conduct for investigation, upon the adoption of resolutions raised as questions of the privilege of the House. In the 102d Congress, the committee was referred allegations of impropriety involving the "bank" of the House operated by the Sergeant-at-Arms and reported that 325 current or former Members had incurred overdrafts during the 30-month period of review, but no further House action was taken. Also in that Congress the committee formed a "task force" to review evidence to determine the necessity of an investigation of the operations of the House Post Office. The committee deferred any action at the request of the Department of Justice. Several incidental questions relating to that deferral of action and cooperation with a special prosecutor were raised as questions of privilege. Federal prosecutions of some Members, Officers, and former Members resulted from the committee's investigations.

In 2009, the House adopted a motion to refer a resolution calling upon the Committee on Standards of Official Conduct to initiate an investigation of allegedly improper political contributions to unnamed Members in return for "earmarks" included in appropriation bills. The House also laid on the table several previous and subsequent resolutions of the same import.

Some questions of privilege offered on the floor of the House relating to the official conduct of a specific Member were adversely disposed of by being laid on the table without debate (in 1998, 2003, 2008, and 2012), including

three committee chairmen, and the Majority Leader in 2006, while others were referred to the committee on debatable motion in 2010.

In all, the Committee on Standards of Official Conduct took some form of action on cases involving at least 68 Members through the 110th Congress, including two Speakers and a Majority Leader, and on several additional Members through the 112th Congress (See H. Rept. 111–707 and H. Rept. 112–690). Its actions ranged from public acknowledgment that it was considering the merits of a complaint against a Member, to the dismissal of complaints, to the recommendation of censure, expulsion or other punishments.

There was a continuation of an investigation of a Member into a new Congress, interrupted then by an internal investigation of improprieties by Committee on Standards of Official Conduct staff during the inquiry leading to appointment of an independent counsel by the committee in 2011. In 2012, six members of the committee (five from one party) who had served in the prior Congress' investigation recused themselves, and the Speaker appointed temporary replacements. Finally, in 2012, the complaint against that respondent Member was dismissed by the Committee on Ethics following a public hearing but letters of reproval were transmitted to an employee who was her grandson. The committee had earlier unanimously determined that the respondent had not been denied Fifth Amendment procedural due process by the prior committee's staff misconduct, since she had been afforded notice of the charges, a proper forum and an opportunity to be heard.

The Committee on Standards of Official Conduct (now Committee on Ethics) since its establishment has not been considered the sole investigative entity by the House. In the 105th Congress the House created a select Ethics Committee consisting of returning members of the Committee on Standards of Official Conduct from the prior Congress to complete an investigation of the Speaker's conduct begun in the prior Congress. In the 110th Congress the House created a select committee to investigate a particular voting irregularity by adoption of a resolution offered by the Minority Leader as a question of privilege.

The alleged lack of "self discipline" by the House despite the empowerment contemplated by the Constitution resulted in increasing demands for outside entities to be involved in the complaint and investigative processes. The House since 1989 rejected the ability of private citizens or groups to file complaints with the Committee on Standards of Official Conduct. Resulting pressures for the establishment of an independent Office of Congressional Ethics to publicly forward outside complaints to the Committee on Standards of Official Conduct resulted in the establishment in 2008 of such

an entity, but without subpoena authority. It consisted of six non-Member commissioners and two alternates appointed by the Speaker and Minority Leader acting jointly. The office was not incorporated into standing rules but was reestablished as a separate part of the rules package in the 111th Congress, when it first became operational, and was continued in the 112th Congress.

In 2008, the House passed a Senate bill enacted into law requiring the Department of Justice to investigate the conduct of an unnamed Member involving acceptance of a campaign contribution in return for enactment of a highway provision benefiting the contributor. The provision which originated in the Senate and debated in the House was enacted (Pub. L. No. 110–244) notwithstanding the normal avenue of an internal House Committee on Standards of Official Conduct investigation (the initiation of which was not then publicly known to the House). Enactment of that law acknowledged again the separate constitutional role of the executive branch in investigating alleged violations of Federal criminal law by current or former Members. In 2010 the Department of Justice discontinued its investigation, and the Federal Bureau of Investigation released details in 2012.

Then in 2012, Congress passed a law criminalizing the use by Members of Congress or other Federal officials of "insider trading" on information received during executive sessions and then relied upon in private stock investments. The law also required more periodic public disclosure of stock transactions. This followed allegations of such conduct by a sitting Member, which was investigated by the Office of Congressional Ethics but not forwarded to the Committee on Ethics.

Rule XXIII clause 10 was added to the Code of Conduct in the 94th Congress in 1975 to encourage Members convicted of felonies to refrain from voting in the House and from any committee business; however, no automatic suspension from House or committee proceedings was contemplated out of a constitutional concern for a deprivation of voting representation of constituents.

In addition to the evolution of House rules relating to the discipline of Members, both party caucuses adopted rules relating to the roles of those entities in the selection process of floor or committee leadership positions. Both the Democratic Caucus and the Republican Conference provided "step-aside" procedures (continued in subsequent Congresses) by which felony-indicted leadership Members would be suspended from their positions, and by which Members convicted of felonies or censured by the House would be "replaced" and ineligible to serve in any leadership position for the remainder of that Congress.

Appendices in the *House Ethics Manual* of 2008 more recent than those in the appendix to chapter 12 carry Advisory Opinions of the Committee on

Standards of Official Conduct since 1975 of all published "Advisory Memoranda." Many advisory "opinions" were furnished privately to Members on request and were not published.

Chapter 13—Powers and Prerogatives of the House.

Chapter 13, published in 1977, was not entirely focused on the powers and prerogatives of the House, as a House, but included material on the powers of Congress emanating from the Constitution. For example, in section 2 relating to the admission of States into the Union, the House and Senate have a co-equal responsibility under article IV, section 3, clause 1 to enact statehood laws, and none have been enacted since the 1977 publication. Other actions by both Houses are contemplated in the Constitution, emanating from article I powers conferred upon Congress or from other specific provisions of the Constitution including the Twelfth Amendment. Procedures under the Twelfth Amendment utilized in 2001 and in 2005 during Joint Sessions and separate House and Senate sessions under 3 USC §§ 15–19 to count the electoral votes for President and Vice President, were noteworthy. Notifications to the two Houses under the Twenty-fifth Amendment of temporary self-proclaimed presidential disabilities in 1985, 2002, and 2007 also fall into that category. Beginning in 2011, House Members were required to submit descriptions of constitutional authority for each introduced bill into the *Congressional Record* on the date of introduction (Rule XII clause 7).

Recent precedents ratified the landmark rulings of Speaker Thomas B. Reed in 1898 and Speaker Frederick Gillett in 1921 and reiterated that powers conferred upon Congress under article 1, section 8 of the Constitution, and under the prohibition in the seventh clause of section 9 of that article against any withdrawal from the U.S. Treasury except by enactment of an appropriation, do not render a measure purporting to exercise or limit the exercise of those powers a question of the privileges of the House in disregard of the ordinary rules of the House.

War Powers. There was utilization of expedited procedures under the War Powers Resolution of 1973, and the refinement of those procedures by laws enacted subsequent to 1977. For example, in 1983, the two Houses passed a joint resolution providing for expedited consideration in the Senate (but not in the House) of bills or joint resolutions requiring the removal of U.S. forces engaged in hostilities outside U.S. territory without a declaration of war. Congress has also engaged in procedures utilized for the consideration of "specific" authorizations for the use of military force, not labeled "declarations of war," since 1977. Despite the U.S. Supreme Court decision in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983),

declaring unconstitutional under the "presentment clause" simple or concurrent resolutions disapproving or revoking executive actions, the Congress has not repealed and the House has not superseded section 7 of the War Powers Resolution of 1973 (50 USC §§ 1541–1548). The House has to various extents utilized its expediting procedures under section 5(c) in 1993 (Somalia), 1998 (Bosnia and Herzegovina) and 1999 (Yugoslavia) to consider concurrent resolutions purporting to remove military forces from specified areas of hostilities. The House and Senate have also employed joint resolutions on several occasions to authorize the use of force without regard to privileged procedures in the Act. In 2010, the House utilized a special order from the Committee on Rules to permit consideration of an otherwise privileged concurrent resolution relating to the removal of military forces in Afghanistan. In 2011, the House rejected two concurrent resolutions made in order by special orders relating to use of military force in Libya.

Beyond the use of "regular order" (motions to suspend the rules or special orders from the Committee on Rules) for consideration of declaration of war measures, and beyond the application of procedures under the War Powers Resolution enacted as an exercise in rulemaking, the Speaker in 1995 suggested that the mere conferral of authority on Congress to declare war does not permit questions of privilege to replace ordinary business in order to immediately raise that question. Speaker Newt Gingrich on that occasion, relying on Speaker Reed and Speaker Gillett's rulings, reminded the House that individual Members could not bring use of military force matters as questions of the privileges of the House despite conferral upon Congress of the exclusive authority to declare war, as that question did not uniquely involve the prerogatives of the House as a House.

Funding Restrictions on Military Activity. In a unique procedure adopted by the House in 2007, the House made in order in a section of a special order reported from the Committee on Rules providing for the consideration of a Senate amendment to a supplemental appropriation bill, an amendment consisting of the text of an introduced bill expressing policy on the use of force in Iraq or Afghanistan, limiting the use of funds for military action and requiring withdrawal of troops in Iraq, on that subject to an anticipated subsequent supplemental appropriation bill the next year by the chairman of the Committee on Appropriations. It marked the first time a special order had anticipated a specific amendment to be offered to a subsequent generally described measure not yet introduced or before the House. The power of the purse was thus being utilized to influence military action by a temporary restriction on funds and by prioritizing that issue on a subsequent bill through an anticipatory waiver of points of order.

Section 12 of chapter 13 (Presidential Proclamations) was published in 1977 to include proclamations relating to national security. While those materials are more historical than precedential from the standpoint of House

practice, they led to presidential assertions of power as Commander in Chief under article II, section 2 of the Constitution, such as by President George W. Bush in 2007, to overcome House and Senate subpoena efforts relating to issues of torture and warrantless wiretaps under the Foreign Intelligence Surveillance Act. Those assertions took the form of "signing statements" accompanying enactment into law of a measure prohibiting torture, wherein the President announced his intent not to enforce a provision banning torture of alleged terrorists and to oppose possible contempt proceedings in Congress.

House Prerogative to Originate Revenue Bills. On at least thirty occasions since the publication of this section in 1977, the House adopted a "blue-slip" resolution offered as a question of the privileges of the House (usually by a member of the Committee on Ways and Means) alleging infringement of article I, section 7 of the Constitution by the Senate and returning to that body a Senate bill or amendment originating revenue legislation. Those Senate infringements included: provisions in bills providing tax-exempt or other special status to persons or entities; numerous provisions prohibiting or limiting the importation of dutiable commodities subject to tariff, thereby reducing revenues; Senate amendments to general appropriation bills limiting funds for the Internal Revenue Service to enforce a requirement in law (thereby reducing general revenue) or proposing a user fee raising revenue to finance broader activities of the agency imposing the levy; a bill repealing a fee that would otherwise raise revenue; an amendment to the criminal code that would make it unlawful to import certain assault weapons that were dutiable under separate tariff law. The assault weapons "blue-slip" resolution was contested in the Senate as not having been an amendment to the tariff law. That position was countered in parol argument by the U.S. Customs Service that they were sworn to uphold all U.S. law bearing on importations, including criminal provisions that although not directly denying entry into customs territory as a matter of tariff law, nevertheless effectively resulting in denial of entry as a matter of criminal law and in the loss of tariff revenues on otherwise dutiable items. In 2010, the House for the first time returned to the Senate from the Speaker's table several (five) infringing measures by adoption of a single (divisible) resolution offered as a question of privilege. In 2012, one resolution combined two alleged Senate infringements.

The House in 1983 adopted Rule XXI clause 5(a) prohibiting consideration of any amendment, including any Senate amendment, proposing a tax or tariff measure during consideration of a bill reported by a committee not having that jurisdiction. The rule was meant to augment the question of privilege procedure by permitting the House to show its disagreement to a

particular Senate tax or tariff amendment (especially to appropriation bills) by sustaining a point of order rather than requiring return of the entire bill and all Senate amendments to the Senate by invoking article I, section 7 of the Constitution.

In 1991, the Speaker announced a new policy distinguishing between tax and tariff provisions properly originating in the Committee on Ways and Means, on the one hand, and user or regulatory fee measures originated by other committees as part of regulatory schemes to offset the costs of the regulatory service, which also raised revenue for the assessing agency, on the other. The Speaker acknowledged the constitutional prerogative of the House to originate revenue in the context of protecting the jurisdiction of the Committee on Ways and Means to receive "an appropriate referral of broad-based fees which could be recast as excise taxes." The Speaker also asserted that "the constitutional prerogative of the House to originate revenue measures will continue to be viewed broadly to include any meaningful revenue proposal that the Senate may attempt to originate." The previous year, the chairman of the Committee on Ways and Means during debate on a point of order had criticized the Speaker for not having adequately defended the prerogative of his committee to be the originator of all revenue legislation.

In 1993, the House amended Rule IX to permit questions of privilege relating to the House prerogative to originate revenue legislation to continue to be offered in preference to all other business without the notice requirement otherwise imposed at that time on all Members other than the Majority and Minority Leaders. This was in recognition of the potential immediate need to respond to Senate infringements, without awaiting the Speaker's scheduling within two days following notice to the House.

In 2000, the House by a single vote margin laid on the table a resolution asserting that a conference report (on a House general appropriation bill), on which the House was acting first, had originated revenue provisions in derogation of the constitutional prerogative of the House. The matter newly inserted by the conferees was a direct amendment to a corporate tax provision in the Internal Revenue Code, and had not been in either the House bill or Senate amendment sent to conference. The resolution offered as a question of privilege by the chairman (with the support of the ranking minority member) of the Committee on Ways and Means in a bipartisan assertion of the House constitutional prerogative, was nevertheless opposed by the majority leadership. This action (laying the resolution on the table without debate) represented the first rejection of an assertion by the Committee on Ways and Means of the House prerogative in modern Congresses. The tax provision remained in the final version of the bill, which was subsequently vetoed by the President. Thus no collateral challenge to the law in

court would have been possible. The fact that the bill had originated in the House, that the Senate had not originated the revenue provision, and that the House had acted first on the conference report, all mitigated against the contention that the Committee on Ways and Means should have originated the provision in a House-passed bill. The effort by the Committee on Ways and Committee chairman and ranking minority member, which would (by an unprecedented recommittal) have returned the bill to the conference committee and not to the Senate, was based as much on a committee jurisdictional argument as on a House constitutional prerogative. The House had waived all points of order against the conference report, and thus no separate scope or revenue point of order in the House lay against inclusion of that new matter in the conference report. Nevertheless the House by tabling the question of privilege resolution declined to honor its revenue committee's bipartisan recommendation.

On a number of occasions, the Senate passed its own general appropriation bill prior to action by the House, but did not message the Senate measure to the House, instead honoring the traditional claim of the House to originate appropriation bills. The Senate accomplished this by entering orders holding the Senate bill at the desk and then substituting its text as an amendment to the companion House measure if and when received. At no time did the Senate originate a general or continuing appropriation measure and message it to the House. On one occasion the Senate did, however, amend a dormant House-passed general appropriation bill to convert it into a short-term continuing resolution, and the House concurred in the Senate amendment in 2010 by adoption of a special order of business.

On another occasion in the 104th Congress, the chairman of the House Committee on Appropriations introduced through the hopper a resolution purporting to return to the Senate a bill and amendments thereto "to assure that all Federal employees work and are paid" during a partial government shut-down. The Senate amendment to the House amendment contained a direct appropriation of funds. The "blue-slip" resolution was referred by the Speaker to the Committee on Appropriations, and the House did not act on the resolution. The Senate bill had been amended by the House by unanimous consent and the Senate then had amended the House amendment to include a direct appropriation. There was no further action by the House on the Senate amendment. The introduction of the "blue-slip" resolution was intended to symbolize the prerogative of the House to originate appropriations although it was not called up as a matter of privilege.

Relations with the Executive Branch; Faithful Execution of Laws. Article II of the Constitution requires the executive branch to faithfully execute Federal law. Further, a provision of law (28 USC § 530D) confers discretionary authority upon the President to direct the Department of Justice

to refrain from defending the constitutionality of Acts of Congress in Federal court. Litigation challenging the constitutionality of the Defense of Marriage Act of 1996 (defining marriage for all purposes of Federal law to be between a man and a woman), signed into law by former President Clinton and supported in court by former President George W. Bush, led the Attorney General to notify Congress by executive communication of President Obama's declination to continue such support in 2011. The BLAG voted, by a 3-2 margin, to retain private counsel. The propriety of the Department of Justice in refusing to defend the validity of that Act of Congress where a reasonable argument existed supporting its constitutionality (as ruled by several Federal courts) and then to actively participate in litigation against the statute, was a political determination with unforeseen precedential impact under article II and was challenged by the Bipartisan Legal Advisory Group counsel in a petition for *certiorari* in *BLAG v. Gill*, case no. 10–2204 (1st Cir. 2012). The declination was challenged again in the subsequent Congress when on the opening day of the 113th Congress, the House adopted a separate order as part of its rules package asserting the authority of BLAG to continue to represent the House in that litigation. There the Court had requested briefing on the question of BLAG's standing (even where the minority Members of that entity did not support participation).

Congressional Review Statutes. Congress has reserved itself a proliferation of statutes that allows an absolute or limited right of review by approval or disapproval of actions of the executive branch, of independent agencies or other governmental entities such as the D.C. City Council. A compilation of those laws is contained in section 1130 of the *House Rules and Manual* in each Congress, especially those current laws which prescribe special procedures for the House and/or Senate to follow when reviewing executive actions. In addition to the Executive Reorganization Act and the War Powers Resolution, Congress subsequently enacted at least thirty statutes and amended some of them to require joint resolutions of approval or disapproval, rather than concurrent or simple resolutions, in light of *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). In that case the Supreme Court held unconstitutional as in violation of the presentment clause of article I, section 7 of the Constitution, and the doctrine of separation of powers the provisions of the Immigration and Nationality Act contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House. That same year, the U.S. Supreme Court (*Process Gas Group v. Consumer Energy Council*, 463 U.S. 1216 (1983)) summarily affirmed several lower court decisions invalidating provisions contemplating disapproval of executive actions by concurrent or simple resolution or by committee action.

On one occasion in 2008, the House disabled for the remainder of the Congress the privileged procedure contemplated by section 152 of the Trade Act (19 USC § 2192) for nonamendable consideration of a specific bill implementing presidential determinations under section 203 of that law relating to free trade with Colombia, by utilization of a special order from the Committee on Rules. It marked the first time that the House rendered inapplicable expedited procedures under any review statute on a particular bill for the remainder of an entire Congress. It also meant under that law, where only one presidential message per nation can be considered under a "fast-track" procedure in any Congress, but where a subsequent House nevertheless wants to consider similar legislation anew, it cannot utilize the expedited procedure, one ramification of which is the preclusion of a motion to recommit. This one-time "fast-track" procedure was acknowledged in 2011 when a new Congress again considered a bill on Colombian free trade under a special rule that permitted a motion to recommit (while also providing for separate consideration for the first time of two other free trade bills—with South Korea and Panama—which special order was able to deny the motion to recommit under the Trade Act).

Subsequently in 2008, the House by special order disabled another statutory expedited procedure which provided for "a bill to respond to a Medicare funding warning" relating to excess general revenue Medicare funding, submitted by the President under 31 USC § 1105. Under that law, only a special order which solely waived the expedited procedure therein, and contained no other procedural matter, could be considered. Then, consistent with that restriction, the House in its rules package for the next Congress in 2009 again disabled that expedited procedure for the entire Congress (which it was permitted to do because the exclusivity requirement had not yet been readopted as a rule on opening day). The disabling by separate order was not continued beginning in 2011.

The Congressional Review Act of 1996 (5 USC §§ 801–808) provides for expedited procedures on an introduced joint resolution of disapproval of any one major agency rule and regulation once finally promulgated and submitted to Congress. Under the Act, Congress has 60 legislative days to exercise a regulatory veto power by joint resolution under expedited procedures, after which the proposed regulation will go into effect. The law has been seldom utilized. Between 1996 and 1999, for example, only seven joint resolutions of disapproval were introduced in Congress pertaining to five of 186 major regulations (those having at least a $100 million annual impact) promulgated during that time. None of those joint resolutions became law. From the 105th Congress through 2007, only 43 joint resolutions of disapproval were introduced in the House and Senate. None of the 25 House

joint resolutions passed the House. Three of the 18 Senate joint resolutions passed the House. Altogether, the disapproval mechanism established by the Act invalidated one rule (Pub. L. No. 107–5) through 2010. Nevertheless the law remains an example of joint exercise of rulemaking primarily to enable the Senate to expeditiously consider joint resolutions disapproving specific agency regulations—by permitting 35 Senators to sign a discharge motion to bring it to the Senate floor for an up-or-down vote following 10 hours of debate and without amendment. The statute contains no comparable procedures for expedited House action (except to permit final votes on Senate companion measures if received in the House), preferring to retain flexibility for the leadership through utilization of the Committee on Rules to make in order a disapproval resolution reported from committee or to discharge a committee of jurisdiction if necessary and including language deeming a proposed regulation to have been finally submitted for review in 2012. While the law was enacted to symbolize the ability of Congress to respond to major agency rulemaking regimes without micromanaging their formulation, its lack of utilization shows that it was not a panacea in addressing regulatory excesses or inadequacies. The assumption that the President would veto any joint resolution disapproving a regulation emanating from an agency whose membership and policy direction he controls, and that a two-thirds vote of each House would be required to enact the disapproval over his veto, leads to this conclusion. Appropriation bills to limit funding to implement specific regulations were more often the vehicle utilized.

Public debt limit increases became a fourth layer of annual decision-making linked to the budget and appropriations processes, under partisan pressure threatening government bond default. The Budget Control Act of 2011 (BCA) enacted three future contingencies for debt limit increases to impose an expedited disapproval scheme so that presidential debt limit increases up to $1.2 trillion for the remainder of that Congress (and presidential term) would go into effect linked to comparable reductions in spending, unless a possible veto of the President's proposed increases was overridden. Those disapproval efforts under expedited procedures failed of enactment in the Senate, although passing the House, preventing bond defaults. On the spending side under the BCA (which revived some "sequestration" procedures contained in the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings, Pub. L. No. 99–177) permitted to expire in 2002), across-the-board deficit reduction mandated in both military and other discretionary spending would result in sequestration of those amounts unless Congress enacted comparable specific cuts, and discretionary spending caps on appropriations were imposed by that law for the next ten years. The option of revenue enhancement as a deficit reduction tool was minimized by the BCA and as the House changed its "Pay-As-You-Go" rule to

a "Cut-As-You-Go" rule and adopted other rules requiring direct spending reductions in all bills, including "deficit reduction lockboxes" in appropriations bills, as the only offset option. At the end of the 112th Congress, availability of those revived sequestration procedures was delayed by law for three months.

The BCA in part expedited both debt limit extensions and spending cuts of at least equal amounts over ten years (either through across-the-board sequestration beginning in 2013 or future legislation), and created a bipartisan joint select committee to recommend further deficit reduction measures (which could include revenue, entitlement and other spending changes without procedural challenge) by a date certain in 2011. When that date was not met, the expedited procedures for floor consideration were not activated and Congress was left to address the specifics after voting by the end of that year on an unspecified constitutional amendment requiring a balanced budget before the rest of the law took effect. Such a constitutional amendment failed to pass both Houses.

Chapter 14—Impeachment.

The House saw an increase in impeachment proceedings during this time. Specifically, six Federal judges and a President of the United States were impeached by the House during the period covered at this writing, and four judges were convicted by the Senate and removed from office. A fifth impeached judge resigned in 2009 pending a Senate trial, causing the House and Senate to adopt resolutions discontinuing the trial. In 2010, a Federal judge was impeached and removed from office based on official misconduct occurring in part prior to his term as a Federal judge.

The constitutional principle was affirmed that impeachment was a remedial process—that of removal from public office and possible disqualification from holding further office in order to maintain constitutional government—and was not primarily a punitive process. In 1998, the Speaker pro tempore ruled that a motion to recommit four articles of impeachment against President William J. Clinton to the reporting Committee on the Judiciary with instructions to amend the resolution to provide instead for censure of the President was not germane, being a punitive matter not constitutionally contemplated and not ever having been separately permitted as a question of the privileges of the House under House precedent. The Chair's ruling was appealed and that appeal was laid on the table (a separate resolution of censure having previously been rejected in the Committee on the Judiciary following its reporting of the four articles of impeachment). Thereby, the constitutional separation of powers, which specifically permits impeachment but does not include censure or other expressions of no confidence of an executive or judicial official as a remedial option, was held to

foreclose that matter as a question of privileges of the House and to render it nongermane as an amendment to an impeachment resolution. The pending impeachment resolution itself had been called up as privileged (as reported by the Committee on the Judiciary) under the precedents permitting impeachment to be a privileged question whether reported or raised on the floor by any Member.

Excerpts from the report of the Committee on the Judiciary recommending four articles of impeachment against President Bill Clinton (H. Rept. 105–830) and excerpts from the reports from that Committee on the Federal judges who were impeached by the House, indicated the recommended grounds for impeachment ("high crimes and misdemeanors") in each case. The examples of impeachment focused on three broad categories of impeachable conduct as voted by the House: (1) abusing or exceeding the lawful powers of the office (allegations that President Clinton obstructed justice in the course of a Federal civil action); (2) behaving officially or personally in a manner grossly incompatible with the office (allegations that President Clinton committed perjury before a Federal grand jury); and (3) using the power of the office for an improper purpose or for personal gain (allegations in 1986 that Federal Judge Harry Claiborne had falsified tax returns, and in 1989 that Federal Judges Alcee Hastings and Walter Nixon had criminally conspired to gain unjust enrichment or to influence prosecutions—on some of which allegations Judge Hastings had been acquitted in a Federal criminal prosecution). Under categories (1) and (2), the House refused to adopt an article of impeachment reported from the Committee on the Judiciary alleging that President Clinton had in contempt of that committee abused his office by inadequately responding to 81 written questions posed by the Committee on the Judiciary during the impeachment inquiry.

The impeachment by the House of Judge Alcee Hastings in 1988 demonstrated again that the final adjournment of that Congress did not prevent his trial (and removal from office upon conviction) by the Senate in the next Congress. This precedent, (ironically having its roots in the British impeachment of Warren Hastings by the House of Commons in one Parliament and his trial in the House of Lords in the next Parliament in 1791—furnished in detail to the House Parliamentarian by Mr. James Hastings, Journal Clerk of the House of Commons in 1998), served to support an impeachment trial in the Senate of President Clinton in the subsequent 106th Congress following the House impeachment at the end of the preceding Congress, once the House managers of the impeachment charges were reappointed by a vote of the House in that subsequent Congress in 1999.

The materials leading to the impeachment proceedings against President Clinton were formally presented to the House by Independent Counsel Kenneth Starr on September 9, 1998, in the form of 36 boxes of secret grand

jury proceedings examining perjury and obstruction of justice allegations under 28 USC § 595(c) in a Federal civil action. The documents were not immediately available to Members as committee documents, but were in the custody of the Sergeant-at-Arms until the House, by adopting a special order from the Committee on Rules, referred them to the Committee on the Judiciary. The day after receipt, the Speaker made an anticipatory announcement with the concurrence of the Minority Leader about proper decorum in the House during subsequent debates. However, admonition against personal references to the President was to be repeated several times during subsequent debates. On September 11, 1998, the House adopted a special order reported from the Committee on Rules which provided: (1) for referral of the matter to the Committee on the Judiciary; (2) that a designated portion of such material be immediately made public (printed as a House document); (3) that the balance of the material be deemed received in executive session but be released from that status by a date certain except as otherwise determined by the committee; (4) that additional material compiled by the committee be deemed to be received in executive session unless received in open session or subsequently made public by affirmative vote of the committee; and (5) that access to executive-session material of the committee during the "review" of the material be restricted to committee members and designated committee staff and not to all House Members as otherwise permitted by House standing rule.

A development of the significant procedural events leading up to the impeachment of President Bill Clinton continued on September 23, 1998, when a resolution offered from the floor directing the Committee on the Judiciary to release executive-session material referred to it by a special rule of the House was held to propose a collateral change in the rules and therefore not to constitute a question of the privileges of the House.

Thereafter, many of the procedures invoked by the House Committee on the Judiciary upon its receipt of the materials closely followed those previously adopted by the House and by that committee in the 1974 impeachment investigation of President Richard Nixon. A deliberate attempt to mirror those documented precedents and proceedings was made by the House Committee on the Judiciary and the majority leadership in 1998, as to avoid allegations of excessive partisanship during the investigation. That attempt was demonstrated in 1998 when the House adopted a resolution reported by the Committee on the Judiciary called up as a question of privilege authorizing an impeachment investigation by that committee. As was the case in the Nixon investigation in 1974, the ability of the Committee on the Judiciary to recommend its own empowerment by reporting and calling up, without three day report availability, resolutions in the House as questions of

privilege—authorizing an impeachment investigation—is unique to that committee as a matter of constitutional impeachment prerogative and urgency.

Other committee inquiries ordered by the House normally result from privileged reports from the Committee on Rules, rather than from reports of the same committee seeking to conduct the investigation. It was another affirmation of the precedent that a committee to which has been referred privileged resolutions for the impeachment of an officer may report and call up as privileged resolutions incidental to consideration of the impeachment question, including conferral of subpoena and deposition authority. The counsel deposition authority was based on a previous question of privilege in 1988 authorizing depositions by committee counsel in an impeachment inquiry into conduct of a Federal judge. One unique additional authority in the Clinton investigation included the exercise of such special investigative authorities by the chairman and ranking minority member acting jointly, or by one acting alone unless the other referred the matter to the committee, or by committee or subcommittee action.

The recall of the House following a *sine die* adjournment (pursuant to authority granted by concurrent resolution in anticipation of impeachment proceedings for the Speaker to reassemble the House alone "should the public interest warrant it") was a unique variation from the then-customary conferral only on the Speaker and Senate Majority Leader of joint recall authority of both Houses during adjournment periods. In adopting the *sine die* adjournment concurrent resolution for the 105th Congress, second session, the majority leadership had contemplated House impeachment proceedings during the "lame duck" session, to be followed by a possible Senate trial in the next Congress. Thus, the Speaker was given unilateral reconvening authority. Speaker Newt Gingrich (despite his announcement that he would not serve as Speaker or Representative in the next Congress), exercised that conferred reconvening authority by giving one week's notice of the reconvening, although not required to give any such notice. Another example of exercise of unilateral reconvening authority in an ordinary legislative context took place in 2010 and in 2012.

Further, there was an unsuccessful attempt in 1998 by a Member (Rep. Alcee Hastings), who had been elected to the House after having been impeached and removed from office as a Federal judge, to impeach the Independent Counsel who had submitted the grand jury allegations to the House and who was by statute (28 USC § 596(a)) an impeachable executive branch officer. That impeachment resolution was offered as a question of privilege, but was tabled without debate.

A 1998 resolution offered by the Delegate for the District of Columbia asserting her right to vote on the articles of impeachment based upon the

Twenty-third Amendment to the Constitution—granting the District of Columbia three electoral votes for President—was held not to constitute a question of the privileges of the House, but rather an attempt to change the rules to permit that Delegate a vote in the House.

Consideration of the impeachment resolution itself was privileged upon report of the Committee on the Judiciary without regard to the three-day report availability rule. The resolution contained four articles of impeachment: alleging perjury in a Federal grand jury; perjury in a Federal civil action; obstruction of justice in a Federal civil action; and abuse of power in response to a House impeachment inquiry.

Other unique 1998 procedures included a planned response to any possible objection for unanimous consent to enlarge the time for debate, whereby the Member next-in-seniority among the majority party members of the managing committee was yielded time by the manager to announce that he would oppose ordering the previous question if moved at the end of the first hour so that he might be recognized in the Speaker's unappealable discretion under the general hour rule to control a successive hour.

The Chair announced that during the debate, remarks could include references to pertinent personal misconduct of the President but may not be abusive or personally offensive and may not include comparisons to the personal conduct of sitting Members of either House. Following debate under the hour rule for two hours, the House adopted a special order by unanimous consent: (1) closing the impeachment resolution to amendment by ordering the previous question without intervening motion except enlarged time for debate to a time certain on that day and one hour the subsequent day, equally divided and controlled between the chairman and ranking minority member of the Committee on the Judiciary; (2) permitting one motion to recommit debatable for 10 minutes if including instructions; (3) providing for controlled debate on a resolution appointing and authorizing managers for the impeachment trial if called up as privileged; (4) adjourning to a time certain for resumption of the resolution as unfinished business the next day; and (5) reiterating that the impeachment resolution was divisible as among each article.

During debate on the final day of consideration (December 19, 1998), the Member who had been nominated by the majority party conference as Speaker in the next Congress called upon the President to resign and then announced his own resignation from the next Congress to be effective at a future time. That extraordinary announcement came following his public acknowledgement of marital infidelity. When made amid minority Members' chants on the floor calling for his resignation, a silence fell over the Chamber and many were overcome with emotion. When the focus thus temporarily shifted from impeachment to "anarchy" in the House, the Chair nevertheless declined to exercise his discretionary authority to entertain a motion

for a call of the House, in order to complete the debate on impeachment as required by the ordering of the previous question on the resolution of impeachment. The point of order against the germaneness of the motion to recommit with instructions to substitute censure for the articles of impeachment was the most significant ruling of the Chair during the impeachment proceedings. During debate on the point of order which the Chair permitted in his discretion to continue for an extended period, the Chair refused to follow some early precedents suggesting that he could submit to the House the issue of germaneness, choosing instead to rule directly on the point of order subject to appeal. Following adoption of the articles of impeachment, privileged and indivisible resolution was called up by the chairman of the Committee on the Judiciary and contained the following elements: (1) electing managers to present the articles; (2) notifying the Senate of the adoption of articles and election of managers; and (3) authorizing the managers to prepare for and to conduct the trial in the Senate. This streamlined the prior practice of separate privileged resolutions on each of those incidental matters.

Proceedings before and during the trial in the Senate extended from the appointment of thirteen House managers (all majority Members), and their reappointment at the beginning of the next Congress on January 5, 1999, to the Senate's first organizational steps on January 7, 1999, through to the final votes in the Senate on February 12, 1999, adjudging President Clinton "not guilty" of the charges contained in the two articles of impeachment. At least 24 steps were taken in the Senate to organize and conduct the trial, including evidentiary and other interlocutory rulings made by the Chief Justice presiding over the trial, and including motions for subpoenaing witnesses, video tapes of their depositions, suspension of the rules motions and other resolutions adopted or rejected by the Senate during the course of the trial. Actions by the House and the role of House managers at various stages of the entire trial as well as all procedural steps in the Senate sitting as a trial court were part of the record.

Other impeachment trials included the unique Senate process under its "Rule XI of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials" during the impeachments of the Federal judges, establishing by resolution for the first time "a committee of twelve Senators to receive evidence, hear testimony, and report to the Senate thereon." That action was held nonjusticiable by the U.S. Supreme Court in *Nixon v. United States*, 506 U.S. 224 (1993). The Court ruled that under the Constitution, the Senate could adopt its own rules on interlocutory matters so long as the ultimate trial of the respondent was by the full Senate.

In 2007, a Member offered a resolution as a question of privilege impeaching Vice President Richard Cheney for having allegedly manipulated the intelligence process to deceive the Congress and the American people about:

(1) a threat of Iraqi weapons of mass destruction, and about an alleged relationship between Iraq and al-Qaeda in a manner damaging to U.S. national security interests; and (2) for openly threatening aggression against Iran absent any real threat to the United States. The motion to lay the resolution on the table without debate was rejected by the House, following which the motion to refer the resolution to the Committee on the Judiciary was adopted by the House after brief debate.

The attempt to impeach Independent Counsel Kenneth Starr in 1998 (laid on the table), the 2007 resolution attempting to impeach Vice President Cheney, and two unsuccessful attempts in 2008 to impeach President George W. Bush, reflected efforts by a Member rising to a question of the privileges of the House to directly impeach an executive branch officer. The resolutions seeking to impeach President Bush were on motion referred to the Committee on the Judiciary following brief debate thereon.

Chapter 15—Investigations, Inquiries and Oversight.

Chapter 15 and chapter 17, section 3, of *Deschler's Precedents*, address the general authority of all committees to conduct investigations and oversight on matters within their jurisdictions and to utilize compulsory process during those proceedings. Part A, section 1 ("Basis of Authority to Investigate; Creating Committees"), discusses general conferral of subpoena authority on committees. Until 1975 only a few standing committees (*e.g.*, Appropriations, Government Operations, and Standards of Official Conduct) were authorized by the standing rules to conduct investigations and to issue subpoenas. Special authority was conferred on every other standing committee pursuant to separate resolutions reported from the Committee on Rules each Congress prior to that time. The Committee Reform Amendments of 1974 amended Rule X and Rule XI to provide all committees with investigative and subpoena authority, thus obviating the need for special resolutions from the Committee on Rules. Collegial action has been contemplated by all committees and subcommittees in the issuance of subpoenas, even requiring a full majority quorum to be present in open session to vote on their authorization. This authority has not been extended to other subunits of a committee such as "task forces" absent specific House conferral. However, since 1975, full-committee chairmen may unilaterally authorize subpoenas when that authority is delegated by the full committee, either on an *ad hoc* basis or generally by committee rule. The delegation of that authority has been subject to question, as evidenced by the action of the chairman of the Committee on Government Reform in 1998, when his actions were challenged (unsuccessfully) by the minority in the House as a question of privilege alleging deliberate violation of committee rules. Having been delegated unilateral subpoena authority, the chairman proceeded to issue hundreds of subpoenas duces tecum and then to unilaterally release materials received in

response, in violation of a committee rule requiring collegial determination of the public status of those materials. The standard requirement for collegial action with a full quorum present to determine whether to issue specific subpoenas remained a safeguard against such unilateral action, and full committees can countermand the delegation if abused. A few committees made that general delegation to the chairman and others only during adjournment periods when committee quorums might not be available.

In the 1975 rules change, the House imposed general oversight responsibilities on all its standing committees, as well as special oversight functions and "additional functions" upon certain standing committees in clauses 3 and 4 of Rule X. The House continued to create special or select committees from time to time to conduct specific investigations and inquiries, normally with subpoena power but usually without authority to report legislation to the House.

In the 100th Congress, the requirement that members of the Committee on Government Operations (now Oversight and Government Reform) meet with other committees at the beginning of each Congress to discuss oversight plans and that that committee report to the House its oversight coordination recommendations within 60 days after the convening of the first session, was deleted. Since 1995, at the beginning of each Congress, standing committees of the House were required to adopt oversight plans in a public meeting with a quorum present by February 15 and to submit them to the Committee on Oversight and Government Reform, which in turn was given 45 days to submit a consolidated report on coordination of plans to the House. These plans are simultaneously submitted to the Committee on House Administration for formulation of a biennial budget for committees, which emerges in the form of a privileged resolution presented to the House providing funds for each committee's investigative activities for the two year period of that Congress. At the end of each Congress all committees were required to submit activities reports which summarize and evaluate oversight activities actually undertaken in that Congress. Since 1995, these separate final reports represented the extent of review of oversight already undertaken. Beginning in 2011, each committee was required to submit four activities reports, two each calendar year and in 2013, the requirement was reduced to two reports, one each year.

Also in 1995, the House amended its rules to grant explicit authority to the Speaker with the approval of the House to appoint "special *ad hoc* oversight committees to review specific matters within the jurisdiction of two or more standing committees." At the time of this writing this authority has not been directly utilized.

Since the adoption of the 1995 rule, a select committee was created and funded in 2005 to Investigate Preparation for and Response to Hurricane

Katrina, but established by a special order from the Committee on Rules. In 2007, again not utilizing the Speaker's direct establishment authority, the House established an *ad hoc* select committee on Energy Independence and Global Warming, despite the standing Committees on Energy and Commerce and on Science and Technology having overlapping jurisdiction over energy, public health, and over environmental research and development respectively. The new select committee was created by adoption of a special order reported from the Committee on Rules merged with the "self-executed" biennial funding resolution for all committees for the 110th Congress. The Select Committee on Energy Independence and Global Warming was not given legislative jurisdiction but was given subpoena authority to compel information on global climate change, particularly on the impact of auto carbon dioxide emissions. It was not reestablished in 2011 upon a change in party majorities.

In 1999, the House further amended its rules to permit committees to have a sixth subcommittee (beyond the general limit of five), if it were an oversight subcommittee. In 2007, eleven standing committees established oversight subcommittees in addition to their legislative subcommittees.

Inquiries and the Executive Branch. There was a change in the rule regarding resolutions of inquiry, specifically the extension in 1983 from 7 to 14 legislative days of the waiting period after which a motion to discharge becomes privileged in the House. There were few rulings as to the privilege of resolutions of inquiry called up, as a common drafting technique requested the production from the President or Cabinet secretary of "copies of documents, if any" on identified matters, so as to avoid the suggestion that the resolution is calling for an investigation or for an expression of opinion which would render the resolution nonprivileged. A resolution of inquiry was held in 1979 to be privileged only where it did not contain a statement as to the purpose for which the information is sought. To retain its privilege, a reported resolution of inquiry must be filed from the floor and not through the hopper. Since the advent of multiple referrals in 1975, where a resolution of inquiry was referred to two committees, but neither reported, the resolution could be discharged by majority vote and called up by any Member. If one committee reported, the other committee could be discharged by motion, but only the reporting committee could then call it up. If both committees reported, the resolution could be called up by direction of one or both committees. In recent Congresses, resolutions of inquiry have been referred by the Speaker only to one committee, in order to avoid the anomalous situation of one committee's report and another committee's discharge only to have the reporting committee as the only authority to call up the resolution itself despite a successful discharge by the House of the nonreporting committee.

Executive Branch Refusals to Provide Information; Litigation to Enforce a Subpoena. In 2008, the House adopted a single indivisible resolution which certified the failure of two White House employees to respond to committee subpoenas for prosecution for criminal contempt under 2 USC § 194. It also for the first time empowered House Counsel to apply to Federal court for civil relief (declarative or injunctive) to enforce the Committee on the Judiciary's subpoena in the investigation of the dismissal of U.S. Attorneys by the Department of Justice. In that case, the Attorney General had announced his refusal to direct U.S. Attorneys to prosecute the case, citing "executive privilege" on behalf of the President. The House thereupon authorized an alternative method to enforce the committee subpoena. The Senate by statute (2 USC § 288d) possessed a remedy: to bring lawsuits in Federal court for civil contempt against recalcitrant witnesses (except those in the executive branch) in lieu of criminal contempt to enforce a committee subpoena in a particular case, in order to expedite resolution of a constitutional matter which might otherwise be mooted by the end of the term of the executive prior to a criminal prosecution. Unlike the Senate, the House possessed no such general avenue in its rules or in law to pursue a civil remedy, but did for the first time adopt a resolution through a special order of business specifically authorizing counsel to initiate or intervene in Federal court in a particular civil action to assure court jurisdiction. In 2008, the U.S. District Court for the District of Columbia upheld the relief sought in the civil action brought by the House of Representatives seeking summary judgment to enforce the Committee on the Judiciary's subpoenas. The Federal judge ordered two witnesses who had refused to appear before that committee under a claim of executive privilege to respond to the subpoena, in order that they might subsequently assert any executive privilege protection on an *ad hoc* basis during their appearance. That court order was stayed by a Federal appeals court which assumed the mootness of the case at the end of the 110th Congress unless initiated anew in the next Congress by issuance of a new subpoena. The reinitiation of those subpoenas and of that civil litigation was authorized on the opening day of the next (111th) Congress as a separate order in the rules package. The question of the extent to which a new administration would protect blanket claims of executive privilege on behalf of a former President was tentatively resolved by an agreement in 2009 that the two witnesses would respond in executive session hearings and could make *ad hoc* claims of executive privilege on behalf of a former President at that time, to be then evaluated by the Committee on the Judiciary.

In 2012, the Committee on Government Reform and Oversight reported the refusal of the Attorney General to respond to committee subpoenas seeking Department of Justice information involving a failed drug enforcement

program. After the committee reported, the President asserted an executive privilege claim against production of the documents although they did not involve direct communications with him—an argument more akin to a "deliberative process" qualified privilege. The House adopted the report and certified the contempt to the appropriate U.S. Attorney under the statute. The Department of Justice immediately declined to prosecute its Cabinet head by a letter to the Speaker. Contemporaneously the House adopted a second resolution authorizing House Counsel to proceed in a civil action to challenge the President's claim of executive privilege (the second such example of an *ad hoc* authorization for a civil action). Both resolutions were made in order by a special rule that allowed the resolution to be called up as privileged and permitting only one motion to refer the contempt after separate limited debate thereon. That unsuccessful motion attempted to direct the committee to conduct a more thorough investigation of the matter. Litigation ensued to enforce the subpoena in the case of *House Committee on Oversight and Government Reform v. Holder* (civil action no. 12–1332, D.D.C.). This authority for House Counsel was extended at the beginning of the subsequent Congress in 2013 as a separate order in the rules package.

Statutes to Obtain Information. One anomaly in statute runs counter to the model in the rules requiring committee majorities to authorize and undertake investigative activities; namely, that provision in 5 USC § 2954 which permits any seven members of the Committee on Oversight and Government Reform of the House (and any five members of the Senate Homeland Security and Government Affairs Committee) to demand information from an executive agency. This "seven-member rule" has been the subject of inconclusive litigation, and has been interpreted by at least one Federal court, in a case later vacated on appeal, to be the equivalent of compulsory process based on the statutory requirement that the requested agency "shall" furnish the information, allowing fewer than a majority of members of either committee (not even a majority of the minority) to compel information. Dismissal of that initial District Court ruling on appeal, coupled with a more recent Federal court opinion that congressional plaintiffs lacked standing to sue under that statute for absence of personal injury (*Raines v. Byrd*, 521 U.S. 811 (1997)) cast doubt on its enforceability by a court.

With respect to the Committee on Standards of Official Conduct, where the House authorized an investigation by that committee of other persons not directly associated with the House, the committee's jurisdiction was thereby enlarged and a broader subpoena authority was required to be conferred on the committee in 1976. The special rule for authorizing and issuing a subpoena by a majority of members of a subcommittee of the Committee on Standards of Official Conduct was adopted in 1997 to reflect the

bifurcation between the investigative role of the subcommittee and the adjudicative role of the full committee.

Procedures; Hearings. Two U.S. Supreme Court cases expanded upon the permissible scope of congressional investigations delineated in *Watkins v. United States*, 354 U.S. 178 (1957). In *Doe v. McMillan*, 412 U.S. 306 (1973), the court determined that it would not question the wisdom of the committee investigation or its methodology. In *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975), the court ruled that the very nature of the investigative function is such that it may take the searchers up some "blind alleys" and into unproductive enterprises. The validity of a legislative inquiry is not contingent on a predictable end result.

Rules changes impacted on committee investigative and oversight procedures, and on the rights of witnesses. In 1981, the requirement for a prompt entry of public notice of committee hearings into the Daily Digest and an electronic data base was adopted. In 1995, the rule was amended to permit the calling of a hearing on less than seven days notice upon determination of good cause either by vote of the committee or subcommittee or by its chairman with the concurrence of its ranking minority member. In 2011, the electronic public announcement of the seven-day notice of the hearing (and three-day notice of meetings) was required.

In 1997, a provision was added to encourage committees to elicit curricula vitae and disclosures of certain interests from nongovernmental witnesses. It was amended in 2011 to require electronic availability of their "truth-in-testimony" and to permit certain redactions by witnesses.

With respect to the procedural regularity of committee hearings, one House rule relating to legislative hearings (Rule XI clause 2(g)(5)) contained in the Legislative Reorganization Act of 1970 (Pub. L. No. 91–510) uniquely protected the ability of a committee member to pursue a point of order to the House floor if legislative hearings on the reported measure were not conducted in accordance with all the provisions of that clause (relating to openness, scheduling, calling of witnesses and other procedures) but only if that point of order was timely raised in committee or subcommittee and "improperly" disposed of at that time. Since adoption of that House rule, no point of order based on an invalid hearing procedure has been made in the full House, indicating that committees dispose of such matters at the committee or subcommittee level.

Beginning in 2009, Rule XI clause 2(n) was added to require all committees or any subcommittees thereof to conduct at least three hearings each year on the topic of waste, fraud, abuse or mismanagement in government programs, including mandates for certain inquiries into auditor disclaimers that they had not received information in preparation of agency financial

statements and "high-risk lists" of programs identified by the Comptroller General.

Other changes in Rule XI addressing committee hearing procedures including the process for the questioning of witnesses have not been the subject of points of order or rulings in the full House but rather have been interpreted and administered at the committee level.

Rule XI clause 2(j)(2) requires utilization of the five-minute rule per member per witness but was amended in 1997 to permit committees to adopt a motion or rule which extend examinations of witnesses for an additional hour equally divided between designated members, or by staff, of each party.

In 1979, Rule XI clause 2(k)(5) was amended to permit a committee or subcommittee to hear testimony asserted to be defamatory in executive session upon a determination by a majority of those present either that such testimony was indeed defamatory, degrading or incriminating, or preliminarily to discuss that question. In 2001, that rule was further amended to permit such an assertion to be made by the witness with respect to himself, or by a member of the committee with respect to any person. In 1997, the rule was clarified that a majority of those voting (a full quorum being present) may decide to proceed in open session. The essence of those rules changes, beginning in 1979, was to presumptively protect the rights of a witness or other persons from defamatory testimony in open session, requiring its initial receipt and retention in closed session unless a majority with a full quorum present determined to the contrary.

Other reasons for closing hearings to the public were first inserted into the rules in 1973, including national security, the compromise of sensitive law enforcement information, and violation of a law or rule of the House. In 1977, the rule was amended to provide that a noncommittee Member cannot be excluded from a hearing except by a vote of the House. In the 1970s, the rule was adjusted to permit certain committees to vote to close a hearing for multiple days. In the 104th Congress the rule was amended to require that hearings open to the public also be open to broadcast and photographic media, eliminating the need for each committee to vote to permit such coverage.

The provision in Rule XI clause 2(k)(5) that a witness may request the committee to subpoena additional witnesses has been interpreted to allow any witness to request subpoenas duces tecum for documents, as well as for testimony, such interlocutory question to be decided by the committee with a quorum present. The various requirements in Rule XI that a majority of the committee or subcommittee shall constitute a quorum for the purposes of closing meetings or hearings or issuing subpoenas have been construed

to require that a majority shall likewise constitute a quorum to release or make public any evidence or testimony received in any closed meeting or hearing and any other executive session record of the committee or subcommittee.

With respect to the rights of committee witnesses under the Constitution, there has been little Federal case law beyond that cited in the previous publication (chapter 15, Part C, sections 9–12) through 1973. The assertion of an attorney-client privilege during a House hearing included a contempt resolution in the Ralph and Joseph Bernstein case in 1986, where the subpoenaed witnesses declined to respond to questions based upon the assertion of that common law privilege. Only following the certification of contempt by the House did those witnesses agree to respond and prosecution was not then pursued under the statute. The District of Columbia Bar Association issued an opinion (#288) in a House committee investigation of Franklin Haney that the attorney-client privilege could be waived by the witnesses' attorney even if there had been a recommendation from the relevant subcommittee to the full committee that the witnesses be cited for contempt but the full committee had not yet acted. While no court has as yet recognized the inapplicability of common law testimonial privileges in congressional proceedings, committee decisions suggest that the acceptance of a claim of attorney-client, work product, or other common law testimonial privilege rests in the sound discretion of the committee, which should weigh legislative need, public policy and the duties of oversight against any possible injury to the witness (See contempt reports against Haney (H. Rept. 105–792 (1998); Quinn, Watkins and Moore (H. Rept. 104–598 (1995)); and the Bernsteins (H. Rept. 99–462)).

To justify withholding subpoenaed information, an executive branch witness sometimes contended that the President has claimed executive privilege with respect thereto or has directed the witness not to disclose the information. The U.S. Supreme Court rejected the claim that the President has an absolute, unreviewable executive privilege in *United States v. Nixon*, 418 U.S. 683 (1974). Subsequently, the question was raised of the applicability of that claim by witnesses in the context of a failure even to appear in response to a subpoena before the committee, where two White House employees were ordered by a Federal judge to appear before the House Committee on the Judiciary before asserting an *ad hoc* executive privilege claim.

Witnesses' rights before committees under House rules were clarified in 2001 to require that a copy of the committee rules be furnished a witness only on request of the witness. The former requirement that a witness must pay the cost of a transcript copy of his testimony was eliminated in 1975. The former requirement of Rule XI clause 4(f) that a subpoenaed committee

witness could demand that audio, video and photographic coverage of his testimony be terminated was eliminated in 1997.

Under Rule XI clause 2(j), a majority of the minority members of a committee or subcommittee have the right to call witnesses of their own choosing to testify in a hearing for one day, and the chairman may set the day under a reasonable schedule. That rule was interpreted in 1987 not to require the calling of witnesses on the opposing side of an issue.

Summoning Witnesses; Subpoenas. Changes in Rule XI clause 2(m) were made in 1975 that authorized subpoenas to be signed by the chairman of the full committee or by any member designated by the committee. The clause was further amended in 1977 to permit a subcommittee, as well as a full committee, to authorize subpoenas and to allow a full committee to delegate such authority to the chairman of the full committee. In 1999, a paragraph was added to permit the terms of return of a subpoena duces tecum to specify a place other than at a meeting of the committee or subcommittee. Following the conferral of general authority to compel evidence or testimony "by subpoena or otherwise" in 1975, that authority has not been interpreted to permit committees on their own initiative to confer interrogatory or deposition authority on any single Member or on staff absent initial conferral by the House. Such staff empowerment only happened in the context of a few investigations including ethics, impeachment, or continuation of a contempt proceeding from the prior Congress (Committee on the Judiciary in 2009) until it was generally conferred on one investigative committee of each House covering all oversight in an entire Congress, beginning in 1948 in the Senate and in 2007 in the House. That year, the House Committee on Oversight and Government Reform was empowered in Rule X clause 4(c) to permit staff depositions and interrogatories or in the presence of one committee member, but in 2011 that authority was limited to require the presence of at least one committee member, unless waived by the deponent.

Authority in Cases of Contempt. A new alternative means for relief against contempts of the House was implemented three times (authority for civil proceedings seeking injunctive or declaratory relief), in addition to certification to the Federal courts of criminal contempt and the inherent authority of the House to impose a "common law" contempt punishment by detaining the witness in its own precincts. There must be authorization by the full House before a subcommittee chairman can intervene in a lawsuit in order to gain access to documents subpoenaed by the subcommittee (*In re Beef Industry Antitrust Litigation*, 589 F.2d 786 (5th Cir. 1979)). There are also statutes on perjury (18 USC § 1601), obstruction of proceedings (18 USC § 1001), and on intimidation of witnesses (18 USC § 1505). Under those

criminal laws, the Department of Justice separately determines whether to investigate and bring an indictment of the committee witness or other respondent. That determination can be based on an informal communication received from a committee chair (and ranking minority member) as in the case of the unsuccessful prosecution of major league pitcher Roger Clemens for perjury and obstruction of proceedings in 2011 and 2012.

Of the ten Cabinet-level officers cited by the House or Senate committees for contempt since 1975, only two, in 1982 and in 2012, were endorsed by the full House. The first involved refusal of the Administrator of the Environmental Protection Agency to produce executive branch documents. It was the first example wherein the House cited an executive official for contempt of Congress. In the following Congress, the House adopted a resolution reported from the same committee (Committee on Energy and Commerce) certifying that an agreement had been reached for access by the committee to the documents that were the subject of the contempt citation, where the contempt had not yet been prosecuted in 1983. Also in 1983, the House for the second time certified refusal of an executive branch official to respond to a subpoena duces tecum. In all other cases, the subpoenaed Cabinet official and the requesting congressional committee reached a negotiated accommodation for access to documents and testimony prior to a vote on a contempt resolution.

In committee contempt reports regarding Secretary of Interior James G. Watt in the 97th Congress, and regarding Attorney General Janet Reno in the 105th Congress, the House took no action on the report which was called up and then withdrawn. On the latter occasion, it was reaffirmed that a resolution directing the Speaker to certify to the U.S. Attorney as a criminal matter the refusal of a witness to respond to a subpoena issued by a House committee involves the privileges of the House and may be offered from the floor as privileged by direction of the committee reporting the resolution. In 1986, a resolution with two resolve clauses separately directing the certification of the contempt of two individuals was held subject to a demand for a division of the question as to each individual, as was a resolution with one resolve clause certifying contempt of several individuals in 2000.

In 2012, the House adopted a committee report from the Committee on Oversight and Government Reform certifying the Attorney General for criminal contempt for refusal to comply with a committee subpoena. That occasion marked the first example of citation for contempt of a Cabinet secretary and the second example of an accompanying resolution authorizing House counsel to seek civil relief against the President's claim of executive privilege (continued by separate order in the subsequent 113th Congress).

Chapter 16—Introduction and Referral of Bills and Resolutions.

The requirement that all bills and resolutions be introduced through the hopper while the House is in session has traditionally not been waived. The Committee on Rules has, however, permitted consideration of a measure not previously numbered or sponsored, but rather coming into existence upon adoption of a special order of business and never having a sponsor in 1986. Similarly, in 1988, the Committee on Rules reported a special order self-executing the "hereby" adoption of an unintroduced resolution or concurrent resolution (but not a bill or joint resolution since the motion to recommit may not be denied in a special order).

An order of the House precluding or limiting the potential for organizational or legislative business on certain days was considered not to deprive Members of the privilege of introducing bills and resolutions during pro forma sessions on those days, such measures being numbered on the day introduced but not noted in the *Congressional Record* or referred to committee until the day on which business was resumed in 1991 and 1992.

At its organization for the 106th Congress, and in subsequent Congresses, the House adopted an order that the first ten bill numbers be reserved for assignment by the Speaker during a specified period, with the time extended by orders of subsequent Congresses to the entire first session and then to the entire Congress. In 2011, the second ten bills were permitted to be numbered by the Minority Leader whenever introduced.

Effective in 1979, the authority of not more than 25 Members to cosponsor a public bill or resolution (adopted in 1967) was amended to permit unlimited cosponsorship of all public measures on introduction, and to provide a mechanism for Members to add their names as cosponsors of measures (upon signature of the original sponsor) that have already been introduced, up until the day of final report from committee(s). Although before the 106th Congress, Rule XII clause 7 only permitted a cosponsoring Member himself to request unanimous consent for his deletion as a cosponsor, in 1982 the primary sponsor of a measure was permitted to request unanimous consent to delete the name of a cosponsor he had listed. In 1985, unanimous-consent requests to delete Members' names as cosponsors were not entertained after the last committee authorized to consider the measure reported to the House. In 1986, a Member requested unanimous consent that his name be deleted as a cosponsor of an unreported bill during its consideration under suspension of the rules and before a final vote thereon.

On various occasions it was held that by unanimous consent a Member may add his own name as a cosponsor of an unreported public bill where the primary sponsor is no longer a Member of the House. A designated Member has been authorized to sign and submit lists of additional cosponsors where the initial primary sponsor was no longer a Member. Otherwise,

the Chair does not entertain any unanimous-consent request to add a cosponsor, the remedy being the filing of a cosponsor list, signed by the original sponsor, through the hopper. At its organization for the 104th Congress the House resolved that each of the first 20 bills introduced in that Congress could have more than one Member reflected as a primary sponsor and the signatures of all primary sponsors would have to be attached. While the authority to cosponsor measures only applies to public and not to private legislation, where a measure contains both private relief for a living person and a public policy statement, such as the Terri Schiavo measure in 2005 addressing Federal court jurisdiction over the removal of life support to a comatose individual, it was treated as a public measure as it also contained a general statement of policy, in order to accommodate cosponsors and to be considered under suspension of the rules procedures. Overall, the introduction (and enactment) of private bills has been greatly reduced in number over time.

Additional restrictions against the introduction and consideration of certain measures have grown. In 1995, at the beginning of the 104th Congress, a rule was adopted prohibiting the introduction (and consideration) of a bill or resolution if it established or expressed a commemoration (Rule XII clause 5). The term "commemoration" was defined by the rule as a remembrance, celebration, or recognition for any purpose through the designation of a specified period of time. The House by unanimous consent has waived the prohibition to permit introduction and consideration of a joint resolution including provisions in the resolve clause (and not merely in the preamble) to designate September 11 as "United We Stand Remembrance Day" (2001). Speakers have narrowly interpreted this prohibition against introduction, and have permitted the introduction of commemorative bills or resolutions so long as they are not date-specific, or so long as they suggest a specific date only in a preamble and not in the resolve clause. This rule has not appreciably reduced the number of commemorative measures introduced, but has resulted in the use of concurrent or simple resolutions, rather than joint resolutions enacted into law, to generally proclaim a special event or congratulatory message. Thus the proliferation through 1994 of public laws establishing specific dates for commemorative purposes abated, and the House chose instead to express its congratulatory sentiments in preambles or in general terms not establishing a date certain. The parochial nature of many of those congratulatory resolutions led to an informal determination announced by the Majority Leader beginning in 2011 to limit their consideration under suspension of the rules.

The adoption of Rule XXI clause 6 in 2001 prohibited the consideration (but not the introduction) of a measure providing for the designation of a

public work in honor of a sitting Member of Congress. That prohibition was waived on one occasion that year by a special order reported from the Committee on Rules permitting the consideration of a bill to name a Federal facility in honor of a sitting Member (Joe Moakley of Massachusetts).

In 2011, Rule XII clause 8 was amended to require a constitutional authority statement to be published in the *Congressional Record* upon introduction of a bill or joint resolution.

Referral Generally. New rules and practices governing referral and committee jurisdiction over public and private bills and resolutions, Senate-passed measures, presidential messages and executive communications were adopted. Rule XII clause 2 contained in the "Committee Reform Amendments of 1974," effective in 1975, required the Speaker to refer introduced measures to all committees with proper jurisdictional claims so as to ensure, "to the maximum extent possible" that each committee of jurisdiction over any provision therein will have an opportunity to consider that provision and report to the House. The procedure applicable through 1974 had allowed the Speaker to refer an introduced measure only to one committee, regardless of its disparate provisions. Messages from the President other than state of the Union messages have been referred to multiple standing committees since 1975, rather than to the Union Calendar. Executive communications have been jointly referred to all committees of jurisdiction, often as an advance indication of the subsequent introduction and referral of recommended bills, some to be introduced "by request" reflecting that executive department's draft measure.

Rule XII clause 2 as originally adopted in 1975 permitted the Speaker to set time limits on all committees of referral except on the original committees, and was amended two years later to include the initial committees among those upon which the Speaker could set time limits. Thus, beginning in 1975, the rule gave the Speaker discretion to: (1) refer the measure to other committees either initially or sequentially (following the primary committee's report) and in either case subject to time limits imposed after the primary committee has reported; (2) to refer designated portions of the same measure to other committees (a split referral seldom utilized); and (3) to refer a measure to a special *ad hoc* committee established by the House, consisting of members of committees with shared jurisdiction over the measure. The clause was subsequently amended in 1995 to require the Speaker to initially designate a committee of primary jurisdiction in each referral of a measure. An exception to that requirement was added in 2003 where the Speaker determined that extraordinary circumstances justified review by more than one committee as though primary (*e.g.*, Medicare-related bills where both the Committees on Energy and Commerce and on Ways and

Means have separate jurisdictions over health care measures depending on the source of financing (general revenues or payroll deductions)). Additional committees of original referral are listed after the primary committee. The Speaker normally imposes time limits on the additional committees following the primary committee's report to the House, but not prior thereto, and each additional committee is free to begin markup of the measure even prior to the primary committee. The Speaker may discharge a committee from further consideration of a bill not reported by it within the time for which the bill was referred and place the bill on the appropriate calendar.

With respect to sequential referrals, the Speaker may limit them to consideration of such portions having a "direct effect" on specified subjects within the sequential committee's jurisdiction, as in 1982 and 1987, or merely to portions of the primary committee's amendment or original text of the measure. The Speaker may extend the terms of a sequential referral or in rare cases discharge a reported measure from the calendar and sequentially refer it where a jurisdictional claim is later discovered.

The Speaker refers messages from the Senate in his discretion, including Senate-passed bills and amendments to House-passed measures, under the same conditions permitted for introduced House measures. For example, the Speaker has referred nongermane portions of Senate amendments without referring the remainder of the amendment, and has jointly referred a few Senate-passed measures where no House committee has reported on the subject.

The House on three occasions by privileged resolution upon recognition by the Speaker created *ad hoc* select committees to consider a particular bill emerging from standing committees under Rule XII clause 2(c)—two with respect to Outer Continental Shelf measures and one major energy measure. Then in 2002, the Select Committee on Homeland Security was created by special order reported from the Committee on Rules. The select committee was required to report to the House its recommendations on a bill establishing a Department of Homeland Security. In making its recommendation, the select committee was required to take into consideration recommendations by each standing committee (12) to which the bill was initially referred.

Chapter 17—Committees.

Changes in House rules and practices since 1975 have altered standing, select and joint committee creations, namings, organization, funding, investigations, choices of chairmen, members and staff, procedures, jurisdictions, reports, and discharge of measures.

Creating and Organizing Committees; Subcommittees. There were both rule and practice changes relating to subcommittees. In 1995, Rule X

clause 5(d) was amended to require that except for the Committee on Appropriations (with thirteen subcommittees) and the Committee Oversight and Government Reform (with seven subcommittees), no standing committee could have more than five subcommittees, except those with subcommittees on oversight. This requirement for oversight subcommittees did not relieve other subcommittees of their oversight responsibilities. It replaced the 1975 requirement that all standing committees having more than 20 members (except the Committee on the Budget) establish at least four subcommittees. In various subsequent Congresses, standing orders permitted certain committees to have more subcommittees than the prescribed number in the standing rule. The rules for the Committee on Appropriations established fewer than 13 subcommittees (10 in 2005 and 12 beginning in 2007). All subcommittees were permitted to issue subpoenas in 1977 by standing rule. In 1995, the authority of chairmen and ranking minority members of subcommittees to each appoint one staffer separate from full committee approval established in 1975 was deleted, and that authority was replaced by a requirement that the minority be treated fairly in the appointment of subcommittee staff (Rule X clause 6(d)).

Abolition and Renaming of Standing Committees. Significant changes came in 1995 when a new Republican majority amended the rules to abolish three standing committees—District of Columbia, Merchant Marine and Fisheries, and Post Office and Civil Service. The jurisdictions of the District of Columbia and Post Office and Civil Service committees were transferred to the Committee on Government Reform (now Committee on Oversight and Government Reform), where they became separate subcommittees (except for matters relating to the Franking Commission transferred to Committee on House Administration). The jurisdiction of Merchant Marine and Fisheries was split among three committees as follows: (1) the Committee on Armed Services assumed jurisdiction over inter-oceanic canals, the Merchant Marine Academy and State Maritime Academies, national security aspects of merchant marine including financial assistance for the construction and operation of vessels, maintenance of the U.S. shipbuilding and ship repair industrial base, cabotage, cargo preference and merchant marine officers and seamen matters relating to national security; (2) the Committee on Resources assumed jurisdiction over fisheries and wildlife, including research, restoration, refuges and conservation, international fishing agreements, marine affairs (including coastal zone management other than oil and other pollution of navigable waters), and oceanography; and (3) the Committee on Transportation and Infrastructure, assumed jurisdiction over the Coast Guard, including lifesaving service, lighthouses, lightships, ocean derelicts, and the Coast Guard Academy; navigation and laws relating thereto, including pilotage, registering and licensing

of vessels and small boats, rules and international arrangements to prevent collisions at sea; the merchant marine (except for national security aspects thereof); and marine affairs, including coastal zone management as they relate to oil and other pollution of navigable waters.

The names of a number of standing committees were changed, some several times, without significant changes in jurisdiction. These changes are also shown in *House Practice*.

The Committee on Armed Services became the Committee on National Security in 1995, but was renamed Armed Services in 1999.

The Committee on Education and Labor became the Committee on Economic and Educational Opportunities in 1995, and then Education and the Workforce in 1997. It was renamed Education and Labor in 2007, and again Education and the Workforce in 2011.

The Committee on Energy and Commerce had been the Committee on Interstate and Foreign Commerce until 1975, when it became the Committee on Commerce and Health, then Energy and Commerce in 1980, Commerce in 1995, and again Energy and Commerce in 2007.

The Committee on Financial Services, first so named in 2001, had been Banking, Currency and Housing since 1974, Banking, Finance and Urban Affairs since 1977, and Banking and Financial Services since 1995.

The Committee on Foreign Affairs regained its name in 2007, having become the Committee on International Relations in 1975, Foreign Affairs in 1979 and International Relations again in 1995.

The Committee on Oversight and Government Reform was so named in 2007, having been the Committee on Government Operations through 1994, Government Reform and Oversight through 1998, and then the Committee on Government Reform through 2006.

The Committee on House Administration was renamed House Oversight in 1995 and again House Administration in 1999.

The Committee on Natural Resources, so named in 2007, had been the Committee on Interior and Insular Affairs until 1993 when it gained its current name, and then became Resources in 1995.

The Committee on Science, Space, and Technology had been the Committee on Science and Astronautics until 1975, when it was renamed Science and Technology until 1987, then Science, Space and Technology until 1995 when it became the Committee on Science, again Science and Technology in 2007, and again Science, Space, and Technology in 2011.

The standing Committee on Small Business was first established in 1975, having been a select committee since the 77th Congress.

The Committee on Standards of Official Conduct was renamed the Committee on Ethics in 2011.

Committee Expenses; Oversight Plans; Funding Resolutions; Interim Funding; Travel; "Lame Duck" Travel. Since 1995, at the beginning of each Congress standing committees of the House have been required to adopt oversight plans, in a public meeting with a quorum present, by February 15 in the first session and to submit them to the Committee on Oversight and Government Reform, which in turn was given 45 days to submit a consolidated report on coordination of plans to the House. Such plans were simultaneously submitted to the Committee on House Administration for formulation of a biennial budget for committees. Those committee budgets emerge in the form of a privileged resolution presented to the House providing funds for each committee in the form of expenses for "applicable accounts of the House" (previously named the "contingent fund").

The requirement (Rule X clause 6), which first replaced separate annual funding resolutions for each committee as a result of the Legislative Reorganization Act of 1970, was amended in 1977 to apply to all committees and other House entities. In 1995, the rule was amended to institute biennial funding of committee expenses (except the Committee on Appropriations) and to require that all committee staff salaries and expenses (including statutory staff) be authorized by expense resolution. In 1997, the rule was amended to permit a primary expense resolution to include a reserve fund for unanticipated expenses of committees. An exemption from the biennial requirement for the Committee on the Budget was effective from 1974 through 1994. While the new clause required the accompanying report from the Committee on House Administration on a primary or supplemental expense resolution to detail the funding provided for each committee, a resolution establishing a task force of members of a standing committee and providing for the payment of its expenses was held not to need an accompanying report detailing the funding provided, since called up at the beginning of a session before consideration of a primary expense resolution for all committees in 1992. In 1995, special provisions for interim funding were adopted in light of the abolishment of three standing committees. Interim funding for all committees became automatic for the first three months of each Congress as a standing rule (Rule X clause 7(a)) in 1985, replacing routine separate resolutions at the beginning of each Congress considered prior to the regular funding resolutions reported from the Committee on House Administration.

Procedures were utilized in some recent Congresses to bring those biennial funding resolutions to the House by utilization of special orders from the Committee on Rules despite their privilege for immediate consideration if reported from the Committee on House Administration. The expeditious use of special orders permitted consideration or "self-executed" adoption of

the funding resolutions without amendment and motions to recommit (motions otherwise applicable under the general rules of the House), to prevent restrictions and alternative committee budgets from being offered by the minority. In 2011, the biennial funding resolution was reported as privileged and then considered by unanimous consent, there being no controversy. It continued the requirement for second-session justifications to be submitted by each committees' leadership to the reporting Committee on House Administration.

Until 1975, each committee was given separate authority to incur expenses in connection with its investigations and studies, and only certain committees were authorized to use local currencies for foreign committee travel, by resolutions reported from the Committee on Rules in each Congress. Rule X clause 8 was amended in 1977, to clarify the availability and limit of local currencies for travel by all committees outside the United States authorized by committee chairmen, to require reports within 60 days and to authorize the Committee on House Administration to recommend in biennial expense resolutions expenses for foreign as well as domestic travel. Funding for "lame duck" travel for defeated or retiring Members was prohibited beginning in 1977 (Rule XXIV clause 10).

Establishing and Abolishing Select Committees. The creation of House select committees expanded, but most of those committees were terminated at the end of their desired existence without renewal into the next Congress. In all, some 23 select committees were established by the House. They can be categorized as follows: (1) panels to investigate and report on specific matters or events without authority to consider and report accompanying legislation; (2) panels with legislative jurisdiction to report to the House or to standing committees; (3) panels to consider House organization and procedures; and (4) panels to oversee internal administration.

As examples within category (1), select committees on Aging; Assassinations; Children, Youth and Families; Covert Arms Transactions with Iran; Crime; Hunger; Hurricane Katrina; Narcotics; Population; Professional Sports; Technology Transfers to China; Military Missing in Action; Global Climate Change; and to investigate a voting irregularity on a specific date in the House all were given investigative and reporting authority (the latter as a question of privileges of the House to report findings and recommendations to the House by a date certain). Some, such as Aging, Children, and Hunger, were reestablished in at least one subsequent Congress by temporary incorporation into the standing rules of the House.

Within category (2), select committees on Energy, Outer Continental Shelf, Homeland Security, and Intelligence were empowered to report legislation to the House, and Intelligence became a "permanent" select committee by incorporation into the standing rules in the same Congress (94th)

in which it was originally established in 1975. The Committee on Homeland Security became a standing committee in the 109th Congress in 2005.

Within category (3) the select committees on Committees, on Congressional Operations, and two on Ethics all existed during a single Congress. The first ethics panel in 1977 was created to respond to Member requests for advisory information and the second in 1997 was created to continue an investigation of the Speaker begun by the Committee on Standards of Official Conduct in the prior 104th Congress but not finalized. In the 110th Congress, the House for the first time by adoption of a resolution raising the question of the privileges of the House created a select committee (also mentioned in category (1)) to investigate a particular procedural (voting) irregularity rather than refer the matter to the Committee on Standards of Official Conduct.

Within category (4) three select committees—on the Beauty Shop, on the House Restaurant, and on Parking—were all created and terminated in the 95th Congress as purely internal oversight panels.

In 1993, the Speaker was authorized in Rule I clause 11 to remove Members whom he had appointed from select (and conference) committees . He exercised that authority several times (See, *e.g.,* 1998, 2002, 2004, 2005, 2007).

The first attempt at the creation of a House select oversight committee came in 2005, when the House, utilizing the Committee on Rules, created a "Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina." That select committee was never fully appointed, as the Minority Leader refused to recommend Members' names to the Speaker. Nevertheless, the select committee held hearings attended only by majority party members, but by unanimous consent permitted participation by a few minority noncommittee Members of the House from the geographic areas affected by the hurricane, although they could not vote on the report ultimately filed with the House. It filed a final report in 2006. Although the select committee was not equal in terms of party representation (despite the formal title of "bipartisan"), such equally-divided committees have been virtually unknown in the House—the primary exception being the Committee on Ethics. The minority noncommittee Members who were permitted to participate in the hearings had no standing to represent their leadership's concerns about the performance of the executive agencies controlled by the opposite political party. That opportunity was left to minority members of the standing Committees on Homeland Security, Transportation and Infrastructure and Appropriations which retained ongoing oversight jurisdiction over those aspects of the Federal Emergency Management Agency—the entity that the new select committee had been called upon to investigate.

Creation of Joint Committees. The Joint Committee on Atomic Energy was terminated on January 4, 1977, and its legislative jurisdiction transferred to several standing committees. Two joint committees on congressional operations or organization were established. The Joint Committee on Congressional Operations established in 1970 became inactive in the 94th Congress in 1976, while the Joint Committee on Organization of Congress was established in 1992 and terminated in December, 1993, upon report to the House and Senate. Neither joint committee was given legislative jurisdiction but both filed final reports to the two Houses; and some of their recommendations were separately implemented. Membership ratios on each committee reflected majority/minority ratios in each House.

For a discussion of the Temporary Joint Committee on Deficit Reduction, established in the wake of the *Bowsher* v. *Synar* decision, see section 26 of chapter 41.

The Budget Control Act of 2011 established the Joint Select Committee on Deficit Reduction which was instructed by that law to develop a bill to reduce the Federal deficit by at least $1.5 trillion over the 10 year period ending in fiscal 2021. The joint committee, which was bipartisan with six members from each House (three from each party) voting per capita, was required to vote on proposed legislative language and on an accompanying report by November 23, 2011, in order to take advantage of expedited procedures in both Houses which precluded amendment and required a vote in both Houses by December 23, 2011. The Joint Committee failed to meet the November 23 reporting deadline and thus lost its ability to bring legislation to the floor of either House under expedited procedures.

Electing Chair; Vice Chair. In 2001, Rule XI clause 2(d) was amended to provide that the ranking majority member of each committee and subcommittee be designated as its Vice Chair. In 1995, the rule was further amended to permit the chair of a full committee to designate Vice Chairs of the committee and its subcommittees (not necessarily the next ranking member). In 2009, Rule X clause 5(c) was amended to clarify the devolution of authority in case of absence or vacancy. In 1991 and 1994, a privileged resolution offered by the majority caucus contained an incidental provision that the Chair's powers and duties be exercised by the Vice Chair, unless otherwise ordered by the House (due to incapacities).

Election of Committee Members. There were a number of changes in caucus and conference rules relating to nominations of Members to standing committees. The role of the respective party caucus or conference in making nominations for House election to committees or to fill vacancies was made specific in standing rules in 1983 (Rule X clause 5(a)). The requirement for election of standing committees within the first seven calendar days and the

conferral of privileged status on caucus and conference resolutions to elect of change composition of committee members was made specific in 1985.

The requirement that membership on standing committees be contingent on continuing membership in a party caucus or conference along with the mechanism for automatic vacating of a Member's election to committee should party relationship cease, was added in 1983 in Rule X clause 5(b). The limitation on full committee assignments was added in 1995 (no more than two standing committees or four subcommittees except ex officio service under a committee rule and service on investigative subcommittee of Committee on Standards of Official Conduct). Exceptions from this limitation were to be approved by the House on the recommendation of the relevant party caucus or conference (accomplished by resolutions electing Members to three or more full committees and by separate resolution in case of subcommittee beyond four). The latter rule was not consistently observed since the House had no formal notice of subcommittee assignments. Communications relating to the removal of a Member because of change in party affiliation are laid before the House. The party to which the Member switched, presents resolutions electing them to committees, often with adjusted seniority to reflect past service while in the other party. In modern practice, the party with which the Member chooses to caucus takes the responsibility to handle committee assignments for third-party or independent Members by separate privileged resolution to that effect (*e.g.*, 1991, 2001).

Seniority Considerations; Term Limits. The House in 1995 adopted a limitation on terms (three two-year terms not counting service for less than one session in a Congress) for committee and subcommittee chairmen on committees or subcommittees of the same jurisdiction. The House term-limit rule (Rule X clause 5(c)(2)) was repealed in 2009 but was reinstituted in 2011 upon change in party majorities. Party rules extended that term limit to apply to both chairman and ranking minority positions, cumulatively. Beginning in 2005, the chairman of the Committee on Rules was exempted from the three-term restriction.

Setting and Increasing Committee Membership; Ratios. Overall committee size was implicitly controllable by the majority by voting against any minority resolution if not in accordance with the agreed upon ratio. In 1984, a resolution directing that the party ratios of all standing committees, subcommittees and staffs thereof be changed within a time certain to reflect overall party ratios in the House was held to constitute a rules change and not to raise a question of privilege. Later that year a question of the privileges of the House was raised alleging that subcommittee ratios should reflect full committee ratios established by the House and failure to do so denied representational rights at the subcommittee level.

Appointment, Employment and Compensation of Employees. In 1975, a rule was adopted authorizing the chairman and ranking member of a subcommittee each to appoint one staff member to the subcommittee, to be reflected in the committees' expense resolutions. In 1995, the rule (Rule X clause 6(d)) was amended to require the full committee chairman to provide sufficient funding for all subcommittees and "fair treatment" in the appointment of minority subcommittee staff (a return to the 92nd Congress standard) rather than as an entitlement for separate appointment without full committee action. That 1975 rule had previously replaced the 1971 rule guaranteeing one-third of a committee's staffing funds to be devoted to the needs of the minority. The 1995 change also eliminated the former distinction between professional and clerical staff, set the authorized maximum for committee staff under expense resolutions at 30, and set the entitlement of the full committee minority (as determined by a majority of those minority members) within that number at one-third (10).

The Ethics Reform Act of 1989 prescribed that committee staffs' work be confined to committee business during congressional business hours, with exceptions for "associate or shared" staff added in 1995, subject to Committee on House Administration regulations except for the Committee on Appropriations (which retained its independent authority on all staffing). On at least two occasions upon the change in party majorities, the House reduced its overall committee staff by at least one-third from the previous Congress in 1995, or by a percentage of expenditures in 2011 and again in 2012.

Procedure in Committee. In the 99th Congress, Rule XI clause 2 was amended to allow a privileged nondebatable motion to dispense with the first reading of a measure if printed copies are available, superseding the requirement in *Jefferson's Manual* that a bill or resolution be read in full upon demand before being read by paragraphs or sections for amendment. In 2005 a privileged nondebatable motion in committees to recess subject to the call of the chair within 24 hours was added to that clause. In 2011, electronic availability of all committee publications was required "to the maximum extent feasible" (Rule XI clause 2(e)(4)). That year also marked the first formal reference in House rules (Rule X clause 4) to alternative electronic in lieu of print availability of House documents under regulations promulgated by the Committee on House Administration.

Rule XI clause 1(b) was amended in 1997 to waive the readings of certain investigative and oversight reports if text was available for 24 hours, and to permit final activities reports to be filed with the Clerk after seven days for committee members to file separate views. A clause 1(d) requirement that final activities reports be filed prior to the expiration of the Congress

and that they include separate sections on legislative and oversight activities and recommendations was added in 1995. In 2011, the rule was amended to require four activities reports from each committee to the House in each Congress, two per session. That requirement was reduced to two per Congress, one for each session, in 2013.

The publication of committee rules in the *Record* was required beginning in 1991 within 30 days after members were elected (refined to refer to the election of the chair of the committee in 2011), rather than after the beginning of the Congress, and was required electronically beginning in 2011 (Rule XI clause 2(a)(2)). Committees were authorized beginning in 2005 in clause 2(a)(3) to adopt rules permitting the chair in his discretion to offer motions to send bills to conference.

In 2011, all committees except the Committee on Rules were required to give three days notice of all meetings unless the chairman and ranking minority member agree for good cause to begin earlier or the committee voted to do so. The 24-hour electronic availability to the public of text to be considered in a committee markup was also required beginning in 2011 (Rule XI clause 2(g)(3)).

Sitting of Committees While House in Session. Rule XI clause 2(i) was amended several times to liberalize the ability of committees to sit either in a hearing or meeting when the House was in session. A provision that special leave to sit be granted if ten Members did not object was added in 1977. In 1989, that rule was amended to prohibit committee sittings during joint sessions or meetings. The rule was stricken altogether in 1993 but was reinstated in 1995 with specified exceptions for five committees, along with a provision for a privileged motion by the Majority Leader to permit committees to sit. The rule was stricken again in 1997 except that committees may not sit during joint sessions or meetings.

Proxy Voting; Postponement of Votes. Beginning in 2003, postponed votes on amendments and reports in committees were permitted if committees adopted such a rule. In 1975, the prohibition on proxy voting in the Committee Reform Amendments of 1974 never became operative, when it was modified to permit proxy voting in committees with additional restrictions requiring an assertion that the grantor was absent on official business or otherwise unable to attend, requiring the Member to sign and date the proxy, and permitting general proxies for procedural matters. Proxy voting in committees was totally prohibited beginning in 1995 (Rule XI clause 2(f)).

Committee Jurisdiction. A multiple referral, after being made to resolve an ambiguity, itself can become a precedent for subsequent referrals, including those in subsequent Congresses, unless House rules are rewritten to supersede them.

Informal agreements, drafted among committees or their chairmen to stipulate their understanding of jurisdictional boundaries, have been used in recent years. These agreements, called "memoranda of understanding," have been considered instructive, although not necessarily binding, in subsequent Congresses when they are supported by all the committees concerned, signed by their chairmen and inserted into the *Congressional Record*. They are not formally ratified by the House. Memoranda of understanding can be disclaimed by new committee chairs or by the Speaker as of no further significance in a subsequent Congress. On opening day in 2013, a memorandum of understanding was inserted in the Record by two chairmen to explain a jurisdictional rules change in the rules package relating to insular areas beyond territories of the United States.

Six committee chairmen signed a memorandum of understanding over energy jurisdiction inserted in the *Record* in 1980. Two committees (the Committee on the Budget and the Committee on Rules) inserted an agreement on budget process jurisdiction in 1995. Neither of these memoranda of understanding was renounced in subsequent Congresses. There have been many examples of committee reports or matters inserted in the *Record* containing an exchange of letters between committee chairmen waiving a committee's claim to review a portion of a particular bill, with the understanding that this reluctance to assert jurisdiction over the matter was not permanent. Typical in this area were situations where a primary committee reported a measure and sought to bring it to the floor expeditiously. Often a committee seeking a sequential referral would forego a meaningful time limit imposed by the Speaker in favor of a symbolic one-day referral to signal a proper jurisdictional claim for future referrals, accompanied by an exchange of letters. Most recently, the one-day sequential referrals have given way to exchanges of letters published in the committee report or in the *Record*. Beyond these token referrals, the Speaker's discretionary authority under Rule XII to impose time limits on any committee of referral potentially injected a political calculation into the referral process. While jurisdictional decisions were nonpartisan, as delegated to the Parliamentarian, the time granted to a committee for review could enhance or detract from a secondary committee's ability to hold hearings and mark up the referred measure.

Beyond the language of Rule X and the precedents of prior referral, and informal discussions with the Parliamentarian, however, there were some misplaced notions that referrals could be based: on political influence exerted through the Speaker; on the status of the sponsor of the measure (as for example a committee chairman or "expert in the area"); on the fact that oversight on the general subject may have been conducted by a committee

seeking referral; on the fact that there had been conference committee participation on a prior bill; or on the fact that authorizing committee jurisdiction should align with appropriation subcommittee jurisdiction.

Over the course of 185 years of single referrals a large array of precedent had been established as to committees of predominant jurisdiction, but given the complexities of contemporary issues and the perceived need to modernize standing committee jurisdictions, the House established a Select Committee on Committees in 1974 to recommend jurisdictional realignments and consolidations. That select committee's bipartisan recommendations were rejected by the House in favor of retention to the present day of most of the traditional fragmentation which existed even after enactment of the Legislative Reorganization Act of 1946. For example, the select committee recommended the establishment of a new standing committee on Energy and Environment, which would have assumed various jurisdictions of five or six committees, including energy policy, agricultural environment, energy and environmental research and development, military aspects of those matters, public lands and resources, and air and water pollution matters. A coalition of Members were convinced that they stood to lose rather than gain more power and influence in those and other major subject areas as a result of the proposed realignments, as they could not all gain assignment to the newly consolidated committee. They rejected the consolidation proposal in favor of retention of the existing fragmentation. Contained in a separate unamended section of the select committee's consolidation proposal—but only as a safeguard in the perceived unlikely event that jurisdictional overlaps might continue to occur—was the new requirement for multiple referrals in the event of such overlap. A review of the debate on that occasion failed to disclose that the House consciously adopted a new requirement for multiple referrals while retaining more overlapping and fragmented jurisdictions than envisioned by the select committee. If it was the policy of the prevailing coalition to multiply Members' jurisdictional involvement at the committee level by insisting on a proliferation of referrals, it was not articulated. In fact, the so-called Democratic Caucus "Burton-Hansen coalition" amendment (named after Reps. Phil Burton and Julia Hansen who led the opposition to the select committee's proposal and who proposed an alternative following a six-month majority caucus review) retained with moderate changes the existing jurisdictional scheme. It was drafted to amend only that portion of the select committee resolution containing the jurisdictional statement, and not the subsequent section mandating multiple referrals. Of the factors motivating the prevailing coalition to advocate the retention of fragmented jurisdictions, success could be enhanced on the crucial vote if more Members stood to serve on more committees than under the

Select Committee's consolidation alternative. Combined with the empowerment of the Speaker to place time limits on referrals, in order to bypass entrenched committee chairmen who had gained their positions by seniority and were often not answerable to the leadership, this multiple jurisdictional commitment contributed to profound institutional change in the House.

All committees were empowered by actual language of the Speaker's referral to consider only "such provisions of the measure as fall within their respective jurisdictions under Rule X." This restriction imposed by the Speaker from the outset of the referral confined each committee's consideration without being delineated by the referral, based on advice of the Parliamentarian, and created a point of order in committee markups if attempts were made to read or amend portions of the measure not within that committee's jurisdiction. While those rulings by committee chairmen were not reported to the House and are not treated as precedent for the purpose of this work, they were available through committee markup transcripts.

Prior to 1975, the Speaker could not formally impose time limits on the committee of referral. Only a formal discharge petition or the infrequent utilization of a special order of business from the Committee on Rules to discharge a committee from an unreported bill could accomplish the purpose of the House to take a measure away from a standing committee as though a time limit had been imposed.

The infrequency with which the Committee on Rules was utilized until recent Congresses to report special orders of business which discharged standing committees from unreported legislation was demonstrated in 1972. On that occasion, the Committee on Education and Labor had not reported a measure ending a west coast dock strike, and the Committee on Rules was utilized to bring that matter directly to the floor. The debate on that occasion reflected the "unprecedented" use of a special order to discharge a standing committee from an unreported measure. A review of examples of such special orders from the 1930s until that time indicates only three similar occasions. Two years later, in 1974, the Speaker responded to a parliamentary inquiry that the Committee on Rules had the authority to report a special order which discharged the Committee on Appropriations from consideration of an unreported measure, but it remained clear that the practice of the House was not to so utilize the Committee on Rules. Rather, the practice remained deferential to standing committees in an era of decentralization of authority away from the elected majority leadership and toward the independence of committee chairmen.

In 1975, the first year the Speaker could impose time limits, only committees receiving secondary referral could be time limited. This restriction was quickly removed at the beginning of the 95th Congress in 1977 to permit

time limits to be imposed on all referrals. While this authority has not often been exercised by Speakers, its mere conferral signaled that from the standpoint of available "time" for committee consideration, formal limits were possible from the outset. It symbolized new leadership ability to circumscribe committees from the day of introduction, not merely following a primary committee's report, whenever that might be, to expedite plenary consideration. It represented imposition of a degree of institutional certainty of available time at the committee stage, an enhancement of centralization of majority party leadership, a corresponding reduction of committee and subcommittee independence, and the beginning of a reemergence of majority leadership dominance not seen since the speakership of Joseph Cannon at the beginning of the 20th century (1903–1911) (also utilizing the Committee on Rules).

From 1975 to 1995, joint referrals without the designation of one primary committee had proliferated, where measures containing substantive provisions were separately or concurrently within the jurisdiction of more than one committee and were not merely incidental to more predominant provisions. In 1995, the requirement for the Speaker to designate a primary committee among all committees to which the bill was jointly referred was instituted. In 2003, a return to the pre-1995 policy was permitted but only if based on the "exceptional circumstance" of overlapping and conflicting jurisdiction prompted by ongoing disputes, as over national health care measures between the Committee on Energy and Commerce and the Committee on Ways and Means. The jurisdictional conflict in this area emanated from the 1974 fragmentation of the issue of health care financed by general revenues—conferred upon the Committee on Energy and Commerce, and health care financed by payroll deductions—conferred upon the Committee on Ways and Means. The premise that jurisdiction over health care should depend on the source of Federal funding—payroll tax as opposed to general revenues—ignored a third form of financing, namely premiums which were not collected as payroll taxes. They were the primary source of health care funding under Medicare part B, first enacted in 1965 when the only committee of jurisdiction was the Committee on Ways and Means. Both committees continuously claimed co-equal jurisdiction in this important part B area (and currently in the part D prescription drug benefit area enacted in 2003) since Rule X language was not changed to clarify this omission. This ambiguity in the rule combined with valid claims of the Committee on Education and Labor over health care in employment pension plans, and with the perception that the primary committee might enjoy an added prestige. Yet ongoing disputes remained despite the requirement that the Speaker select a primary committee (and despite the reality that an additional committee of

original referral had as much opportunity to hold hearings and report such a bill within their jurisdictions from the outset as the primary committee). Thus the "exceptional circumstance" safety valve reemerged where the rule and precedents did not enable the Speaker to easily make the determination of primary referral as otherwise required since 1995.

The elimination of three standing committees in 1995 represented the most extensive jurisdictional realignment since the 1946 Reorganization Act. It was adopted as a part of a larger package of partisan procedural reforms rather than as a bipartisan effort utilizing the Committee on Rules or a select or joint committee. A Joint Committee on Congressional Operations, while recommending a series of reforms in the procedures of both Houses, had declined in 1994 to recommend House or Senate committee jurisdictional realignments during its existence in the 103d Congress, thereby tacitly acknowledging the political difficulty encountered in the House in 1974 of accomplishing "reform" in that area.

The six-year evolution of jurisdiction over matters pertaining to homeland security beginning in 2002 was unique. The creation in 2005 of a standing Committee on Homeland Security was the culmination of activity in three consecutive Congresses that ended a temporary procedural anomaly in the Speaker's role in making referrals and an extensive dispute over the extent to which existing standing committee jurisdictions would either be transferred to or shared with a new entity. First, in 2002, the House established a Select Committee on Homeland Security, pursuant to a resolution reported from the Committee on Rules, which was tasked to receive recommendations from 12 standing committees to which the Speaker had referred a bill establishing a new Department of Homeland Security in the executive branch, and to report a bill based on an evaluation of those recommendations. That select committee went out of existence upon final congressional approval in 2002 of the bill which created the department. Then the House at the beginning of the 108th Congress in 2003, in a standing order accompanying the opening-day rules package, created a new Permanent Select Committee on Homeland Security. Its mission was: to develop recommendations on such matters that relate to the Homeland Security Act of 2002 (Pub. L. No. 107–296) as may be referred to it by the Speaker; to conduct oversight of laws, programs, and government activities relating to homeland security; to conduct a study of the operation and implementation of the rules of the House, including Rule X, with respect to homeland security; to report its recommendations to the House on matters referred to it by the Speaker; and to report its recommendations on changes to House rules to the Committee on Rules by September 30, 2004. The legislative jurisdiction conferred on that select committee was unusual in that it referred only to the 2002 Act

which created the department and "matters relating thereto as determined by the Speaker." Even before that matter was debated in the House on January 7, 2003, Speaker-elect Dennis Hastert, in his acceptance speech prior to taking the oath of office, pledged to the House that upon becoming Speaker and upon adoption of the rules creating the new select committee with limited legislative jurisdiction, his referrals would not be prejudicial to the jurisdictions of those standing committees that had contributed to the 2002 Act. He was thus promising a very restricted set of referrals of measures to the select committee so as not to diminish the jurisdictional claims of the standing committee chairmen who would in turn reluctantly support its creation. Over the course of the 108th Congress, only a handful of measures were referred to the select committee, and only two or three to that committee as primary, although others directly amended the 2002 Act in some reorganizational or substantive respect. The Speaker personally examined each measure on the date of introduction, and did not conclusively seek the advice of the Parliamentarian based on precedent. For example, if the bill proposed to expand or transfer new authority to the new department, it was likely referred to one or more of the existing standing committees because the proposed reorganization was not contained in the 2002 Act and therefore not "related thereto." The Speaker had taken the extraordinary step of announcing even prior to taking office that he would protect the standing committees of the House, and further appointed virtually all standing committee chairmen who had contributed recommendations to the 2002 Act, and who had overlapping jurisdictions, as members of the new select committee. The legislative activities of the select committee during its two year existence in 2003–2004 were therefore very limited, because the Speaker would not confer an expansive jurisdictional role on it through his referrals.

The House on opening day of the 109th Congress in 2005, on recommendation of the majority conference, then created the standing Committee on Homeland Security with jurisdiction over both the organizational aspects of the new department and over subject matter aspects on a wide variety of matters relating in whole or in part to homeland security. Shared jurisdiction was made explicit in several areas, with the new committee having jurisdiction over customs except customs revenue (retained by the Committee on Ways and Means), border and port security except immigration policy and non-border enforcement (retained by the Committee on the Judiciary), transportation security (with the Committee on Transportation and Infrastructure retaining jurisdiction over transportation except transportation security functions of the new Department of Homeland Security), and integration, analysis, and dissemination of homeland security information (overlapping the intelligence jurisdiction of the Permanent Select Committee

on Intelligence). On that day, the Speaker announced that his referrals in the previous Congress to the former select committee would not be considered precedent for referrals to the new standing committee, affirming that the traditional nonpartisan role of the Parliamentarian would be resumed in all subsequent referrals. The calamitous events of September 11, 2001, were to be reflected in the first major legislative jurisdictional realignment of standing committees of the House since the 1995 elimination of three standing committees, but only after three years of examination and trial through utilization of a select committee with very limited jurisdictional authority. After three years of executive branch reorganization, the House could no longer resist a permanent internal reorganization reflecting a comparable prioritization in the complex area of homeland security in the executive branch. It responded to a demand from the executive and the public that a more expeditious capacity for and degree of oversight be put in place. At the same time, the jurisdictional overlaps with other standing committees and the unique conferral of some subject matter jurisdiction only to the extent that it was a function of the Department of Homeland Security (*e.g.*, transportation security unless it is a function of another department, and catastrophic emergencies only if defined to include terrorist activities), demonstrated the limits of the new jurisdiction.

A number of other jurisdictional transfers from one standing committee to another were accomplished by changes in Rule X. As well, several unanimous-consent orders set precedents by rereferrals of specific measures to correct or clarify existing jurisdictions.

With respect to the Committee on Agriculture, that committee assumed jurisdiction by rule over inspection of poultry, seafood, and water conservation regulated by the Department of Agriculture in 1995. By rereferral the committee's jurisdiction over the Horse Protection Act, food stamp eligibility requirements for aliens, and executive level positions in the Department of Agriculture was clarified.

The Committee on Appropriations gained specific jurisdiction over rescissions and deferrals under the Impoundment Control Act of 1974. Section 401(b) of the Congressional Budget Act (formerly section 402), required sequential referral of bills reported by other committees containing new entitlement authority in excess of allocations in a budget resolution. Several mandatory sequential referrals to the Committee on Appropriations were made by Speakers in 1977 through 1981. In 1997, that referral authority was made discretionary on the part of the Speaker.

The Committee on Armed Services gained jurisdiction over military applications of nuclear energy in 1977, over inter-oceanic canals, the Merchant Marine Academy, and national security aspects of merchant marine in 1995, and over cemeteries operated by the Department of Defense in 2011.

The Committee on the Budget in 1995 gained limited legislative jurisdiction over the congressional budget process generally (with the Committee on Rules), over special controls over the Federal budget including budgetary treatment of off-budget Federal agencies and programs, and over measures relating to sequestration orders. In 2012, the House adopted a concurrent resolution on the budget requiring the Committee on the Budget to itself report legislation which responded to reconciliation-like instructions in lieu of automatic "sequestrations" to be effective in 2013. When the Senate did not act on the concurrent resolution, the House adopted that requirement as a standing order instructing its own Budget Committee.

The Committee on Financial Services, was the recipient of a major jurisdictional consolidation in the 107th Congress when it obtained jurisdiction over securities and exchanges from the Committee on Energy and Commerce, and was given jurisdiction over insurance generally. A memorandum of understanding between those committees with respect to accounting standards (jurisdiction to be retained by the Committee on Energy and Commerce) in 2001 no longer served as jurisdictional guidance to the Speaker following his renunciation four years later in a statement inserted in the *Record* (the first example of such a renunciation), thereby giving the Financial Services Committee comprehensive jurisdiction over banking, securities, insurance and accounting aspects of financial institutions, many of which were performing all those services for customers.

The Committee on Energy and Commerce underwent several jurisdictional changes in Rule X. In the 96th Congress, the committee obtained specific jurisdiction over national energy policy generally, over energy resources, energy information, generation, marketing, interstate transmission of, and ratemaking for power including siting of generation facilities, and general management of the Department of Energy and the Federal Energy Regulatory Commission. In the 104th Congress, the committee's jurisdiction over inland waterways and railroads was transferred to the Committee on Transportation and Infrastructure, and over commercial application of energy technology to the Committee on Science (now Science, Space, and Technology), while the committee gained exclusive jurisdiction over regulation of the domestic nuclear energy industry from the Committee on Natural Resources. In 2001, the committee relinquished jurisdiction over securities and exchanges to the Committee on Financial Services and in 2005 was stripped by the Speaker of jurisdiction over accounting standards which it had previously retained based on a memorandum of understanding between those committees. While the committee has retained jurisdiction over health and health facilities financed from general revenues (*e.g.*, Medicaid), as opposed to health and health facilities financed from payroll deductions (*e.g.*, part

A of Medicare), which was assigned to the Committee on Ways and Means by the Committee Reform Amendments of 1974, a subsequent referral by the Speaker has resulted in joint jurisdiction with Committees on Ways and Means and Energy and Commerce over health care financed by other sources such as premiums (*e.g.*, parts B and D of Medicare) and in acknowledgment in the 109th Congress that such joint referrals in extraordinary circumstances could occur without regard to listing a "primary" committee as otherwise required beginning in 1995. Only one such joint referral has been made.

The Committee on Foreign Affairs assumed jurisdiction in 1977 over nonproliferation of nuclear technology and hardware, and over international agreements on nuclear exports, upon termination of the Joint Committee on Atomic Energy.

The Committee on House Administration assumed jurisdiction in 1995 over the Franking Commission, and lost jurisdiction over the erection of monuments to the memory of individuals to the Committee on Natural Resources. The Committee's policy direction and oversight jurisdiction over the Inspector General was retained in 2001 while policy direction (but not oversight) over other officers of the House conferred in 1995 was eliminated. In 2011, the committee was empowered in Rule XXIX clause 3 to establish regulations governing electronic availability of measures in the House and in committees. Those regulations were reported in December, 2011.

The Committee on Natural Resources absorbed much of the jurisdiction of the former Committee on Merchant Marine and Fisheries including fisheries and wildlife, international fishing agreements, marine affairs and oceanography, upon abolition of that committee in 1995. Jurisdiction over the Trans-Alaska Oil Pipeline was transferred from the Committee on Transportation and Infrastructure. The Committee on Natural Resources relinquished jurisdiction over the domestic nuclear energy to the Committee on Energy and Commerce. In 2013, it was given explicit jurisdiction along with the Committee on Foreign Affairs over insular areas beyond territorial possessions, such as the sovereign Freely Associated States.

The Committee on Oversight and Government Reform lost jurisdiction over general revenue sharing, over off-budget treatment of agencies or programs (to Committee on the Budget) in 1995, and over budget process (to Committee on the Budget) in 1997, while assuming the jurisdictions of the former Committees on Post Office and Civil Service and on the District of Columbia in 1995.

The Committee on Science, Space, and Technology was given jurisdiction in 1981 over energy demonstration projects and federally-owned nonmilitary energy laboratories as an extension of its energy research and development

jurisdiction. In 1995, the committee received jurisdiction over marine research (upon termination of the Committee on Merchant Marine and Fisheries) and over commercial application of energy technology from the Committee on Energy and Commerce.

The Committee on Transportation and Infrastructure obtained jurisdiction in 1995 over several matters transferred from the former Committee on Merchant Marine and Fisheries, including navigation, registration of vessels, international rules to prevent collisions at sea, the merchant marine (except for national security aspects), and marine affairs as related to oil and other pollution of navigable waters. That year the committee also was given jurisdiction over all aspects of transportation including inland waterways and railroads.

The jurisdiction of the Committee on Ways and Means was further protected by the adoption of Rule XXI clause 5(a) in 1983 permitting points of order to be raised "at any time" against tax or tariff provisions in bills not reported to the House from that Committee, or amendments thereto. There were rulings in 1985 and in 1989 interpreting that rule in the context of reconciliation bills with language "recommended" by the Committee on Ways and Means but reported from the Committee on the Budget (creating the anomaly discussed in chapter 41). In 2005, the restriction against such tax or tariff provisions was extended to amendments to general appropriations bills, which per se were in the form of limitations on funds for the administration of a tax or tariff (but not to such limitation language in the bill itself), in order to avoid the difficulty of the Chair's determining whether or not such floor amendments had the inevitable and necessary effect of resulting in a loss or gain in tax liability and in tax collection. Language in the general appropriation bill itself would continue to require the necessary and inevitable determination regarding the negative effect of the limitation on such tax or tariff liability or collection.

A history of the Committee on Rules was published as a committee print in the 97th Congress in 1983, together with a short updated history found on the Committee on Rules website posted in 1996. The composition, role, and work product of that committee has evolved, beginning with the method used in majority party caucus rules to select the majority members. The current size and ratio of the committee, which stood at 8-4 through 1970 (and in the 112th Congress due to a majority vacancy), then at 11-5 through the 97th Congress, and since then at 9-4, regardless of the majority party size in the House, reflected the traditional notion that the leadership's agenda should presumptively be enhanced by a committee with a disproportionate majority reflecting the leadership's legislative priorities. In the 1970s, the rules of the Democratic Caucus were amended to confer upon the Speaker

the authority to nominate the majority members without seniority considerations and without going through the bidding selection process applicable to other committee assignments. The Republican Conference followed suit to authorize their Speaker or Minority Leader to similarly nominate its members.

In 1977, the Committee on Rules was implicitly given jurisdiction over rules relating to financial disclosure so long as not directly amending the Code of Official Conduct, transferred from the Committee on Standards of Official Conduct. In 1991, the authority of the Committee on Rules to report emergency waivers of the required reporting dates for bills authorizing new budget authority, conferred by the Congressional Budget Act, was repealed as obsolete. The requirement for automatic sequential referrals to the Committee on Rules of budget resolutions and other measures changing congressional budget processes was refined in a memorandum of understanding in 1995 in part to subsume that committee's original jurisdiction over rules into the expectation that the committee would exercise its jurisdiction in the context of special orders of business governing budget resolutions.

Committee on Rules Procedure. There were changes in party caucus policy since 1974 with respect to Committee on Rules members' support of "restrictive" special orders limiting the offering of germane amendments. That year Democratic Caucus rule 35 (but not Republican Conference rules) required announcements to the House in the *Congressional Record* respecting the Committee on Rules' expectation to hold a hearing on a request for a special order limiting germane amendments which might be offered on the floor. That announcement required no less than four legislative days in advance of a committee meeting, so as to enable a possible petition by at least 50 majority Members for a caucus to consider whether that amendment should be made in order. While party policies not to seek or support "closed" rules were sometimes utilized, these were not committee rules and therefore not binding. Both majority parties until the 21st century usually gave some advance notice to the House of leadership intent, during which time Members were requested to deliver amendments to the Committee on Rules by a time certain before the hearing. More recently, most "closed" or "modified-closed" (*i.e.*, "structured") rules reported from the Committee on Rules were not preceded by such announcements on the floor by either majority, but rather by "dear colleague" letters and electronic announcements.

Rules of the Committee on Rules were printed in the *Congressional Record* and indicate their evolution. They demonstrate reduced quorum requirements for hearings (five members rather than a majority), additional provisions governing emergency meetings, as well as additional provisions required by House rules for inclusion in all committees' rules (*e.g.*, of all

record votes on motions to amend or to report showing totals and individual members' votes in the accompanying report, and the banning of proxy voting). In the 110th Congress, House rules were amended to no longer require the Committee on Rules to include committee record votes in its accompanying report (so as to avoid possible points of order in the House based on a report error), but the committee rules continued to include the requirement. In 2011, that requirement for the Committee on Rules was reinstated (Rule XIII clause 3(b)).

Reports from the Committee on Rules must show proposed direct changes or repeals in standing rules as a comparative print ("Ramseyer"). That rule (Rule XIII clause 3(g)) was held in 1993 not to apply to a special order providing for consideration of a bill which would affect certain changes in House rules on enactment of the bill into law, where the special order itself did not itself repeal or amend any rule. In 1995, the Committee on Rules was required to include in its accompanying report "to the maximum extent possible" a specification of the object of any recommended waiver of a point of order against a measure or its consideration. The committee in subsequent Congresses did not always adhere to that standard in reports accompanying special orders. This requirement was clarified in 2013.

Beginning in 1995, a motion to recommit with proper instructions pending initial final passage of a bill or joint resolution (although not applying to adoption of concurrent or simple resolutions or of Senate amendments) if offered by the Minority Leader or a designee could not be restricted by the Committee on Rules in a special order of business. This rule change recommended by the Joint Committee on Organization of Congress in 1993 was in response to several rulings by Speaker Thomas Foley in 1990-94 (relying upon a precedent by Speaker Henry Rainey in 1934) that the Committee on Rules had the authority to report special orders which precluded instructions in motions to recommit, so long as not totally denying a straight motion to the minority. This protection of the minority right to offer recommittal motions was held in 1990 not to apply, however, to a special order providing for consideration of a bill under suspension of the rules, as there is no ordering of the previous question under that procedure which would otherwise protect a recommittal motion.

In the 111th Congress, the motion to recommit made in order under Rule XIX clause 2(b) following the ordering of the previous question and pending initial final passage of a bill or joint resolution was restricted to require that any instructions included in the motion contain the "forthwith" reporting of an amendment. That 2009 rules change had the effect of precluding such motions to recommit with instructions to report "promptly" or to take any other action than forthwith reporting. By limiting the definition of permissible motions to recommit with instructions, the authority of the Committee

on Rules to report special orders having the effect of restricting other minority motions to recommit with non-amendatory instructions was accordingly enhanced. While other restrictions on the authority of the Committee on Rules to report special orders limiting or prohibiting motions to recommit on initial passage of bills or joint resolutions remained in place, its authority to prohibit motions to recommit on conference reports or on amendments between the Houses, addressed in other rules of the House and not expressly prohibited by Rule XIII clause 6, was left unimpaired (See, *e.g.*, *Deschler-Brown Precedents* Ch. 33 § 31.5).

Also in the 111th Congress, the House changed the Calendar Wednesday rule by requiring a committee chairman to give one day's notice of intent to call up a reported bill under general rules of the House on Wednesdays, rather than requiring an alphabetical call of all committees every Wednesday unless the call was dispensed with by a two-thirds vote. As a conforming amendment, that subparagraph of Rule XIII clause 6(c)(1) which had prevented the Committee on Rules from reporting special orders setting aside Calendar Wednesday by less than a two-thirds vote, was repealed, leaving in place only constraints against denial of proper recommittal motions and same-day consideration without a two-thirds vote.

Several rulings with respect to the privileged filing and consideration of reports from the Committee on Rules included a decision in 1987 that such a report may take precedence over a motion to consider a measure that is "highly privileged" pursuant to a statute enacted as an exercise of the rulemaking authority of the House, thereby acknowledging the constitutional authority of the House to change its rules at any time. On that same day, however, a resolution raising a question of the privileges of the House was held to take precedence over a privileged report from the Committee on Rules. Special orders of business reported from the Committee on Rules which temporarily waive or indirectly alter the rules of the House, including statutory provisions that would otherwise establish an exclusive procedure for consideration of a particular type of measure, were held privileged in 1975, 1986 and 1987. In 1991, it was held that the Committee on Rules was permitted to report a special order making in order specified amendments that have not been preprinted as otherwise required by an announced policy of that committee.

Several changes in the standing rules and in practice affected the requirement for a two-thirds vote of the House to consider a report from the Committee on Rules on the same (legislative) day reported. In 1976, Rule XIII clause 6(a)(1) was amended to permit the immediate consideration of a reported special order if it only waived the three-day layover requirement for consideration of a reported bill or the two-hour layover requirement for consideration of conference reports and contained no other provisions. All other

special orders were still required to lie over "beyond the same day reported" in order to avoid a two-thirds vote on the question of consideration.

In 1987, a trend began permitting a report filed by the Committee on Rules at any time before the convening of the House on the next "legislative" day to be called up for immediate consideration without the two-thirds requirement. If the House continued in session into a second calendar day (by continuous session or by "short time" recesses declared by the Chair), and then adjourned and met again the second day, or convened twice for two legislative days on the same calendar day, any report filed on the first legislative day was permitted to be called up on the second such day without the question of consideration being put. A landmark occasion for holding two legislative days on one calendar day was in 1987, with two sessions separated only by a brief adjournment pursuant to motion to set the time for reconvening recognized by Speaker Jim Wright in his discretion, which permitted the Committee on Rules to meet and file prior to the adjournment. This sequence followed House rejection of a similar special order earlier that calendar day. The House then received the filing of a second special order on the same bill prior to adjournment, all within the space of approximately two hours. While the Speaker's decision and the action of the House was in order under a previous determination that "on the same day" reported meant a "legislative" day in 1985, the Speaker's decision was subjected to extensive criticism from the minority for having changed the time for reconvening to a later time on that same calendar day, rather than waiting until the next calendar day as otherwise established by standing order for daily convening.

Only when that minority became the majority in 1995 until 2007 did the practice of "two legislative days in one calendar day" by extended declared recesses become commonplace. Often through 2006, and then only twice during the 110th Congress under another new majority, the practice persisted that reports would be filed by the Committee on Rules late at night or early in the morning interrupting an extended (sometimes overnight) recess declared by the Speaker. Those special orders often made in order a conference report or newly introduced bill (filed only an hour or so earlier), to be immediately followed by an adjournment of the House to meet again at the ordered time (usually a very short time later) the same calendar day. They were given privileged consideration despite the lack of printing of either the special order or the measure being made in order.

The frequent practice developed where the Committee on Rules anticipated the need to waive the two-thirds requirement for same day consideration of a special order it might subsequently report, but was not yet certain of the nature of that report. In that case, the Committee on Rules would

report a preliminary "same-day rule" merely waiving the layover requirement for any subsequent special order on that measure, which preliminary special order would itself lie over for one legislative day and then adoption by the House. That "same-day rule" would permit subsequent special orders on the measure(s) covered to be considered by the House without a two-thirds vote as soon as filed.

One constraint upon the Committee on Rules was its informal policy not to meet until the measure to be made in order was available for at least one hour (either electronically or in printed form). Thus a conference report needed to be filed or a new bill introduced (and an electronic version available) for at least one hour prior to a Committee on Rules meeting. This tactic was made possible by the expanded use of short term recess authority. It suggested a contrast (an "inverse ratio") between the importance and complexity of the measure being made in order and proximity to an adjournment period, on the one hand, and the minimal time permitted for Members to scrutinize the measure, on the other, with waivers of the three-day availability rule becoming the "customary" way of permitting immediate consideration of the measure just filed.

Committee Reports. There were several rules changes over the years: those pertaining to filing permitting only two rather than three legislative days for the filing of additional, minority or supplemental views from the day reported (Rule XI clause 2(l)) in 1997; permitting the filing of committee reports with the Clerk within one hour after receiving all such views, despite a House adjournment and without unanimous consent (Rule XIII clause 2(c), redesignated in 1999); and permitting supplemental reports to correct technical errors and omissions in the previous report without requiring unanimous consent for filing or being subject to a new three-day availability requirement if only correcting depiction of a record vote in committee (Rule XIII clause 3(a)(2) as added in 2001).

Various additions to and repeals of reporting requirements included: a requirement that committee members' votes on reporting or on amendments be shown (Rule XIII clause 3(b) in 1995) (a change in 2007 exempting the Committee on Rules from this requirement was repealed four years later); a requirement that committee reports include a statement of performance goals and objectives (Rule XIII clause 3(c)(4) in 2001) (replacing a requirement that oversight findings and recommendations by the Committee on Government Reform be included); and a requirement for citation of constitutional authority of Congress to enact the bill (Rule XIII clause 3(d)) in 1997 (replacing a requirement for an inflation impact statement). In turn, the requirement for citation to constitutional authority in committee reports was replaced in 2011 by a requirement for that statement to be included in the

Record the same day as the introduction of all bills and joint resolutions. In 1989, the Committee on House Administration was given privilege to report matters relating to preservation and availability of noncurrent House records. Beginning in 1995, reports were required to contain a description of the applicability of a measure to the legislative branch under the Congressional Accountability Act (Pub. L. No. 104–1) of that year, with points of order in the House waivable by majority vote. In 2013, the "Ramseyer" rule (Rule XIII clause 3(e)) was amended to require the display of "contiguous portions of existing law" in addition to that being directly amended if providing clarity at the committee chair's discretion. Also that year all committees were required by standing order to include in reports on legislation estimates of the number of "directed rule makings" to agencies contained therein, as well as a statement on potential duplication of other Federal programs.

In reports on general appropriation bills, a specific list of unauthorized appropriations was required for inclusion beginning in 1995 and broadened in 2001 to include levels of such funds (Rule XIII clause 3(f)).

Regarding measures amending the Internal Revenue Code, requirements were added in 1999 for report or *Congressional Record* language to include a "tax complexity analysis" and in 2003 for a "macro-economic impact analysis," both to be prepared by the Joint Committee on Internal Revenue Taxation (Rule XIII clause 3(h)). In 1981, cost estimates from the Congressional Budget Office if available were required to be included in lieu of optional committee cost estimates; and various changes in the reporting of spending and revenue levels over five years were included in 1990 and 1995.

In the Unfunded Mandates Reform Act, a requirement for inclusion in a committee report or in the *Congressional Record* of estimates of levels of unfunded intergovernmental mandates was enacted and made the premise for a point of order to be decided by a vote on the question of consideration rather than by a ruling from the Chair. Beginning in the 109th Congress, requirements for inclusion in committee reports or in the *Congressional Record* of "earmarks" of special spending or tax provisions, and of the Members' sponsoring those provisions were similarly made the premise for a point of order decided by a vote on the question of consideration.

Changes in Rule XIII clause 5 were made with respect to privileged reports from committees. In 1981, reports on continuing (non-general) appropriations joint resolutions were made in order after September 15 of each year (although this provision was not utilized, as privilege is attached *en bloc* by special orders from the Committee on Rules so as to limit amendments otherwise in order).

Clarifications as to the calculation of calendar-day time required for the availability of committee reports, as well as exceptions therefrom, were

added on several occasions between 1979 and 1997 (Rule XIII clause 4). Reports from the Committee on the Judiciary relating to impeachment proceedings and from the Committee on House Administration dismissing an election contest were held in 1998 to be immediately in order as reported questions of privilege without a three-day availability. The three-day availability requirement for most committee reports was qualified in 2011 by Rule XXIX clause 3 to permit electronic availability under standards promulgated by the Committee on House Administration. Also that year a similar three-day availability requirement for consideration of introduced but unreported measures was put in place (Rule XXI clause 11).

Filing of Reports. In 2011, the House entered a standing order by unanimous consent permitting the filing of privileged reports by committees during Morning-hour debate, a departure from the prohibition against conduct of any business during that period initiated in 1994. While all other business requiring consent of the House continued to be prohibited during that period, the filing from the floor was permitted in order to begin the layover period for availability of reports. This had the effect of precluding preemptive motions to adjourn which might otherwise prevent the filing of privileged reports.

Chapter 18—Discharging Matters from Committees.

The discharge rule (Rule XV clause 2) has undergone several changes. In 1991, the clause was amended to permit debate on a resolution discharged from the Committee on Rules. Prior thereto, the House voted immediately on adoption of the discharged resolution without debate. In 1993, after a successful petition under that clause placed on the Calendar, a motion to discharge the Committee on Rules from further consideration of a resolution to require publication of the names of Members who had signed pending discharge petitions, the clause was so amended. In 1995, the clause was amended to ensure the periodic publication of signed names; and, in 1998, it was held to require publication of the withdrawal of such signatures. In 1997, the clause was amended to clarify that, to be a proper object of a discharge petition, a resolution providing a special rule must address the consideration of only one measure and must not propose to admit or effect a nongermane amendment. This change had the effect of limiting application of discharge petitions to one measure which had been pending for the requisite period so as not to serve as a vehicle for nongermane amendments which did not themselves qualify as introduced measures under the timetable of the rule. In 2003, the Chair clarified that Delegates were ineligible to sign a petition, even by unanimous consent.

In 1992, and again in 1994, a discharge petition received the requisite number of signatures on the same day it was filed, and on the former occasion, the House by unanimous consent dispensed with the motion to discharge and agreed to consider the object of the petition (a special order)

under the same terms as if discharged by motion. On those and other occasions, the line of Members waiting to sign the discharge petition proceeded to the rostrum from the far right-side aisle where the Chair would not permit Members to stand between the Chair and Members engaging in debate or to otherwise obstruct debate.

The prior publication of chapter 18 illustrated certain matters arising under the Constitution and privileged for consideration at any time (such as veto override and impeachment) which may therefore be discharged from committee at any time irrespective of the requirements for petitions under the discharge rule, subject to relevant notice and scheduling under Rule IX. Added to the examples of such measures were motions in 1997 to discharge a committee from a proposition involving the right of a Member to her seat.

Additionally, statutory procedures enacted as joint exercises in rulemaking involving motions to discharge committees from various measures of approval or disapproval of executive actions were compiled in the *House Rules and Manual* in section 1130. They are covered in chapter 18, section 5, to the extent that questions were raised as to utilization of discharge motions to bring those matters before the House. Motions to discharge committees from resolutions approving Reorganization Plans were mooted in 1984 when the authority of the President to submit reorganization plans was terminated by law.

The use of special orders making in order consideration of unreported measures, and of measures not yet introduced, has increased over time. Under Rule XXI clause 11 added in 2011, unreported bills must be available either in electronic or printed form to be considered on the third calendar day (not necessarily for 72 hours).

Chapter 19—Committee of the Whole.

House Rule XVIII was codified in 1999 (changed from Rule XXIII) to reflect current usage of the Committee of the Whole House on the state of the Union for consideration of public bills, with respect to matters requiring consideration therein, methods for resolving into a Committee of the Whole, and elimination of a separate "Committee of the Whole House" for consideration of private bills. The latter was recodified as "the Private Calendar" under Rule XV clause 5. Also, consideration of measures in the "House as in the Committee of the Whole," although technically available under existing precedent, has been largely discontinued. While the jurisdiction of the Committee of the Whole remained unchanged in Rule XVIII clause 3, and also with respect to initial consideration of Senate amendments under Rule XXII clause 3, the authority of the Committee on Rules to report special orders of business which waived the requirement for Committee of the Whole

consideration of Senate amendments prior to the stage of disagreement by "hereby adopting" a Senate amendment on the Speaker's table otherwise requiring such consideration was upheld in 1993.

Special orders often provided for consideration in the House of reported bills on the Union Calendar under a restrictive rule permitting no amendments or only a few amendments. This had the effect of precluding the consideration of many measures under the five-minute rule in the Committee of the Whole. Where Committee of the Whole consideration was permitted for the consideration of multiple amendments, the traditional consideration through the 1970s of all major measures, except revenue bills, under an "open" rule (permitting any germane amendment and amendment thereto to the pending portion of the bill) gradually gave way to "closed" or "modified-closed" rules permitting consideration of designated amendments in a specified order, normally not subject to second-degree amendments and without the five-minute rule governing debate. This departure from the standing rule (traditionally giving individual Members the right to offer any germane amendments) became commonplace by the 110th Congress, and was the result of the constant utilization of the Speaker-designated majority of the Committee on Rules to control amendments and debate.

The customary spontaneity and unpredictability of Committee of the Whole amendment procedures were often superseded on the general appropriation bills although the five-minute rule was retained for the most part through 2008 (and revived again on an omnibus appropriation bill in 2011). Standing rule procedures were often overtaken by unanimous-consent agreements in the House to establish a "universe of amendments" governing some of the amendment process in the Committee of the Whole. On one occasion in 2010, a special order providing for a motion in the House to concur in a Senate amendment included a contingency that an amendment to the Senate amendment be first considered in a Committee of the Whole under a structured rule, rather than merely given priority status as a motion in the House to concur with an amendment—an anomalous procedure.

In the 103d and again in the 110th and 111th Congresses, Delegates and the Resident Commissioner were permitted to vote and to preside in the Committee of the Whole. That rule (former Rule XVIII clause 6(h)) was held constitutional by a Federal appellate court in 1993, based on the provision for immediate reconsideration in the full House in the event that the cumulative votes of the Delegates and Resident Commissioner were decisive to the outcome. The rule was again repealed in 2011.

Motions and Requests Generally. At least twelve forms of unanimous-consent requests were allowed to be entertained in the Committee of the Whole as not materially altering procedures required by special rule or

order adopted by the House (*e.g.*, enlarging debate on an amendment but not general debate congruent with terms of equal division imposed by the House). Those rulings were contrasted with at least sixteen types of requests which could not be entertained and required the Committee of the Whole to formally rise by motion in order to consider the unanimous-consent requests in the full House (*e.g.*, limiting the "universe of amendments" which may be offered). The number of rulings making that distinction coincided with the rapidly increasing use of special orders from the Committee on Rules providing "closed" or "modified-closed structured" rules for the consideration of most major legislation, where procedural accommodation subsequent to adoption of those special orders often necessitated unanimous-consent modifications with respect to specified amendments being considered under time and amendment limitations. On one occasion in 1986, the House by unanimous consent delegated to the Committee of the Whole authority to entertain unanimous-consent requests to change procedures contained in an adopted special order, but for the most part those requests were made *ad hoc* in the House, the Committee rising, as the situation arose.

Resolving into Committee of the Whole. The adoption of Rule XVIII clause 1(b) in 1983 reflected the use of special orders to authorize the Speaker to declare the House resolved into the Committee of the Whole without motion when no other question was pending, in order to avoid the question of consideration on motions to resolve into Committee and votes thereon, although not to avoid points of order against consideration which might arise initially in the House.

The Chairman. The tradition of the appointment of one Chairman to preside over the entire deliberations on a measure gave way in modern practice to rotations at regular intervals, without the Speaker naming more than one Chairman, to accommodate Members' schedules. Pursuant to Rule XVIII clause 1, Delegates were appointed on two occasions in the 103d Congress, (the first being the Delegate from the District of Columbia), and again in the 110th and 111th Congresses, to preside over its consideration. The rule was repealed in 2005, reinstated in 2007, and repealed again in 2011. In 2007, the traditional assurance that no member of a committee which had considered the measure should preside over the Committee of the Whole was considered not to be technically binding on a Speaker pro tempore—a member of the reporting committee—in ruling on a point of order in the House prior to his declaration of the House into the Committee of the Whole, although the Parliamentarian suggested future diligence in avoiding that appearance of a conflict of interest.

In 1995 and 2002, the chairman of the Committee of the Whole determined that he did not rule upon matters which may arise in the House in

the future, such as a possible motion to recommit, or (in 1999) on scheduling matters which are the prerogative of leadership. The Member offering an amendment in the Committee of the Whole pursuant to a special order of the House had the burden of proving to the Chair that it met the description of the amendment made in order in 1996, as where the amendment made in order was described by subject matter rather than by prescribed text in 2000.

In the 110th Congress a newly adopted rule (Rule XX clause 2(a)) prohibiting the Chair from holding open an electronic vote "for the sole purpose of reversing the outcome of such vote" was held not to be directly enforceable in the Committee of the Whole. That point of order during the conduct of a vote could not be appealed during the pendency of the underlying vote (a recorded vote on the appeal could not be simultaneously accommodated by the electronic system), and questions of privilege of the House to collaterally challenge the Chair's action could not be immediately entertained in 2008. The Chair in that instance indicated that a point of order following the challenged vote could be entertained in the Committee of the Whole. In any event, the rule was repealed at the start of the 111th Congress in 2009.

Other rules changes with respect to voting on amendments in the Committee of the Whole included the authority of the Chair added by Rule XVIII clause 6(f) in 1991 to reduce to five minutes the time for electronic voting on any pending amendments without intervening business after a 15-minute recorded vote on the first amendment. Beginning in 2011, two-minute minimum votes were permitted under that rule in such circumstances (and in 2013 on all votes immediately following regular quorum calls), obviating the need for similar authority previously granted in some special orders in prior Congresses. Reductions of voting time to two minutes had been permitted by unanimous consent obtained in the House but not in the Committee of the Whole (*e.g.*, 2006). Division votes were held not to constitute such intervening business in 1994, but pro forma amendments to discuss the program were held in 2000 to be intervening business such as to preclude a five-minute vote except by unanimous consent.

Rule XVIII clause 6(g) was added in 2001 to permit the chairman of the Committee of the Whole to postpone requests for recorded votes on any amendment. Prior to that time, special orders of the House gradually provided the chairman this authority on an *ad hoc* basis. In 1998, its exercise was held to be entirely discretionary. Several rulings from 1987 through 1998 prevented the Committee of the Whole from entertaining unanimous-consent requests to postpone and cluster votes on amendments absent a conferral of that authority by the House. Recorded votes on appeals could not be postponed under that rule even by unanimous consent in the Committee

of the Whole as the rule was only applicable to votes on amendments. At the Chair's discretion the Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending in 2000. Requests for recorded votes were held in 1998 and 2004 to be withdrawable by unanimous consent during the interval before proceedings resumed on the request as unfinished business, but then as a matter of right when the postponed question was pending and was put.

Appeals. A vote on an appeal could not be postponed, even by unanimous consent, although an appeal could be withdrawn in Committee of the Whole as a matter of right in 2000. An appeal is debatable under the five-minute rule (2003), and the ruling is sustained by a majority vote (1989).

Motions to Strike the Enacting Clause. Several rulings in 1986 reiterated the requirements of Rule XVIII clause 9 that the motion to strike the enacting clause in the Committee of the Whole be in proper form and in writing. In 1979, the motion was held applicable in the Committee of the Whole to the resolving clause of a concurrent resolution on the budget. The motion was held to take precedence over the motion to rise and report at the end of the reading of a general appropriation bill, and over a motion to limit debate on pending amendments. In 1979 and 1995, rulings reiterated that the Member offering the motion must qualify as being opposed to the bill, if challenged.

The equally-divided ten minutes of debate on the motion could not be reserved or subdivided between more than two Members, and priority of recognition in opposition was given to a managing committee member, to be determined after the five minutes of debate in favor of the motion (as demonstrated in 1988 and in 1991, respectively). Where the motion was withdrawn by unanimous consent rather than voted upon, a second motion was permitted on the same day without the requirement that the bill be modified in 1996.

On one occasion in 1994, the Speaker indicated that notwithstanding that consideration of the pending bill was governed by a "modified-closed" rule permitting only specified amendments, pending the concurrence of the House with the recommendation of the Committee of the Whole that the enacting clause be stricken, the House could by instructions in a motion to refer under Rule XVIII clause 9 direct the Committee of the Whole to consider additional germane amendments (the previous question not yet operating at that point so as to prevent additional amendments in the House).

Consideration and Debate in Committee of the Whole. A significant change in Rule XVIII clause 6 in 1977 limited points of order of no quorum during debate in the Committee of the Whole (and in the House), and was

supported by two rulings in 1977 to the effect that debate was not such "business" as to require the presence of a quorum under article I, section 5 of the Constitution. After a quorum has been established in committee on any given day (by quorum call or recorded vote), the Chair would not thereafter entertain a point of order that a quorum was not present unless: (1) the Committee of the Whole was operating under the five-minute rule (which was interpreted to include any "modified-closed" amendment process under the terms of a special order); (2) the Chair has put the pending question to a vote; or (3) by unanimous consent. During general debate, there was no absolute requirement of a quorum (100 Members); but the Chair was given the discretion to recognize for a point of order. From 1977, as reaffirmed in 1984, the Chair must entertain a point of no quorum during the five-minute rule if a quorum has not yet been established that day on the pending measure.

Several rulings clarified the control of general debate in the Committee of the Whole, as in 1985 where the majority manager was assured the right to close under Rule XVII clause 3. This included discretion given to the Chair to determine the order of recognition and the right to open and close where more than one committee has been allocated debate time, while protecting the paramount right of the primary committee. Among several managers for and against a proposition an order of closing in the reverse order of opening was held appropriate. Where the House has fixed the time for general debate in the Committee of the Whole, the Committee could not even by unanimous consent, extend it (as in 1984 and in 1999).

A series of rulings reaffirmed the right codified in Rule XVII clause 3(c) in 1999 of the manager of a bill or other representative of the committee, if opposed, and not the proponent of an amendment to close controlled debate thereon.

Points of Order in Committee of the Whole. In 1995, Rule XXI clause 1 was amended to provide that at the time a general appropriation bill is reported to the House, all points of order against provisions therein shall be considered as reserved, so as not to require *ad hoc* reservations by the minority at the time of reporting. This provision automatically enabled the Committee of the Whole on sustained points of order to strike provisions in a bill referred to it by the House which violate Rule XXI clause 2 containing unauthorized items or legislation. By unanimous consent, point of order proceedings was vacated in the Committee of the Whole in 1991, but a point of order may be withdrawn as a matter of right by its proponent before action thereon (*e.g.*, 2000). Points of order against tax or tariff provisions in a bill reported by a committee other than the Committee on Ways and Means (or amendment thereto) were permitted under Rule XXI clause 5 beginning in 1983, to be made "at any time" during the pendency of the bill

or amendment under the five-minute rule, mirroring the same expanded guarantee in clause 4 of that rule of the timeliness of points of order against appropriations in a bill reported by a committee other than the Committee on Appropriations (or amendment thereto). In 2003, clause 5 was further amended to prohibit amendments to appropriations bills limiting funds for the administration of taxes or tariffs, while permitting them in the bill itself (if otherwise in compliance with that clause).

Rising of the Committee of the Whole. The priority of the straight motion to rise (as the counterpart of the motion to adjourn in the House) was reaffirmed as not requiring a quorum for adoption, however it was held not in order in 1986, 1995, and 2007 where another Member had the floor during debate on a pending amendment. When the House has vested control of general debate in certain Members, their control could not be abrogated by another Member moving to rise, unless yielded to for that purpose, as in 1999. Its repeated use other than by the majority manager or leader was limited from time to time by special orders adopted by the House in order to avoid potential filibusters on particular measures. The motion to rise was not permitted to include restrictions on the amendment process or limitations on future debate on amendments in 1990, and the motion was held not debatable in 2000.

Informal risings of the Committee of the Whole by announcement of the Chair without motion to receive messages or to lay signed enrollments before the House were held in 2000 not to permit unanimous-consent business to be transacted in the House, and to require automatic resolve back into the Committee of the Whole immediately upon completion of those actions.

Rising and Reporting. A 1983 change in Rule XXI clause 2(d) permitted the motion to rise and report a general appropriation bill upon the completion of its reading. It was amended in 1995 to limit that preferential motion to the Majority Leader or his designee. This procedure was designed to restrict the offering of limitation amendments during the reading of a general appropriation bill under the five-minute rule and then to give the leadership motion to rise and report priority over all amendments at the end of the reading. In the 109th Congress and in subsequent Congresses, a standing order was adopted to prevent the Committee of the Whole from rising and reporting an appropriation bill if the bill had been amended to contain funding in excess of the relevant section 302(b) Budget Act suballocation. The order provided for a specific motion permitting such rising and reporting, or if rejected a "proper" amendment was adopted after 10 minutes of debate adjusting the bill to that suballocation level.

Chapter 20—Calls of the House; Quorums.

Section 2 of chapter 20 of *Deschler's Precedents* states that "amendments to the rules affecting procedures subsequent to the 94th Congress under

calls of the House and under automatic yea and nay votes will be discussed in greater detail in supplements to this edition as they appear." Those changes began in 1977 and included calls of the House ordered on motion which were made in order at any time in the House only at the discretion of the Speaker. This discretion was held in 1977 not subject to appeal or subject to parliamentary inquiry as to numbers present. The rule adopted that year provided that points of order of no quorum were prohibited unless the Chair was putting a pending question to a vote. The absolute discretion to recognize for the motion for a call of the House was supported by subsequent rulings. It was held in 1977 that no point of order against the enforcement of this clause during debate lay independently under the Constitution. This significant reform had the effect of expediting the business of the House by determining that debate was not such business as required the presence of a quorum on a point of order made by any Member, while at the same time giving the Speaker unlimited authority to recognize for a motion for a call of the House (potentially requiring a vote) regardless of the quorum situation. Previous rules restricting points of order during the prayer, administration of the oath, reception of messages or special orders of business were repealed by the recodification in 1999 in light of the overarching prohibition adopted in 1977, when absolute discretion to permit the motion was given to the Chair at any time other than during the pendency of votes. This discretion and restriction imposed on the Speaker had the effect of diminishing the use of the "old form" in Rule XX clause 5 that 15 Members could order a call of the House upon recognition by the Speaker.

Calls by Electronic Device. The implementation of electronic votes and quorum calls first utilized in 1973 impacted the ascertainment and procurement of quorums. Most of the rulings in this area have relevance to electronic calls of the House or quorum calls in the Committee of the Whole. Based upon the presumed infallibility of the electronic system, quorum calls (like votes) once completed and announced could not be reopened or corrected even by unanimous consent. Several rulings established that the 15-minute minimum requirement did not relieve the Chair of the responsibility of permitting all Members present prior to the announcement of the result to record their presence.

Quorums in the Committee of the Whole. Automatic yea and nay votes based on lack of a quorum were not permitted in the Committee of the Whole. Rulings under Rule XVIII clause 6 held that the chairman must entertain a point of order of no quorum during the five-minute rule if a quorum has not yet been established in the Committee on the bill then pending, but that where a quorum has once been established on that bill on that day during the five-minute rule, a subsequent point of no quorum

was precluded during debate, although a call of the Committee may be ordered by unanimous consent. On a division vote totaling less than 100, the Chair has relied on his immediately prior count on a point of no quorum and on his observation of several Members present but not voting in finding the presence of a quorum. Several rulings reiterated that the presence of a quorum was not necessary for adoption of the motion that the Committee of the Whole rise. The discretionary use of "notice" or "short" quorum calls (where the call may be vacated when 100 Members appear) as well as conversion to regular calls gradually fell out of use, congruent with the liberalized ease (at the sufferance of the Chair) for ordering recorded votes by 25 Members.

Effect of Presence or Absence of a Quorum. Where less than a quorum rejected a motion to adjourn, the House could not immediately consider business but could dispose of motions to compel the attendance of absent Members. Several rulings reiterated that where the announced absence of a quorum has been made the House may not, even by unanimous consent, vacate pending business, since a unanimous-consent agreement was business and was not in order in the wake of such an announced absence of a quorum.

Dilatoriness. Since Rule XVIII and Rule XX were amended to restrict recognition for points of order of no quorum only where the question is being put, the use of repeated points of order as a delaying tactic lost its efficacy.

Withdrawals of Points of No Quorum. The current practice developed that the Chair would resume his count for a recorded vote in the Committee of the Whole when the requesting Member withdrew his point of order (as Members came to assume that the Chair will always count a sufficient number (25) to order a recorded vote in order to avoid an unnecessary preliminary quorum call, and that a sufficient number would be present and standing before ordering subsequent clustered record votes). Thus the expectation that business would be expedited by the Chair to order recorded votes without intervening quorum calls, regardless of the number actually standing, took hold in modern practice.

The impact of the postponement of votes in the House and in the Committee of the Whole upon the pendency of points of order of no quorum which accompanied the demands for those votes was inevitable. Pursuant to Rule XX clause 7, which prohibits a point of order of no quorum unless the Speaker has put the pending proposition to a vote, the Speaker announced pursuant to clause 8 of that rule, after postponing a vote where objection was made on the grounds that a quorum was not present, that the point of order was considered as withdrawn, since the Chair was no longer putting the question and it was no longer pending. Likewise in the Committee of the Whole, the Chair's authority was established to postpone and

cluster requests for recorded votes on amendments, as part of the standing rules (Rule XVIII clause 6(g)) in 2001. It could not be permitted in Committee of the Whole even by unanimous consent prior to that time absent a special order adopted by the House, because it constituted a change in procedure imposed by the House. Thus the postponement authority was included in many special orders of business until 2001. Where proceedings resume on a request for a recorded vote, the previous voice vote was acknowledged and a point of order of no quorum could then be renewed.

The intervention of a motion to adjourn pending a call of the House or an "automatic" yea and nay vote, while in order under Rule XX clause 6(c), as clarified in 2003, has been limited at certain stages in the House by language in supervening special orders ordering the previous question on a pending measure to final passage "without intervening motion"—including motions to adjourn (except one motion to recommit).

Reduced Quorums as Result of Disabilities in Catastrophic Circumstances. There were rules changes and interpretations relating to the composition of a quorum of the House, stemming from the constitutional requirement that a majority of Members constitute a quorum for the conduct of House business. In the wake of the terrorist attacks of September 11, 2001, and discussion of potential catastrophic circumstances impacting on Congress, Rule XX clause 5(c)(7)(B) was added at the beginning of the 109th Congress in 2005 to codify prior precedent that the "number of Members constituting a quorum was a majority of the whole number of the House chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House." While the denominator of that equation would be reduced upon the death of sworn Members, left unanswered was the issue of the inability of the House to establish a quorum due to incapacitation of Members where their deaths had not been determined. At that time, the House adopted a new rule (also in clause 5(c)), that in the case of the established absence of that full quorum (218 Members) due to catastrophic circumstances (described to include natural disaster, attack, contagion or similar calamity) caused by the incapacitation but not proven death of Members, a quorum would be determined based upon a provisional number of the House, to be determined by a prolonged call of the House over a period of 72 hours to ascertain those Members able to respond to the call, with subsequent adjustments to that number based either on certified deaths or appearances. At the end of that 72-hour period, the Speaker would be required to receive and announce without appeal a certified catastrophic quorum failure (fewer than 218) report from the Sergeant-at-Arms based on the most authoritative information available. While that new rule had bipartisan support in the House, the House's constitutional ability to adopt the rule was challenged by a point of order raised

against the rules package in 2005. The Speaker ruled that the constitutionality of a resolution adopting the rules allegedly containing such a provision was a matter for the House to decide by way of the question of consideration or disposition of the resolution, and not on a point of order. The argument that such a provisional quorum requirement as a rules change was unconstitutional, and that the House could not unilaterally change that requirement short of a constitutional amendment permitting appointed Members to temporarily be seated in the House, was subsequently addressed that year. The House rejected a constitutional amendment which would have enabled Congress by law to establish a mechanism for temporary appointment of Members.

Chapter 21—Order of Business; Special Orders.

Rule XIV clause 1 was recodified in 1999 to acknowledge in the parenthetical "(unless varied by the application of other rules and except for the disposition of matters of higher precedence)" that the standing rules prescribing a daily order of business could be superseded by operation of other rules and orders. The Pledge of Allegiance to the Flag requirement as the third daily order of business was added in 1995 to codify the practice which began in 1988 whereby the Speaker in his discretion recognized a Member to lead the Pledge. That followed the Chair's ruling on that day that while a resolution requiring the Pledge of Allegiance was an attempted change in the order of business rule and did not constitute a question of privilege, the Chair would henceforth exercise that discretionary recognition following approval of the Journal.

Unfinished and Postponed Business. New authorities were given to the Chair in the House and in the Committee of the Whole to postpone announced or pending matters either to designated times and places or indefinitely in the House following ordering of the previous question, rendering somewhat obsolete the ordinary motion to postpone to a day certain and the sixth priority given to unfinished business under Rule XIV clause 1.

Calendar Wednesday. A rules change in 2009 removed the century-old guarantee that an alphabetical call of all committees on each Wednesday to call up reported measures could not be precluded by a special order reported from the Committee on Rules. Rule XV clause 6 was amended to eliminate the requirement that all committees be called as the first order of business each Wednesday and that a two-thirds vote be necessary to dispense with the call—a guarantee that could not be waived by the Committee on Rules by simple majority vote. The rule provided instead that only those committees which had reported measures and had given notice the previous day (Tuesday) seeking recognition would be called. Thus committees retained the

ability to have reported measures considered under the general rules of the House regardless of Committee on Rules inaction if called up by the chairman or (as reaffirmed by several rulings) by another specifically authorized committee member, but only upon timely one day notice. As a conforming amendment, that subparagraph of Rule XIII clause 6(c)(1) which had prevented the Committee on Rules from reporting special orders setting aside Calendar Wednesday by less than a two-thirds vote was repealed, thereby removing a constraint against the Committee on Rules' ability to report special orders relating to measures which might be called up on Wednesday. In sum, the protection accorded to reporting committees guaranteeing floor action on those measures despite Committee on Rules inaction was eliminated in favor of a right given to standing committee chairman to give one day's notice to call up a specified report, while tacitly permitting the Committee on Rules to recommend the preemption of that Calendar Wednesday call if the House so desired by majority vote.

District of Columbia Business. The Committee on the District of Columbia was eliminated in 1995, and its jurisdiction and accompanying privilege to call up reported business was transferred to the Committee on Oversight and Government Reform. The fact that the House had considered some District of Columbia business before motions to suspend the rules on a second or fourth Monday was held in 1984 not to affect the eligibility of further such business after suspensions have been completed. From 1995, District of Columbia business was never called up as privileged business by the Committee on Oversight and Government Reform to the time of this writing.

General Priorities in the Order of Business. No standing rule of the House addressed the timing of one-minute, special order and morning-hour opportunities for speech-making. Rather, the practices have developed by announced policies of recognition by the Speaker (negotiated with the minority) with respect to one-minute and special-order speeches, and by unanimous-consent standing orders, in the case of morning-hour debates.

For example, the priority given by the Speaker to recognize for one-minute speeches in the order of business was held to be a matter entirely within his discretion by unanimous consent prior and/or subsequent to legislative business. In 1980, it was held not in order to raise as a question of the privileges of the House a resolution directing the Speaker to recognize for such speeches, as such a proposal would impinge upon the Speaker's discretionary power of recognition and based upon the practice that unanimous-consent requests may supersede established orders of business.

Special-Order Speeches. There have been recent developments subsequent to 1994 on matters of priority, alternation and duration of recognition

for special-order speeches. First, recognition on consecutive days alternated between the parties—a continuation of the Speaker's policy announced in 1984. The Speaker's announcement in 1994 that henceforth recognition for special orders longer than five minutes would depend not only upon the Speaker's discretionary power of recognition for unanimous consent, but also upon lists submitted by the Majority and Minority Leaders on a daily basis, marked the first time that the order of speeches following legislative business would not be based on the will of the House through unanimous-consent recognitions conferred by the Speaker. Its purpose (while retaining the Speaker's authority to declare recesses, to recognize for motions to adjourn, or to terminate disorderly speeches) in addition to cutting off special orders at midnight, was to allow each party leadership to determine its own priorities for debate during the first two hours of a potential four hour time frame (beyond that on Tuesdays until midnight). Then the leaders could accommodate individual Members of their parties through prepared lists submitted to the Chair for the second two hours or prorated reductions thereof, rather than allow a more random prioritization based on the order in which unanimous-consent requests of individual Members were accepted. The Chair continued to announce the possible resumption of legislative business once special orders have commenced as needed, but that announcement was a courtesy and not a necessary condition to the order of business. Beginning in 2011, recognition for special-order speeches ended at 10:00 p.m. every day or after four hours divided as before and with 30-minute segments per party during the second hours, whichever came first.

With respect to five-minute special-order speeches, individual Members could, until 2011, continue to obtain recognition by unanimous consent, could not extend their time, and could not be on the leadership-submitted lists for longer special orders. First recognition alternated between the parties each day as on one-minutes, regardless of the time within the previous week permission was granted. Beginning on February 1, 2011, the Speaker announced that recognition for special-order speeches of five minutes or less would not be granted after legislative business. Rather, morning hour was expanded to four days per week and for up to one hour longer on those days to accommodate more five-minute speeches.

Morning-hour speeches were initiated in 1994 by a unanimous-consent standing order to partially offset the debate time lost by the midnight cutoff of special orders. Morning-hour procedures have been refined at the beginning of each subsequent Congress. In 1994, they ordered that the House convene one hour earlier than the ordered time on Mondays and Tuesdays for up to one hour of five-minute speeches from leadership-submitted lists, during which no business of the House could be conducted. In 2011, morning-hour speeches were made in order on Mondays through Thursdays, to

begin two hours in advance of the regular convening time, for up to one hour of five-minute speeches controlled by each party's leadership. The filing of privileged reports and notifications to the House requiring no House action were permitted during Morning-hour beginning in 2011, having the effect of precluding motions to adjourn to preempt such filing, in order to begin layover times for printing. Otherwise, the prayer, approval of the Journal and Pledge of Allegiance and all business by unanimous consent were postponed until the conclusion of the assured 10-minute recess following morning hour.

Varying the Order of Business. The impact of unanimous-consent requests and special orders on the daily order of business was formally acknowledged (as the parenthetical "(unless varied by the application of other rules and except for the disposition of matters of higher privilege)" added to Rule XIV clause 1 by the recodification in 1999 suggested).

Motions to Suspend the Rules. Since publication, there were expansions in the requirements and utilization of the suspension rule and procedures. Generally, the weekly use of the Speaker's discretionary authority under Rule XV clause 1 accelerated rapidly to permit recognition, first on two days and then on three days of each week (Monday through Wednesday) and often on additional days pursuant to unanimous consent or special orders. It was reiterated that the motion may be repeated regardless of prior rejection, the motion to reconsider not being entertained on rejected motions to suspend the rules. As the Consent and Corrections Calendars were abolished (in part due to lack of use and to avoid minority motions to recommit), and as fewer measures were considered by unanimous consent given increased partisanship, motions to suspend the rules proliferated. They became the primary procedure for consideration of noncontroversial measures with recorded votes often postponed and clustered to enhance leadership management of time and the availability of Members in the Chamber for whipping.

Use and Effect of Motions to Suspend the Rules. All other rules inconsistent with the purpose of the motion (requiring a two-thirds vote for adoption) are suspended, including the requirement that a quorum be present when a bill is reported from committee or that the bill be previously reported or even introduced, as in 1996. The motion to suspend the rules may provide for passage of a bill that consists of the text of two bills previously passed by the House, as in 2000. The motion may include an amendment without the formality of committee approval, but the motion is not separately amendable. The motion has been increasingly utilized to dispose of amendments between the Houses, including the commitment of a bill to conference. A motion to suspend the rules and concur in a Senate amendment waived the PAYGO requirement in Rule XXI clause 10 that new

spending be offset (the first example of such a waiver occurring in 2007). Copies of reports are not required to be available in advance, but cannot be filed after the reported measure is passed (as the bill is no longer before the House). Advance notice of scheduling was not required, unless a special rule requires that the object of a motion to suspend the rules be announced on the floor at least one hour before the Chair's entertaining the motion in 1996, and without such notice unanimous consent was required. The motion may be withdrawn, modified and reoffered *de novo* by the proponent at any time (*e.g.*, 2006), as the ordering of a second (no longer required since 1991) previously restricted withdrawal or modification except by unanimous consent. A motion to suspend the rules decided in the affirmative remained subject to the motion to reconsider in 1996.

The Speaker's traditional discretion not to utilize recognition under motions to suspend the rules to pass private bills was honored, with one anomaly being the consideration in 2005 of what was primarily a private bill for the relief of Terri Schiavo. The bill contained a section on "right-to-die" policy and was introduced as a public bill and then considered under suspension of the rules. While no point of order was warranted on that occasion, the Speaker's referral and recognition avoided the practice that suspension motions not be utilized on private bills in order to prevent a proliferation of such requests and to avoid Private Calendar objectors' screening.

Seconding the Motion. Until repeal of the requirement for a second in 1991, several rulings were made regarding the ordering of a second by tellers. That requirement was eliminated to avoid delay and to permit continuous debates on scheduled motions before postponed votes began (without intervening motion except one to adjourn pending and one between each motion). Other matters taking precedence of motions to suspend the rules included the priority of questions of the privileges of the House in 1983 and 2007.

Time and Control of Debate. Several rulings further defined recognition for control and relevance of the 40 minutes of debate divided between the mover and a Member opposed to the motion. The challenge whether a manager of time was opposed must be made when the time was initially allocated by the Chair. Debate was not permitted to range to the merits of a measure not scheduled for suspension on that day in 1991. The Chair did not evaluate the degree of opposition, but granted precedence to the minority and then to committee membership if there was other opposition.

The Chair's customary announcement of his intent to postpone recorded votes, which was made before consideration of a series of motions, was held not to be a necessary prerequisite to his postponement authority, and where there has been an announcement, there may be a redesignation in the Chair's discretion within the two legislative-day period.

Special Rules and Orders. Utilization of special orders reported from the Committee on Rules has consistently affected the operation of the standing rules. Several rulings demonstrate the authority of the Committee on Rules to report special orders of business which short-circuit the ordinary sequence of consideration of bills and amendments. These include the following authorities: to recommend consideration of measures and amendments thereto the subject of which might be separately pending before a standing committee (often a direct "discharge"); to make in order the consideration of the text of an introduced bill as original text in a reported bill; to permit consideration of a previously unnumbered and unsponsored measure that comes into existence by virtue of adoption by the House of the special order; to provide that an amendment containing an appropriation in violation of Rule XXI clause 4, or that a legislative amendment to a general appropriation bill be considered as adopted in the House when the reported bill is under consideration; and to provide that an amendment (whether or not germane) be considered as adopted in the House. The authority to "self-execute adoption" (a "hereby" resolution)—for example, that a concurrent resolution correcting the enrollment of a bill be considered as adopted by the House (as in 1988), or that a Senate amendment at the Speaker's table and otherwise requiring consideration in the Committee of the Whole be "hereby" considered as adopted (as in 1993)—was held to be within the authority of the Committee on Rules to report, since the restriction on the committee's authority to deny motions to recommit with instructions imposed in 1995 was confined to initial consideration of bills and joint resolutions and did not extend to concurrent resolutions, simple resolutions, or to amendments between the Houses.

In 2011, a special order reported from the Committee on Rules not only providing for a "closed" rule for the consideration of a bill without amendments but also making in order the subsequent considerations of two concurrent resolutions without intervening motions, correcting the possible enrollment of the bill if passed by the House and Senate (without amendment), and also conditioning that enrollment on a message from the Senate informing that a vote had been taken on those resolutions, was held within the authority of the Committee on Rules to report, since not denying a motion to recommit a bill or joint resolution and consistent with other examples of Committee on Rules reports delaying enrollments. By this action, the House for the first time adopted a special order delaying enrollment of a bill if passed by both Houses contingent upon the Senate's voting on (although not necessarily adopting) resolutions correcting its final enrollment, in order to assure some Senate action prior to final disposition while preventing earlier votes on those matters as amendments to the bill.

Reports from the Committee on Rules repealing a statutory joint rule, or which were nearly identical to one previously rejected by the House, were held to be privileged. The Committee on Rules, in 1982, was held empowered to report any resolution temporarily waiving or altering any rule of the House (other than constraints on denial of recommittal motions) including waivers of statutory provisions enacted as an exercise of joint rulemaking, where those laws did not constrain the Committee on Rules from making such reports. The Committee was not precluded from reporting a special order making in order specified amendments that were not preprinted as otherwise required by an announced policy of that committee in 1991.

Privileged reports from the Committee on Rules may be filed at any time the House is in session, including during special-order speeches. The one legislative-day layover requirement between filing and consideration of privileged reports from the Committee on Rules and the requirement for a two-thirds vote for consideration on the same legislative day reported were minimized on numerous occasions by shortening the time between an adjournment immediately following a filing of the report (often at the end of a recess) and reconvening of the next session, even though on the same calendar day.

Consideration and Debate in the House. Motions (otherwise in order under the standing rules in the House) were held to be "dilatory" under Rule XIII clause 6(b) during the consideration of reports from the Committee on Rules, including the motion to recommit after the ordering of the previous question in 1984, and the motion to postpone to a day certain in 1986. However, the member of the Committee on Rules calling up a privileged resolution on behalf of the committee was permitted to offer an amendment without the specific authorization from the committee in 1990, subject to being preempted by the ordering of the preferential motion for the previous question. A motion to table such a pending amendment was held dilatory, but not the motion to table a motion to reconsider in 1990. Adoption of a motion tabling the motion to reconsider was held not to carry the pending special order to the table. Motions to reconsider made during the pendency of a special order, including reconsideration of the vote on ordering the previous question on the rule and pending amendment thereto, were held not to be dilatory in 1990. The purpose of the unique restriction against "dilatory" motions, determined by precedent and not merely by the Chair's discretion, was to expedite special orders of business. To that end, only one motion to adjourn was admissible and could be offered immediately after the reading of the resolution but could not be made when another Member had the floor. Where the House adjourns during consideration of a special order, further consideration of the report became the unfinished

business on the following day, and debate resumed from the point where interrupted, as in 1993. However, where the special order is withdrawn during consideration, debate begins anew on such special order when reoffered. In sum, motions applied to a pending special order beyond one motion to adjourn or motions to reconsider were ruled out as dilatory. If the previous question were rejected, the rule against dilatory motions was held to no longer apply, and motions to dispose of the special order became permissible in their general order of priority under Rule XVI clause 4, including germane amendments, as in 1980 and 1982.

Important rulings in 1980 and 1982 addressed the developing strategy of utilizing debate and the vote on the motion for the previous question to advocate adoption of amendments to pending special orders which would permit consideration of additional or substitute subjects not already made in order. An amendment that would permit the additional consideration of a nongermane amendment to the bill was held not germane. This demonstrated that it was not in order to do indirectly by amendment to a special order what could not be done directly to the measure to be made in order. There were limits to this doctrine where the pending special order already contained diverse germaneness waivers. A number of rulings beginning in 1989 established that debate could range to the merits of the bill to be made in order, but not to the merits of an unrelated measure not to be considered under that special order (when relevancy was challenged on a point of order).

The Chair reiterated reluctance to interpret special orders while they were pending in response to parliamentary inquiries, it then being a matter for debate, in contrast to the Chair's proper role following their adoption. Special orders may not be materially modified by the Committee of the Whole. This lack of authority of the Committee of the Whole to change or modify rules adopted by the House was the focus of several rulings.

A series of rulings on one day in 1993 involving the pendency and effect of "self-executed" adoption of specified amendments (usually incorporated by reference in the accompanying Committee on Rules report) by virtue of adoption of the underlying special order demonstrated the significance of that technique in expediting the amendment process and in foreclosing points of order and separate votes. That the referenced amendment was never separately pending before the House or the Committee of the Whole, but rather was considered adopted by adoption of the special order and thereby became part of the original text from that point on, reflected the ability of the Committee on Rules to alter the text of a committee's work product without separate consideration of those alterations.

Types of Special Orders. The forms of special orders and reports thereon showed trends in the more varied use of special orders, ranging from

"open," "modified-open," to "structured" or "closed." The biennial activities reports filed by the Committee on Rules at the end of each Congress (*e.g.*, H. Repts. 103–891; 109–743; 110–931) and semi-annually beginning in 2011, support those analyses. In 2013, the requirement was reduced to annual reports.

As stated in section 16 of chapter 21 of *Deschler's Precedents*, "due to the numerous possible variations in the form of special orders, only a representative sample is included in this and the following sections." Many more variations were reported from the Committee on Rules due in part to the increased complexity of the interaction of standing and statutory rules and to proposed waivers of points of order on an *ad hoc* basis. As well, frequent leadership determinations to provide more certainty in time and issue management by "modified-closed" special orders increasingly led to the "discharge" from standing committees without awaiting committee reports. Such rules limited the offering of germane amendments and second-degree amendments, imposed the order of consideration and time limits for debate by reference to the accompanying Committee on Rules report, and either "self-executed" the adoption of many changes or grouped amendments for subsequent *en bloc* consideration. While it is not the purpose of chapter 21 or of chapter 27 (Amendments) to comprehensively document each step in that development, some examples of departures from "open" rule forms which had traditionally governed consideration of most reported legislation (other than revenue measures reported from the Committee on Ways and Means) further illuminate those changes. As a noteworthy example, the form already contained in section 3.31 of chapter 27 represented a significant departure from the traditional "open" consideration of reported non-revenue measures. Following prolonged but incomplete consideration of a complex immigration measure in the previous Congress under an "open" rule in 1982, the subsequent special order in the 98th Congress made in order an immigration reform measure under a "modified-closed" rule permitting sixty-nine floor amendments, including some recommended by sequentially reporting committees, in a prescribed order as contained in the accompanying Committee on Rules report, waiving all points of order against those amendments and permitting five-minute debate but prohibiting second-degree amendments. The chairman of the Committee on Rules indicated on that occasion that a further special order could be reported if debate could not be limited under the five-minute rule.

Thus began a trend whereby the Committee utilized the reports accompanying its special orders of business to incorporate by reference in the resolution the text of those amendments proposed either to be considered as adopted and made original text, or to be separately made in order, together

with the order of consideration, their amendability, allocation of debate time, and either general or specific waivers of points of order applying to those amendments (some containing exceptions from waivers such as Rule XXI clauses 9 and 10 relating to earmarks and PAYGO, respectively, in the 110th and 111th Congresses to demonstrate the political importance of those standing rules).

"Closed" and "Structured" Rules. Many special orders provided for consideration of measures in the House, rather than in the Committee of the Whole, where no amendments or only one amendment were to be permitted, thereby eliminating the applicability of Committee of the Whole procedures including the five-minute rule and the offering of second-degree amendments. By ordering the previous question to final passage, those special orders also precluded motions otherwise in order in the House, including motions to adjourn, to lay on the table, and to postpone.

Waiving and Permitting Points of Order. Statutory and standing rules changes permitted points of order to be made against the consideration of special orders of business, where those special orders themselves contained blanket waivers against bills alleged to contain unfunded intergovernmental mandates, or congressional earmarks. In both the Unfunded Mandates Reform Act, and in Rule XXI clause 9 requiring reports or the *Congressional Record* to list earmarks and their sponsors, where the special order waived those points of order against the upcoming bill, points of order were permitted against consideration of the special order itself so as to focus 20 minutes of debate, with a vote on the question of consideration of the special order constituting disposition of the point of order.

A further enhancement of the opportunity for separate votes on unfunded intergovernmental mandates (Rule XVIII clause 11) was added in 1995 permitting amendments in Committees of the Whole to strike unfunded mandates unless specifically precluded, and was held in 2005 not to be precluded by a structured rule generally permitting only certain amendments, but not specifically precluding such motion to strike. Subsequent special orders were drafted to overcome that inadvertent omission by specifically precluding that motion to strike. The rule was repealed in 2011 as redundant to the statutory procedure.

Reading for Amendment. Departures from standing rules requiring second readings in full of the pending bill text and amendments became commonplace, so as to consider bill text to have been read and to require only the Clerk's designations and not the reading of actual text of amendments where available in the *Record* or Committee on Rules report.

Voting and Motions; Combined Consideration of Several Measures or Matters. The Committee on Rules frequently utilized one report to make

in order consideration of more than one measure, sometimes contingent upon the passage of a previous measure made in order in the same resolution, and containing procedures which merged the separately passed provisions in the final engrossment of one of those measures. While each of those provisions permitted separate motions to recommit with germane instructions pending passage as required of the Committee on Rules, the combined engrossment after passage was not required to be made subject to one subsequent recommittal motion under a broader germaneness test of the instructions measured by the combined text. Other such special orders also contained (non-divisible) sections covering a variety of standing orders governing procedures in the House during a designated "recess" time period or whenever such "housekeeping" was necessary.

In 2012, a single special order of business made in order the entire "open" consideration of three reported general appropriation bills and "modified-closed" consideration of one authorization bill. Also that year another special order made in order a nonamendable motion to amend a Senate amendment to one measure, and a closed rule for consideration of another measure introduced that day and referred to eleven committees (the "fiscal cliff" special order).

Incrementally, special orders containing *ad hoc* procedures governing particular bills conferred on the Chair the authority in the Committee of the Whole to postpone and cluster votes on amendments, and authority in the House for the Speaker to postpone consideration indefinitely notwithstanding the ordering of the previous question. When those *ad hoc* authorities proved workable, they were transferred into the standing rules in subsequent Congresses. In 2009, on a general appropriation bill, a special order permitted the time on clustered votes on amendments to be reduced to a minimum of two minutes. That authority became a standing rule for Committee of the Whole proceedings in 2011.

Rule XXI clause 10 acknowledged the ability of the Committee on Rules in the context of PAYGO compliance in 2009, and then CUTGO compliance in 2011 to make in order separate initial consideration of two measures, followed by their merger after final passages into one engrossment for budgetary scorekeeping purposes.

Special orders often addressed separate matters in discrete sections, including many "housekeeping" or "martial law" matters relating to tabling of other special orders on the House Calendar no longer needed to conduct business and in order to prevent an individual Committee on Rules member from calling them up after seven legislative days as permitted by Rule XIII clause 6(d), adjournments for three days or less, to permit pro forma sessions without legislative business or to conduct business at the Speaker's

discretion, suspension of the rules authority, authority to consider specified rules on the same day reported, and budgetary scorekeeping—all in order to expedite those matters (the special orders not being subject to demands for division of the question under Rule XVI clause 5(b)(2)).

There was increased utilization of special orders reported from the Committee on Rules governing the disposition of amendments between the Houses either by "self-executed" adoption of amendments or by unamendable (although sometimes divisible) motions to concur or to concur with amendment(s). In 2010, a pending special order permitting a motion to concur in a Senate amendment to a House amendment to a Senate amendment with an amendment in the fourth degree was itself amended to clarify that the motion would first be considered in the Committee of the Whole, following which a motion to concur in the Senate amendment (as so amended or not) would be pending in the House. The divisibility of motions to concur in Senate amendments permitted two votes on different portions, with separate majorities resulting in disposition of the entire amendment.

Privileged Business. Numerous rulings, reiterating the landmark decision of Speaker Frederick Gillett in 1921 (6 *Cannon's Precedents* § 48), determined that the empowerment of Congress to legislate in a prescribed area does not give individual Members the ability to raise such measures as a question of privilege, the extent to which empowerments to Congress in the Constitution, by law, or by rule, necessarily attach a privileged status to various items of business, combined with precedents which confined the claim of constitutional privilege to consideration of presidential vetoes and to impeachments. A central purpose of the recodification of the rules in the 106th Congress was to distinguish ordinary privileged business from questions of privilege under the Constitution or Rule IX by providing consistent definition to various privileged questions, in order to remove ambiguities which emerged over time from language such as "highly privileged," and "of the highest privilege."

Privilege for Certain Bills, Resolutions and Reports. The removal from Rule XIII clause 5 of the authority of certain committees to report privileged legislative business included: the Committee on Ways and Means on bills raising revenue; the Committee on Natural Resources on certain public land and conferral of Statehood matters; the Committee on Transportation and Infrastructure on improvements of rivers and harbors; and the Committee on Veterans' Affairs on general pension bills. The list of privileged reports was expanded to include joint resolutions providing for continuing appropriations if reported by the Committee on Appropriations after September 15, and matters relating to preservation of noncurrent House records if reported by the Committee on House Administration. While formerly the right conferred on several committees to file privileged reports "at

any time" carried with it the right of immediate consideration, the advent of the three-day report availability rule (Rule XIII clause 4) in 1971 was subsequently interpreted to cover all committees except the Committee on Standards of Official Conduct (now Committee on Ethics) on matters relating to the conduct of a Member, contempt reports from all committees, separate one-day layover requirements for funding resolutions from the Committee on House Administration, and the two-thirds consideration requirement for reports from the Committee on Rules on the same legislative day reported.

Privileged Motions as to the Order of Business. The recodification of Rule XIV clause 1 reiterated that the daily order of business can always be interrupted or preempted by other rules and by matters of higher precedence. Various statutes that confer privileged status on motions relating to the order of business in the House are included in section 1130 of the *House Rules and Manual*, which has been updated each Congress from section 1013 of the 1979 *House Rules and Manual*. The motion to resolve into the Committee of the Whole has been largely displaced by the Chair's discretionary designation to that effect, so that the House no longer votes on that motion as the equivalent of the question of consideration and the vote on the special order of business permitting the Speaker to make that designation becomes the determining vote on the order of business. Beyond that designation authority, however, several rulings on the priority and applicability of raising the question of consideration demonstrated the House's ability, by voting on that question, to determine the order of business.

Chapter 22—Calendars.

The advent of Rule XII clause 2 in 1975 requiring the Speaker to refer bills to all committees with jurisdiction was interpreted by Speakers to authorize them to remove a reported measure from the House or Union Calendar and to sequentially refer the bill to another committee where a valid jurisdictional claim was called to his attention, but overlooked at the time of the original calendar referral. Similarly, bills on the wrong calendar were transferred to the proper calendar as of the date of original reporting in 1984 and 1990.

Much of the material in the chapter on Calendars will be merely historical, as the Consent Calendar was abolished in 1995 and replaced by the Corrections Calendar. That calendar was in turn repealed in 2005. The Corrections Calendar was only applicable for ten years, its purpose having been to give the Speaker discretion to select for expedited consideration reported legislation which was intended to eliminate or "correct" governmental regulatory excesses. The rule facilitated disposition of relatively noncontroversial

reported bills on the second and fourth Tuesdays of each month with one hour of debate, amendable only by the manager and requiring a three-fifths vote for passage. As was the case with the Consent Calendar, its utilization was rendered unnecessary by the Speaker's increased recognition for motions to suspend the rules. Suspensions, although requiring a two-thirds vote, could cover the same types of business, but did not require a committee report and were not susceptible to the minority's motion to recommit with instructions.

In 1999, the Calendar of the Committee of the Whole House was recodified to become the Private Calendar, reflecting its proper use as the receptacle for all reported private bills and resolutions. During several Congresses, a Member serving as an "Official Objector" for the Private Calendar included in the *Congressional Record* an explanation of how bills on the Private Calendar are considered. Speakers remained unwilling to recognize for motions to suspend the rules and pass private bills. The Speaker's discretion to permit the call of the Private Calendar on the third Tuesday of each month was reaffirmed in 1990, and a motion to dispense with the call on that day once the call had begun was held in 1981 to be consistent with the Speaker's discretion on the call of the entire Calendar.

Chapter 23—Motions.

Certain motions merit separate treatment, as to adjourn (chapter 40), to recess (chapter 39), to suspend the rules (chapter 21), calls of the House (chapter 20), and to discharge committees (chapter 18). Other primary motions not secondary to any pending question, including: a motion for a call of the House; that when the House adjourns on that day it adjourn to a day and time certain; and that the Speaker be authorized to declare a recess, were specifically made in order at the Chair's discretion in rules changes.

Recognition for the Purpose of Offering Motions Generally. Rulings and usages reaffirmed that recognition to offer a motion in response to the Chair's query "for what purpose does the gentleman rise" did not assure the pendency of that motion where motions of higher precedence might intervene, as in 1988 and 1992.

A Member having the right to withdraw a motion in the House before a decision thereon was held to have the resulting power to withdraw and reoffer a modified motion in 1990, and a Member having the right to withdraw a motion to instruct conferees before a decision thereon had the resulting power to modify the motion by offering a different motion at the same stage of proceedings in 1993.

The rule (Rule XVI clause 2) that motions may be withdrawn in the House before action thereon was applied in 1977, even though the motion

was under consideration as unfinished business postponed from the preceding day. That principle was also held to apply to motions to instruct conferees in 2000. The ordering of the previous question on the motion, however, was held to preclude withdrawal as a matter of right in 1995.

Any Member may demand that a motion be reduced to writing and in the proper form, including the motion to adjourn in 1993 and 1995, and the demand may be initiated by the Chair, as was done in 1986. No rule requires, however, that motions properly in writing be separately distributed on the floor in 2000. The Clerk usually performs that function as a matter of course.

There were no direct rulings holding motions to be generally dilatory. One ruling in 1996 allowed repeated offerings of a motion to permit the use of charts in debate (a motion since restricted by Rule XIII clause 6(b)). There were, however, reiterations of the specific prohibitions against dilatory motions pending a report from the Committee on Rules under Rule XIII clause 6.

Motions to Postpone. The use of the motion to postpone to a day certain was largely superseded by the advent of discretionary authorities given to the Chair to postpone requests for recorded votes in the House (now Rule XX clause 8).

The Speaker's authority to postpone further proceedings to subsequently designated times on measures on which the previous question had been ordered was made part of the standing rules (Rule XIX clause 1(c)) in 2009. It had been included in *ad hoc* special orders of business in several prior Congresses. While the original purpose of that discretionary postponement authority inserted in special orders was to avoid the operation of the ordering of the previous question in the House on occasions when it was necessary to temporarily set aside that business, the authority was later utilized to entirely suspend the consideration of measures where unanticipated motions to recommit with instructions were pending (or even where final passage was uncertain prior to the vote thereon). This unilateral postponement authority given to the Chair potentially removed a major impact of the ordering of the previous question by the full House under traditional practice which had not permitted interruption.

The motion to postpone indefinitely is not utilized in modern practice having the least priority of all motions listed in Rule XVI clause 4. In 1977, however, it was utilized twice on motions that the House resolve into the Committee of the Whole pursuant to the provisions of a statute that specifically allows such a motion on a resolution disapproving a certain executive action.

Motions to Lay on the Table. Relevant rulings in this area established the following: (1) that the action of the House in adopting the motion to lay

a proposition on the table was equivalent to a final adverse disposition thereof, and did not merely represent a refusal to consider in 1978; (2) that the motion was in order after the proposition was called up for consideration but before debate thereon in 1978, and in 1984, but came too late after the Chair put the question on the pending proposition to a vote in 1979; (3) that the motion to lay on the table was not debatable under Rule XVI clause 4 in 1991; and (4) that gratuitous remarks by the Majority Leader who had offered the motion could not be included in the *Congressional Record* in 2007 (a question of privilege complaining of that omission was itself laid on the table the next day). In 1984, debate on the motion was permitted by unanimous consent. Several rulings supported the applicability of the motion to privileged or incidental matters such as a resolution electing Members to committees in 1997, an appeal from the decision of the Chair in 2006, and a motion for a secret session in 2007. The priority of the motion over the motion for the previous question was reiterated in 1985, but the motion was held not in order where applied to a bill itself after the previous question was ordered to final passage, except where applied to a motion to reconsider in 1979. The motion was held dilatory when applied to a pending special order from the Committee on Rules in 1990. The motion was held unamendable in 1991. The motion was held not applicable to motions which themselves are neither debatable nor amendable, such as the motion to adjourn in 1990, or adjournment to a day and time certain in 1981. The motion was, however, held applicable to debatable secondary motions for disposal of another matter, such as the motion to refer in 1982, or to a motion to dispose of a Senate amendment in disagreement. A variation from rulings that a motion to take a tabled matter from the table was not itself in order nevertheless permitted a resolution raising a question of the privileges of the House which had been tabled to be reoffered in identical form with a different number on a subsequent day if still constituting a question of privilege in 1995.

Motions for the Previous Question. The motion for the previous question retained its status as the third most preferential motion and as the most basic guarantee that a majority can foreclose further debate and amendment and bring a pending matter to an immediate vote. This was especially true in the context of special orders reported from the Committee on Rules where under Rule XIII clause 6 other motions, except one motion to adjourn, were considered dilatory. Nevertheless, rejection of the motion for the previous question on a special order was held in 1982 to remove the restriction against "dilatory" motions and to permit recognition of Members to offer proper motions to dispose of the special order in the order of priority stated in Rule XVI clause 4.

The motion was again held applicable (and indivisible) to a pending resolution and an amendment thereto in 1990 and in 1998, and was held in 1979 to be in order by any Member pending the offering of an amendment made by the Member calling up the resolution. The motion was held not in order where debate time on a pending proposition was equally divided by standing House rule until all such debate was used or yielded back in 1989. On that occasion, the Speaker vacated proceedings whereby the previous question was ordered on a motion on which a portion of debate time controlled by an opponent under House rules had not been utilized or yielded back. That rationale was for a while considered to extend to cover situations where a block of time has been yielded by the manager to another Member for further yielding, but a 1977 ruling (carried in *Deschler-Brown Precedents* Ch. 29 § 68.6) which had held that the manager of a special order from the Committee on Rules could move the previous question in derogation of the equal debate time already ("traditionally") yielded to a minority Member, was not directly repudiated.

With respect to the effect of the adoption of the motion, it was reiterated in 2001 and 2002 that the motion to adjourn is not available when the previous question has been ordered by special rule "to final passage without intervening motion (except one motion to recommit)." A special order ordering the previous question in the House without intervening motion was held to order that motion from the beginning of debate in the House and not merely after debate, precluding the consideration of any intervening motion during debate in 1980, and in 2001. However, the ordering of the previous question to final passage even without intervening motion no longer guarantees an immediate vote on final disposition of recommittal. The Speaker was empowered by Rule XIX clause 1(c) (first adopted in 2009), and various special orders in previous Congresses, to unilaterally postpone consideration of the pending measure being considered under terms of a special order to a subsequently designated time based on unforeseen circumstances.

Motions to Refer or Recommit. The recodification of the rules in 1999 reorganized the four variations of the motions to refer, to commit or to recommit, all with different requirements for timing of the motion, for opposition to the proposition to which offered, and for debate, as further explained in section 916 of the *House Rules and Manual*.

In 1982, the priority in Rule XVI clause 4 of the ordinary motion to refer, and its amendability, over an amendment to the underlying question following rejection of a motion for the previous question, was affirmed. In 1990, the ordinary motion to refer with instructions was held debatable under the hour rule but not preferential to the motion for the previous question.

Prior to adoption of the rules at the beginning of a Congress in 1981, a motion to commit was entertained after ordering of the previous question as a usage consistent with "general parliamentary law" patterned after Rule XIX clause 2, treating the motion to have higher priority than the ordinary motion to refer when a matter is "under debate."

Debating the Motion. Until 2009, a straight motion to recommit (without instructions) following the ordering of the previous question pending initial final passage of a bill or joint resolution under Rule XIX clause 2 was not debatable. That rule was changed to permit the same 10 minutes of debate as on motions with instructions equally divided between a proponent and an opponent. When read in conjunction with the prohibition against "promptly" motions to instruct adopted at the same time, it became apparent that a minority intent upon returning a bill to committee indefinitely by straight recommittal should be able to explain their position without forcing Members to immediately vote on an amendment which may never be subsequently before the House. Other rulings reiterated that the 10 minutes of debate does not apply to any motion to recommit a resolution or a conference report. Recognition of the bill's manager in opposition to the motion carried with it the right to close debate, and neither side was permitted to reserve time, or yield blocks of time, but could yield while remaining standing. In 2002, the Chair ruled that an amendment to a motion to recommit following the rejection of the previous question was not separately debatable but must be read in full.

Prior to 1995, eight rulings from 1990 through 1994 (several on appeal) supported the authority of the Committee on Rules to report special orders which only permitted "straight" motions to recommit, based upon a ruling by Speaker Henry Rainey in 1934. The minority had become particularly concerned that the motion to recommit with instructions of their choosing was being restricted just as the ability of all Members to offer amendments was being increasingly limited or "structured" in the late 1980s and early 1990s. The element of surprise had become problematic to majority leaderships since the recommittal motion did not need to be available in advance of being offered. In 1995, the House, following a recommendation from a Joint Committee on Congressional Organization in the prior Congress, amended Rule XIX clause 2 to deny the Committee on Rules authority to recommend special orders which prevented the Minority Leader or his designee from offering proper instructions in a recommittal motion pending initial final passage of a bill or joint resolution. As minority motions to recommit with instructions to report "promptly" proliferated beginning in the 1990s, a series of parliamentary inquiries demonstrated that adoption of such a motion which contained specific or general language of amendment

would permit but not require the committee to which the measure might be recommitted to meet again to consider the measure in the form amended by the House, but without authority to require the House to immediately consider the measure when reported absent a subsequent order of the House. The use of the instruction to "promptly" report had the combined effect of requiring Members to vote on the amendment included in the motion, while at the same time voting to return the bill to committee for an uncertain fate and preventing a vote on final passage of the underlying measure. On several occasions in the 110th Congress further proceedings on bills pending motions to recommit were postponed unilaterally by the Speaker before the vote, pursuant to authority contained in special orders. Rule XIX clause 2(b)(2) was amended in 2009 to provide that the motion to recommit a bill or joint resolution with instructions following the ordering of the previous question could only instruct the committee to report the measure back to the House "forthwith" with specific amendments, and not to report back "promptly" or with any other general or indefinite, non-immediate instructions to amend or take any other action.

Motions to Reconsider—Effect of Adoption. In 1980, where the House adopted a motion to reconsider a vote on a question on which the previous question has been ordered, the question to be reconsidered was neither debatable nor amendable unless the vote on the previous question was then separately reconsidered.

Several rulings clarified the requirement of Rule XIX clause 3 to qualify on the prevailing side of a question in order to enter or make the motion to reconsider. In modern practice, entry of the motion was the equivalent of making the motion, as they were accomplished contemporaneously before proceeding to other business. Formerly, in 1980, where intervening business was pending, the motion to reconsider could be entered but not voted upon immediately unless debate had not yet begun on the intervening business. On a nonrecord vote, any Member could make the motion to reconsider whether or not he voted on the prevailing side, as in 1992, but otherwise only a Member who voted on the prevailing side could offer the motion to reconsider, as in 1986. The Chair, having voted on the prevailing side, offered the motion to reconsider by stating the pendency of the motion where no motion was made from the floor in 1997. A motion to vacate proceedings whereby a motion to reconsider had been disposed of on passage of a bill was held not in order in 1985.

—**Applicability and Debate.** The motion to reconsider has been held applicable to the vote on ordering the previous question on a special order, a vote postponing a bill to a day certain, an affirmative vote on the question of consideration, and an affirmative vote on a motion to suspend the rules.

The motion to reconsider was held not itself subject to reconsideration, nor available in the Committee of the Whole. Because the motion for the previous question is itself not debatable, a motion to reconsider such a vote was likewise held not debatable.

Unanimous-Consent Requests. While the Consent Calendar procedure was abolished in 1995, the ability of the House on an *ad hoc* basis to consider business by unanimous consent was not impacted and was viewed as a proper alternative to the formalities of that Calendar. Since then, partisanship often prevented unanimous consent from being utilized and much noncontroversial business was conducted under suspension of the rules.

There were a number of announcements by the Speaker in the exercise of his discretionary power of recognition under Rule XVII clause 2, beginning in 1981, which required Members to obtain clearance from majority and minority floor and committee leaders before seeking recognition to propound a unanimous-consent request for the immediate or future consideration of business. Over the years since then, that policy was expanded to include a variety of requests for the disposition of legislative business, to cover both unreported and reported measures, the offering of nongermane amendments, expedited consideration of measures on subsequent days, disposition of Senate bills, and amendments at the Speaker's table (where only an authorized committee manager would be recognized for clearance), and for constituent parts of a single request combining final disposition of several separate measures. The Chair, by declining recognition on his own initiative absent that assurance of clearance, was thereby relieving all Members on the floor from the responsibility of going on record as objecting to the request, so as to prevent provocations forcing objecting Members to be so indicated, while at the same time imposing an objective standard which would not necessarily indicate the Chair's personal preference in response to the request. The Speaker's denial of recognition under this policy was a matter of discretion held not subject to appeal. "Floor leadership" was construed to apply only to the Minority Leader and not to the entire hierarchy of minority leadership, and the Speaker asserted discretion to indicate (or not) which leadership side had not cleared the request. In 1984, Delegates were held to be authorized to object to unanimous-consent requests in the House.

—**Reservation of Objection.** Rulings from the early 1990s reaffirmed that a Member objecting to a unanimous-consent request must stand and be identified for the *Record*, and that a reservation of the right to object is precluded upon a demand for the regular order.

—**Scope and Application of Requests.** Generally, unanimous consent for the immediate consideration of a measure in the House did not preclude

a demand for a record vote when the Chair subsequently put the question on initial final passage, since it merely permitted consideration of a matter not otherwise privileged. Senate amendments, on the other hand, continued to be routinely agreed to or amended by one unanimous-consent request where votes were not anticipated. With respect to initial House consideration, *House Practice* indicates several expanded uses of unanimous consent not only to permit consideration but also to expedite subsequent stages of consideration up to and even including the question of final passage. Beyond such expedited consideration by unanimous consent, several unanimous-consent requests also included final disposition, as for the first time "deeming" a conference report to be considered "and adopted" in 1989, and a certain measure consisting of separate bills to be passed or adopted *en bloc* in 2002. Other deeming requests included those sending to conference a measure not yet passed by the Senate as amended if and when that message was received in 1987, and consideration on any subsequent day of a bill to be introduced by the chairman of a committee in 1982. While these examples of the use of unanimous consent were not challenged on points of order, they reflected the flexibility and expansion of the procedure upon recognition by the Speaker and within the Speaker's guidelines.

—**Limitations on Requests.** The availability of unanimous-consent requests in the Committee of the Whole to modify rules or orders of the House became the subject of several rulings. Generally, requests to alter adopted orders governing the conduct of specific business increased in both the House and in the Committee of the Whole because the House increasingly considered measures under "structured" or "modified-closed" special orders or previous unanimous-consent orders. Those orders often denied flexibility, for example, by restricting the order of consideration of amendments, imposing time limits on each amendment, and precluding second-degree amendments thereto, and did not anticipate subsequent modifications as those needs arose. This trend toward "structure" gradually set aside standing rules and the tradition of spontaneity under the five-minute rule which allowed the Committee of the Whole to perfect amendments and to limit debate by motion. The requests were not permitted in the Committee of the Whole when they would substantively change a rule or order of the House, other than minor variances which were congruent with those rules or orders (such as extensions, reductions, or control of equally divided debate time on amendments). Conversely, modifications by unanimous consent of amendments once pending were permitted to be propounded but only by the proponent of the amendment in the Committee of the Whole, since the governing special order precluded second-degree amendments by other Members but not modifications by the sponsor. Thus the Committee of the Whole

was often required to rise to permit unanimous-consent requests in the House to modify a previously adopted special order. Such requests in the House were particularly utilized during the consideration of general appropriation bills, where "universe of amendments" unanimous-consent orders to specify permissible amendments were entered on many bills following some consideration under the five-minute rule. Those orders usually dispensed with the reading of the remainder of the bill except the last "short title" line, named the sponsors of amendments, and indicated their number as printed in the *Record* or their generic subject matter, without specifying an order of consideration or waiving any points of order.

In 2011, an order separately permitted the bipartisan managers of the bill acting to offer some of those amendments *en bloc* for a indivisible vote. On occasion the vagueness of those requests became problematic where the Chair was required to discern, upon the offering of the amendment, whether it met the general description of the unanimous-consent request. The same "universe" agreements also prescribed the parameters of debate, normally a set time by number of minutes of debate equally divided between the proponent and an opponent. This "universe" practice as an order of the House was intended to bring some certainty to the completion of the amendment process on appropriation bills, but fell into disuse beginning in the 110th and 111th Congresses when bipartisan agreement could not be reached. It was revived in 2011 to accommodate over 100 amendments on an "omnibus" appropriation bill to be offered in the Committee of the Whole following several days of "modified" consideration (*i.e.*, a preprinting requirement).

Other denials of recognition for unanimous-consent requests included the extension of special-order speeches beyond midnight, based upon the bipartisan arrangement first announced by the Speaker in 1994 which also included: the refusal to recognize Members to request second five-minute speeches or to be listed by their leaderships for longer special orders on the same day; to revise and extend arguments on points of order; to insert colloquies in the *Record* in 1997 and in 1998; and to reduce the time for an initial recorded vote below 15 minutes where there would be lack of notice to Members in 1985. By unanimous consent, the House may vacate a previous unanimous-consent agreement, as in 1983. The Speaker will not entertain unanimous-consent requests to preclude him from recognizing for consideration of a certain matter, as such an agreement would render that restriction an order of the House impeding the Speaker's discretion and use of the guidelines. Requests for five-minute speeches except during an expanded morning hour were not recognized beginning in 2011.

Chapter 24—Bills, Resolutions, Petitions, and Memorials.

Various types of bills, resolutions and other mechanisms for action have evolved in recent practice in relation to the purpose, form and content of different legislative vehicles.

Resolutions of Approval or Disapproval of Executive Decisions; "The Legislative Veto." Former or currently effective laws constituted an exercise in House or Senate rulemaking where Congress reserved for itself a period of time to approve or disapprove various executive actions under expedited procedures. This section includes rulings of the Chair interpreting those statutes, and variations of House utilization of those statutory provisions. The model for many of those statutes was the (Executive) Reorganization Act of 1939 (5 USC §§ 902–12). In the immediate aftermath of the landmark Supreme Court decision in *Immigration and Naturalization Service v. Chadha,* 462 U.S. 919 (1983), section 905(b) of that law was amended by Pub. L. No. 98–614 in 1984 to terminate the authority of the President to submit reorganization plans for expedited congressional review. The provisions remain relevant, however, because other acts have incorporated their procedures by reference. In *Chadha*, the U.S. Supreme Court held unconstitutional as in violation of the presentment clause of article I, section 7 of the Constitution and the doctrine of separation of powers, the provisions of the Immigration and Nationality Act contemplating disapproval of a decision of the Attorney General to allow an otherwise deportable alien to remain in the United States by simple resolution of one House. That same year, the Supreme Court summarily affirmed several lower court decisions invalidating provisions contemplating disapproval of executive actions by concurrent resolution or by a committee action (*Process Gas Group v. Consumer Energy Council*, 463 U.S. 1216 (1983)). Congress then amended several such statutes to convert provisions requiring simple or concurrent resolutions to provisions requiring joint resolutions to be signed by the President. At the beginning of each Congress, it became customary (and was codified into Rule XXIX in 1999) for the House to reincorporate by reference in the resolution adopting its rules such "legislative procedures" as may exist in current law, subject to the constitutional right to change its rules at any time. This was demonstrated by a ruling in 1987 that a special order reported from the Committee on Rules can supersede statutorily privileged business. Statutes which prescribe no special procedures for consideration of executive action, while not constituting rules of the House, were last compiled in H. Doc. 101–256 in the 102d Congress. There were examples of joint resolutions of disapproval being brought to the House under special orders, where the Congressional Review Act of 1995 contained no expedited procedures for House consideration (*e.g.*, 2012).

Titles and Preambles. Amendments to the title of a bill were held not in order in the Committee of the Whole in 1986. In the Committee of the Whole, amendments to the preamble of a joint resolution were considered following disposition of any amendments to the resolving clause, as in 1967

and in 1993. In the House, amendments to the preamble of a concurrent or simple resolution were considered following adoption of the resolution, as in 1970 and in 1973, and to preambles of joint resolutions pending engrossment and third reading, as in 1993.

Engrossment. The third reading in the House was by title and the question of engrossment and third reading was not subject to a demand for division of the question in 1989. The correction of substantive omissions or errors to be made in the engrossment, following final passage and prior to messaging to the Senate, could be accomplished by unanimous consent and the changes are read by the Clerk, as in 1985, while unspecified technical and conforming corrections such as punctuation, table of contents, and cross-references in the engrossment may be made by the Clerk by unanimous consent. The House has by unanimous consent or special order permitted the engrossment of one House-passed bill to include another separately passed bill as a separate title before being messaged to the Senate, sometimes to avoid consolidation of all the provisions as one bill where the test of germaneness would have been broadened but budget scoring would be cumulative. It is considered within the authority of the Committee on Rules to provide such a merger in the engrossment as long as each measure when considered separately was made subject to a motion to recommit, and there need not be a separate vote on passage of the combined measure.

In the 111th Congress, House standing rules formally acknowledged the possible merger of two House-passed measures into one engrossment. The PAYGO rule (Rule XXI clause 10) was amended to anticipate the likelihood of special orders merging two House-passed bills into one engrossment while permitting separate consideration for germaneness and budget scorekeeping purposes. The rule allowed the scoring of the savings in one measure to offset spending in the other. In 2011, the PAYGO rule was replaced by the CUTGO rule which maintained the provision regarding the merger of two bills into one engrossment for the evaluation of whether the combined bill increased direct spending. The so-called "Gephardt rule" (repealed in 2001 readopted in 2003, and repealed again in 2011), required automatic engrossment and passage of a joint resolution adjusting the public debt limit reflecting final adoption of a budget concurrent resolution and avoided a separate vote on passage in the House.

Transmission of Legislative Messages Between Houses. In 1996, the House treated as privileged a Senate request for the return of a message so as to show the proper naming of conferees while the Senate had been in possession of the papers. On several occasions, the House treated as privileged (as a constitutional prerogative) Senate requests for returns of Senate bills that included revenue provisions (*e.g.*, 1999 and 2004). The House also

treated as privileged motions to request the Senate to return House-passed measures where the engrossments were incorrect in 2004, and to agree to a Senate request where the engrossment failed to properly depict the action of the Senate in 2005. There were requests by both Houses for the return of engrossments they had previously passed. Several House actions reiterated that a request of one House for the return of a bill messaged to the other or to correct an error in its message to the other, may either qualify as a privileged motion, or may be disposed of by unanimous consent where no error is alleged (as the claim of privilege cannot become a substitute for the motion to reconsider where no error is involved) in 1982 and in 1986. Such requests in the House were not debatable unless under a reservation of the right to object, as in 1977. In 1998, the Senate requested the return of a bill to effect a specified substantive change in its text, and in 2004, in order to recommit the bill to a Senate committee, and those requests were granted by unanimous consent in the House.

Enrollments; Correcting Bills in Enrollment. In 2001, Rule II clause 2(d)(2) was amended to authorize the Clerk, rather than the Committee on House Administration, to prepare enrollments of bills and joint resolutions. Concurrent resolutions authorizing the hand enrollment of certain bills to avoid delay in presentation of parchment to the President were privileged and were utilized in the last six days of a session pursuant to law permitting that procedure in 1982 and 1984. Prior to the last six days, however, a joint resolution changing the law to permit hand enrollments was required and had no privileged status absent unanimous consent or a special order in 1985 and 1998. The speed with which enrollments can be produced electronically has reduced the need for hand enrollments. Congress has enacted laws which permit a separate printed enrollment to be prepared at a later time for deposit in Archives in 1987 and 1988, or to require the Archivist to include the text of a bill incorporated by reference as an appendix in the archived enrollment where the enactment was by bill number only (a practice properly not replicated since that date (Pub. L. No. 106–554)).

Concurrent resolutions authorizing the Clerk of the House or Secretary of the Senate to correct enrollments of measures which have passed both Houses enjoy no privilege in either House, but were often made in order by unanimous consent or pursuant to a special order in the House. The House has adopted special orders "hereby adopting" concurrent resolutions correcting enrollments of final measures, as in 1988, without separate debate or motions to recommit those concurrent resolutions. This was held to be within the authority of the Committee on Rules which was only restricted under Rule XIII clause 6 from reporting such special orders on bills and joint resolutions. On occasion, the House has agreed to a concurrent resolution correcting the enrollment of a joint resolution before the consideration

of a conference report on that measure (as in 1985), in order to make the Senate aware of the preferred final text should it be able to consider the concurrent resolution by unanimous consent in that body.

On another occasion in 2011, the House permitted separate "closed" consideration of two concurrent resolutions correcting the eventual enrollment of a bill, setting a new procedure by conditioning that final enrollment upon receipt of a message from the Senate that it had "taken votes" on those concurrent resolutions (whether or not adopted). The purpose was to make the Senate aware that final enactment awaited some response to the House correcting efforts.

On a unique occasion in 2008, the two Houses enacted a law (Pub. L. No. 110–244) requesting the Department of Justice to investigate an unauthorized change in a previously enrolled bill prior to its presentation to the President in the prior Congress. The Member ostensibly responsible for that change erroneously claimed during debate that the enrolling clerk could make changes on his own initiative where there was informal consensus in 2008. The section of law, originated in the Senate, was a departure from the usual practice of the House with respect to internal investigation of conduct of a Member, and without Senate involvement. It reaffirmed that the enrolling clerk can make no substantive changes in any enrollment absent authority in a concurrent resolution. Two Congresses later in 2012, the Department of Justice reported possible conversion of campaign contributions to personal use by that Member (alleged to have influenced the unauthorized change).

In the 109th Congress, the House laid on the table a resolution offered as a question of privilege calling for an investigation by the Committee on Standards of Official Conduct of an enrollment procedure whereby the Secretary of the Senate made a change in the enrollment to reflect intended Senate action although it had not been earlier corrected by a request for return of the engrossed Senate message containing the error. Several Federal courts dismissed lawsuits which were filed challenging the enactment of that entire law, citing *Field v. Clark*, 143 U.S. 649 (1892), to prevent the courts under the doctrine of separation of powers from looking behind the signatures of the Presiding Officers and into procedural actions of the two Houses.

In the 110th Congress, the House laid on the table a resolution offered as a question of privilege rebuking the Speaker for signing an enrolled bill knowing that a portion of the bill had been omitted in the enrollment process, and calling for a Committee on Standards of Official Conduct investigation.

Signing. Rule I clause 8(b)(2) was adopted in 1985 to authorize the Speaker with approval of the House to appoint Member(s) to sign enrollments during a designated period of time. Prior to that time, a Speaker pro

tempore had to be elected by the House to be authorized to sign enrollments. In the 111th and subsequent Congresses the House on opening day approved the Speaker's appointment of two or more designated Members (some of whose districts were close to the seat of government) to sign enrollments in his/her absence during the entire Congress.

Veto Powers—Effect of Adjournment; Pocket Vetoes; Protective Returns. Several Presidents made challenged assertions of "pocket veto" authority, during intrasession or intersession adjournments. No Supreme Court opinion finally resolved the issue because of mootness, leaving the applicability of the *Pocket Veto Case*, 279 U.S. 655 (1929) and *Wright v. U.S.*, 302 U.S. 583 (1938) to many such adjournment vetoes in question. In 1976, following *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974) and a consent decree in *Kennedy v. Jones*, 412 F.Supp. 353 (D.D.C. 1976) it was announced that President Gerald Ford would utilize a "return" veto, subject to override, in intersession and intrasession adjournments (other than final *sine die* adjournments of a second session), where *ad hoc* authority existed for the originating House to receive such messages notwithstanding the adjournment. On several occasions, the Congress in adjournment resolutions asserted the Clerk's authority to receive messages during intrasession adjournments. The Clerk was given ongoing explicit authority in Rule II clause 2(h), beginning in 1981. A Federal appellate court in *Barnes v. Kline*, 759 F.2d 21 (D.C. Cir. 1985), vacated as moot in *Burke v. Barnes*, 479 U.S. 361 (1987), determined that a bill could not be pocket-vetoed during an "intrasession" adjournment of Congress to a day certain for more than three days, where the House of origin had made appropriate arrangements for the receipt of presidential messages during any adjournment, or during a recess.

On at least five occasions, the bipartisan leadership of the House wrote to four different Presidents complaining of improper presidential assertions of pocket veto authority. On the first occasion on August 16, 1989, President George H.W. Bush claimed to have pocket vetoed a joint resolution (permitting a hand enrollment of a bill which had been mooted by presentment of the parchment) by not returning it during an intrasession adjournment to a day certain. On several subsequent occasions, that President Bush and Presidents Bill Clinton, George W. Bush and Barack Obama respectively asserted pocket veto authority during intrasession or intersession adjournments, while nevertheless returning those bills to the originating House with "memoranda of disapproval" asserting pocket veto authority although not exercising it. On those occasions (*e.g.*, 1991) the House correctly regarded the President's actual return without his signature as a return veto and proceeded to reconsider the bill over the President's objections (in 2010 sustaining the veto). The Speaker inserted remarks in the *Record* on the

"pocket veto" in light of modern congressional practice concerning the receipt of veto messages during recesses and adjournments in 1992. Several jointly signed letters of the Speakers and Minority Leaders (but never with Senate leadership participation) responding to improper presidential claims of pocket veto authority were inserted in the *Record* in 1990, 2000, 2008 and 2010. The Attorney General responded on behalf of the President in 1990, citing the *Pocket Veto Case* as the binding U.S. Supreme Court ruling, although it applied only to a *sine die* adjournment pocket veto. The 2008 correspondence summarized prior congressional assertions as follows: "the pocket veto and the return veto are available on mutually exclusive bases, and therefore, during mutually exclusive periods . . . your return of H.R. 1585 with your objections is absolutely inconsistent with this most essential characteristic of a pocket veto, to wit: retention of the parchment by the President for lack of any body to whom he might return it with his objections."

Proposals for Item Veto. The Line Item Veto Act (2 USC § 691) took effect on January 1, 1997. The Act gave the President the authority to cancel discrete dollar amounts of discretionary budget authority, new direct spending, and limited tax benefits contained in acts sent to him for approval. Cancellations were effective unless disapproved by law. Such disapprovals could be enacted under expedited congressional review procedures set forth in the Act. The President on three occasions exercised his cancellation authority in the 105th Congress. The Supreme Court in *Clinton v. City of New York*, 524 U.S. 417 (1998) held that the cancellation authority of the Line Item Veto Act violated the presentment clause of article I, section 7 of the Constitution, as it gave the President the ability to unilaterally change (cancel) enacted items unless a subsequent law of disapproval were enacted by Congress and then passed over the President's likely veto by two-thirds votes. The U.S. Supreme Court had previously held in *Raines v. Byrd*, 521 U.S. 811 (1997) that congressional plaintiffs lacked standing to sue under that statute for lack of personal injury. Following the *Clinton* decision, bills were introduced to change the congressional review authority to one of approval of the President's recommendation, with the cancellation only being temporary (a deferral) unless Congress approved it by law within a specified time. That approach was argued to pass constitutional scrutiny when such a reform bill passed the House in 2012 but no bill had been enacted at this writing.

Motions Relating to Vetoes. Rulings from the late 1980s confirmed certain principles regarding the availability and precedence of motions to dispose of a vetoed bill, viewed in light of the constitutional mandate that the House "shall proceed" to consider such vetoed bill. For example, although

the motion for the previous question takes precedence over motions to postpone or refer when a question is under debate, where the Speaker has laid before the House a veto message but has not yet stated the question on overriding the veto, that question was not "under debate." Therefore the motion for the previous question did not take precedence, but under earlier precedents motions to postpone or refer could be offered at that point. A motion to refer a vetoed bill to committee may be laid on the table, and vetoed bills successfully referred to committee are subject to (repeatable) privileged debatable motions to discharge—a motion that itself could be tabled. The motion to refer may include instructions to report "promptly" as in 1990. The adoption of a motion to postpone to a day certain removes the privilege of consideration prior to that day. A motion to postpone has been for as long as eight months, and into the next session of the same Congress, as in 1985.

Vacating Legislative Actions. Several examples of vacating business proceedings by unanimous consent were employed, some involving voting situations. In 1995, a proceeding in the Committee of the Whole by which a recorded vote on an amendment was vacated in the House the next day after the Committee had risen, so as to require the Chair to put the question *de novo* on the amendment when the Committee resumed its sitting. There the Chair had declined to permit several Members who were in the Chamber to vote and the result had been announced prematurely. In 2011 and 2012, the Committee of the Whole by unanimous consent immediately vacated an announced recorded vote on an amendment and conducted the vote *de novo* where it was alleged that a Member in the well had not been permitted to vote. A question of privilege was raised in 2008 proposing to vacate a vote which had allegedly been held open beyond a reasonable time in violation of a rule then in place preventing such action solely to change the result.

On several occasions, the ordering of the yeas and nays or of recorded votes was subsequently vacated by unanimous consent where the matter was no longer the pending business so as to permit the earlier voice vote on that matter to be dispositive or to permit the Chair to put the question *de novo*. This procedure was utilized where requests for record votes on amendments in the Committee of the Whole or ordering of record votes on motions to suspend the rules had been postponed and were subsequently determined to be unnecessary either during the interim or as proceedings resumed as unfinished business.

On other occasions, unanimous consent was utilized to vacate the transaction of specific business, including action on a Senate amendment, on election of a Member to a committee, on going to conference (in order to permit a motion to instruct conferees), and on filing a report on a bill already passed the House.

Chapter 25—Appropriation Bills.

In addition to that contained in chapter 26, there was much procedural jurisprudence on appropriations issues due to a large number of rulings by the Chair, standing rules changes, special orders of business, unanimous-consent orders, variations of other House practices, and the advent of Congressional Budget Act disciplines. In practice, the concepts "unauthorized appropriations" and "legislation and limitations on general appropriation bills" sometimes have been applied almost interchangeably as grounds for making points of order pursuant to Rule XXI clause 2, because an appropriation made without prior authorization in law has, in a sense, the effect of legislation, particularly in view of rulings of long standing that a "proposition changing existing law" may be construed to include the enactment of a law where none exists. The two concepts were treated separately in these chapters as, since the restructuring of clause 2 in 1983, they derived from different paragraphs in that clause and constituted distinct restrictions on the authority of the Committee on Appropriations and on amendments to general appropriation bills..

Reappropriations. Rule XXI clause 2(a)(2) was amended in the 99th Congress by section 228(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) to permit the Committee on Appropriations to report certain transfers of unexpended balances in a general appropriation bill, if those reported transfers were within the department or agency for which they were originally appropriated. This exception to the prohibition in bill text was added to the existing exception for reappropriations in continuation of public works on which work had commenced, but did not cover amendments. The clause was held to apply only to reported general appropriation bills in 1988. Rulings in 1982 and in 1988 reinforced the prohibition against amendments continuing the availability of funds previously appropriated for a prior fiscal year. The fact that appropriations may be authorized in law for a specified object did not permit an amendment to include legislative language mandating the reappropriation of funds from other acts in 1992. Clause 2(a) was read together with clause 2(b) to rule out as a change in existing law a provision in a general appropriation bill that authorized an official to transfer funds among appropriation accounts in the bill in 2006 (as contrasted with reported language making direct "within-bill" transfers (rather than conferring authority) as permitted by the exception in clause 2(a)(2)).

Appropriations in Legislative Bills. Rule XXI clause 4 was held not to apply to a special order reported from the Committee on Rules "self-executing" the adoption, to a bill being made in order, of an amendment containing an appropriation, because the amendment was not separately before

the House during consideration of the special order in 1993. The clause was, however, held to apply to an amendment proposed to a Senate amendment to a House bill not reported from the Committee on Appropriations in 1980.

The provision in clause 4 that a point of order against an amendment containing an appropriation to a legislative bill may be made "at any time" was interpreted to require that it be raised during the pendency of the amendment under the five-minute rule, even against an amendment in its perfected form while still pending, or against an amendment which was identical to bill text against which that point of order had been waived in 1975. The additional protection accorded to points of order "at any time" against appropriations in legislative bills, and not merely at the outset of consideration as required on most points of order, became the focus in rulings in 1975. That model for points of order "at any time" was extended in 1983 to tax or tariff provisions or amendments in bills not reported from the revenue-raising Committee on Ways and Means to mirror the added protections accorded to the Committee on Appropriations against encroachments on their respective jurisdictions.

Language permitted to remain in a House-passed bill and included in a conference report was not subject to a clause 4 point of order, since the only rule prohibiting such inclusion (Rule XXII clause 5) was limited to language originally contained in a Senate amendment in 1975. An appropriation in a bill reported by a legislative committee and then sequentially reported adversely by the Committee on Appropriations was subject to Rule XXI clause 4 in 1975, but the point of order must be directed to the provision (potentially including an entire section containing it) and not against the entire bill. A provision exempting loan guarantees in a legislative bill from statutory limitations on expenditures was not prohibited by clause 4 in 1974, nor was authority to make available loan receipts or other payments where the actual availability remains contingent upon subsequent enactment of an appropriation act in 1975 and in 1980. Several rulings reinforced the prohibition against diverting an appropriation already made for one purpose to another in 1988, as by expanding definitions of recipients of funds already appropriated in 1976 and in 1980, or from one fiscal year to another in 1992, or making existing funds available for a new purpose or to a new agency without further appropriation in 1974, 1979, and 1985. A diversion of previously appropriated funds in lieu of the enactment of new budget authority if a maximum deficit amount under existing law was exceeded was held to constitute an appropriation, though its stated purpose was to avoid the sequestration of funds in 1988.

Contingent Fund Expenditures. A change in terminology in the House occurred in 1995 from "Contingent Fund" to "Applicable Accounts of the

House" as contained in the statement of jurisdiction for the Committee on House Administration in Rule X clause 1(j)(1). Chapter 17 includes the area of funding of House committees and the privilege and use of "primary" and "supplemental" committee expense resolutions. All such funds originally derived from annual appropriations in the Legislative Branch Appropriations Act.

Reporting and Consideration of Appropriation Bills. Sections 6 and 7 include rulings defining "general" appropriation bills, as distinguished from non-general "special purpose" bills or joint resolutions "continuing" appropriations, and their privileged status. In 1979, 1980 and 1988, joint resolutions providing an appropriation for a single government agency or permitting a transfer of appropriated funds to another agency were held not to constitute general appropriation bills and not subject to Rule XXI clause 2. Continuing appropriations joint resolutions were made in order in 1981 as privileged if reported by the Committee on Appropriations after September 15 preceding the new fiscal year, but that status has not been utilized. Additional requirements for reports accompanying general appropriation bills (Rule XIII clause 3(f)) were adopted in 1974, including separate headings for rescissions and transfers of unexpended balances, unauthorized items in 1995, requiring more detail on the status of unauthorized appropriations in 2001, and in 2009 requiring earmarks to be shown in all reported bills (Rule XXI clause 10).

Consideration Made in Order by Special Rule or Unanimous Consent. Increasingly special orders of business reported from the Committee on Rules were utilized to govern the entire consideration of reported general appropriation bills in order to grant necessary waivers of points of order against consideration and against specific provisions in those bills, and to structure the amendment process in some cases. This trend replaced traditional consideration of appropriation bills by privileged motions resolving into the Committee of the Whole under standing rules, in order to manage expeditious consideration in the Committee of the Whole and to order the previous question following Committee of the Whole consideration. In 2012, several special orders of business provided for the separate entire considerations of multiple reported general appropriations bills, in one case together with an authorization bill, departing from the traditional practice that there be a separate rule for each bill.

Unanimous-consent orders of the House also proliferated—some at the outset of consideration of nonprivileged measures continuing appropriations or on general appropriation bills where it was considered unnecessary to first adopt a special order of business. Unanimous-consent orders in the House since 1995, establishing a "universe" of amendments, became routine

and followed general debate at various point(s) during the amendment process.

Waivers of Points of Order by Resolution. Generally, special orders were utilized to waive all points of order against consideration of general appropriation bills. Those points of order often were directed at three-day availability of the accompanying report, at new budget authority in excess of allocations to subcommittees, at failure of the committee report to contain a comparison of spending in the bill with subcommittee allocations (*e.g.*, 1986), and at the lack of availability of hearings for at least three calendar days (Rule XIII clause 4(c)). With the "universe" of amendments prescribed by the Committee on Rules in advance of consideration, those special orders protected the permitted amendments by waivers.

Consideration and Debate. In what came to be known as "universes of amendments," unanimous-consent orders permitted a specified number of amendments departing from the five-minute rule, to expedite reading of bills and amendments to the bill. Those orders did not usually prescribe the order of consideration but did restrict debate (including pro forma amendments), amendability, divisibility, and intervening motions. These expeditious steps by unanimous consent were not, however, intended to waive points of order otherwise applicable when the amendments were actually offered. This technique was utilized because it provided all parties a benefit—party leaders got increased certainty about the floor schedule, the Committee on Appropriations was able to move its bills forward more readily, and individual Members were permitted, as the price for acceptance of the order, to offer amendments of their choice but unprotected from points of order. The permitted amendments were usually described by number as printed in the *Record* or generically in the unanimous-consent order. In 2007, where it was not possible to obtain unanimous consent for a "universe" of amendments on a general appropriation bill, a second special order was reported from the Committee on Rules to accomplish that result. Then, in 2009, the Committee on Rules began to report "modified-closed" special orders of business on general appropriation bills, where the negotiations of "universe" agreements between the leaderships had not been productive and where additional certainty of time and issue was sought during a period of heavy legislative scheduling. The Committee on Rules reported, upon the leadership's request, "modified-closed" rules which permitted the offering of a relatively small number of the many amendments submitted to that committee, even giving certain sponsors the choice of offering up to a specific number of amendments from among a larger number submitted by them on a certain subject (*e.g.*, striking "earmarks"), and then waiving points of order against the permitted amendments. To further prevent unanticipated

delays during consideration, those special orders restricted the offering of privileged motions (to rise or to strike the enacting clause) and permitted two-minute votes on clustered amendments (permitted by standing rule beginning in 2011).

In 2011, on the first general appropriation bill being considered, the House, following some consideration of amendments under the five-minute rule, reestablished a "universe of amendments" unanimous-consent order by permitting 129 preprinted amendments in the Committee of the Whole on an omnibus continuing appropriation bill under a procedure which permitted second-degree amendments thereto (none were offered), with controlled and limited debate on each amendment and without waiving points of order.

En bloc offsetting amendments, and motions to rise and report to preempt limitation amendments, were new procedures. New forms of amendments proposed to change appropriation amounts in pending portions of the reported bill as parenthetical insertions "(increased or reduced by $_____)" or "(in addition thereto $_____)." Because it is not in order to amend text previously amended, this form had the advantage of allowing separate and subsequent consideration of amendments to a pending "umbrella" or consolidated amount in the bill, often symbolizing focus on priorities within an existing number while not textually stating a specific purpose (which might not have been separately authorized). This form was permitted regardless of prior adoption of similar indirect changes in those umbrella figures, in order to avoid the need for second-degree amendments which might address other issues covered by the amended amount, or in order not to directly change that amount by way of a motion to strike and insert.

"Fetch-back" amendments to appropriation bills in the form of new paragraphs inserted to indirectly change amounts contained in previous paragraphs were in order as long as the amendment was germane to the portion of the bill to which offered (such as "general provisions") and only if reducing funds contained in previous paragraphs in 1999. "Fetch-back" amendments which attempted to increase an amount contained in a prior paragraph were required to be supported by an authorization, because the precedents that admit a germane perfecting amendment to an unauthorized item permitted to remain deal only with actual changes in the figures permitted to remain and not with the insertion of new matter beyond that permitted to remain, and because waivers against unauthorized portions were usually stated as waivers against portions of the bill and not against amendments adding unauthorized increases at another part of the bill, as in 1995, 1997, and 2012.

The adoption in 1995 of Rule XXI clause 2(f), permitted *en bloc*, indivisible offsetting "reach-ahead" amendments transferring funds in a pending

paragraph to portions of a general appropriation bill not yet read for amendment, if both budget authority and outlay neutral when measured against the increase or decrease proposed in the pending paragraph. Several rulings established that such an *en bloc* offsetting amendment must not net to increase the levels of budget authority or outlays and that the proponent carried the burden of so proving (See, *e.g.*, 1999, 2000, 2004, 2011, and 2012). They also determined that such reach-ahead amendments offered during the reading could not include limitation language beyond a change in amounts of budget authority and could not change the amount of a rescission in the bill in 2011. In 2012, clause 2(f) was held inapplicable to an amendment which not only reached ahead to change amounts of budget authority but also included an increase in a limitation on obligations from the Highway Trust Fund. The estimate of relative outlay rates as between the appropriation being reduced and that being increased, in order to maintain the same outlay rates over the course of the covered fiscal year, required the Chair to rely on estimates from the Committee on Appropriations in 2012. An amendment otherwise in order under this paragraph may nevertheless be in violation of clause 2(a)(1) if increasing an appropriation above the authorized amount contained in the bill. The Chair queried for points of order against provisions of an appropriation bill not yet reached in the reading before recognizing for "offsetting" reach-ahead amendments offered *en bloc* to achieve new priorities within the bill while maintaining budget authority and outlay neutrality. This was consistent with the priority given to points of order before *en bloc* amendments were offered to relevant portions of such bills.

In 2011, the House adopted a standing order supplementing Rule XXI section 2(f) to permit *en bloc* transfers of amounts in the bill to a spending reduction account at the end of the bill, rather than to other spending accounts. In 2012, an amendment transferring more to a spending reduction account than was reduced in previous accounts was ruled out as impermissible under that *en bloc* authority.

House–Senate Relations on Appropriation Bills. The House addressed the authority of House conferees to agree to Senate amendments containing legislation or unauthorized appropriations, and to House conferees' authority to agree to Senate legislative bills or amendments containing appropriations, absent specific authority of the House as required by Rule XXII clause 5. A provision in a Senate amendment included in a conference report on an authorization bill considered after the relevant appropriation has been enacted into law, directing that those funds be expended on a project not specifically funded in the appropriation, was itself held in 1979 to be an appropriation not to be recommended by House conferees absent specific authority through instructions. A legislative conference report

containing a Senate provision not only authorizing appropriations to pay costs incurred in judgments against the United States but also requiring that where such payments were not paid out of appropriated funds, payment be made directly out of the U.S. Treasury pursuant to a direct appropriation previously provided by law, was ruled out of order in 1980 where House conferees had not been specifically authorized under Rule XXII clause 5 to agree to that provision.

Congressional Earmarks. Provisions requiring the reporting of earmarks were originally adopted in the form of a standing order in 2006 and then added to Rule XXI as a new clause 9 in 2007. Patterned after the unfunded mandates point of order added in 1995, the congressional earmarks point of order was essentially a reporting requirement. It established a point of order against initial consideration of appropriation (as well as limited tax and tariff) measures unaccompanied by a list of earmarks either in a report or inserted in the *Congressional Record*. Such earmarks were defined as a specific spending authority of a specific amount of discretionary budget authority for an object or entity other than through a statutory or administrative formula-driven or competitive award process. A point of order against a special order waiving that reporting requirement required a separate vote on the question of consideration of the special order, following 20 minutes of debate, as disposition of the point of order. Clause 9 required a point of order under that clause was held in 2007 not to lie against an unreported measure where the chairman of the relevant committee has printed in the *Record* a statement that the measure contained no congressional earmarks, or against a reported measure where the committee report contained such a statement. The point of order did not contemplate a question of order relating to the content of such statement, merely to its existence, and was untimely after consideration has begun, as in 2007. Later that year the House adopted a standing order by unanimous consent extending the point of order to conference reports unless the joint statement of managers contained a list of earmarks not contained in either the House or Senate committee report but rather "air-dropped" into the conference report. That standing order was incorporated into Rule XXI clause 9 in 2009. In 2011, earmarks were informally banned in Congress, not specifically by House rule, but rather by majority (Republican Conference) rules which discouraged their inclusion. The ban was also adopted by the Senate for the 112th Congress by caucus rules adopted by both parties.

PAYGO. Rule XXI clause 10 (PAYGO) was added in 2007 and repealed in 2011. It provided points of order against measures affecting direct spending and revenues which increase the deficit by not being offset by comparable spending reductions or revenue increases. The PAYGO rule was

held in 2008 not to apply to general appropriation bills based upon then-existing definitions of applicable "direct spending" incorporated from the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). That ruling established a major exception from Rule XXI clause 10. In 2010, the clause was amended to narrow the definition of applicable "direct spending" to incorporate only the statutory definition and to restrict the Committee on Appropriations from going beyond it on "changes in mandatory programs" ("CHIMPs") without an emergency designation. As demonstrated in 2009 during consideration of the "economic stimulus" general appropriation bill, the 2008 ruling established that the exception did not apply to revenue provisions also contained in such a bill, thus requiring emergency designation language in that bill and triggering the separate vote on consideration provision inserted in the rule in the 111th Congress.

The PAYGO rule was amended in 2009 to allow for emergency exceptions for provisions designated as "emergency spending" in a non-appropriation bill. The Chair put the question of consideration on the bill or amendment containing that language on his own initiative without a point of order and without regard to a waiver of points of order in a special order. The purpose of this unique exception was to allow for an automatic vote on consideration of measures that respond to emergency situations such as an act of war, terrorism, a natural disaster or a period of sustained low economic growth. On one occasion in 2010, the inadvertent failure of the Chair to take the initiative to put the question of consideration on a measure containing an emergency designation was held to have been cured by the vote on adoption. While the PAYGO rule was replaced in 2011, the requirement in law (the Statutory Pay-As-You-Go Act of 2010) remained that the Chair must on his own initiative (without a point of order) separately put the question of consideration on any bill containing emergency exception language or on any special order waiving that requirement.

Cut-As-You-Go. Beginning in 2011, the House replaced the PAYGO rule with the CUTGO rule (also Rule XXI clause 10) which prohibited consideration of a bill, joint resolution, conference report, or amendment having the net effect of increasing mandatory spending within the one-year, five-year, and ten-year budget periods. The rule only addressed attempts to increase mandatory spending by requiring at least equal offsets in spending authority and did not permit offsets of increased spending by comparable revenue increases. Its purpose was to eliminate the option of revenue increases from permissible offsets and to require only offsetting spending reductions. The provision continued the clause 10 PAYGO practice of counting multiple measures considered pursuant to a special order which directed the Clerk to engross the measures together after passage for purposes of compliance

and provided a comparable mechanism for addressing "emergency" designations by requiring the Chair to put the question of consideration on any measure containing such language. In 2011, the Chair ruled out of order a motion to recommit a revenue bill with instructions to amend various portions of the Internal Revenue Code based upon an "authoritative" estimate from the chairman of the Committee on the Budget that the motion would increase direct spending over the amount in the bill.

Spending Reduction Accounts; Lockbox. By standing order included in the rules package in 2011 as section 3(j) of H. Res. 5, the House imposed for that Congress an additional option to Rule XXI clause 2(f) for "reach-ahead" amendments in order to allow an amendment to reach ahead *en bloc* to reduce amounts in paragraphs not yet read and to place those reductions in a "spending reduction account." The "lockbox" would be the last section of the bill and would contain only a recitation of the amount by which an applicable 302(b) allocation exceeded the amount of new budget authority proposed by the bill. The section 3(j)(2) standing order prohibited all other amendments to the spending reduction account contained in the bill except modifications proposed by the chairman of the Committee on Appropriations prior to filing the reported bill. Any such spending reduction account contained in the last section of the appropriation bill itself would not be subject to a Rule XXI clause 2(b) point of order as legislation. The provision was continued by standing order in the next Congress in 2013. In addition, the standing order in section 3(j)(3) prohibited a net increase in budget authority in the bill, and thus, in 2011, an amendment was ruled out of order which attempted to reach ahead to provide offsets in subsequent paragraphs but resulting in a net increase in new budget authority in the bill. Guidance to the Chair in the enforcement of that standing order was based on "persuasive" evidence submitted by the chairman of the Committee on the Budget as to the net effect of the *en bloc* amendments. Two other amendments in the form of limitations preventing the use of funds for the Internal Revenue Service's contracting out the collection of revenues under a specific law, or reducing to zero budget authority for certain regional power authorities, were likewise held to increase net budget authority in violation of section 3(j)(3) on "persuasive estimates" from the Committee on the Budget chairman (presumably based on the assumption that the prohibitions would incur additional budget authority in terminating the programs). A motion to recommit a continuing appropriation with instructions to continue current rates of spending without the reductions contained in the joint resolution was ruled out as an increase in net budget authority in 2011. This role of the Chairman of the Committee on the Budget in the enforcement of section 3(j)(3) should be contrasted with the new authority conferred upon him in

2011 in enforcement, pursuant to section 312, of Congressional Budget Act points of order by Rule XXIX clause 4, where his estimates are "authoritative and conclusive." In 2012, an *en bloc* amendment attempting to avail itself of a standing order (section 3(j)(1)) was ruled out of order when it mathematically transferred more to the spending reduction account than the amount being transferred out of other accounts.

Chapter 26—Unauthorized Appropriations; Legislation on Appropriation Bills.

Precedents interpreting Rule XXI clause 2 beginning in the 1980s were as numerous as any rulings to be documented in the entire republication. This increase was caused in part by the frequency of unauthorized appropriations, based on the inability of Congress to enact relevant authorization bills into law in a timely manner before consideration of the appropriation bill and the beginning of the fiscal year in question. Even where the House had passed an authorization bill, delays in the Senate often prevented enactment by the time the appropriation bill was scheduled for House floor consideration under the timetable of section 301 of the Congressional Budget Act. It also reflected increased use of reported language in bill text and in amendments to general appropriation bills—many permissible in the form of annual negative limitations on funding although having policy implications. General appropriation bills thus often became vehicles for enactment of legislative policy (sometimes upon informal recommendation from authorizing committees). Waivers of points of order under clause 2 were required to facilitate such legislation. On one occasion in 1981, a special order applied the restrictions in clauses 2 and 6 of Rule XXI (otherwise applicable only to reported bills) to all provisions in an unreported bill being made in order. The recurring use of special orders which provided partial waivers against reported language but also subjected certain provisions in reported general appropriation bills to points of order under that clause, reflected utilization of the Committee on Rules as a screening mechanism to balance the interests of the majority leadership and of the authorizing and appropriations committees (the "Armey" protocol).

There were two anomalous examples of the enactment of authorizing laws which, in order to enhance the primacy of the authorization process, required that subsequent appropriations must first be specifically authorized by separate law before the funds may be spent by the executive branch (*e.g.*, military funding (10 USC § 114) and intelligence funding (50 USC § 414), enacted in 1973 and in 1985, respectively). Even those restrictions have since been waived by legislative language in appropriation bills (such provisions being protected by waivers of points of order under Rule XXI clause 2 in

special orders) to permit immediate spending upon enactment of the appropriation contained in the same bill. Those waivers were further examples of the blurring of the protections of the authorization and appropriations processes based on the statutory need under the Anti-Deficiency Act of 1921 and the Congressional Budget Act of 1974 to enact actual spending prior to the beginning of a new fiscal year.

The impetus for the increase in rulings on points of order under Rule XXI clause 2 was also premised on the intermittent continuation of the tradition permitting general appropriation bills to be considered for amendment under a relatively "open" rule or order for amendments, or pursuant to unanimous-consent orders permitting a "universe of amendments" but not waiving the applicability of clause 2. Thus, at least through the 109th Congress, and beginning again in 2011, individual Members were permitted to offer amendments addressing many aspects of funding for the congressional budget, while remaining subject to clause 2, to the germaneness rule, and to the Congressional Budget Act. There were relatively few exceptions contained in "structured" or "modified-closed" special orders dictating the amendment process which protected amendments from points of order in 2007–2010.

Chapter 26 of *Deschler's Precedents* covered rulings and rules changes through 1984, and included brief discussion of the reorganization of Rule XXI clause 2 in 1983, when the 98th Congress restructured that clause in the basic form of paragraphs (a) through (d). In 1999, as part of recodification, former clause 6 was transferred to clause 2(a)(2) to clarify that reappropriation points of order, like unauthorized appropriation points of order, lie against the offending provision in the text and not against consideration of the entire bill. In the 99th Congress, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) amended clause 2 to permit the Committee on Appropriations to report transfers of unexpended balances within the department or agency for which originally appropriated. That law (Pub. L. No. 99–177) also added the last exception in paragraph (b) permitting the inclusion of legislation rescinding appropriations made in prior appropriation acts, and permitted legislative committees with proper jurisdiction to recommend retrenchments to the Committee on Appropriations for its discretionary inclusion in the reported bill.

In 1983, clause 2 was amended by adding paragraph (d) to permit certain "limitation" amendments to be offered only at the conclusion of the reading of the general appropriation bill in the Committee of the Whole (and by inference not in the House). This so-called "Obey" rule, named after former Rep. David Obey, was put in place at the recommendation of the Democratic Caucus to restrict the proliferation of limitation amendments (which had

come to address a wide range of policy issues by a denial of funding for the fiscal year and could unpredictably be offered wherever germane in the bill) during the reading of general appropriation bills for amendment. The new rule made it possible to prohibit most limitation amendments altogether if the Majority Leader's preferential motion to rise and report at the end of the reading were adopted. The rule also had the effect of prohibiting motions to recommit with limitation instructions which had not been previously offered in the Committee of the Whole. Recommittal motions containing limitations were ruled out in 1989, 1995 and in 2009 by enforcement of clause 2(d) in the House.

In 1997, paragraphs (b) and (c) of clause 2 were amended to treat as legislation (per se) a provision reported in a general appropriation bill or amendment thereto that made funding contingent upon whether circumstances not made determinative by existing law for the period of the appropriation were "known" by an official in receipt or possession of information (sections 52 and 64–65). The Parliamentarian's reliance upon precedents established in 1908 (7 *Cannon's Precedents* § 1695) and in 1989 eventually prompted a change in clause 2 itself in 1997. The rules change directly overcame those precedents as the preferred approach to elimination of the "made known" exception, rather than through reinterpretation of those precedents by the Chair or an appeal from a ruling. Over a period dating from 1908, the House had developed a line of precedent to the effect that language restricting the availability of funds in a general appropriation bill could be a valid limitation if, rather than imposing new duties on a disbursing official or requiring new determinations by that official, it passively addressed only the state of knowledge of the official. This reasoning last culminated in a ruling in 1996 admitting as a valid limitation an amendment prohibiting the use of funds in the bill to execute certain accounting transactions when specified conditions were "made known" to the disbursing official. The same reasoning had also formed the basis of the Parliamentarian's advice (no point of order was raised but amid considerable controversy) in response to provisions relating to funding to perform abortions with exceptions where the life of the mother would be endangered if the fetus were carried to term or the pregnancy was the result of rape or incest. Such abortion-related provisions or amendments which did not include the "made known" language were ruled out as legislation imposing new duties in 1977, 1993, and 1998, but were presumed by the Parliamentarian based on precedent to be in order in 1993 if utilizing the "made known" technique. This advice prompted use of the "made known" exception in other contexts until its abolition by the rules change in 1997. Several subsequent rulings rejecting that language beginning in 1997 were mandated by the per se violation restriction of the new rule.

Reservation of Points of Order on General Appropriation Bills. Rule XXI clause 1 providing for automatic reservation of points of order on reported general appropriation bills was added in 1995 to render unnecessary the former practice that a Member reserve points of order when a general appropriation bill was referred to the Union Calendar, in order that provisions in violation of Rule XXI could be stricken in the Committee of the Whole. Other rulings will analyze points of order if made against the whole or only a portion of a paragraph. The fact that a point of order was made only against a portion of a paragraph was on several occasions held not to prevent an expanded or immediately subsequent point of order against the whole paragraph, and the sustaining of a point of order against any portion of a package of amendments considered *en bloc* ruled the entire package out of order and required reoffering of the permissible amendments separately. Points of order against provisions in a portion of the bill read "scientifically" (*i.e.*, merely by heading and appropriation amount), or considered as read by unanimous consent, must be made before amendments are offered and may not be reserved. The text of the pending portion of the bill must be known before amendments to it were offered in order to prevent subsequent points of order against the bill from addressing text already amended. Once amendments were pending, however, reservations of points of order against them were commonplace, in order to permit some debate on their merits before the point of order was pressed.

Waivers of Points of Order; Perfecting Text Permitted to Remain. Rulings relating to the timeliness of points of order, and of waivers of (or failure to raise) points of order against provisions in a general appropriation bill or in amendments thereto, established that when an unauthorized appropriation or legislation was permitted to remain in a general appropriation bill by waiver or by failure to raise a point of order, an amendment merely "perfecting" by changing that amount or restricting application of that legislative language was in order as not adding "further" legislation. However, other included rulings demonstrate that this doctrine of "perfection" did not permit an amendment that added additional legislation in 2012, that proposed or earmarked for a new unauthorized purpose, or that increased an authorized amount above the authorized ceiling. Amendments adding a new paragraph indirectly increasing an unauthorized amount contained in a prior paragraph permitted to remain were ruled out in 2012 because the new paragraph was not directly "perfecting" existing text protected by the waiver of points of order. Conversely, a new paragraph indirectly reducing an unauthorized amount permitted to remain in a prior paragraph passed in the reading was held in order as not adding a further unauthorized amount. These numerous rulings reflected the importance of

the reading for amendment in determining whether amendments directly perfect language permitted to remain during the reading, or instead reached ahead to unread portions.

Where legislation was permitted to remain, the following types of amendments were ruled out as not merely perfecting the included legislation: expanding the class entitled to a benefit; expanding a restriction on benefits pursuant to new criteria; expanding a sanction on one nation to include other nations; and substituting a new trigger for the restriction of funds (such as the enactment of other legislation). By contrast, the following types of amendments were allowed under the perfecting doctrine: restating verbatim or particularizing but not expanding a definition; altering the criteria for an exception where the evaluation of such exception was fully subsumed by the prior criteria; and striking a delimiting date for a funding restriction to broaden it to the entire year. Exceptions from limitations on funds were held merely "perfecting," unless imposing new duties (*e.g.*, to determine "equivalence" of benefits), as in 1998.

The Holman Rule. Amendments in Rule XXI clause 2(b) in 1983 narrowed the definition of permissible legislative provisions which "retrench" expenditures to cover only retrenchments reducing amounts of money included in the bill as reported, and permitted legislative committees with proper jurisdiction to recommend such retrenchments to the Committee on Appropriations for its discretionary inclusion in the reported bill. In 1995, paragraph (d) of that clause was amended to limit the availability of the preferential motion to rise and report to the Majority Leader or his designee in order to foreclose retrenchment amendments (as well as limitation amendments) which were in order only at the conclusion of the bill's reading. Retrenchments have been distinguished since 1985 from permitted "rescissions" in reported bills, which are reductions of funds appropriated in prior appropriation acts and not in the reported bill. Decisions under the Holman rule were few, as the use of limitations in appropriation bills was perfected so that most modern decisions by the Chair dealt with distinctions between limitations and legislation.

Rescissions and Deferrals. Authority to the Committee on Appropriations was conferred by Rule XXI clause 2 in 1985 to report legislation containing rescissions of funds in prior appropriations acts, rescission bills, and deferral resolutions were statutorily treated in title X of the Impoundment Control Act of 1974. The reporting authority conferred on the Committee on Appropriations did not extend to: floor amendments to those bills; legislation in those bills providing rescissions of contract authority contained in other laws or in a loan guarantee program; or rescissions under an agricultural law. A provision constituting congressional disapproval of a deferral of budget authority proposed by the President pursuant to the Impoundment Control Act was likewise held to be legislation in 1982 when included in a general appropriation bill rather than in a separate resolution of disapproval under that act.

Amendments Between the Houses. This section of chapter 26 addresses the authority of House conferees on general appropriation bills to agree to or amend Senate amendments containing unauthorized items or legislation for inclusion within a conference report.

Until the mid-1990s, appropriations conferences usually considered discrete Senate amendments in disagreement, numbered at the appropriate place in the House-passed bill, reflecting separate consideration and adoption given those issues by the Senate. As a result, appropriations conferees enjoyed less latitude without waivers of points of order in arriving at compromises within the scope of difference because comparisons between the House provisions and the corresponding numbered Senate amendment (often isolated as specific amounts of money) were easily discerned. Subsequent waivers of points of order in the House recommended by the Committee on Rules were not traditionally anticipated or sought, and conferees were required to abide by standing rules and precedents which restricted their authority. With numbered amendments conferees could submit a partial conference report to their respective Chambers, containing everything they both agreed upon in fact and had authority to recommend. Amendments on which they still disagreed either technically or which remained in true conflict, were then separately disposed of in each Chamber without directly jeopardizing previous adoption of the partial conference report. Proceeding under standing rules and precedents on separately numbered Senate amendments had proven to be complicated and time-consuming, involving procedural issues of time allocation, *en bloc* consideration by unanimous consent, and priority of motions. Even if not germane in the Senate, Senators could further amend compromise House amendments to Senate amendments remaining in disagreement, in order to revisit matters contained in the conference report or to broach new issues. In the House, special orders from the Committee on Rules had not been utilized and standing rules and precedents governed the unpredictable sequence of preferential motions and votes.

Beginning in the 1990s, Senate amendments to House-passed general appropriation bills were increasingly messaged to the House in the form of one amendment in the nature of a substitute (striking all after the enacting clause and inserting entire new text) which were not divisible for separate votes in the House, for disposition in conference or subsequently in either House. When embodied within entire conference reports in the House, rather than being reported in real or technical disagreement for separate disposition, the conference reports required waivers of points of order because they were in violation of Rule XXII clause 5 since House conferees were not specifically authorized to agree to such Senate amendments. The advantages

of this form of Senate amendment to general appropriation bills include the consolidated consideration of all issues in disagreement for disposition by one debate and vote on the conference report in both Houses rather than the time-consuming and complicated consideration of motions to dispose separately of each of many numbered Senate amendments on which House conferees had no authority to agree. This emerging process assumed that the Senate would package all its amendments as one substitute despite their previous separate consideration in that body. It also assumed that the House would, after the filing of the conference report, adopt a special order from the Committee on Rules (as it has almost without exception) waiving that point of order (and all other points of order).

Two rulings (in 1979 and in 1987) reiterated the principle stated in section 6.9 of chapter 26 that when a Senate amendment proposing an unauthorized item or legislation on a general appropriation bill is, pursuant to Rule XXII clause 5, reported back from conference in disagreement, a motion to concur in the Senate amendment with a further amendment was in order, even if the proposed amendment adds legislation to that contained in the Senate amendment, and the only test was whether the proposed amendment was germane to the Senate amendment reported in disagreement. As noted above, those rulings were no longer utilized after the mid-1990s.

The Senate adopted a new Rule XLIV in 2007 which impacted on the House. That rule prohibited the "air-dropping" (first time insertion) of new matters not committed to conference by either House into appropriation and other conference reports providing for "direct spending," and required a three-fifths waiver to permit the consideration of the conference report in the Senate.

Appropriations for Unauthorized Purposes. The requirement in Rule XXI clause 2(a) that appropriations contained in general appropriation bills be authorized by law was frequently enforced by points of order. Chapter 26 of *Deschler-Brown Precedents* generally cites to rulings under Rule XXI clause 2 through 1984. There were decisions beginning in the 99th Congress in 1985 regarding the sufficiency of provisions in law asserted to support items of appropriation, and the "works in progress" exception from that requirement.

Although the object to be appropriated for may be described without violating the rule, an amendment proposing an appropriation under a heading that indicates an unauthorized purpose as its object was ruled out in 1991. An amendment stating a legislative position constituted legislation in 2001, as did one establishing a select committee or a trust fund in the Treasury in 2006. Although the Committee on Appropriations may include in a general appropriation bill language not in existing law limiting the use of funds

in the bill, if such language has the combined effect of constituting an appropriation of funds (*e.g.*, "not more than $_____ shall be available for . . ."), it must be authorized by law.

Several rulings were based upon the burden of proof required to demonstrate sufficient authorization, such as proving (by a preponderance of the evidence) that the funds were authorized by a law previously enacted, currently in force, and not lapsed. Thus, the following were ruled out for lacking sufficient authorization: international agreements predating the authorization for funding such agreements; private compensation based solely on the constitutional guarantee of just compensation; funding for matching grants to States where not required by law; and funding from trust funds where only authorized from the general treasury. Whether organic statutes or general grants of authority in law constituted sufficient authorization to support appropriations depended either upon whether the general laws applicable to the function or department in question required specific or annual subsequent authorizations (as in 1978 and in 1997), or on whether a periodic authorization scheme has subsequently "occupied the field" (as in 1997). An authorization of "such sums as may be necessary" was sufficient to support any dollar amount (but not to relieve other conditions of that law) in 1993, whereas amendments to a general appropriation bill providing that "not less than" a certain amount be made available to a program were held to require an authorization permitting that directive in 1988 and in 2000. The Chair will not invoke a "fairness" standard in determining whether the proponent of an amendment has met the burden of proof to support an amendment containing legislation, as in 2012.

An amendment limiting funds to the extent provided in authorizing legislation on or after the date of enactment of the pending appropriation bill was not in order in 2005. This extended the precedents that delaying the availability of an appropriation pending subsequent enactment of an authorization did not protect the item of appropriation against a point of order.

Precedents on the "works in progress" exception to the authorization requirement continue to demonstrate the relative narrowness of the exception. Thus, the clause was held only to apply to cases of general revenue funding, and not to lapsed authorizations or projects not yet under construction. Neither will the exception apply in cases where a comprehensive authorization scheme (not contemplating the specific project) has "occupied the field." A general system of roads on which some work had been done or an extension of an existing road was not considered a "work in progress" in 1993.

The cataloging of rulings based on the specific subject matter of the purpose or program of the appropriation, while more anecdotal from a precedential standpoint than those which analyze the decision-making process itself,

will be included where they involved some new subject matter rulings such as "Intelligence".

Provisions as Changing Existing Law. Emergency spending designations within the meaning of the Congressional Budget Act were held to constitute legislation in a general appropriation bill, and matter within the jurisdiction of the Budget Committee, in violation of section 306 of that Act in 1999.

Appropriations Subject to Conditions. There were rulings regarding contingencies, such as provisions limiting the use of funds in a bill "unless" or "until" an action contrary to existing law was taken in 1996. Other conditions held out of order included requirements for submission of an agreement to Congress and congressional review thereof in 1986, or for legal determinations to be made by a Federal court and an executive department in 1988.

Spending Conditioned on Congressional Approval. Recent rulings carried in section 1055 of the *House Rules and Manual* were shown there to have effectively overruled earlier 1968 and 1979 rulings. Making the availability of funds contingent upon subsequent congressional action or approval constituted a legislative condition. Where stated as an exception from a negative limitation in those cases where Congress has approved and funded such activity under existing law, however, as contrasted with a new requirement, the reference to congressional action was held merely descriptive of the status quo and did not affirmatively impose a new condition in 1991. A provision may not require funds available to an agency in any future fiscal year for a certain purpose to be subject to limitations specified in advance in appropriations acts in 1986. Restrictions on executive authority to incur obligations were held to be legislative in nature and not a limitation on funds.

Provisions Affecting Executive Authority; Imposition of New Duties on Officials. A number of decisions ruled out language imposing affirmative new responsibilities on officials, or directly interfering with discretion conferred upon them by existing law. In section 1054 of the *House Rules and Manual* for the 111th and subsequent Congresses, examples numbered 11–44 recited rulings chronologically made since the last date of publication of Part E in 1985 whereby various requirements for new determinations were held to change existing law. Contrasted with these rulings, section 1054 then recited at least fourteen rulings since 1983, also chronologically inserted, wherein limitations were held in order as consistent with requirements of existing law since not placing new duties on officials. Thus, any duties imposed by a limitation must be merely ministerial or already required by existing law. In each case, the procedural question involved a

burden of proof to the Chair placed on the proponent of the bill or amendment, as the case may be, that the language did not require actions, investigations, findings, or other new duties beyond those required by existing law. This was most recently demonstrated in 2012 where language in the bill was held to impose new duties on Federal officials to determine the "semi-professional" status of potential recipients of an appropriation.

Permissible Limitations on the Use of Funds. Almost continuously since the 44th Congress at the insistence of Rep. John Quincy Adams in 1835, the rules have contained language forbidding the inclusion in general appropriation bills of unauthorized appropriations, to which was added in 1880 the prohibition against any provision changing existing law (4 *Hinds' Precedents* § 3578). Rule XXI clause 2 contains two exceptions from the restriction against "legislation": (1) the "Holman rule" permitting germane provisions that "retrench" expenditures and (2) rescissions of previously enacted appropriations. The distinction permitting "limitations" which do not constitute "legislation" in general appropriation bills or in amendments thereto was established by precedent over many years (primarily by numerous rulings of chairmen of the Committee of the Whole). The term "limitation" did not textually appear in clause 2 until 1983, when the House first required most limitation amendments to be offered only at the conclusion of the reading of a general appropriation bill for amendment, and then only if the Committee of the Whole did not adopt a preferential motion by the Majority Leader or his designee to rise and report the bill to prevent such amendments from being offered.

Construing Existing Law or Terms of Bill; Repealing Existing Law. Provisions prescribing rules of construction were held to constitute legislation, such as a prospective rule of construction for possible tax enactments in 2000 or a declaration of the meaning of a limitation in 1988. The mere recitation that a determination is to be made pursuant to existing laws and regulations, absent a citation to the law imposing such responsibility, was held not to be sufficient proof provided by the amendment's proponent in 1986. Language waiving provisions of existing law was ruled out as legislation in 1996 and in 2000, as was language repealing existing law in 2006. Amendments proposing to increase budget authority and to offset that increase by proposing a change in the application of the Internal Revenue Code (to increase revenues) were held to constitute legislation on several occasions in 1999 and in 2003.

Authorizing or Budget Scorekeeping Statute as Permitting Certain Language in Appropriation Bill. Certain limitation amendments are permissible under Rule XXI clause 2(c) during the reading of the bill because "specifically contained or authorized in existing law for the period

of the limitation." Requirements of budget enforcement laws were enacted contemplating the inclusion of legislative scorekeeping language. For example, a proposal to designate an appropriation as "emergency spending" within the meaning of the budget-enforcement laws (or so designated under provisions of a budget resolution), was on several occasions held to be legislative in character (1999 through 2005). Similarly, a provision containing an averment necessary to qualify for certain scorekeeping under the Congressional Budget Act was conceded in 1989 to be legislation, even though the Budget Act contemplated that expenditures may be mandated to occur before or following a fiscal period if the law making those expenditures specifies that the timing was the result of a "significant" policy change.

Provisions Affecting or Affected by Funds in Other Acts. Rules changes and rulings have related to the rescission of previously appropriated funds, either in the committee bill or in amendments thereto. The last sentence of clause 2(b) was added by statute in 1985 to permit legislation in a reported general appropriation bill which proposed to rescind funds appropriated in previously enacted appropriation acts, but not enacted in other non-appropriation laws such as contract authority, or a loan guarantee program. An amendment proposing such a rescission was held to be legislation in violation of clause 2(c) in 1993. A provision constituting congressional disapproval of a deferral of budget authority proposed by the President under the Impoundment Control Act was held not in order in 1982 if contained in a general appropriation bill rather than in a separate resolution of disapproval under that act. An amendment limiting funds in the bill to the extent provided in subsequently enacted authorization law was also ruled out in 2005 as it assumed and incorporated possible future legislation. The words "no funds in this or any other Act may be used . . ." reiterated prior rulings that the limitation was not confined to funds in the bill and was legislation in 2012.

Transfers of Funds in the Same Bill; En Bloc Offsetting Amendments (to the pending paragraph as well as to a subsequent paragraph). Rule XXI clause 2(f) was added in 1995 to permit "reach-ahead" amendments *en bloc* which amend portions of the general appropriation bill not yet read for amendment, so long as the increases or decreases of budget authority and outlays proposed by the offsets were either neutral or netted to reduce those levels. The proponent of the amendment carried the burden of proof which was particularly difficult to meet when measuring outlay neutrality, since the text of the bill itself did not provide outlay levels and must be determined by extrinsic evidence as to "rates of spend-out." Thus the offset amendments often reduced more budget authority than was increased in the *en bloc* offset counterpart, in order to neutralize outlay levels

(as estimated by the Committee on Appropriations) during the covered fiscal year. The clause did not permit "reach-back" *en bloc* offsets to paragraphs passed in the reading, nor did it permit increases in amounts beyond authorized levels in 1999. The Chair queried for points of order against provisions of a bill not yet read when they are addressed by an offsetting amendment under clause 2(f) in 2005 as the text of the unread paragraph which may be subject to a clause 2 point of order must be known before amendments may then be considered. Such *en bloc* offsetting amendments may not, however, include legislative authority to make transfers, but may only directly increase or decrease amounts.

Extended Availability of Funds Prior to or Beyond the Fiscal Year. In 2006, language permitting funds to remain available until expended or beyond the fiscal year covered by the bill was held to be legislation where existing law does not permit such availability. Permitting funds to be available immediately upon enactment before the fiscal year covered by the bill (in 1986 and in 1988), to be available to the extent provided in advance in appropriation acts although not explicitly beyond the fiscal year in question (in 1981), or setting a floor on spending that is not established by existing law (in 2003), were all ruled out as changes in existing law. A proposal to amend existing law to provide for automatic continuation of appropriations in the absence of timely enactment of a regular appropriation bill constituted legislation in 1996.

Mandating Expenditures. Several amendments emerged in the form of limitations but comprised a textual "double negative" (the coupling of a denial of an appropriation with a negative restriction on official duties). Those efforts have been stated by the Chair to be "suspect" if resulting in an affirmative direction or statement of intent mandating the expenditure of funds and therefore tantamount to legislation. Thus, in order to carry the burden of proof on an amendment proposing a double negative, a Member must be able to show that the object of the double negative is specifically contemplated by existing law and may not result in an affirmative direction or statement of intent (*e.g.*, 2003). A provision to limit funds to officials who would prohibit the obligation of funds up to a specified amount for an unauthorized transportation project (thereby effectively authorizing an unauthorized project in 1993); an amendment to limit funds to prohibit projects that promote the participation of women in international peace efforts, such promotion not specifically contemplated by law in 2003; and an amendment to limit funds to officials who would prohibit the establishment of an independent commission not contemplated by existing law in 2003, were all ruled out as legislation. A provision that elevated existing guidelines to mandates for spending was legislation in 1989. A provision that mandated

a distribution of funds in contravention of an allocation formula in existing law was legislation in 1995, as was an amendment that mandated that not less than a certain sum "should" be allocated in 2006. A provision requiring States to match funds provided in an appropriation bill was ruled out where existing law contained no such requirement in 1993. However, where existing law prescribed a formula for the allocation of funds among several categories, an amendment merely reducing the amount earmarked for one of the categories was held not to be legislation in 1995 as it did not textually change the statutory formula.

Beginning in 1983, the only "limitations" permitted during the reading for amendment (not to be preempted by the preferential motion to rise and report) were those which were "specifically contained or authorized in existing law for the period of the limitation." This narrow exception has been strictly construed to apply only where existing law contemplated the inclusion of annual language of limitation in an appropriation bill on the availability or use of funds (*e.g.*, limits on the amount of new contract, borrowing and credit authority in advance in annual appropriation acts contemplated by section 401(a) of the Congressional Budget Act). In 2000, the tendency of a limitation to change existing law was measured against the state of existing law "for the period of the limitation," such that the presence of the same limitation in the annual bill for the previous fiscal year did not justify its inclusion the following year.

A limitation amendment prohibiting the use of funds for certain construction if not subject to a project agreement was held not in order in 1988 during the reading, even though existing law directed Federal officials to enter into such project agreements, since limitation amendments merely alleging consistency with existing law, but not required for inclusion in appropriation acts for the period of the limitation, must await the end of the reading of the bill. An amendment expanding a limitation already in the bill was not in order in 2003 during the reading unless merely "perfecting," but was required to await the end of the reading.

It was held in order by way of limitation to deny the use of funds for implementation of currently promulgated regulations, such as: a precisely described Executive Order in 1977; a regulation described as having been promulgated pursuant to court order and constitutional provisions in 1980; an existing Internal Revenue Service ruling in 1979; and changes to a set of overtime compensation regulations in existence on a given date so long as not requiring administration of superseded regulations in 2004.

The fact that a limitation may indirectly interfere with an executive official's discretion by denying the use of funds was held not to destroy the character of the limitation where it did not otherwise amend existing law

and was precisely descriptive of functions or findings already required by law. Thus a limitation precluding funds for Federal agencies to file specified motions in civil litigation (all matters of public record and therefore known to responsible intervening Federal officials), was held a proper limitation in 2001.

Limitation on Total Amount Appropriated by Bill. Standing orders adopted beginning in the 110th Congress (and continued into the 113th Congress) enabled a point of order against motions that the Committee of the Whole rise and report appropriation bills back to the House in excess of the appropriate 302(b) allocation. If such a motion were defeated, one "proper" amendment bringing the bill into compliance was permitted, as well as pro forma amendments by the chairman and ranking minority member of the Committee on Appropriations.

Funding Floors; Transportation Obligation Limitations. Enactment of section 8101(3) of the Transportation Equity Act for the 21st Century in 1999 (Pub. Law No. 105–178) added Rule XXI clause 3 to preclude consideration of a measure or amendment thereto that would cause obligation limitations to be below the level for any fiscal year set forth in section 8103 of that law for highway or mass transit spending. Later that year, the Omnibus Consolidated and Emergency Supplemental Appropriations Act included the following provision: "Sec. 108. For the purpose of any rule of the House of Representatives, notwithstanding any other provision of law, any obligation limitation relating to surface transportation projects under that law (SAFETEA-LU; Pub. L. No. 105–178) shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within State program allocations." In keeping with standard statutory analysis, clause 3 and the subsequently enacted appropriation law were interpreted as not mutually inconsistent. In 2005, clause 3 was amended to conform the rule to the current law, which also provided that for the purposes of clauses 2 and 3 of Rule XXI it shall be in order to transfer funds, in amounts specified in annual appropriation acts to carry out SAFETEA-LU from the Federal Transit Administration's administrative expenses account to other mass transit budget accounts by law. In 2006, an amendment to an appropriation bill limiting funds for a transportation project (1) that was part of an aggregate, annual level of obligations limitation set forth in the cited law, (2) that was not covered by the "past practice" assumption, and (3) the funding for which could not be redirected elsewhere in the program, was ruled out as causing an obligation limitation to be below the minimal funding level required by clause 3. All of these exercises in rulemaking reflected an ongoing dispute

between the authorizing committee (Committee on Transportation and Infrastructure) which uniquely considered as its sole jurisdiction the inclusion of contract authority transportation spending, and the Committee on Appropriations, which defended its prerogative to appropriate annual contract-liquidating and administrative funds from the U.S. Treasury as well as to include annual negative limitations in general appropriation bills or amendments thereto denying funding for specific transportation projects. What emerged was a rule permitting the authorizing committee to set overall minimal floors on transportation spending below which an appropriation bill could not venture, in order to be in compliance with overall spending priorities enacted into law. At the same time, the Committee on Appropriations retained the traditional authority to limit expenditure of funds on specific projects so long as that amount could be reallocated to other projects in the same State and the total obligational floor was not violated. In 2000, the chairmen of the authorizing committee and the Committee on Rules inserted in the *Record* correspondence concerning points of order under clause 3. In the 112th Congress, the rule was amended to apply only to bills and resolutions, but not to floor amendments and to entirely shift the focus of the clause instead to diversions of amounts from the Highway Trust Fund for unauthorized purposes.

A similar minimal obligation floor for aviation programs was enacted into law in 1999 (49 USC § 48114) reported by the authorizing Committee on Transportation and Infrastructure as an exercise in rulemaking (although not directly amending Rule XXI clause 3), establishing points of order to guarantee certain prescribed levels of budget resources available from the Airport and Airway Trust Fund for several fiscal years, to restrict the uses of those resources, and to guarantee a certain level of appropriations for several fiscal years. That law was extended to 2007 and in 2012 again until 2015 under reduced floor levels.

Spending Reduction Accounts. Adoption of a standing order (section 3(j) of H. Res. 5) in 2011 required the inclusion of "lockbox" accounts in all general appropriation bills as the last section thereof, such sections not being subject to a point of order as containing legislation. The order permitted indivisible amendments *en bloc* if not containing legislation to reach ahead in the reading to reduce amounts of budget authority and to place reduced amounts in that account, and permitted the chairman of the Committee on Appropriations to add or modify such section in reporting the bill to the House.

In sum, several changes in the standing rules and orders in 2011 made it easier for individual Members to offer floor amendments to general appropriation bills to reduce but not to increase budget authority. They included

the standing order provided by section 3(j)(3) of H. Res. 5 which restricted any amendments proposing an increase in budget authority whether or not headroom existed under section 302(b) allocations. There were several rulings in 2011 which sustained points of order against amendments or motions to recommit which netted to an increase in spending over the level in the bill as "persuasively" estimated by the chairman of the Committee on the Budget. Under the standing order provided by section 3(a)(4) of H. Res. 5 in 2011 (carried forward from previous Congresses), a motion restricting the ability of the Committee of the Whole to finalize action where the bill exceeded the relevant section 302(b) allocation and permitting one amendment to conform to that allocation was made in order. As amended in 2011, floor amendments could reduce appropriations for highway and mass transit programs from the Highway Trust Fund below the obligational floor formerly protected in an earlier version of Rule XXI clause 3.

Chapter 27—Amendments.

The chapter of *Deschler's Precedents* currently comprising volume 9 extends through 1986. Rulings, practices, and forms from that date interpreted Rule XVI clause 6 (recodified from Rule XIX in 1999) and Rule XVIII clause 5 (the "five-minute rule"), as well as Section XXXV of *Jefferson's Manual* (Amendments). Rulings from the Chair interpreting those provisions were fewer in number since 1986 (and since the mid-1990s) than theretofore, both in the House and in Committees of the Whole. This trend was primarily based upon increased utilization of special orders reported from the Committee on Rules which "structured" the amendment process, often prohibiting the offering of amendments altogether or prescribing the precise order of consideration and voting on amendments regardless of their form, waiving the reading of the bill for amendment and the reading of amendments. At the same time, those "modified-closed" rules normally waived points of order against the amendments which were being made in order, thereby obviating rulings from the Chair as to their propriety. Much of this strategy was in the interest of promoting certainty of time, subject matter, and chances of final passage. Such structured special orders normally prohibited second-degree amendments, substitutes and amendments to substitutes (otherwise contemplated by Rule XVI clause 6) so that the once-traditional practice regarding the "filling of the amendment tree" was avoided on the floor. This was not the case in standing committee markups where only unanimous-consent agreements and not special orders or motions were in order to change the amendment process contemplated in the standing rules. The continuity of debate and votes on amendments was often disconnected once discretionary authority was conferred upon the chairman of the

Committee of the Whole to postpone and cluster requests for recorded votes on amendments.

During this period, preprinting requirements for amendments became more commonplace. Discretionary priority was also regularly stated in "open" special orders for recognition of Members printing their amendments in the *Congressional Record*, but went largely unobserved. The numbering of preprinted amendments was required to be in the order submitted in 1995. Some special orders such as "modified-open" rules carried some form of preprinting requirement, while not otherwise structuring the amendment process under the five-minute rule. Preprinting under a "modified-closed" rule was not a separate requirement, as it was accomplished by printing in the Committee on Rules report and then incorporated by reference in the special order.

Pro Forma Amendments for Debate. There was a gradual decline in usage of pro forma amendments, as special orders or unanimous-consent agreements governing the consideration of most bills in the Committee of the Whole increasingly structured all debate on amendments between a proponent and an opponent. This set aside the five-minute rule and often permitted only the manager(s) of the bill to offer pro forma amendments for the purpose of debate to obtain additional time, either during the pendency of a substantive amendment or when no amendment was pending. Despite the decline in the use of pro forma amendments to garner debate time, there have nevertheless been additional rulings regarding priority for recognition (as between pro forma amendments and substantive first- or second-degree amendments), the inability to reserve time on a pro forma amendment, and the Chair's role in alternating recognition between the majority and minority parties to offer pro forma amendments (rather than between sides of the question). A Member recognized on a pro forma amendment may not allocate or reserve time, though he may in yielding indicate to the Chair when he intends to reclaim his time, as in 1987 and in 1994.

Effect of Special Rule; Amending Special Rule. Special orders reported from the Committee on Rules and adopted by the House become the arbiter (subject to subsequent special orders or unanimous-consent orders) as to whether the standing five-minute rule (Rule XVII clause 5 and Rule XVI clause 6) would govern the amendment process on a particular measure in the Committee of the Whole. The term "modified-closed" or "structured" rule has come to describe the circumvention, in whole or in part, of the standing rule which otherwise guaranteed the offering of germane amendments, amendments thereto, substitutes therefor and amendments to substitutes, at the appropriate place in the reading of the measure.

A number of rulings in 1993 upheld the authority of the Committee on Rules to report special orders which expedited the amendment process, by

inclusion of the "hereby" or "self-executed" adoption of a Senate amendment, by the adoption of an amendment containing an appropriation on a legislative bill or containing legislation on a general appropriation bill, or providing that an amendment (whether or not germane) be considered as adopted in the House (and in the Committee of the Whole) when the bill was under consideration. The "self-execution" of amendments technique considerably expedited the amendment process in contravention of the five-minute rule, preventing the need for separate consideration and votes on amendments to the pending bill text in both the Committee of the Whole and in the House. Such amendments changed original text immediately upon adoption of the special order and prior to further consideration. Once adopted, the text so inserted was not read for subsequent amendment unless the special order so provided, as in 2002. Varying forms of special orders provided that in lieu of a reported committee amendment in the nature of a substitute printed in the bill, a specified amendment in the nature of a substitute included in the accompanying Committee on Rules report (often a compromise result of leadership negotiations) would be read as an original bill for amendment under the five-minute rule, or would be considered as adopted and then subject to further amendments.

The Committee of the Whole may not even by unanimous consent substantively restrict the offering of amendments in contravention of a special rule adopted by the House. Section 993 of the *House Rules and Manual* contained a long series of rulings by chairmen of the Committee of the Whole regarding attempts to change the procedures for consideration, debate and voting on amendments—all in support of the proposition that the Committee of the Whole cannot change procedures imposed by the House through a special order. Unanimous-consent orders (such as "universes of amendments" on appropriation bills) imposed by the House, like special orders, govern the subsequent Committee of the Whole amendment process and prevent substantive modifications there, whereas bills considered under the standing five-minute rule are subject to certain unanimous-consent modifications in the Committee of the Whole since the House has not imposed superseding orders.

A 1990 ruling permitted the member of the Committee on Rules calling up a privileged resolution on behalf of the committee to offer a (germane) amendment without the specific authorization from that committee. That ruling expedited leadership decisions on a variety of special orders by not requiring the Committee on Rules to formally meet again.

Priority of Recognition; Points of Order; Reading for Amendment. Rulings throughout this period reaffirmed certain principles regarding the amendment process related to priority of recognition to offer amendments,

the interaction between points of order and the offering of amendments, and the restrictions imposed when reading a bill by paragraph or section. For example, the traditional practice in the House, notwithstanding the Chair's unappealable power of recognition, of alternating recognition for offering amendments between the majority and minority parties (unless a special order prescribes a specified order for amendments) was adhered to, with priority for committee members in 2000. The general principle that points of order must be raised or reserved prior to debate on an amendment (or prior to the offering of an amendment if raised against the portion of the bill to be amended) was also reiterated in rulings from 1997 and 2004. A timely reservation of a point of order by one Member inured to the benefit of any other Member, as in 1990. Amendments may not be offered to text not yet read for amendment, or portions already passed in the reading, though unanimous-consent requests to waive this principle were agreed to in 2001. However, Rule XXI clause 2(f) permits *en bloc* consideration of amendments to a portion of an appropriation bill not yet read if the combined effect does not increase budget authority and outlays.

A Member recognized under the five-minute rule may not yield to another Member to offer an amendment, or yield blocks of time. While the Committee of the Whole may limit debate on amendments where the House has not imposed a time limitation, it may not restrict the offering without debate of amendments in contravention of a special order adopted by the House, as in 1985.

Offering Particular Kinds of Amendments; Priorities. Several rulings reinforced principles of the precedence of certain amendments depending on their form. For example, motions to strike were held in abeyance pending consideration of amendments to perfect the paragraph in 1992, 1995, and 1999. While perfecting amendments were pending to a section, a motion to strike it out could not be offered and if the motion to strike was first offered, it could be voted on so long as the provision sought to be stricken was not rewritten entirely, as in 1988 and in 1995. Conversely, where a motion to strike out was pending, it was in order to offer an amendment to perfect the language proposed to be stricken in 1996.

A rule was added in 1995 (Rule XVIII clause 11) by the Unfunded Mandates Reform Act permitting an amendment in the Committee of the Whole proposing only to strike an alleged unfunded mandate from the pending portion of the bill unless precluded by "specific" terms of a special order of the House. This rule was included as a further safeguard against inclusion of unfunded mandates, in addition to the unfunded mandate point of order and subsequent vote on the question of consideration of the bill. In 2005, that rule was held to permit a motion to strike out an alleged unfunded mandate

despite adoption of a special rule prohibiting amendments generally, where the special order did not specifically preclude such an amendment. On that occasion, the House had voted to consider a special order waiving all points of order (including unfunded mandates) against consideration of the bill, as permitted by section 425 of the Congressional Budget Act. Yet the lack of specific language in that special order prohibiting a motion to strike allowed that amendment to be offered, and subsequently led to use of "closed" or "modified-closed" special orders which specifically precluded motions to strike under Rule XVIII clause 11 until it was eliminated in 2011 as redundant.

Order of Consideration. Postponement and clustering of requests for record votes on amendments in the Committee of the Whole, were first permitted on an *ad hoc* basis by special orders of business and then permitted by standing rule (Rule XVIII clause 6(g)) in 2001. Absent authority conferred by special orders on the Chair prior to that date, unanimous consent in Committee of the Whole to permit clustering and postponement was not in order in 1995 and in 1998, and use of that authority when conferred was entirely within the discretion of the Chair in 1998. The Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending in 2000. Where further proceedings were postponed on the perfecting amendment, debate could continue on the underlying motion to strike in 1999.

Debating Amendments. The Member recognized during the five-minute debate may not yield blocks of time unless remaining on his feet (*e.g.*, 1998). In 1990, where debate on an amendment was limited or allocated by special order to a proponent and an opponent, the Members controlling the debate could yield and reserve time, whereas debate time on amendments under the five-minute rule could not be reserved.

The adoption of Rule XVII clause 3(c) in 1999 codified a variety of precedents that the manager of a bill (or reporting committee representative) defending the committee position, and not the proponent of an amendment, has the right to close controlled debate on an amendment. Section 959 of the *House Rules and Manual* documents many rulings under that rule which generally assured a manager in opposition to an amendment the right to close, as long as the final manager was part of an unbroken chain of committee managers in opposition. The Chair assumed that the manager of a measure was representing the committee of jurisdiction even where the measure called up was unreported in 1996 and in 1998, where an unreported compromise text were in order as original text in lieu of committee amendments in 1995, or where the committee reported the measure without recommendation in 1997. On the other hand, proponents of amendments

were permitted to close where the opposing Member did not derive that status as a committee manager in opposition. The Committee of the Whole may by unanimous consent (but not by motion) limit and allocate control of time for debate on amendments not yet offered, as in 1998.

Effect of Consideration or Adoption; Changes after Adoption. Rulings updated established principles regarding the effect of adoption of certain amendments on the subsequent offering or pendency of other amendments. In the 1990s, rulings affirmed the basic notion that amendments to portions already amended are not in order, unless also amending previously unamended portions as well. Two amendments to strike a section and insert alternative language may be pending simultaneously where the vote on the first has been postponed, and if both amendments were adopted, the second would supersede the first. In 2002, it was ruled that an amendment "self-executed" by the adoption of a special order was not subject to an amendment seeking to strike that provision.

Amendments in the Nature of a Substitute. With respect to concurrent resolutions on the budget, the House has since 1980 adopted special orders which permitted only designated amendments in the nature of a substitute, but not perfecting amendments under procedures permitting their consideration notwithstanding prior adoption of another such substitute amendment. On one occasion, the House adopted "Queen of the Hill" procedures making in order several amendments in the nature of a substitute regardless of the prior adoption of any such amendment, and providing that only the amendment receiving the greatest number of votes would be reported to the House, if offered to a proposed constitutional amendment for a balanced budget. On other occasions, "King of the Hill" procedures provided that the last such amendment adopted in the Committee of the Whole to a concurrent resolution on the budget would be reported to the House, regardless of the number of votes received on previously adopted amendments. Another variation permitted the offering of the Committee on the Budget's reported version as an amendment to be offered last regardless of the adoption of a prior amendment, in order that the committee version would receive the final potentially superseding vote. These procedures proved problematic and the House reverted back to "regular order" special orders providing that adoption of any amendment in the nature of a substitute would preclude the offering of any other such amendments made in order on budget resolutions (see chapter 41 of *Deschler's Precedents*).

Amendments Pertaining to Monetary Figures. In recent practice, an amendment in an appropriation bill may be indirectly changed by inserting a parenthetical "increased by" or "decreased by" after the amount rather than by directly changing the number, in order to avoid being preempted

by the adoption of a direct amendment to the figure and to consider issues reflected in an amount which might be unrelated to other issues also subsumed in that amount.

Effect of Rejection; Equivalent Questions. The vote on an amendment as amended by a substitute was held in 1987 not equivalent to a direct vote on the reoffered original amendment if it would amend a different portion of the bill and not merely change a portion already amended. An amendment considered with others *en bloc* and rejected may be offered separately at a subsequent time, as in 1991.

House Consideration of Amendments Reported from Committee of the Whole—Demand for Separate Votes. Special orders were adopted beginning in 2009 which prohibited demands for separate votes on sundry amendments reported from the Committee of the Whole, requiring that they be voted upon *en bloc* in the House, thereby rendering separate reconsideration in the House inapplicable. That on one occasion (in 1996 on demand of a single Member) the House had conducted separate votes on 27 amendments reported from the Committee of the Whole may have temporarily prompted this response to avoid unforeseen delays, although it eliminated traditional separate reconsideration in the House upon demand in the order appearing in the bill. The restriction was discontinued beginning in 2011.

Order of Consideration. When demand could be made for separate votes in the House on several amendments adopted in the Committee of the Whole, the amendments were voted on in the House in the order in which they appeared in the bill in 1987 and in 1997, except when amendments were considered under a special rule prescribing the order for their consideration (the modern practice), in which case they were voted on upon demand in the order in which considered in the Committee of the Whole in 1993. Where a special rule "self-executes" an amendment as a modification of an amendment in the nature of a substitute to be considered as an original bill, that modification is not separately voted on upon demand in the House.

Additional rulings which reiterated that recommittal motions to change amendments reported from the Committee of the Whole and adopted by the House were in order under special rules permitting the motion "with or without instructions" in 1989 and in 1995.

Chapter 28—Germaneness of Amendments.

Volumes 10 and 11 of *Deschler-Brown Precedents* covered rulings on the question of germaneness of amendments from 1928 through the 100th Congress in 1988. The reader will also be able to refer to chapter 26 of *House Practice* (2011) and to sections 928–940 of the *House Rules and Manual* for citations to germaneness rulings more recent than those in this compilation.

The incidence of germaneness rulings declined as the result of the increased use of "modified-closed" or "structured" rules reported from the Committee on Rules. Amendments made in order under structured special orders, whether or not germane, ordinarily were protected by waivers of points of order, and were not amendable in turn. This diminished the opportunity for points of order and rulings by the Chair. Points of order against nongermane Senate matter in conference reports and against nongermane House amendments to Senate amendments were likewise not entertained, as special orders routinely waived all points of order against most conference reports and motions to amend Senate amendments. Some obviously nongermane amendments ruled out of order provoked record votes on appeals for political reasons. Otherwise, the progression of germaneness precedents reflected a continuity with past rulings rather than a departure therefrom. The constant and increasing advice rendered to the Committee on Rules and Members privately by the Parliamentarian as to the germaneness of amendments proposed to be made in order remained consistent with those precedents.

Motions to recommit, on the other hand, became the object of numerous points of order decided on the question of germaneness, since those minority motions were not required to be noticed in advance and were not protected by waivers of points of order. Some of those rulings reaffirmed that the test of germaneness of a motion to recommit is the relationship between the motion and the bill as a whole as modified by the House to that point, whether or not the motion suggested specific language or merely directed a committee to report back "promptly" on a described subject matter (a motion not permitted beginning in 2009), as in 1991, 1993, and 1996.

The PAYGO rule (Rule XXI clause 10) requiring revenue increases or spending offset provisions to be included in bills which increased direct spending (from its inception in 2007 until replaced by CUTGO in 2011) meant that on the question of the consideration of such direct spending bills (other than appropriation bills), the bills must contain offsets (either revenue increases or other spending reductions) in order not to require a waiver of that point of order. The resulting change in the breadth of the bill (to escape points of order) into one which sometimes contained totally unrelated provisions, however, greatly broadened the test of germaneness to be applied at the stage of motions to recommit with instructions, since the offsetting language if already part of the bill usually bore no relationship to the spending portion of the text other than to comply with the PAYGO rule.

Thus on several occasions, the Speaker exercised the authority now contained in Rule XIX clause 1(c) to postpone further consideration of such a bill pending the offering of a previously unnoticed and politically problematic motion to recommit. This obviated the need for rulings on the germaneness of the motions (which might have been germane to the bifurcated bill as a whole although unrelated to any particular portion of the bill).

In the 111th Congress, the PAYGO rule was amended to provide that offsetting measures to comply with that rule could be considered separately pursuant to a special order which then merged the nongermane text into the spending bill following final passage of both bills, to be scored as an offset while not broadening the test of germaneness beyond the separate texts of each bill. The ordinary rationale underlying the requirement of germaneness—that unanticipated and unrelated issues not be offered as amendments—had become diminished on bills containing so many unrelated propositions that there no longer was applicable the normal requirement that the amendment relate to at least some portion of such a bill or even to a common thread among all its provisions. That trend was clearly demonstrated in 1996, where to a bill amending an unrelated variety of existing laws within the jurisdiction of several committees, a motion to recommit conditioning the availability of fees under another law within the jurisdiction of one of those committees upon the status of minimum wage payments under a law not within any of those committees' jurisdictions was held germane as a discernible measure which did not directly or indirectly amend the latter law. The dilemma reflected by this unusual line of precedent and the consequent emasculation of the germaneness test, where the pending text was a combination of several unrelated provisions, remained unresolved. It was exacerbated by the growing complexity and diversity of bills pending before the House in recent Congresses in order to reach political compromises by combining otherwise unrelated provisions to meet statutory deadlines.

A special order directing that certain matter be added to the engrossment of a bill, by not operating until after passage of that bill, did not broaden the germaneness test for recommittal motions on each bill in 2008. The same impact under the germaneness rule remained in 2011, after the PAYGO rule became the CUTGO rule, permitting two engrossments to be merged into one to take advantage of offsetting spending cuts (but not revenue increases) after passage.

Introduction and Proposition to Which the Amendments Must Be Germane. A ruling in 2000 reiterated that the burden of proof was on the proponent of an amendment under the germaneness rule. A significant ruling on the applicability of the germaneness rule occurred in 1993 relating to the original text of "hereby" or "self-executing" special orders reported from the Committee on Rules providing for the immediate adoption of nongermane amendments upon adoption of the special order itself and prior to consideration of the measure being so amended. Rule XVI clause 7 (the germaneness rule) was held not to apply to such a special order, since the amendment was in the text of the resolution and not separately before the

House as an amendment thereto during consideration of the special order. Nor did a germaneness point of order lie subsequently during consideration in the House and in the Committee of the Whole, the amendment already having been adopted at that point.

The precedents generally reaffirmed the principle that one must first examine the breadth, purpose and jurisdictional basis of the underlying text being amended before venturing an opinion as to the germaneness of an amendment thereto. If a title within a bill is open to amendment at any point, the germaneness of an amendment perfecting one section therein depended on its relationship to the title as a whole and not merely to that one section in 1991.

The test of germaneness of an amendment offered as a substitute for a pending amendment is its relationship to the pending amendment and not to the underlying bill (*e.g.*, 1995). A motion to recommit must be germane even though its instructions do not propose a direct "forthwith" amendment but merely direct the committee to pursue an unrelated approach, as in 1991 (a form not permitted beginning in 2009 under Rule XIX clause 2(b)(2)).

General Relationship to the Subject Matter under Consideration. A number of rulings on motions to recommit were appealed despite their obvious correctness (*e.g.*, 2011, where to a joint resolution disapproving an agency regulation, a new section providing instead for the continuation of appropriations for the entire government was not germane).

Committee Jurisdiction of Subject Matter as Test. A number of rulings based upon committee jurisdiction over the subject of the amendment were also sustained on appeal, where the underlying bill was clearly within another committee's jurisdiction. These rulings were based on the premise that the measure to which offered was not so diverse as to diminish application of the committee jurisdiction test. One variation involved a diverse bill addressing unrelated programs within the jurisdiction of six committees, where a motion to recommit to condition applicability of another (unamended) law within the jurisdiction of one of those committees (only during periods when the minimum wage was at certain levels) was held in 1996 to be merely a discernible measure of availability and not an amendment to a law not within the jurisdiction of any of the committees with provisions in the bill.

Fundamental Purpose of the Amendment as Test. A historic ruling was the determination in 1998, sustained on appeal, that to a resolution impeaching the President (a constitutionally prescribed remedy toward removal from office), an amendment in the form of a motion to recommit censuring the President in lieu of impeachment had the fundamentally different purpose of punishment or opprobrium—a sanction not contemplated

in the Constitution—and was not germane. To a bill providing a temporary extension of government borrowing authority, an amendment accomplishing the same purpose by permanently raising the statutory debt ceiling was held germane in 1987 since both were based on projections of borrowing under which an increase in the debt ceiling would provide a necessarily temporal extension of such authority.

Several precedents focused on whether the amendment accomplished the purpose and result of the bill by a closely related method (*e.g.*, 1990, 1995, 1999, 2001, and 2002).

An individual proposition is not germane to another individual proposition, even of the same class. In section 9 of chapter 28, additional precedents affirmed that amendments enlarging the scope of the underlying specific or limited proposition are not germane. Noteworthy was the ruling in 2007 sustained on appeal that to a measure continuing appropriations for the current fiscal year for a specified period (eight days), an amendment making certain funds available beyond such delimited period for the entire fiscal year was not germane. This ruling took cognizance of the fundamental purpose of the bill as uniformly temporal, pending enactment of a further continuing resolution or full fiscal year appropriations, while the amendment variably addressed the full fiscal year beyond the temporary confines of the bill.

Specific amendments may be germane to broader or more general propositions of the same class. An example was a ruling in 1996 that to a bill addressing violent crimes, an amendment addressing a subset of that category (violent crimes involving the environment) was germane. To a Senate amendment covering a certain class of borrowers, a proposed House amendment redefining borrowers of the same class was held germane in 1987.

There were several rulings on the germaneness of amendments to appropriation bills, depending in part on whether the amendment was in the form of a limitation and was confined to the fiscal year covered by the bill, or was more permanent in scope as relating to "funds in this or any other act." Those rulings were at times also based on whether the amendment was legislation on an appropriation bill in violation of Rule XXI clause 2. An amendment in the form of a limitation on an appropriation bill restricting funds therein for activities unrelated to the functions of departments covered by the bill was held not germane in 2000.

Section 17 of chapter 28 covers precedents on the application of the germaneness rule to particular propositions, as to special orders of business providing for consideration of legislation. While no specific germaneness rulings in addition to those in 1980 and in 1982 were made (as the previous question was always ordered on special rules from the Committee on Rules

so as to preclude the offering of amendments), many debates on special orders focused on the minority party's attempt to offer amendments which would have waived germaneness and other points of order against the subsequent offering of amendments to the bill being made in order. Debates proposing alternative agendas were on several occasions ruled to be unrelated to the subject matter of the pending special order, but more often those debates were tolerated by failure to make relevancy points of order. An amendment waiving germaneness points of order against an amendment to be subsequently offered to the bill would itself normally be nongermane to the special order, unless that special order already sufficiently broached the issue of germaneness waivers on a sufficient variety of amendments.

Instructions in Motion to Recommit. A ruling in 1996 reiterated the proposition that the test of germaneness in a motion to recommit a bill with instructions was its relationship to the bill (amending an unrelated variety of laws) as a whole and not necessarily to any one portion thereof.

Amendments Providing Conditions or Qualifications. A ruling in 1993 determined that to a bill authorizing Federal funding of certain qualifying state programs, an amendment restricting the payment of Federal funds in a bill to States that enact certain laws relating to the activities being funded was germane. This ruling further enforced the line of precedent that the contingency must be related as a benchmark to the matter being authorized or restricted, and that it not require enactment or amendment of a separate law. A ruling in 2007 held that an amendment conditioning authorizations for one agency on appropriations for another agency was an unrelated contingency. To a bill naming an airport, an amendment conditioning the naming on approval by an entity without jurisdiction over the supervision of the airport was held not germane in 1998. To a bill relating to information to be furnished to the House, an amendment imposing relevant conditions of security on the handling of such information in committee for the period covered by the bill was held germane in 1991. To a bill imposing conditions on the granting of congressional consent to an interstate compact, an amendment stating an additional related condition while not directly amending the compact was held germane in 1997.

Relation of Amendment or Bill to Existing Law. To a bill proposing a temporary change in law, an amendment making permanent changes in that law was held not germane in 1991. A similar ruling in 2008 reaffirmed that to a temporary authorization bill prescribing the use of an agency's funds for two years, an amendment permanently changing the organic law governing that agency's operations was not germane. To a bill amending one law, an amendment changing the provisions of another law or prohibiting assistance under any other law was not germane in 1992. Conversely, to a

bill authorizing funding for the intelligence community for one year and also making diverse changes in permanent laws relating thereto, an amendment changing another permanent law to address accountability for intelligence activities was held germane in 1990. To an amendment adding sundry punitive sections to the Federal criminal code, an amendment creating an exception to the prohibition of another such section was held germane in 1991.

Chapter 29—Consideration and Debate.

Points of Order Against Consideration. In 2011, Rule XXI clause 11 was added to prohibit consideration of unreported bills and joint resolutions unless available (in electronic form) for three calendar days. In 2011, an unreported bill was held eligible on the third day electronically available (not counting weekends) to mirror the same restriction in Rule XIII clause 4 applicable to all reported measures.

Question of Consideration; Unfunded Mandates; Earmarks; PAYGO and CUTGO Emergency Designations. New procedures were put in place either expanding or limiting the raising of the question of consideration upon certain measures under Rule XVI clause 3 and under three new rules. For example, as most measures require consideration in the Committee of the Whole House on the state of the Union, initiation of such consideration was, by a rule change (Rule XVIII clause 2(b)) adopted in 1983, made in order upon declaration of the Speaker pursuant to an adopted special order permitting such a declaration when no question was pending. This declaration quickly became the normal method by which the House resolved itself into the Committee, replacing the use of motions and a vote of the House, thereby avoiding the question of consideration. Even some privileged business, such as general appropriation bills reported from the Committee on Appropriations, was made in order in the Committee of the Whole by the Speaker's declaration pursuant to a special rule, rather than by privileged motion, because those special rules also contained necessary waivers of points of order against consideration and against provisions in the reported bills. Frequently special orders were limited in scope to provide only for initial consideration of a measure, precluding further consideration beyond general debate absent a second special order, as in 1998.

It was held that the question of consideration, not being debatable, was not subject to the motion to lay on the table in 1994, and was not in order after the House had resolved itself into a Committee of the Whole in 2007. An affirmative vote on the question of consideration was held subject to a motion to reconsider in 1994.

Three procedures were established whereby the question of consideration was made dispositive of certain points of order. The Unfunded Mandates Reform Act of 1995 added a new part B (sections 423–426) to title IV of the

Congressional Budget Act, establishing a point of order to permit votes on whether to consider measures allegedly imposing intergovernmental mandates upon State or local governments above a specified threshold of $50 million per year. The initial vote on the question of consideration of a rule or order waiving such points of order (the question of consideration not otherwise being applicable to a special rule reported from the Committee on Rules) could be demanded and disposed of after 20 minutes of debate, prior to one hour of debate on the special order containing the waiver. It represented the first example of utilization of a specific vote on the question of consideration and limited debate to dispose of a point of order, rather than imposing on the Chair the duty of discerning the presence and amount of the intergovernmental mandate in ruling on that point of order. The rule's availability led to the repeal in 2011 as unnecessary of the standing rule permitting a separate subsequent motion to strike in the Committee of the Whole against any provision containing an unfunded mandate unless the motion was specifically rendered inapplicable.

A similar procedure related to "earmarks" (including limited tax and tariff benefits) whereby a point of order was to be resolved following 20 minutes of debate by a vote of the House on the question of consideration following the raising of the point of order was established under Rule XXI clause 9. The procedure followed the rationale underlying the Unfunded Mandates Reform Act of 1995 and established a point of order against consideration of measures for failure to disclose, or disclaim the presence of, certain defined "earmarks" with a similar mechanism for disposition of the point of order by vote of the House on the question of consideration, rather than by a ruling by the Chair. The "earmark" procedure was first put in place in the 109th Congress in 2006 as a standing order and then was added to the standing rules in 2007. That year, it was held under that clause that the point of order does not lie against consideration of an unreported measure where the chairman of the committee of initial referral has printed in the *Congressional Record* a statement that the measure contains no congressional earmarks, limited tax benefits or limited tariff benefits, or against consideration of a reported measure where the committee report contains such a statement. It was also held that the point of order is predicated only on the absence of a complying statement, does not contemplate a question of order relating to the content or sufficiency of such statement, and comes too late after consideration has begun. Where a point of order was sustained for failure of the report to designate the correct bill number, a supplemental report to correct the error was filed immediately in 2010.

Beginning in the 110th Congress, the House adopted a related standing order establishing a point of order against the consideration of conference

reports on general appropriation bills unless the joint explanatory statement contained a list of earmarks that were not committed to conference by either House in committee reports. A point of order against a rule or order waiving such provision was similarly to be decided by voting on the question of consideration of the special order. This order became Rule XXI clause 9(b)(4) in 2009.

A third procedure involved the PAYGO emergency exception designations under Rule XXI clause 10(c)(3) effective between 2007 and 2011, wherein emergency exceptions from PAYGO principles were expressly stated in bill text (not applicable to amendments) and the Chair was required on his own initiative to immediately put the question of consideration of the bill without debate and without awaiting a point of order from the floor. On one occasion in 2010, the inadvertent failure of the Chair to take the initiative to put the question of consideration on a measure containing an emergency designation was held to have been rendered moot by the vote on final passage. The rule was replaced in 2011 by the CUTGO rule which no longer contemplated revenue increases as a spending offset, or the question of consideration being automatically put by the Chair if the measure contained an emergency designation. Nevertheless, the Statutory Pay-As-You-Go Act of 2010 Act established a similar procedure that remained part of statutory law and applicable to consideration of bills containing emergency designations thereunder.

Questions Not Subject to Debate. Additional rulings affirmed that certain questions are not subject to debate, such as the motion to lay on the table and the motion to adjourn. Members may not preface the making of a motion to adjourn by remarks in justification thereof, as in 2002.

Right to Recognition; Speaker's Usages and Guidelines for Unanimous-Consent Consideration; Powers and Discretion of Speaker or Chairman. The notion that the Speaker's recognition for unanimous-consent business and debate is purely discretionary is not totally accurate beyond the unappealability of such a denial in certain situations. Additional guidelines for recognition were intended to assure that the proponent of a measure or motion holding the floor and having yielded time solely for the purpose of debate would himself not be forced to object to a unanimous-consent request by another Member to modify the matter unless he yielded for the purpose of propounding the request, but rather by not yielding would be able to prevent the request being put to the House, thereby sparing the Speaker the need to put such a unanimous-consent request to the House for disposition. For example, once the proponent of a pending motion has been recognized for debate, a unanimous-consent request by another Member to modify the motion may be entertained only if the proponent yields for that

purpose, as in 1996. In the case of motions to instruct conferees, a measure on which the previous question has been ordered without intervening motion, or on which time has been yielded under the hour rule solely for debate, another Member will not be recognized for a unanimous-consent modification without permission of the proponent of the motion.

When an order of the House made consideration of a measure in order, only a manager was recognized to bring it up in 2007. The principle that the Speaker will accord recognition only after inquiring "for what purpose does the Member rise?" was reaffirmed in 1992. For example, a Member's revelation to that query from the Chair that he seeks to offer a motion to adjourn did not suffice to make that motion "pending." Thus the Chair remained able to declare a short recess under Rule I clause 12 in 1997 and in 2003, and there was no appeal from denial of recognition for the motion to adjourn at the moment the declaration of a recess was made in 1992.

Recognition for Unanimous-Consent Requests; One-Minute and Special-Order Speeches. Changes occurred as a result of leadership efforts to assure greater predictability and certainty in the allocation of legislative and other debate time. One-minute speech allocations at the beginning of the day prior to legislative business were often limited in number by order of the Speaker. Leadership theme domination of one-minute time emphasizing party political issues, whereby leadership-chosen Members were recognized prior to other Members in the well, was a temporary trend that came (beginning in 1990) and then abated over several Congresses. A ruling in 2001 reiterated that such recognition was entirely within the discretion of the Speaker. The Speaker's policy of alternation of recognition for one-minute and special-order speeches between the parties was reiterated in 1995.

Prior to 1994, unanimous-consent requests for special-order speeches after business became problematic, as some Members sought political advantage by propounding such requests weeks ahead of the date of the speech in order to be recognized first on that day. Televised special-order speeches were permitted to range beyond midnight until all special orders scheduled by unanimous consent were recognized each day.

In 1994, the Speaker announced a new policy (the result of bipartisan negotiations) governing recognition for special-order speeches, in order to assure party alternation and to place responsibility upon the leaderships to arrange special orders within an overall time frame rather than force the Chair to confer recognition based on the date of entry of the request. There were a number of rulings since 1994 interpreting this announced policy. Until 2011, with respect to recognition for five-minute or shorter speeches, the Chair would recognize for such speeches first, before longer speeches,

and Members were not permitted to enter requests for five-minute special orders earlier than one week in advance. With respect to longer special orders, the Speaker announced a policy of recognition that would not depend on the Chair's discretion and orders by unanimous consent, but rather on lists submitted by the respective party leaders. Under that policy recognition would not extend beyond 10 PM (beyond midnight until 2011), and recognition would be limited to four hours (except Tuesdays) equally divided between the parties, time within each party to be allotted by a list submitted to the Chair by the respective leader and not to be extended beyond 10 PM except with permission of the Chair upon notice to the House. Recognition for the first hour was to alternate between the parties from day to day, with additional guidelines to be developed by each leader, and Members recognized for a five-minute special order were not to be recognized for a longer special order or an extension beyond five minutes on that day. Beginning in 2011, additional guidelines included a subdivision of the second hours for both parties into half-hour segments, and failure to claim all allocated times at the appropriate moment would result in their expiration. These policies were reinforced by several rulings including denial of recognition of a Member seeking a second one-minute speech, and those seeking to speak beyond midnight or beyond five minutes. Members recognized to control time (up to one hour) during special orders could, while remaining standing, yield to colleagues for such amounts of time as the Member may deem appropriate, but could not yield blocks of time to be enforced by the Chair. Recognized Members were to retain control of the duration of their yielding by reclaiming the time whenever they desired. Five-minute special orders were eliminated as of a date certain in 2011 by announcement of the Speaker.

Also in 1994, as part of the negotiated agreement (carried forward in each subsequent Congress by unanimous consent on opening day), a period of "morning-hour" debates was established to convene 90 minutes (one hour on Tuesdays) earlier than preestablished convening times on Mondays and Tuesdays of each week to permit each party to allocate one-half of the available time to Members for speeches up to five minutes. This was intended to partially compensate for the diminution of daily special order debates resulting from imposition of the midnight deadline and the four hour maximum daily limit. The unanimous-consent order required the termination of the morning-hour period no later than 10 minutes prior to regular convening time, and prohibited the conduct of any business during morning hour (including the Prayer, approval of the Journal, and the Pledge of Allegiance, or any unanimous-consent requests), all of which would be transacted upon convening of the regular session. Beginning in 2011, in conjunction with the elimination of five-minute recognitions after business, morning

hour was expanded by unanimous consent to cover four days each week and to extend from 60 or 90 minutes to two hours on those days.

A short-lived "Oxford style" debate format, permitted by unanimous consent in 1994, was an experiment in structured debate on a mutually agreeable topic announced by the Speaker. Three such debates were conducted in that year, in order to attract increased Member and public attention. As a precursor to those structured debates, special order time was used for a "Lincoln-Douglas style" debate on one occasion in 1993 involving five Members, with one Member acting as "moderator" by controlling the hour.

The Speaker has since 1981 developed "guidelines" for conferring recognition for unanimous-consent requests for the consideration of certain legislation only when assured that the majority and minority floor and committee leaderships have no objection. This policy, expanded upon from that date in various contexts was documented in section 956 of the *House Rules and Manual*. They included requests relating to: (1) consideration of both reported and unreported measures; (2) disposition of Senate measures on the Speaker's table; (3) disposition of Senate amendments where recognition is confined to a manager of the committee with jurisdiction; (4) consideration of an unreported measure under suspension of the rules on a nonsuspension day; (5) consideration of nongermane amendments to bills; and (6) expedited consideration of measures on subsequent days under the discharge rule. The policy was intended to prevent other Members on the floor, without that preliminary leadership and committee manager clearance, from being forced to go on record as objecting to such consideration. Under these guidelines, the Speaker declined recognition for an "omnibus" unanimous-consent request to dispose of several measures unless assured that the request and each component part thereof, was cleared under this policy in 2002. Floor leadership in this context was construed to apply only to the Minority Leader and not to the entire hierarchy of minority leadership, and the Speaker was not required to identify which party's leadership has failed to clear such a request in 1996 and in 2002, although the Chair may in his discretion indicate the source of objection for the *Record*, as in 1998. The Speaker's enforcement of these guidelines was not subject to appeal, and was a matter of discretionary recognition in the first instance.

In 2000, where the previous question was ordered to passage of a bill without intervening motion except recommittal, the Chair declined as an exercise in discretionary recognition to a Member other than the manager to entertain a unanimous-consent request to further amend.

Recognition for Parliamentary Inquiries. The Chair's discretion to recognize for parliamentary inquiries is unlimited, except where another Member has the floor in debate and refuses to yield for that purpose. The

Chair is permitted to take a particular inquiry under advisement, especially where not related to the pending proceedings. In 2010, the Chair made an extended statement on the process of entertaining parliamentary inquiries.

Recognition for Particular Motions and Debate Thereon. With respect to modes of consideration of relatively noncontroversial measures, a far greater reliance in modern Congresses was placed on motions to suspend the rules and pass measures or dispose of Senate amendments. Consideration of measures by unanimous consent or from the Consent and Corrections Calendars (both since eliminated) gave way to scheduling of suspension of the rules motions in order to expedite debates and to consolidate record votes at convenient times for Members. This placed control of the debate in the hands of the managers of the measure and not with the Member reserving the right to object. Unanimous-consent requests, when utilized, were usually confined to single measures, but during several Congresses were combined to request not only consideration but sometimes passage or adoption, so as to avoid the Chair putting the question to a vote. The House experimented in 2002 with *en bloc* unanimous-consent requests often covering several measures for simultaneous disposition under the Speaker's "guidelines." Similarly, disposition by unanimous consent of Senate amendments to House measures at the Speaker's table was often replaced by motions to suspend the rules to assure the same predictability and control. Unanimous-consent requests to switch control of some debate once underway from the Member(s) identified in the adopted special rule and initially recognized by the Chair to other Members and committees for convenience sake became routine. Recognition for motions to suspend the rules was extended to every Monday, Tuesday and Wednesday by standing rule in 2005, having been extended incrementally by unanimous consent and then by special order in 2003. Additional motions to suspend the rules on subsequent days during specified weeks were made in order by special orders with increasing frequency.

House rules requiring the availability of committee and conference reports for three days prior to consideration were routinely waived by utilization of special orders and suspension motions. Special orders reported from the Committee on Rules enabled subsequent filing of special rules by that committee on specified measures and same-day consideration without a two-thirds vote ("martial law").

The impact on spontaneity of debate based on the advent of televised proceedings and the changing application of the five-minute rule in the Committee of the Whole (restrictions on the right to offer first-degree and second-degree amendments, the bifurcation of debate on amendments and decisions thereon through the clustering and postponement of votes, and the right to close limited debate on amendments), was unmistakable.

Control and Distribution of Debate. Rulings reaffirmed that a majority manager of the bill who represents the primary committee of jurisdiction was entitled to close general debate as against another manager from an additional committee in 1998 or as against the subject of a disciplinary resolution in 2002. A number of rulings from 1981, cited in section 959 of the *House Rules and Manual*, supported the right of the manager from the primary committee of a measure to open and close general debate (in the reverse order of opening). With certain exceptions (where the control of opposition did not derive from the primary committee of jurisdiction) the same right was affirmed to close debate on amendments. Rule XVII clause 3(c) codified in 1999 the practice that the manager of a measure had the right to close controlled debate in the Committee of the Whole. It was established in 1999 that if an order of the House divided debate on an unreported measure among four Members, the Chair would recognize for closing speeches in the reverse order of the original allocation. Under such a multiple allocation, which was further fractionalized under a later order by unanimous consent, the Chair recognized for closing in the reverse order of opening, even where the manager who opened debate was opposed, as in the case of a measure reported adversely in 1998, 1999, and 2000. Time unused by a minority manager in general debate was considered as yielded back upon the recognition of the majority manager to close in 2002. Rule XVII clause 3(b), which prevents Members from speaking more than once on the same question except by leave of the House, was superseded in modern practice by special orders that vest control of debate in designated Members and permit them to yield more than once to other Members.

As codified in Rule XVII clause 3(c) in 1999, and reaffirmed thereafter, the manager of a bill or other representative of the committee and not the proponent of an amendment normally has the right to close controlled debate on an amendment. The Chair would assume that the manager of a measure was representing the committee of jurisdiction even if the measure called up is unreported (as in 1996 and in 1998), if an unreported compromise text was made in order as original text in lieu of committee amendments (as in 1995), or if the committee reported without recommendation (as in 1997). Managers named in a special order who do not serve on a committee of jurisdiction were entitled to close controlled debate in opposition to an amendment in 1997. A majority manager may close such debate without regard to the party affiliation of the proponent where the special order allocated control to "a Member opposed" in 1998. The right of a final opponent to close if derived by unanimous-consent reallocations must come from an unbroken line of committee affiliation in opposition to the amendment in 1997 and in 2003. A proponent of a "manager's amendment" may close

if a member of the relevant reporting committee did not claim time in opposition. Likewise a proponent may close if no committee representative or one deriving control directly by unanimous consent was in opposition, as in 1995, 1998, and 2003. The proponent of a first-degree amendment who controlled time in opposition to a second-degree amendment that favored the original bill over the first-degree amendment did not qualify as a "manager" under paragraph 3(c) in 2000.

Distribution; One-Third Time in Opposition: Suspensions, Conference Reports, Motions to Dispose of Senate Amendments. The 40 minutes of debate on motions to suspend the rules was divided between the mover and a Member opposed to the bill, unless it developed that the mover was opposed to the bill, in which event some Member in favor was recognized for debate, as in 2004. Where recognition for the 20 minutes in opposition was contested, the Speaker accorded priority first on the basis of true opposition, then on the basis of committee membership, and only then on the basis of party affiliation, the latter preference inuring to the minority party in 1991. The Chair will not examine the degree of opposition to the motion by the member of the committee who seeks time in opposition.

A rules change in 1993 made preferential to the motion to recede and concur, and separately debatable, a motion to insist on disagreement to a Senate amendment to a general appropriation bill if: (1) the Senate amendment has been reported from conference in disagreement; (2) the original motion to dispose of the Senate amendment proposes to change existing law; and (3) the motion to insist is timely offered by the chairman of a (legislative) committee of jurisdiction or a designee. On one occasion the rule was utilized that year to permit as preferential a motion to insist on disagreement to a Senate legislative amendment entitling Forest Service employees to separation pay, where offered by the chairman of the authorizing committee with jurisdiction (Post Office and Civil Service). From that date on, however, this provision giving authorizing committees the preferential option was not utilized because the Senate no longer proposed numbered amendments to general appropriation bills and they were not reported from conference in disagreement. Rather they were incorporated as part of an amendment in the nature of a substitute reported from conference, against which all points of order were normally waived.

Rule XXII clause 8(d) was adopted in 1985 to assure equal time for debate to the majority and minority parties on conference reports and amendments in disagreement, except where both were in favor of the conference report or motion, in which case one third of the debate would be controlled by a Member opposed. The Chair assumed that the minority manager supported the conference report if he had signed the report and was not immediately

present to claim the opposition. When time was divided three ways, the right to close fell to the majority manager preceded by the minority manager, preceded in turn by the Member in opposition—the reverse order of the recognition to begin debate. Debate on a motion in disagreement was likewise split three ways in 2002, but not in 1992 on separate debate on an amendment to such a motion, which was governed by the general hour rule.

Beginning in 1989, a similar three-way division of time was required by Rule XXII clause 9(d) on motions to instruct conferees, except on an amendment to such a motion where debate continued to be governed by the hour rule. The proponent of a motion to instruct conferees and not the manager of the measure has the right to close debate.

Losing or Surrendering Control. A Member recognized to call up a privileged resolution may yield the floor upon expiration of his hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour, as in 1998. Control of a motion to dispose of a Senate amendment reported from conference in disagreement passes to an opponent when the House rejects a manager's motion to dispose thereof, as in 1993.

Relevancy in Debate. Where parliamentary inquiries were utilized to raise the issue of relevancy in debate, the Chair in 2011 responded that a Member under recognition must confine his remarks to the pending legislation, and in 1999 cautioned Members not to "dwell" on another measure not before the House. The Member must maintain a "constant nexus" between debate and the subject of the bill. Often, however, the minority party's customary use of 30 minutes of debate on special orders of business ranged to their preferred alternate (unrelated) agenda in support of nongermane amendments that they proposed to offer to special orders upon possible rejection of the previous question. Such irrelevant debate was often tolerated and no point of order or parliamentary inquiry was raised, in part to avoid challenges to the Chair's rulings. Indeed, the majority frequently engaged in rejoinders to such unrelated debate, while reminding the House that any such amendment to a special order would likely be ruled out as nongermane if permitted to be offered.

The Chair accorded Members latitude in debating a series of amendments in the nature of a substitute to a concurrent resolution on the budget as in 1999. On a motion to suspend the rules, debate was confined to the subject of the motion and not permitted to range to the merits of a bill not scheduled for such consideration in 1999 and in 2002. Several rulings affirmed that debate on a special order providing for the consideration of a bill may extend to the merits of the bill to be made in order, because the

question of consideration of the bill was involved, but should not range to the merits of a measure not to be considered under that special order or to the rules of the House in general. Debate on a resolution providing authorities to expedite the consideration of end-of-session legislation may neither range to the merits of a measure that might or might not be considered under such authorities nor engage in personalities with respect to the official conduct of the Speaker even where, as in 1996, such conduct was asserted to relate to the question of granting the authorities proposed. Debate on a resolution electing a Member to a committee was confined to the election of that Member and could not extend to that committee's agenda in 1995.

In the Committee of the Whole, where debate is normally confined to the subject by a special order, debate on a general provisions title when pending could relate to any agency funded by the bill in 1991. Remarks held irrelevant by the Chair may be removed from the *Congressional Record* only by consent of the House, as in 2002. The requirement of Rule XVII clause 1(b), that remarks be confined to the question under debate, was not always enforced, based on the consistent practice of the Chair not to take the initiative, as in 1990, 1995, and 2002 (except with respect to disorderly references to the Senate or the President), and on the reluctance of Members to make points of order against Members' irrelevant comments.

Disorder in Debate. On several occasions, minority Members staged organized temporary "walkouts" to protest alleged majority abuse of process, including refusal to seat a certified Member-elect temporarily, and the conduct of a vote on a motion to recommit (*e.g.*, 1985, 2007).

Various disruptive actions on the floor were ruled out of order as breaches of decorum. The Chair became more proactive in taking the initiative to admonish against the "trafficking in the well" of the House by Members while another Member was under recognition. In addition to opening-day statements, the Speaker on his own initiative made a comprehensive decorum announcement from the Chair when all Members were present in 2012. Other disruptions, including shouted interjections, hissing and booing during debate, were called to order. The Chair required a line of Members waiting to sign a discharge petition to proceed to the rostrum from the far right-side aisle and required the line not to stand between the Chair and Members engaging in debate in 1997. Beginning in 1993 and repeated in every subsequent Congress, Speakers' statements on decorum inserted in the *Record* on opening day became more detailed in proscribing certain conduct and more easily enforced standards reflecting usages to be followed by the Chair on a daily basis. They included Members' addressing the Chair rather than other Members such as "you" in the second person. For example, in

2007, the Chair took the initiative to caution a Member addressing others in the second person by the repeated reference "When in the name of all that is holy are you going to stop?". The Chair often took initiative when Members were addressing the television audience or others, as in 2005. The Chair directed the Sergeant-at-Arms to assist the Chair in maintaining decorum in 1997 and in 2012. The use of communicative "badges" worn by Members to convey a political message was ruled out on several occasions.

The 1999 recodification of the rules labeled Rule XVII clause 5 as "Comportment" in order to consolidate all provisions regarding Members' decorum in the House, extending beyond the propriety of debate. The prohibition against any use of personal electronic office equipment adopted in 1995 was interpreted to include the galleries in 1999. It was modified to cover only a wireless telephone or personal computer in 2003—an acknowledgment that the electronic age had brought new silent technology such as text messaging that would presumably not be disruptive of proceedings. Nevertheless, that exception brought into question the issue of the Chamber as a sanctuary from the intrusion of outside communications (the committee print report from the Subcommittee on Rules and Organization of the House (1997) addressed that issue). In the 112th Congress, acknowledging the advances of tablet devices, the rule was relaxed further to permit any electronic device to be used in the Chamber so long as not disruptive of decorum, with the Chair to determine in his discretion what might be either a breach per se or only in a particular instance. This change avoided the constant need to update the rule to keep pace with changing devices. On the opening day, the Speaker inserted in the *Record* a statement that any device for audio transmission would constitute a breach, as would any personal computer, but not other tablet devices such as iPads and Blackberries. Visual recordings and still photography would remain prohibited.

The prohibition against wearing hats in the Chamber was held to preclude "doffing" a hat in tribute to a group in 1993 and in 1996 and wearing a hooded sweatshirt in 2012. Admonitions from the Chair included reminders that proper attire was required whether or not the Member was under recognition. The ban against smoking in the Chamber was extended to smoking behind the rail in 1995. The decorum rule was held to extend to all persons having the privileges of the floor, including a former Member in 1997 who was banned from the floor by a question of privilege resolution until the resolution of a contested election to which he was party.

Disorderly Language. The Chair did not rule on the veracity of a statement made by a Member in debate in 1997 and in 2008. The truth of allegations involving unethical behavior of a Member was not a defense to a point of order that the remarks were unparliamentary in 1995. "Personalities"

were forbidden, even if the references could be relevant to the pending question in 1996. In 1984, the Speaker's use in debate of the term "the lowest thing" in describing the conduct of another Member was ruled out of order. Although accusing a Member of deceit engaged in personality in 2012, merely accusing another Member of making a mistake did not in 2000. Several rulings reaffirmed that personal attacks, such as accusations that an identifiable group of Members committed a crime, were out of order in 1998 and in 2004. On the other hand, references to political motivations for legislative positions in 1995, 1996, and 2008 or to the pending measure itself rather than to the measure's proponent, were permitted. A reference suggesting that another Member "did not have the nerve" to make a statement on the floor was ruled out as a personality in 1996. Various characterizations of Members as "the most impolite Member," "mean-spirited," "indecent," and the use of a Member's surname as an adjective for ridicule, were all ruled out of order as personalities. A general reference that "big donors receive access to leadership power and decisions" was held in order where it did not identify a specific Member as engaging in an improper "quid pro quo" exchange for legislative favors in 1997. Likewise general statements invoking racial stereotypes but not so inflammatory as to be a breach of decorum in 2003, or linking politics with armed conflict in an impersonal way in 2007, were not ruled out of order. It was affirmed that references in debate to extraneous material critical of another Member that would be improper if spoken in the Member's own words were also out of order in 1995 and in 1996. A mere reference to a Member's voting record did not form a basis for a point of order in 2002.

It was held on several occasions that Members should refrain from references to the official conduct of a Member if such conduct was not the subject then pending before the House as a question of privilege or report from the Committee on Ethics. This included references to a disciplinary resolution previously disposed of or to insinuations of misconduct. Notice of an intention to offer a resolution as a question of the privileges of the House under Rule IX does not render such resolution "pending" and thereby permit personal references to the Member proposed to be disciplined beyond allegations in the preamble of the resolution itself which were read to the House in 1996. The reading of a resolution's preamble by the Clerk was not subject to a point of order in 2005. This stricture against personalities was held not to apply to references to a former Member unless comparing such conduct with that of a sitting Member, as in 1995 and in 1996. Where a privileged ethics resolution is pending, however, debate may include personalities so long as not personally abusive. The Chair can take the initiative to prevent such breaches of decorum, especially where directed at the Speaker. Several

rulings reemphasized added protections afforded to the Speaker concerning personal references to him in 1995, and wider latitude as to the timeliness of points of order against such references was permitted. Prohibited debate was also held to include references to the motives of a Member filing a complaint, to the members of the Committee on Ethics, or to suggestions of courses of action for, or to reports by, that committee when not the pending business.

Reference to the Senate or Senators. From the 101st through the 108th Congress, Rule XVII clause 1 permitted only factual references in debate to the Senate that were a matter of public record, references to the pendency of sponsorship in the Senate of certain measures, factual descriptions concerning a measure under debate in the House, and quotations from Senate proceedings relevant to the making of legislative history on a pending measure. In the 109th Congress, clause 1 was amended to permit debate to include references to (including political criticisms of) the Senate or its Members but within the general stricture that required Members to avoid personality. Since the adoption of the new rule in 2005 the following references to Senators have been held unparliamentary: accusing Senate Republicans of hypocrisy; referring to Senate Democrats as "cowardly"; accusing a Senator of making slanderous statements, and of giving "aid and comfort to the enemy"; and referring to the Senate Majority Leader as "unethical." Even as the rule against references to the Senate was liberalized, the prohibitions against personal references to House Members remained in place for Senators. Disparaging characterizations (beyond political criticisms) made of the Senate as a body remained out of order.

References to the Vice President, President of the Senate. References in debate to the Vice President (as President of the Senate) were held to be governed by the standards of reference permitted toward the President both before and following adoption of the new rule in 2005. As such, a Member may criticize in debate the policies, or candidacy, of the Vice President but may not engage in personality, the many examples of which were very similar to references to the President mentioned below, (also including speculation that he might "pardon" the President, and innuendo suggesting that policy choices were made on the basis of personal pecuniary gain to the Vice President).

References to the President. Many rulings reflected the principle in *Jefferson's Manual* that personal references to the President or Vice President were not in order and that the Chair takes the initiative to enforce this stricture, even after other debate has intervened. Such rulings did not prohibit references which critically but not personally characterized political actions taken or to be taken by the President. Personal abuse, innuendo, or

ridicule of the President, on the other hand, was admonished on several occasions, including references to lying, dishonesty, intended deception (but not unintentional mischaracterization), obstruction of justice, hypocrisy, demagoguery, cowardice, sexual or criminal misconduct or other unethical behavior, arrogance, or personal mean-spiritedness. While debate on a proposition to impeach the President was permitted wide latitude when that issue was actually pending in 1998, it must refrain from language personally offensive. A Member may not read in debate extraneous material personally abusive of the President (or Vice President) that would be improper if spoken in the Member's own words, including the recitation of another Member's criticism of the President made off the floor, even as a rebuttal to such criticism. References to the President's family or to former Presidents are given greater latitude. The Speaker extended a minimal standard of propriety for all debate concerning nominated candidates for the Presidency, including a presumptive major-party nominee for President, whether or not those candidates were in office. In 2009, a shouted reference by an identifiable Member to the President during a joint session ("you lie") was collaterally challenged in the House as a question of privilege, and a resolution disapproving that conduct was adopted.

Procedure: Call to Order—Demand that Words be Taken Down. Rulings reaffirmed the practice that words spoken by a Member not under recognition (such as an interjection) were not to be included in the *Congressional Record*. This was also true with remarks uttered after a Member has been called to order, or when a Member fails to heed the gavel at the expiration of time for debate. Deletion of unparliamentary remarks from the *Record* was permitted only by consent of the House and not by the Member uttering the words under authority to revise and extend, as in 1990. That ruling was codified in Rule XVII clause 8(b) in 1995. Time consumed by proceedings incident to a call to order was not charged against the time of the Member under recognition in 1992.

The Chair continued to distinguish between engaging in personality toward another Member of the House, as to which the Chair customarily awaits a point of order from the floor in (although there have been initiatives taken by the Chair in extreme cases), on the one hand, and improper references to the Senate or to Senators which violate comity between the Houses, as to which the Chair normally takes initiative (even after intervening recognition), on the other. A Member may initiate a call to order either by making a point of order that a Member is transgressing the rules or by formally demanding that words be taken down under Rule XVII clause 4. A Member's comportment in debate was held in 1994 to constitute a breach of decorum even though the content of the Member's speech was not

itself unparliamentary. Except for naming the Member, the Speaker may not otherwise censure or punish him without an order of the House, but he may order the offending Member to take his seat or deny further recognition, subject to the will of the House on the question of proceeding in order. In 2009, the Chair established the practice of withdrawing further recognition (as the rule requires the Member to be seated) where a demand that such Member's words be taken down was made at the end of legislative business during special-order speeches and potentially postponing until the next day both the ruling and that Member's special-order speech. In effect, the Chair was delaying resolution by the House of the question of order so that subsequent special-order speeches could continue and a quorum would not be required to be assembled at a late hour to dispose of a question of order. This practice of withdrawing recognition was codified in the Speaker's opening-day policies in 2011. The Chair's rulings on the propriety of words taken down were subject to appeal, although the Chair's determination that a Member's time in debate has expired was not, as in 1996.

Timeliness of Point of Order. The Chair's ruling regarding the timeliness of a point of order may be appealed. A parliamentary inquiry concerning the propriety of words spoken in debate did not render untimely a demand that the words be taken down in 2004, although an improper parliamentary inquiry concerning the substantive content of the words did render such a demand untimely in 2005. While the rule forecloses a Member from being held to answer a call to order or being subject to censure if further debate or other business has intervened, a question of the privileges of the House collaterally challenging a Member's remarks in debate was permitted where the resolution alleged a breach of the code of conduct, as in 2005 and 2007. The Chair may, under Rule I clause 2, generally admonish Members to preserve proper decorum even after intervening debate.

Withdrawal or Expungement of Words. The period between the demand that words be taken down and the Chair's ruling often permits negotiations among Members which result in the withdrawal of offending words by unanimous consent without the Chair being required to rule. The demand for an apology sometimes became a condition for the granting of unanimous consent for withdrawal.

Expungement is often granted on initiation of the Chair by unanimous consent. In 1995, the House adopted Rule XVII clause 8 which mandates that the *Congressional Record* be a "substantially verbatim" account of debate and permits the deletion of unparliamentary remarks only by order of the House. The clause established a standard of conduct potentially to be investigated by the Committee on Ethics.

Proceeding in Order. If words are ruled out of order, the Member loses the floor and may not proceed on the same day without the permission of

the House and may not insert unspoken remarks in the *Record*, as in 1995. The offending Member will not lose the floor if the House permits him to proceed in order, and such permission may be at the initiative of the Chair by unanimous consent or by motion stated by the Chair, or may be implicitly denied absent such initiative, as in 2012. The motion is debatable within narrow limits and may be tabled. The Chair may deny the offending Member further recognition as a disposition of the question of order, subject to the will of the House on the question of proceeding in order, as in 1996. The ruling does not take the issue under debate off the floor and other Members may proceed to debate the same subject if still pending. The Chair either may invite the offending Member to proceed in order, or if such admonitions have been ignored, may deny the Member recognition for the balance of the time for which such Member was recognized, both subject to the will of the House on the question of proceeding in order. The resolution of that question permits the House to determine the extent of the sanction for a given breach. If an offending Member leaves the Chamber without permission to proceed in order, the Chair will not necessarily put that question to the House, as in 2012.

Duration of Debate in the House. A Member in charge of a measure can be recognized for unanimous consent to enlarge the time for debate. The Chair announced the policy of strict adherence to time limitations in 1995, with certain exceptions. The Chair may follow a tradition of the House to allow the highest-ranking elected leaders (Speaker, Majority and Minority Leaders) additional (unlimited) time to make their remarks in debate, as in 1998, 2004, and 2009. In 2009, the Minority Leader consumed almost one hour of debate upon being yielded one minute on a "climate change" bill. As on that occasion, in calculating the time to be taken by the Leaders, the manager yielding time often yielded only one minute to the Leader concerned, and the clock computation of that one minute was indefinite and did not affect remaining time, whereas the yielding of "such time as (s)he may consume" to the Leader resulted in a full deduction of all time consumed from the time remaining to the manager. It was also determined that while the Leader could (*e.g.* in a one-minute speech) himself consume a longer period, he could not yield to other Members to further expand his time beyond one minute. Otherwise, the Speaker announced his intention to strictly enforce time limitations on debate in 1995. With respect to unanimous-consent requests to insert remarks in the *Record*, the Chair did not deduct that request time from remaining debate to the manager yielding for that purpose so long as the request constituted a simple declarative statement of the Member's attitude toward the pending measure and not an embellishment, in which event the time was deducted from the manager. In 2009 and 2010,

a consecutive number of "embellishments" by Members recognized for such unanimous-consent requests resulted in more than two minutes being deducted from the control of the majority and minority managers of a special order reported from the Committee on Rules. A 2009 precedent underscored the practice that a Member reserving the right to object to such requests could not proceed to control time under his reservation in the face of a "demand for the regular order" by any other identifiable Member, but would then need to either object or to withdraw his reservation.

The Hour Rule. A Member recognized to call up a privileged resolution may yield the floor upon expiration of the hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour. It was reaffirmed in 1997 that a Member may not extend his time for a special-order speech beyond one hour, even by unanimous consent. Although the hour rule is a rule of general applicability when a question is pending, the limitation in Rule XVII clause 2 acknowledges that other provisions of that rule may permit control of debate beyond one hour, such as an additional hour for the right to close in clause 3. A manager of a measure may be recognized for unanimous consent to enlarge the time for debate, as in 2009. Where a standing rule specifically divided the hour between two Members, the manager could not move the previous question unless all time had been consumed or yielded back, as in 1989. A special rule may supersede this rule of general applicability, as by giving control of more than one hour of general debate on a question to designated managers, or by giving control to managers thereby permitting them to yield more than once to other Members, as in 2000. Consideration of a resolution as a question of the privileges of the House may include recognition for a separate (undivided) hour of debate on a motion to refer the resolution under Rule XVI clause 4 before the previous question is ordered, as in 1992 and 2006.

10-Minute, 20-Minute, and 40-Minute Debate. Although the 10 minutes of time for debate on a motion to recommit were not "controlled" and therefore Members could not reserve or yield blocks of time, they could yield to another while remaining standing. In 2009, the rule (Rule XIX clause 2) was amended to permit 10 minutes of debate on a straight motion to recommit as well as on a motion with instructions. An amendment to a motion to recommit offered after the 10 minutes was not debatable. In 1985, the rule was amended to permit the majority floor manager of the measure to extend debate on a motion to recommit to one hour, equally divided and controlled, but that option has not been utilized.

Twenty minutes of debate were permitted where a point of order was raised against an unfunded Federal intergovernmental mandate under section 425 of the Congressional Budget Act in 1995, 10 minutes by the Member making the point of order, and 10 minutes by a Member in opposition.

Following that format, a point of order under Rule XXI clause 9 against consideration of a matter for the inclusion of congressional earmarks was likewise debatable for 20 minutes equally divided.

Forty minutes of debate on a motion to suspend the rules were equally divided between the mover and a Member opposed to the motion, unless it developed that the mover was opposed to the measure, in which event some Member in favor was recognized for 20 minutes, as in 2004. The Chair will not examine the degree of opposition to the motion by a member of the committee who seeks time in opposition and debate should be confined to the object of the motion and may not range to the merits of a bill not scheduled for suspension on that day.

Forty minutes of debate were also permitted after the previous question was ordered on an otherwise debatable proposition on which there has been no debate.

Duration of Debate in the Committee of the Whole—General Debate. Time unused by the minority manager in general debate was considered as yielded back upon recognition of the majority manager to close general debate in the Committee of the Whole in 2002. The Chair as a matter of recognition managed the sequence in which committees used their time for general debate under a special rule and recognized any member of the committee who was filling the role of manager under the governing special rule in 2005. A majority manager of a bill who represents the primary committee of jurisdiction was entitled to close general debate, as against another manager representing an additional committee of jurisdiction in 1998. If the House has fixed the general debate time, the Committee of the Whole may not extend it even by unanimous consent.

In recent Congresses, special orders have been adopted providing for initial consideration of a measure in the Committee of the Whole for general debate only, with the Committee rising automatically at the end of that debate and subject to a subsequent order of the House, in order to allow consideration to begin while reserving time for the Committee on Rules to recommend an amendment process in a subsequent special order.

Five-Minute Debate. As codified in Rule XVII clause 3(c) in 1999, the manager of a bill or other representative of the committee (including a minority manager), even on an unreported measure or one reported without recommendation, and not the proponent of an amendment, has the right to close controlled debate on an amendment. The majority manager was recognized to control time in opposition to an amendment and to close debate thereon without regard to the party affiliation of the proponent where the special order allocated control to "a Member opposed" in 1998. This codification simplified the myriad of precedents which had accumulated up to that

time regarding the right of management opponents to close limited debate on amendments in both the House and in the Committee of the Whole. That right devolved to a member of the committee of jurisdiction who derived debate time by unanimous consent from a manager who originally had the right to close. The right did not go to an opponent who derived such control from a noncommittee Member, because that right could be transferred under that rule only where there has been an unbroken line of committee affiliation in opposition, as in 1997 and 2003. As well, the proponent of a first-degree amendment who controlled time in opposition to a second-degree amendment thereto that comparatively favored the original bill did not qualify as a "manager" in 2000. The Committee of the Whole may by unanimous consent (but not by motion) limit and may allocate control of time for debate on amendments not yet offered.

Under certain circumstances, however, the proponent of the amendment was permitted to close debate either if representing the reporting committee (as for example the proponent of a "managers" amendment made in order by a special order) if a committee member did not claim time in opposition.

Effect of Limitation; Distribution of Remaining Time. Various discretionary options to allocate remaining limited debate time on amendments once traditionally utilized by the chairman of the Committee of the Whole, including the allocation of equal time among all Members standing seeking to speak, or continuation of recognition for the remaining time under the five-minute rule, gave way to recognition of proponents and opponents equally for the remaining time to be yielded by them. This was accomplished either at the Chair's discretion to relieve him of the need to subdivide the time, or as the result of "modified-closed" special orders wherein the House predetermined available time on amendments to be equally divided and controlled. There was a general diminution of the normal five-minute rule whereby each Member could seek his own recognition for debate and amendment. Consequently nondebatable motions to limit debate on amendments were less frequent. Special orders and unanimous-consent orders placed control of debate from the outset of consideration of amendments in the hands of one proponent and one opponent (usually the manager of the bill). The Chair retained, however, discretion to reallocate to conform to the limit by unanimous consent of the Committee of the Whole, as in 1995.

Reading Papers and Displaying Exhibits; Use of Improper Exhibits. With the advent of televised proceedings in 1978, a variety of presentations in debate by Members utilizing charts, graphs, photographs and other props proliferated. On many occasions the Chair admonished Members utilizing exhibits to address the Chair and not to directly address the television audience, whether or not the Chair could personally observe the exhibit. At the same time, traditional rules requiring the permission of the

House upon demand of any Member for the reading of any paper (not only those to be voted upon) derived from the British Parliament and were embodied in an earlier form of Rule XVII clause 6. They were utilized as filibuster techniques for immediate votes and brought about rules changes which took those decisions away from the House. In 1993, Rule XVII clause 6 was amended to address the use of exhibits in debate rather than the reading from papers, thereby eliminating the antiquated need for permission of the House for a Member to read a speech. It established the rule until 2001 that an objection to the use of an exhibit (even a blank chart) automatically triggered a vote by the House on its use. The Member objecting was not required to state the basis for the objection and the Chair automatically put the question without debate, and a second consecutive demand invoking the provision was held not dilatory in 1996. As such, an objection was not a point of order, and could be resolved either by withdrawal of the exhibit or by a vote of the House, as in 1995 and 1996. It was not a proper parliamentary inquiry to ask the Chair to judge the accuracy or authenticity of the content of an exhibit. The Chair retained the authority to preserve decorum under Rule I to direct the removal from the well of the House of a chart that was either not being utilized during debate or was otherwise disruptive of decorum. The Speaker's responsibility to preserve decorum required the disallowance of exhibits that would be demeaning to the House or to any Member. The Speaker has disallowed the use of a person (including children) on the floor as a guest of the House as an "exhibit." In 1998, it was held not in order to request that the voting display be turned on during debate as an exhibit. Similarly, in 2005, audio or other electronic devices could not be used as exhibits or props.

Although congressional pages (high school students employed by the House) could assist Members to manage the placement of an exhibit on an easel, in 2003 it was held not appropriate to refer to the page or to use the page as though part of the exhibit. In 2003, the Chair distinguished between using an exhibit in the immediate area of the Member addressing the House as a visual aid for the edification of Members, and staging an exhibition, such as having a number of Members accompany him into the well, each carrying a part of his exhibit. The Chair took preemptive steps in 1990 to prevent exhibits under the decorum rule (all photographs) based upon the more pertinent constitutional conferral upon the House to adopt its own rules, despite an inapposite claim not internally pertinent to House debates of First Amendment rights of free speech. The Speaker permitted the display of an exhibit in the Speaker's lobby during debate on a measure in 1999, but prohibited a bumper sticker being attached to the lectern in the House Chamber in 1989. A caricature of the Speaker was held out of order

in 1995. An appeal may be taken from a ruling of the Chair on the propriety of an exhibit.

In 1995, at the request of the Committee on Standards of Official Conduct, the Speaker announced that: (1) all handouts distributed on or adjacent to the floor must bear the name of the Member authorizing the distribution; (2) the content of such handouts must comport with the standards applicable to words used in debate; (3) failure to comply with those standards may constitute a breach of decorum and thus give rise to a question of privilege; (4) staff were prohibited in the Chamber or in adjoining rooms from distributing handouts and from attempting to influence Members with regard to legislation; and (5) Members should minimize the use of handouts to enhance the quality of debate. The Speaker has reiterated these policies in subsequent Congresses.

In 2001, the rule governing exhibits was further amended to give the Chair the discretion to submit the question of the use of an exhibit to the House and to take away from Members the automatic right to object and to demand a vote. Thus, the presumption in favor of the unimpeded use of exhibits absent the Chair's exercise of discretion was established, and time-consuming votes on the use of exhibits were eliminated.

Secret Sessions. A privileged motion for a secret session having been defeated in 2007, a Member offered a second motion on the same legislative day asserting additional communications to make, and that motion though not debatable was subject to the motion to lay on the table. The motion for the secret session was not debatable; otherwise the very purpose of the motion would be compromised. In 2008, the House by unanimous consent authorized the Chair to resolve the House into secret session pursuant to Rule XVII clause 9, debate therein to proceed without intervening motion for one hour equally divided between party leadership, and at the conclusion of debate the secret session be dissolved and the House to stand adjourned. On that occasion, the Speaker declared a recess to make necessary preparations, and then made a series of announcements regarding staff access and secrecy requirements. Under the authority in Rule I clause 3 regarding use of the Chamber, the Speaker may convene a classified briefing for Members on the House floor during a recess or when the House is not in session, as in 1999. In all, there were sporadic attempts toward more secret sessions (not all successful).

Chapter 30—Voting.

Chapter 30 of *Deschler-Brown Precedents* includes precedents from 1928 through 1996. The updated chapter will include precedents from the 105th Congress in 1997 to the date of republication and will also include some rulings in 1995–1996 omitted from that earlier compilation.

Introduction. The notion that unanimous consent could dispose of any legislative matter without a vote, while accurate, had not been utilized prior to 1997 to accomplish the passage of bills and conference reports, but merely to permit consideration which would then result in a vote. Unanimous consent for final disposition on resolutions and Senate amendments was more commonplace after 1996. Unanimous-consent requests infrequently began to cover passage of bills or adoption of conference reports, even to the extent of passage of several measures *en bloc* in 2002.

Tie Votes; Supermajority Votes. In 1995, the House adopted a unique standing rule requiring a supermajority (three-fifths) vote to pass a bill, joint resolution, amendment, or conference report on a defined specific subject matter (Federal income tax rate increases), to politically demonstrate a higher threshold for enactment of such matter. The only precedent applying the original form of this rule was included in section 5.7 of chapter 30. In 1995, the Chair held that a provision repealing a ceiling on total tax liability attributable to a net capital gain was not subject to the original version of Rule XXI clause 5(b). The rule was thereafter waived on several occasions by special orders providing for consideration of measures potentially containing such provisions. In 1997, the rule was amended to clarify the definition of "Federal income tax rate increase" as limited to a specific amendment to one of the designated subsections of the Internal Revenue Code. That modification was held to comprise three elements: (1) an amendment to a pertinent section of the Internal Revenue Code of 1986; (2) the imposition of a new rate of tax thereunder; and (3) an increase in the amount of tax thereby imposed. Measures that did not fulfill even the first element were held in 2007 and 2011 not to comprise a Federal income tax rate increase. The rule was also held not to apply to a concurrent resolution in 1995. The Speaker ruled on the applicability of this rule only pending the question of final passage of a bill or joint resolution alleged to carry the increase, and not in advance upon adoption of a special order rendering the paragraph inapplicable in 1995.

Two-thirds votes required on motions to dispense with the call of Calendar Wednesday were eliminated in 2009.

Rule XV clause 6 was adopted in 1995 to create a "Corrections Calendar" requiring three-fifths votes for passage of the presumably noncontroversial reported measures placed on that calendar. It was repealed in 2005 but had no issue-specific application requiring interpretation by the Chair during its existence.

Finality of Votes Once Cast. The Speaker declined to entertain unanimous-consent requests to correct the Journal and *Congressional Record* on votes taken by electronic device, based upon the system's presumed infallibility under established precedent. The one exception was a request to delete a vote that was not actually cast in 2000. That electronic anomaly became the subject of an informal investigation by the Committee on House

Administration pursuant to its oversight responsibility over the Clerk. The chairman of that committee verbally reported to the House that the electronic malfunction was indeed an anomaly. On that basis, the Chair announced three days later that the presumed infallibility of the electronic system would continue to be honored by the Chair and that correction of the Journal and *Record* by unanimous consent on that occasion based upon a certification of circumstances by the Clerk would not be considered a precedent permitting other corrections of electronic tallies (*Deschler-Brown Precedents* Ch. 30 § 32).

It was also held in 2008 that a recorded vote or quorum call may not be reopened once the Chair has announced the result. However, the Speaker may announce a change in the result of an electronic vote required to account for a submitted but not tabulated voting card, as in 2008.

In order to avoid the possibility of a constitutional demand by one-fifth of Members present for the yeas and nays in the House immediately following the conduct of a recorded vote on the same question ordered by one-fifth of a quorum under Rule XX clause 1, that clause was amended in 1997 to provide that a recorded vote taken thereunder would be considered a vote by the yeas and nays to prevent such duplication. A recorded vote may be had in the House on an amendment adopted in the Committee of the Whole on which a recorded vote had been refused there in 1998. Although the request for a recorded vote once denied may not be renewed, the request remained pending where the Chair interrupted the count of Members standing in favor of the request in order to count for a quorum pursuant to a point of order in 2003. Where both a division vote and a recorded vote were requested, the Chair first counted for a recorded vote in 2003. A demand for a recorded vote was held untimely in 2007 even though the body had not moved on to other business where a lengthy pause intervened. A demand for a recorded vote on an amendment was untimely in 2005 where the Chair has recognized for the next amendment or where considerable time has elapsed after the Chair's announcement of the voice vote, as in 2006. A motion to vacate a pending vote by electronic device was not in order.

In the Committee of the Whole under modern practice, recorded votes are normally ordered even with very few Members in the Chamber where it assumed that the Chair will make an unassailable count of at least 25 Members standing in order to avoid a time-consuming "regular" or "notice" quorum call to first gain the attendance of Members. This expectation was usually relevant at a time when the Committee resumed unfinished business on the first of a series of amendments postponed and clustered by the Chair, since in Committee the Chair may postpone further proceedings merely on the request for a recorded vote and need not ascertain those supporting the demand at that time. This tacitly assured greater certainty to

Members of the time and order of voting on postponed and clustered votes to be subsequently conducted, without the necessity of an intervening quorum call. Under Rule XX clause 7, points of order of no quorum are considered as withdrawn when a vote is postponed, as the question is no longer pending. There were few rulings demonstrating this practice because all Members have come to accept the certainty of the Chair's count ordering a recorded vote as the price for avoiding a preliminary quorum call when the question is pending. This understanding was symbolized in 2001 where the chairman of the Committee of the Whole, having announced an insufficient number of Members to have "apparently" risen, and having refrained from stating the conclusion that a recorded vote was refused, nevertheless entertained a point of no quorum, tacitly treating the request for a recorded vote as not yet finalized and the question to still be pending.

There were decisions governing the procedures for demanding and ordering a record vote in the House and in the Committee of the Whole. The yeas and nays may be demanded in the House if the Member seeking the yeas and nays was on his feet and seeking recognition for that purpose when the Chair announced the result of the voice vote, as in 1991 and in 2005. The Speaker's count of one-fifth of those present to support a demand for the yeas and nays may not be challenged on appeal and need not be the subject of a parliamentary inquiry. In 1997, acknowledgment that yea and nay votes and "recorded" votes in the House, though separately requiring either one-fifth of Members present or one-fifth of a quorum respectively, were essentially the same record vote and not to be duplicated once either was conducted, was embodied in Rule XX clause 1.

Yeas and Nays and Other Record Votes. In a 1995 proceeding (carried in *Deschler-Brown Precedents* Ch. 30 § 31.18), the House, by unanimous consent, vacated proceedings of a prior day on a recorded vote conducted in the Committee of the Whole and required a vote *de novo*, it being alleged that Members were improperly prevented from being recorded. On that occasion, the Chair, by relying on the results shown on a tally "slip" already handed up by the Tally Clerk indicating a one-vote margin, had refused to permit two minority Members already in the Chamber and proceeding to the well to submit voting cards. In the dispute that ensued, the threat to obstruct any business of the House prompted the unanimous-consent order, and the vote was taken *de novo* in the Committee of the Whole the next day. The Chair's announcement, while technically in order since reliant upon a tally slip submitted by the Clerk, was vacated by the unanimous-consent accommodation reflecting a sense of comity in the House. In 2012, on request of the Majority Leader, the Committee of the Whole vacated proceedings on a recorded vote on an amendment upon complaint of its unrecorded minority-

party sponsor, and a re-vote was taken at the end of the stack of postponed votes, resulting in a change from the first result.

Discussion of the Chair's role in conducting votes in a fair and impartial manner received added attention, and became the subject of collateral challenges by questions of privilege in 2007 and 2008. A resolution adopted by the House on August 3, 2007, established a Select Committee to Investigate a Voting Irregularity which had occurred on the previous day. On that occasion, the Chair did not rely upon a tally slip submitted by the Clerk but rather prematurely read the result depicted on the electronic voting board in the Chamber while the Clerk was processing vote changes made by card in the well but not yet entered into the electronic system. The Chair's announcement of the numbers (based on the electronic display's reading of a tie) and premature rejection of a motion to recommit was immediately followed by several changes in results on the electronic display—the first indicating adoption of the motion and the second and final display indicating rejection as more change cards were processed by the Clerk. The Chair permitted those changes and then announced (again) final result without the benefit of tally slips from the Clerk. The occupant of the Chair subsequently revealed in testimony before the select committee investigating the irregularity that he had been guided by his own misinterpretation of the new rule which mandated that he could not hold an electronic vote open solely to give time to change the result. The Chair had not relied on a tally slip from the Clerk nor on advice from the Parliamentarian. The investigation revealed that a tally slip was never produced, notwithstanding the unbroken tradition with both electronic and yea and nay voting by rollcall prior to that occasion. Immediately following that vote, the House first adopted a motion to reconsider the disputed vote offered by the Majority Leader, but then rejected the motion to recommit, this time by voice vote, and then passed the bill on a record vote. The next calendar day, the House adopted by voice vote a resolution offered as a question of privilege by the Minority Leader establishing a select committee to investigate the voting irregularity and to report to the House. The resolution was divided for separate votes on the resolution and then on the preamble which recited allegations of impropriety. The preamble was rejected by voice vote. All this followed the Majority Leader's offer and then withdrawal of a privileged resolution referring the matter to the Committee on Standards of Official Conduct, during the debate on which the Member who had been in the Chair as Speaker pro tempore apologized to the House for his premature announcement of the vote. Other questions of privilege pertaining to the Chair's conduct of the proceedings following that disputed vote and prior to the ultimate establishment of the select committee (including the Chair's count of the yeas and

nays on approval of the Journal and the malfunction of the electronic system resulting in vacating a recorded vote on a motion to adjourn) were laid on the table.

The notion that the Chair could not hold open a recorded vote "solely to reverse the outcome," notwithstanding the fact that standing rules only imposed a minimum time for electronic voting and not a maximum (which would be determined at the Chair's discretion), became a rule in the 110th Congress in 2007 in order to demonstrate the new majority's commitment to procedural fairness. That majority (while in the minority) had collaterally but unsuccessfully challenged as a question of the privileges of the House in 2003 a vote held open for two hours, fifty minutes. That rule, premised on the Chair's "sole" intent in holding a record vote open, was later held to be impossible of direct enforcement on a point of order in 2008 and repealed.

The report of the Select Committee (H. Rept. 110–885) was filed in 2008 following a 13-month inquiry. It recommended repeal of the rule which prevented the Chair from holding a vote open "solely" to change the result. The rationale underlying that recommendation observed the impossibility of discerning the Chair's sole intent. The Select Committee, while declining to recommend that the portion of Rule XX clause 2 which requires the Clerk to conduct record votes, be amended to require that the Chair always rely on certification by the Clerk, nevertheless suggested in the report that the "best practice" in the House would so require. In the next Congress, the House followed the Select Committee's recommendation and repealed the rule. The Speaker's statement of practices to be followed, also made at the beginning of the 111th Congress and in subsequent Congresses, recited the recommendation of the Select Committee as the "best practice" to be followed by all occupants of the Chair.

Time to Respond on a Vote, Postponing and Clustering Votes; Reduced Voting Time. Rule XX clause 8 provided that the Chair may at his discretion reduce the time for a second and subsequent record vote in the House to a minimum of five minutes where conducted without intervening business following a 15-minute vote in a clustered series or on motions immediately incidental to a 15-minute recorded vote (such as reconsideration and laying on the table a motion to reconsider, or on clustered amendments reported from the Committee of the Whole). On several occasions, the House by unanimous consent or by special order permitted clustered votes after the first to be two-minute minimum votes in the Committee of the Whole, as in 2006 and 2009. In 2011, the House in Rule XVIII clause 6(f) permitted all clustered votes after the first in the Committee of the Whole to be two-minute minimum votes at the Chair's discretion. In 2013, all clustered votes

immediately after a regular quorum call were likewise permitted to be two-minute votes. The House also permitted designated postponed and clustered votes in the Committee of the Whole to be conducted beyond the two legislative-day limit permitted under that clause. In 2013, the Speaker was given discretion to conduct a five-minute vote on a motion to recommit if immediately following other votes in the House or in Committee of the Whole or even following 10 minutes of debate on the motion.

The Speaker announced a policy that the Chair would give a verbal warning when two minutes remained in the conduct of any electronic vote. The policy began in 1995 and was repeated in succeeding Congresses. It included the admonition that Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive. It also reiterated that the Chair will not close a vote while a Member was in the well attempting to vote.

Several rulings reaffirmed the proposition that the 15-minute requirement was a minimum, and that the Chair in his discretion (not subject to a point of order) could allow additional time for Members to record their presence or to vote before announcing the result, as in 2003 and 2004. When an emergency recess under Rule I clause 12(b) occurred during an electronic vote in 2005, the Chair extended the period of time in which to cast a vote by 15 additional minutes when the House resumed business.

On an extraordinary occasion in 2003, a record vote on a conference report was held open for two hours and fifty minutes by the Chair (far longer than on any prior occasion since the advent of electronic voting) in order to enable the majority leadership to lobby Members to change their votes, eventually sufficient to overcome a tally of 216–218 which had remained in place for most of that time and resulting in a majority vote adopting the conference report. Following that event, a resolution alleging intentional misuse of House practices and customs in holding a vote open for the sole purpose of circumventing the will of the House and directing the Speaker to prevent further abuse was held (in 2003 and 2005) to constitute a question of privilege but was laid on the table, later resulting in 2007 in the short-lived rule precluding votes to be held open "solely" to change the result.

The "scoreboard" components of the electronic voting system are for information display only, such that when the clock setting on the board reads "final" the Chair may continue to allow Members in the well to cast votes or enter changes, as in 2007.

Announcement of Member Pertaining to His Own Vote; Pairs. The practice of announcing general pairs ("Rep. X for, with Rep. Y against") was discontinued in 1999 by the recodification of the rules in the 106th Congress. That change acknowledged the irrelevance of the practice while retaining the ability of all absent Members to announce how they would have

voted by submitting signed announcements compiled in the cloakrooms for inclusion in the *Record* immediately following the vote or by making floor statements to that effect. The announcement of "live" pairs, though rarely used, was still permitted under Rule XX clause 3. By agreement with the absent Member, the voting Member announces the "live pair" before the result of the vote is announced, withdraws his vote and records himself by ballot card as "present" in the electronic system. The last live pair was in 2003.

Division of the Question for Voting. In the modern practice, special orders of business from the Committee on Rules have greatly circumscribed demands for a division of the question on amendments which are otherwise divisible, while conversely permitting certain indivisible questions (such as concurring in Senate amendments) to be automatically divided for separate votes. Where the rule (Rule XVI clause 5) was permitted to operate so as to permit a division of the question on matters which were substantively and grammatically divisible, recent rulings have, for example, permitted a division of the question on a resolution with one resolving clause separately certifying the contemptuous conduct of several individuals in 2000. A resolution of impeachment presenting discrete articles may be divided as in 1998 and in 2009.

A rules change in 1995 permitted amendments to general appropriation bills to "reach ahead" to provide only for transfer among amounts as offsets in portions of the bill not yet read so long as not providing a net increase in budget authority or in outlays therein, to compensate for changes in amounts in the pending paragraph (Rule XXI clause 2(f)), and declared that such *en bloc* amendments were not subject to a demand for a division of the question. In 2011, a standing order (sec. 3(j) of H. Res. 5) extended the indivisibility of amendments to those offered *en bloc* placing funds in a spending reduction account ("lockbox").

It was reiterated that while a motion to recommit with instructions is not divisible, an amendment reported forthwith pursuant to instructions contained in a successful motion to recommit may be divided on the question of its adoption if composed of substantively and grammatically distinct propositions (*e.g.*, 1993, 2010).

The motion for the previous question, if applied to a resolution and to an amendment thereto, was not subject to a demand for a division of the question in 1990.

The Order of Voting on Divided Questions. Where neither portion of a divided question remains open to further debate or amendment, the question may be first put on the portion identified by the demand for division and then on the remainder. Where the question on adopting an amendment

is divided by special rule, rather than on demand from the floor, the Chair puts the question on each divided portion of the amendment in the order in which it appears. In modern practice, special orders of business have occasionally precluded separate votes in the House on sundry amendments adopted in the Committee of the Whole, requiring them to be voted on *en bloc* in an effort to expedite proceedings. This has had the effect of preventing a demand for a division of the question and for reconsideration in the House of votes on separate adopted amendments, except on those on which Delegates' votes were decisive and were immediately reconsidered in the House (until that rule was repealed in 1995 and again in 2011).

Postponing and Clustering Votes; Reduced Voting Time; Separate Votes. Rule XVIII clause 6(g) was added in 2001 to permit the chairman of the Committee of the Whole to postpone requests for recorded votes and to reduce the voting time on the second and subsequent clustered votes to five minutes (then to two-minute minimums beginning in 2011). Until that time, the chairman of the Committee could not entertain a unanimous-consent request to reduce the time or to postpone and cluster votes, as that constituted a change in procedures imposed by the House on the Committee of the Whole. Rather, the House would be required to grant that authority to the Committee either by unanimous consent or by special order. Use of that authority was held to be entirely within the discretion of the Chair in 1998.

A request for a recorded vote on an amendment on which proceedings had been postponed could either be withdrawn by unanimous consent during other business before proceedings resumed on the request as unfinished business, or by right when those proceedings did resume, in which case the amendment stood disposed of by the voice vote (*e.g.*, 2000) unless the request proposed that the Chair put the question *de novo* (*e.g.*, 2004). That rule and the prior practice did not permit the Chair in 2000 to postpone a vote on an appeal of a ruling of the Chair (even by unanimous consent). The Committee of the Whole could by unanimous consent vacate postponed proceedings, thereby permitting the Chair to put the question *de novo* in 2000. The Committee of the Whole could resume proceedings on unfinished business consisting of a "stack" of amendments even while another amendment was pending in 2000.

While parliamentary inquiries relating to the conduct of a vote are not such intervening business as to require another 15-minute vote, unanimous-consent requests to permit intervening business such as announcements, one-minute speeches or moments of silence are required and are frequently instigated by the Chair and granted to permit five-minute or two-minute voting to continue. Flexibility for five-minute voting on a motion to recommit even after 10 minutes of debate was conferred on the Speaker in 2013.

Delegate Voting. In 2007, the House readopted the rule which was first adopted in 1993 and then repealed in 1995 (Rule III clause 3(a) and Rule XVIII clause 6(h)). The rule was repealed again in the 112th Congress in 2011. Motions to refer the opening-day rules package, which called upon a select committee to investigate the constitutionality of that repeal, were tabled in 2011 and in 2013. When operative, the rule permitted the Delegate from the District of Columbia, the Resident Commissioner from Puerto Rico and the Delegates from four territories (the Northern Mariana Islands having become a territory) to vote in the Committee of the Whole, subject to an immediate reconsideration in the House on any question on which their votes were collectively decisive in the Committee of the Whole. This was accompanied by adoption of the rule permitting Delegates and the Resident Commissioner to preside over the Committee of the Whole (Rule XVIII clause 1). The Chair's count in applying the "decisiveness" ("but-for") test under the rule was held not to be subject to appeal in 2007. The Chair's announcement did not differentiate between Members and Delegates in announcing the result of a record vote, and they were counted in establishing a quorum in the Committee of the Whole in 2007. Voting was held not to include the right to sign a discharge petition, a right confined to Members under the discharge rule in 2003.

In 2007, the House passed a bill (not enacted into law) giving the Delegate from the District of Columbia full voting rights in the House, based on the constitutional conferral in article I, section 8, clause 17 of the Constitution to Congress to "exercise exclusive legislation in all cases, whatsoever, over the District of Columbia." The constitutional question of whether that provision in article I superseded another provision in article I, section 1 which defines the House of Representatives as composed of Members chosen every second year "by the People of the several States," was debated on those occasions.

Statutory Requirements for Voting by Day Certain. A variety of statutes contemplated House and Senate action by a date certain or by a number of days as a contingency to achieving a certain result. They were enacted as exercises in joint rulemaking acknowledging the constitutional ability of either House to change its rules. To be distinguished from such procedures, Congress also enacted several laws requiring both Houses to vote by a date certain on a specified matter, and not merely as a contingency for a specified outcome. Beginning in 1977, certain Federal pay increases (2 USC § 359; Pub. L. No. 95–19) required recorded votes in each House within 60 days following presidential recommendation. The War Powers Resolution required votes in both Houses within three calendar days following reporting or discharge of bills or resolutions relating the use of military force unless otherwise determined by the yeas and nays. The National

Emergency Act (50 USC §§ 1601–1651) repeated that requirement for joint resolutions to terminate a national emergency declared by the President. Under the "fast-track" procedures in the Trade Act of 1974, the two Houses were required to vote within 15 (calendar) days of reporting or discharge of an implementing bill or approval resolution. Questions relating to the mandatory nature of those voting requirements on or before the expiration of the final day of the relevant time limit were not definitively raised such that a ruling from the Chair was required. In 2011, the Budget Control Act required a vote in both Houses by the end of that calendar year on an unspecified constitutional amendment requiring a balanced Federal budget. Conducting that vote was a condition for subsequent debt limit increases to be considered under an expedited procedure. Both Houses failed to pass the joint resolution by a two-thirds vote in the permitted time.

Chapter 31—Points of Order; Parliamentary Inquiries.

There were new developments since 1996 relating to the role of the Chair and matters relating to the basis, timing, and effect of points of order as new rules were put in place and as new rulings and practices emerged.

Ordinarily, the Chair would rule on a proposition only when a point of order was raised and only when he was required under the circumstances to respond. It was not the duty of the Chair to decide any question that was not directly presented in the course of the proceedings, such as the admissibility of an amendment not yet offered in 2000. While Rule XVII clause 4 would seem to impose a mandatory duty on the Chair at all times, in practice the Chair's initiatives were confined to improper references to the Senate, President, or Vice President, or to the gallery or the television audience as infringements of decorum. The Chair would not declare judgments on the propriety of words taken down before they were read to the House in 2001. An objection to the use of an exhibit under Rule XVII clause 6 was not a point of order on which the Chair must rule. Before the rule was rewritten in the 107th Congress, it required that the Chair put the question whether the exhibit may be used, but after that merely permitted the Chair to put such question in his discretion.

Rulings reiterated the Chair's reluctance to rule on constitutional questions, including the constitutional competency of proposed legislation in 1998, and the authority of the House to propose a rule of the House, such matter appropriately being decided by way of the question of consideration or disposition of the proposal in 2005. The Chair's traditional reluctance to issue advisory opinions on hypothetical or anticipatory questions made him decline to interpret a special order of business while pending.

The Chair seldom initiated rulings on relevancy of debate, or on personal references to other House Members, preferring to await points of order from

the floor and advice from the nonpartisan Parliamentarian. In modern practice, the Chair does not submit a point of order directly to the House. For example, pending a point of order against an amendment to an impeachment resolution, the Chair followed precedent in declining to submit the point of order directly to the House for its decision in 1998.

Under section 312 of the Congressional Budget Act, the Chair was required to treat as "authoritative" an estimate from the Committee on the Budget in ruling on points of order involving estimates of levels of new budget authority, outlays, direct spending, new entitlement authority and revenues. In 2011, a new standing rule (Rule XXIX clause 4) enabled the chairman of the Committee on the Budget (not necessarily "the committee") to supply such estimates including for purpose of "CUTGO" points of order (Rule XXI clause 10).

Manner of Making Point of Order. A Member may raise multiple points of order simultaneously, and the Chair may hear argument and rule on each question individually or sustain only one of the points of order raised, as in 1998. Where, in 1996, the House decided not to consider one motion to recommit with instructions as a disposition sustaining a point of order under the Unfunded Mandates Reform Act (after the Chair overruled a germaneness point of order against that motion), one valid motion to recommit remained in order. A ruling on a point of order can interrupt the reading when Chair has heard enough to rule on the point of order, as in 2009.

Timeliness. Points of order may be raised either against the consideration of a measure or matter, or against a portion of a pending measure, based on a specific rule of the House which prohibits its consideration or inclusion. Examples of points of order against consideration included violations of rules requiring availability and inclusion of certain matters in accompanying reports (inapplicable if the measure was not reported but rather discharged from committee), or under provisions of standing rule or law which enabled points of order against consideration of certain bills, amendments, resolutions or conference reports. Generally such points of order must be raised when the measure or matter was first called up for consideration, and come too late after consideration has begun. Beginning in the 112th Congress in 2011, Rule XXI clause 11 required three-day (printed or electronic) availability of any unreported measure. Budget Act points of order against consideration of a measure must be made in the House pending the outset of consideration pending a motion (or declaration) resolving into the Committee of the Whole.

Multiple points of order against a conference report—one alleging a Budget Act violation and another the nongermaneness of a Senate provision

therein under Rule XXII clause 10—will be disposed of in the order in which the effect of sustaining the point of order would have on the conference report. If the point of order would vitiate the entire report the Chair will rule on it before ruling on germaneness, which would merely trigger a separate vote on motion to reject nongermane portion.

Examples of points of order against provisions within measures, which must be made when those offending provisions are separately being read, include legislation or unauthorized items in general appropriation bills, appropriations in legislative bills, and tax or tariff provisions in bills by a committee other than the Committee on Ways and Means. Points of order against nongermane amendments must be raised or reserved when the amendment is first considered, and come too late following some debate on the amendment. The underlying notion that points of order, while presumptively necessary to assure regular order in the House, could be waived if not made or reserved at the outset of consideration, incorporates the principle of *laches*. It assured that the time of the House will not be wasted on objectionable matter, by requiring that objections must be disposed of as consideration begins, while also requiring the Member raising the point of order to be on his feet seeking recognition at the appropriate moment. That requirement was also embodied in the rule that objectionable debate must be challenged immediately upon utterance, before any subsequent debate intervenes. By precedent, the timeliness of points of order on most other matters is similarly confined to the moment of initial consideration. For example, by unanimous consent a portion of a general appropriation bill being open to amendment at any point, the Chair queries for points of order against any of that portion before entertaining amendments and will not permit reservations of points of order to be later disposed of, so that the text of the measure to be amended is known before amendments are offered.

In 2008, the Chair ruled that a point of order during proceedings on a record vote regarding the Chair's conduct of that vote, which could invite a possible appeal from the Chair's ruling and a "vote within a vote" which the electronic system could not accommodate, would not be entertained. The Chair indicated that the matter could be collaterally challenged as a question of privilege vacating the vote thereafter.

Reserving Points of Order. As a protection against the need to immediately rule on points of order against amendments, or to allow the proponent of the amendment and others to temporarily debate its merits, the Chair may in his discretion permit the reservation of a point of order at the outset, which would be subsequently disposed of upon the insistence of the Chair while the matter remains pending.

Only two points of order in the House were stated by rule to be so sacrosanct as to be exceptions from the general requirement for timeliness for

the making or reservation of a point of order immediately upon consideration of the offending matter. Beginning in 1983, Rule XXI clause 5(a) was adopted to permit points of order to be raised "at any time" during the pendency of a portion of a reported bill not reported from the Committee on Ways and Means or an amendment thereto which contains a tax or tariff. That clause mirrored the provisions of Rule XXI clause 4 (adopted in 1920) in order to protect the jurisdiction of the Committee on Ways and Means (just as Committee on Appropriations had been protected by clause 4) against encroachments discovered in measures reported from other committees or against amendments thereto. To that end, where the reporting committee was the Committee on the Budget on reconciliation bills pursuant to section 305 of the Congressional Budget Act, and the Committee on Ways and Means had only submitted tax or tariff recommendations to that committee for packaging without change but had not actually reported the bill to the House, the Committee on Ways and Means was not considered to have been the reporting committee in 1985 and in 1989. Thus, an anomaly emerged under Rule XXI clause 5(a) by not protecting matter approved by the Committee on Ways and Means, to permit points of order against tax and tariff provisions in or amendments to such Committee on the Budget reported reconciliation bills although recommended by the Committee on Ways and Means. Both "at any time" points of order under clauses 4 and 5(a), however, have been held inapplicable where the legislative bill under consideration was unreported. Similarly where a pending special order reported from the Committee on Rules "self-executed" the adoption in the House of an amendment containing an appropriation into a bill not reported by the Committee on Appropriations, the Chair ruled that the amendment was not separately before the House and the special order was not subject to an "at any time" point of order in 1993. Subsequently, when that reported bill was under consideration and already contained the appropriation, the Chair ruled that the "at any time" point of order did not apply, as the amendment had already been adopted by the House by adoption of the special order.

In 2007, Rule XXI clause 8 was added to permit points of order under title III of the Congressional Budget Act whether or not the offending bill had been reported from committee, in order to remove the point of order distinction between reported and unreported bills in title III.

Debate. The Chair may decline to rule on a point of order until he has had time for examination, and he may in his discretion hear argument on any point of order. Such debate must be confined to the point of order and may not go to the merits of the underlying proposition or to other parliamentary business. Members may not yield to each other, may not revise

their arguments for the *Record*, and must be separately recognized by the Chair, who may decline further recognition when ready to rule, as in 2011. A number of rulings documented in section 628 of the *House Rules and Manual* reiterated that colloquies are not permitted and that Members must address the Chair directly and may not revise their remarks or gain separate debate time by offering pro forma amendments pending the point of order.

Burden of Proof. The Chair will not apply a "fairness" test by judging the advisability of the proposition in applying Rule XXI clause 2 or any other rule where the burden of proof on the point of order is not met, as in 2012. Where two arguments are made in support of a point of order alleging separate violations of the Budget Act, the Chair may sustain it based on one correct argument, as in 1998.

Waivers; Disposition of by Debate and Vote on Unfunded Mandates, Earmarks, or Waivers Thereof. The Chair is barred by rule and practice from entertaining unanimous-consent requests to waive or suspend certain rules, including constitutional requirements which constitute basic rules (such as points of order of no quorum on votes or a demand for the yeas and nays). Also rules on admission to the floor or references to persons in the gallery may not by their terms be waived, even by unanimous consent, and are thus always enforceable on the Chair's initiative or on points of order from the floor. Otherwise, the House may by proper means—by unanimous consent, by special order, by a motion to suspend the rules, or by forbearance or a lack of timeliness—waive any point of order which would otherwise impact the consideration of a measure or matter.

In the contemporary practice of the House (as noted earlier), several points of order are disposed of not by a ruling from the Chair, but instead by the House voting upon the question of consideration. These include points of order raised against measures allegedly containing unfunded intergovernmental mandates, and points of order related to earmark disclosure requirements. Debate on such points of order is limited to 20 minutes, equally divided between the proponent and an opponent. Similarly, the former House PAYGO rule (replaced by the CUTGO rule in the 112th Congress) required an automatic question of consideration to be put to the House for measures containing emergency designations (*i.e.* exemptions from certain budgetary constraints). Such question was decided without debate. Although the current CUTGO rule has no comparable provision, the Statutory Pay-As-You-Go Act still requires the question of consideration to be put for measures containing emergency designations, in the same manner as the prior House PAYGO rule.

Appeals. In chapter 31 of *Deschler's Precedents*, it was asserted that "appeals from rulings of the Chair have been infrequent, and the only issue

presented by an appeal is the propriety of the Chair's ruling under the rules and precedents, and not on the merits of the proposition to which the ruling applies." Nevertheless, the proliferation of appeals from rulings of the Chair since that time was pronounced. While that description of the precise question on appeal remains accurate, it became increasingly evident that most appeals from correct rulings of the Chair were taken to prompt recorded votes thereon in order to politically characterize those votes as decisions on the merits of a matter not made in order (and often to express frustration at the restrictive nature of a special order adopted by the House).

A Member cannot secure a recorded vote on a point of order absent an appeal and the Chair's putting the question thereon. Appeals were not entertained from decisions on recognition 1999 and in 2006, on the count to order a recorded vote in 2000, on the call of a voice vote in 1994, or on the determination of remaining debate time in 1996. Although the timeliness of the Chair's recognition of a Member to offer a motion to table an appeal was not subject to appeal in 2006, the Chair's ruling on timeliness of a Member's demand that words be taken down was subject to appeal in 2007.

A new rule (Rule XX clause 5), adopted in 2005 required the Speaker to announce the whole number of the House upon death, resignation, expulsion, disqualifications or removal of a Member, and to announce the content of a catastrophic quorum failure report triggering a reduced quorum requirement by not counting incapacitated Members, which announcements were not subject to appeal. These provisions were added to prevent record votes on appeals which might otherwise establish the absence of a quorum if the revised number required were not yet finalized because of the appeal.

An appeal could be withdrawn at any time before action by the House thereon, as where (*e.g.*, 2004) the Chair has not even stated the question on appeal. An appeal of a ruling of the Chair could be withdrawn in the Committee of the Whole as a matter of right. It was reiterated in 2003 that debate on an appeal in the Committee of the Whole is under the five-minute rule and cannot be tabled there.

Parliamentary Inquiries. Recognition for parliamentary inquiries was in the discretion of the Chair. However, parliamentary inquiries cannot interrupt another Member having the floor without his yielding. A Member under recognition for a parliamentary inquiry may not yield to another Member. The Chair responds to parliamentary inquiries relating in a practical sense to the pending proceedings (*e.g.*, pending consideration of a bill and its relationship to a second budget resolution's impact if subsequently adopted in 1984), but does not respond to requests to place them in historical context. The Speaker may entertain a parliamentary inquiry during a record vote if it relates to the vote. The Chair would not explain the exercise

of discretion to hold a vote open beyond the minimum time prescribed under Rule XX clause 2, even where in the 110th Congress that rule prohibited the Chair from holding a vote open "solely" to change the result (although the Chair did on occasion explain his motivation during votes in 2007–2008). That rule was repealed in the 111th Congress. The Chair would not respond to a parliamentary inquiry to state the vote tally as it stood upon expiration of the minimum time.

In 2010, the Chair made an elaborate statement outlining the proper parameters for parliamentary inquiries. The Chair did not respond to improper parliamentary inquiries of the following types: (1) to judge the propriety of words spoken in debate pending a demand that those words be taken down in 1995; (2) to judge the veracity of remarks in debate in 1996 and in 2004; (3) to judge the propriety of words uttered earlier in debate in 2000 and in 2007; (4) to reexamine and explain the validity of a prior ruling in 1995, 2005, and 2008 (although the Chair did clarify a prior response to a parliamentary inquiry in 1996); (5) to anticipate the precedential effect of a ruling in 1998; (6) to judge the accuracy of the context of an exhibit in 1995; (7) to indicate which side of the aisle has failed under the Speaker's guidelines to clear a unanimous-consent request; (8) to respond to political commentary in 1998, 2001, and 2004; (9) to comment on the effect of time consumed on a pending amendment as a tactic to prevent the offering of other amendments under a special order adopted by the House in 2000; (10) to anticipate whether bill language would trigger certain executive actions; (11) to otherwise interpret a pending proposition in 1998 (although the Chair may explain the application of the procedural status quo to a pending proposal to change the standing rules, as in 2006); (12) to judge the appropriateness of Senate action in 2003; (13) to characterize committee proceedings in 2006; (14) to speculate as to the operation of committee rules in 2007; or (15) to rule on the propriety of specified words not yet uttered in debate in 2012. The Chair confirmed (in 2007 and 2008) that the adoption of a motion to recommit with instructions to report "promptly"—a motion no longer permitted beginning in 2009—did not necessarily suspend the operation of any rule of the House or of a committee regarding the need for subsequent meeting and action by the committee. The Chair also confirmed that adoption of a pending motion to suspend the rules and concur in a Senate amendment would waive all House rules, including the PAYGO rule in Rule XXI clause 10 in 2007.

Chapter 32—House-Senate Relations.

In all, the frequency of the utilization of special orders to "ping-pong" (directly dispose of) amendments between the two Houses, in lieu of the more

traditional disposition of differences by conference committees, was the result of several factors influenced by the rules and practices of both Houses. The extent to which special orders reported from the Committee on Rules at the leadership's direction could short-circuit conferences was demonstrated. Such special orders could not only dispense with the need for separate committee-ordered motions to go to conference, but could avoid all of the following procedural steps: initial (minority priority) and 20-day privileged motions to instruct House conferees; the holding of formal open conference meetings; the production of a joint explanatory statements of managers; three-day availability of the conference report; the requirement that House (and Senate) managers remain within the scope of differences, and the availability of a (minority) motion to recommit in the House where acting first on the conference report.

Messages Between the Two Houses. An instance in 1998 supplemented sections 1.10 and 1.11 of chapter 32 regarding anticipatory or "deemed" House or Senate action which by unanimous consent was made contingent upon receipt by the Clerk or Secretary of a message from the other House transmitting the official papers in a prescribed form in order to avoid waiting for the message. This included "deeming" a bill not yet passed by the Senate in an amended form to be sent to conference upon receipt by the Clerk of a message to that effect. Those instances are aberrations from the requirement that action should await actual receipt by messenger as stated in *Jefferson's Manual*.

In 2006, the House adopted a conference report containing, *inter alia*, the specified number "13" as part of legislative text. The Senate then rejected the conference report and instead amended the original House-passed amendment to the Senate bill, intending inclusion of "13" but instead providing "36" by an error affecting the bill's substance in the engrossed Senate amendment messaged to the House (which message thus became the official Senate position). The House by special order concurred in the incorrect Senate amendment, the Senate not having asked the House to return the papers so that it could correct its depiction of its final action. This was done in the House to avoid a separate vote on any request by the Senate for return of the message, or subsequently on any concurrent resolution correcting the final enrollment. Nevertheless, the Secretary of the Senate in preparing the final enrolled parchment then changed the number back to the intended number "13" without authority of either House, in order to correct her previous error, and the presiding officers signed the enrollment as "truly enrolled." The entire procedure was collaterally but unsuccessfully challenged in the House by a question of privilege calling upon the Committee on Standards of Official Conduct to investigate the matter. The procedure was

also unsuccessfully challenged in court (*e.g.*, *Public Citizen v. Clerk of the U.S. District Court for the District of Columbia*, 451 F.Supp. 109 (D.D.C. 2006)), relying on the U.S. Supreme Court decision in *Field v. Clark*, 143 U.S. 649 (1892), that the courts will not as a matter of separation of powers look behind the signatures which certify the true enrollment of the measure into the procedure.

On two occasions in 2011, the House took extraordinary steps to textually anticipate possible Senate action or inaction either: (1) in the bill itself being made in order (making in order bill language merely to (re)pass a previously-passed House bill if the Senate has not acted on it by a day certain by incorporating its terms by reference); or (2) to delay final enrollment of a bill if passed by both Houses unless the Senate first conducted votes on two concurrent resolutions to be adopted by the House separately correcting that enrollment (whether or not adopted by the Senate).

Disposing of Amendments Between the Houses. Section 6 of chapter 26 explains the trend away from the use of numbered Senate amendments and toward amendments in the nature of a substitute. On October 5, 1978, the House was considering a numbered Senate amendment reported from conference in disagreement, and a motion to recede from disagreement and concur in the Senate amendment was made by the manager of the bill. The Chair ruled that the motion could be divided and the House thereupon receded without debate. In response to parliamentary inquiries, the Chair then stated that had any Member sought timely recognition, one hour of debate, equally divided between majority and minority parties, would have been permitted on the initial question of receding and then separately on the question of concurring if the House had receded. Following confusion in the House regarding the status of the pending motions, the House by unanimous consent vacated such proceedings to permit the motion to recede and concur to be reoffered and divided and the question of receding to be separately debated all over again.

Rule XXII clause 4 was added in 1999 as part of a recodification to emphasize that motions in the House to dispose of Senate amendments requiring Committee of the Whole consideration or House amendments thereto are privileged only after the stage of disagreement has been reached. In modern practice, the House normally disposes of Senate amendments prior to the stage of disagreement either by unanimous consent, by suspension of the rules, or by a special order from the Committee on Rules. Section 528 of the *House Rules and Manual* includes discussion of the various forms and interpretations of special orders providing for disposition of Senate amendments both before and following the stage of disagreement. Since the 1990s, conferees on general appropriation bills in modern practice seldom go to conference on numbered Senate amendments containing legislation or unauthorized items in disagreement for disposition by separate vote. Rather the

Senate normally amends all such House bills with amendments in the nature of a substitute, and not by numbered amendments, and the Committee on Rules then recommends a waiver of all points of order against resulting conference reports although they contain disposition of Senate amendments containing legislation or unauthorized appropriations otherwise requiring consideration in the Committee of the Whole. That change in practice developed incrementally in both Houses and has had profound impact on consideration of appropriation bills in both Houses, giving conferees greater authority to include provisions for one vote which otherwise had required separate votes on discrete motions.

Effect of Special Rules. There was a proliferation of efforts to circumvent the standing rules and traditional procedures of the House and Senate in order to expedite consideration and disposition of matters between the two Houses as indicated by relevant rulings interpreting special orders, representing expanded use of the authority of the Committee on Rules to vary "regular order." In 1996, the chairman and ranking minority member of the Committee on Rules inserted in the *Congressional Record* an exchange of correspondence regarding the authority of that committee to report special orders disposing of Senate amendments while not providing for a motion to recommit—that minority protection only being applicable to a special order providing for initial consideration of a bill or joint resolution. For example, the Committee on Rules has reported special orders which permit two or more amendments to a Senate amendment in order to divide some of the Senate text for separate votes by unamendable motions. Special orders have provided for the consideration of a single indivisible motion to concur in sundry Senate amendments, or to concur in a Senate amendment with an amendment printed in the accompanying Committee on Rules report, or to consider any motion offered by the Majority Leader to dispose of any Senate amendments.

In 2010, during the health care debate, the House utilized one special order to expedite consideration of the initial House bill by a "modified-closed" rule, and also permitted "closed" consideration of a second health care bill to be merged after separate passage. After Senate amendment of that bill, the House in one special order adopted that Senate amendment by a single subsequent motion, and then immediately considered a separate House bill under a "closed" rule as "reconciliation" which would make agreed-upon budgetary changes in the soon-to-be-enacted law. The Senate treated that bill as "reconciliation" but invoked the "Byrd" rule (see chapter 41 on Budget Process) to strike out an extraneous provision. The House finally self-executed the adoption of that Senate amendment by a final special order.

In 2010, the House adopted a special order permitting the Committee of the Whole consideration of a specified amendment to a Senate amendment but not permitting amendments thereto or any other amendments, before voting on a motion to concur in the House if that amendment were rejected in Committee of the Whole. Rather than suggest the preferential status of the motion to concur with amendment over the motion to concur in the House, the special rule was intended to appear more "open" by suggesting initial Committee of the Whole consideration.

Degree of Amendments. Special orders were utilized making in order House amendments broaching the third degree between the Houses notwithstanding the constraint in *Jefferson's Manual*.

In the Senate, an amendment to Senate Rule XXVIII in 2007 imposed a strict prohibition on the inclusion of new matter not committed to conference by either House (the "air-drop" rule), absent a three-fifths waiver in order to retain the offending new matter. The proliferation of filibusters requiring cloture votes at several stages of getting to conference and of disposition of the conference report sometimes suggested that conferences be avoided where the Majority Leader could offer preemptive motions to "fill the amendment tree" to foreclose other motions or amendments by other Senators. On several occasions, the Senate Majority Leader, being assured of priority of recognition at every stage, could offer either a motion to concur in the final House amendment or a motion to further amend (if not in the third degree). He could then offer an amendment to his own amendment in the nature of a substitute, during the pendency of which further amendments were not in order (substitutes for the original amendment of the Majority Leader and amendments to substitutes not being in order in the Senate) and adoption of which would preclude further amendments. While one cloture vote requiring three-fifths majority was still required, the numerous filibusters at several stages of Senate proceedings each potentially requiring three-fifths waivers could be avoided.

Chapter 33—House-Senate Conferences.

There were important trends in this area beginning in 1999, such as: (1) reduced utilization of conference committees in favor of "ping-pong" direct votes on amendments to resolve differences between the two Houses; (2) increased complexity and variety of conferee appointments (especially in the House); and (3) the impact of Senate rule changes governing inclusion of new matter in conference reports.

Motions, Resolutions and Requests for Conference. Rule XXII clause 1 was codified in 1999 to reflect a 1994 ruling that privileged motions to go to conference must be authorized by all reporting committees of initial

(but not sequential) referral. On a Senate bill with a House amendment consisting of the text of two corresponding House bills that were previously reported to the House, the motion must be authorized by the committees reporting those corresponding bills, as in 1998. Some committees' rules provide advance authority to move to go to conference at the Chair's discretion so that *ad hoc* votes in committee on each bill are not required. Rule XI clause 2(a)(3) was added in 2005 to empower committees to adopt rules to authorize the chairman to move to go to conference whenever appropriate.

Conferees. With respect to changes in the Speaker's appointment of conferees, unilaterally permitted since 1993, the Speaker modified an initial appointment by removal, by substitution of one conferee for another, and by expansion of the specification of provisions on which a conferee had been appointed. While conferee appointments in the House generally became more complex, including both general conferees and additional conferees on specified portions, conferees on general appropriation bills continued to be limited to members of the Committee on Appropriations (sometimes with different subcommittees represented on portions of the Senate amendment). There were noted examples of very limited naming of conferees by the Speaker in 2001 and 2005, as only three (two majority and one minority) conferees including the chairman and ranking minority member of the relevant committee and the Majority Leader were named. On those occasions, it was apparent that informal negotiations with Senate leadership by the majority leadership in the House would take place prior to a formal conference meeting sometimes without the participation of the minority, and that only one formal open conference meeting would then take place to merely ratify the informal compromise and to sign the signature sheets. In 2012, the Minority Leader refused to recommend minority conferees to the Speaker, who appointed only majority conferees until the end of the conference. On another occasion, the Speaker appointed a Minority Member as a conferee among the majority names without consultation with the Minority Leader.

Instructions to Conferees. Rule XXII clause 7(c) was amended in 2003 to require that the motion to instruct conferees after 20 calendar days of conference appointment in both Houses was only in order after ten legislative days, running concurrently, so that the 20-calendar day period could not alone render timely a motion when elapsing during an adjournment. In 2012, the House adopted a special order providing that pro forma sessions held every third day during a "recess" period would not count toward the computation of the 20- or 10-day period. In 2001, clause 6(d) was added to provide that instructions to House conferees may not include argument, but must reference only proposed legislative language without stating a reason therefor. The motion may be repeated after one day's notice.

Points of order under the Congressional Budget Act have been determined to be inapplicable to motions to instruct conferees, since there may be no available legislative text to score, and because those motions are not binding and there is therefore no need at that stage to obtain estimates from the Committee on the Budget (chair) on the advice of the Congressional Budget Office.

The motion to adjourn was in order while a motion to instruct conferees was pending, and if adopted the motion to instruct was rendered unfinished business on the next day without need for further notice. The managers' filing of a conference report in the House precluded further proceedings on noticed 20-day motions to instruct, including postponed votes thereon even following debates in 1999, 2003, and 2004.

A motion to instruct conferees on a general appropriation bill may not instruct the conferees to include either a funding limitation or a change in income tax law not contained in the House bill or Senate amendment. Such motion also may not instruct managers to include funding for a program above or below both of the respective amounts in the House bill and Senate amendment for that program, as in 2005.

Conference Reports—Contents of Report; Corrections. Two instances demonstrated the importance of the sanctity of official papers and the possibility of collateral ethics challenges as questions of privilege. In 2005, as indicated in debate, the Majority Leader of the Senate, accompanied by the Speaker of the House, importuned the staff director of the House Committee on Appropriations (who was about to file in the House a conference report already containing the requisite number of signatures) to insert language into the report which had not been agreed to by the conferees when they signed the signature sheets, and without the knowledge and consent of the conferees. The conference report subsequently was considered and adopted in the House on the same day pursuant to a special order waiving all points of order. In 2006, a question of privilege calling upon the Committee on Standards of Official Conduct to investigate the alleged impropriety was entertained after the fact but laid on the table.

Another irregularity occurred when the House adopted a conference report containing a certain figure, and the Senate, by operation of the "Byrd" rule (see chapter 41 on Budget Process), then rejected the conference report and instead amended the original House-passed amendment to the Senate bill, intending that its amendment should contain the same figure as in the House-passed conference report. By inadvertence, the Senate's engrossment of its amendment contained a different figure. As the best evidence of the content of the Senate amendment was the engrossment of that amendment in the official papers messaged to the House, the final Senate action became

the changed figure. The Senate did not ask the House to return the papers so that it could correct its depiction of its final action. The House, its leadership having knowledge of the error in the Senate message, nevertheless concurred in the Senate amendment with the incorrect figure, to avoid a separate vote on any request by the Senate for return of the message, or subsequently on any concurrent resolution correcting the final enrollment. The Senate enrolling Secretary in preparing the final enrolled parchment then changed the number to that originally intended, without the authority of either House. That version was enacted into law, followed by unsuccessful attempts in the House to collaterally challenge the impropriety by a question of privilege in 2006 and by unsuccessful lawsuits in Federal courts.

In 2006, a conference report on a highway authorization bill adopted by both Houses was improperly changed by the House enrolling clerk at the behest of the lead House conferee to include in the enrollment a provision not in either bill which provided a highway project financially benefiting a political donor to that Member's campaign fund. There was no concurrent resolution authorizing correction of the enrollment. In the next Congress, that provision became the focus of a Senate amendment added to a subsequent House-passed highway bill in 2008. The amendment directed the Department of Justice to investigate allegations of impropriety surrounding the earlier enrollment change. During debate on the amendment in the House, the Member who was to be the focus of the investigation suggested incorrectly that such changes were proper if informally supported by bipartisan agreement (the Department of Justice discontinued its investigation two years later but the FBI, in 2012, released detailed information regarding potentially improper diversion of campaign funds for personal use).

Signatures. A revision in the Parliamentarian's analysis in section 18.8 of chapter 33 will change the statement that "the accepted practice in the House, and in the Senate, is for the managers to either sign a conference report without qualification, to show that the matters in conference have been reconciled, or to refuse to sign if total agreement has not been reached." The Senate Parliamentarian has taken the view that although its conferees are permitted to sign a report with exceptions or conditions, nevertheless even such qualifying signatures are counted per capita toward a majority of the total although not having agreed to all matters in the report. In the House, the practice correctly continued that qualified signatures of Senate or House conferees will not be permitted to count toward a majority, the report being a signed agreement on all matters therein and not containing exceptions or minority views. Also in the Senate, its additional conferees (and House conferees) appointed only on certain matters committed to conference are nevertheless counted by the Senate Parliamentarian toward a majority on the entire report per capita, while in the House the correct practice continued that limited conferees are counted only toward a majority on those issues. In the House, separate majorities must be obtained

on each of the issues committed to conferees which are identified in the Speaker's appointment and on the signature sheets by specified provisions in the House or Senate version (counting both general conferees appointed on all matters and additional conferees where relevant).

Scope. On one occasion, in 2002, a conference report was held to exceed the scope of conference, the joint statement of managers conceding that the report contained new matter not committed to conference by either House (or beyond the precise range of differences), and against which points of order had not been waived. The report was vitiated, after which a privileged motion to recede and concur in the Senate amendment with an amendment incorporating by reference the text of an introduced bill (consisting of the text of the conference report with one deletion) was offered. The form of the motion—incorporating text by reference to another numbered measure rather than specifying text—was irregular but was used to avoid the reading of the lengthy amendment by the Clerk in the interest of time.

On virtually every other occasion all points of order were waived against the consideration of conference reports and against their provisions, either by unanimous consent, by virtue of consideration under suspension of the rules, or most frequently by special orders reported from the Committee on Rules. In fact, when such special orders were called up, the manager of the rule often described such waivers as "usual," "customary," or "necessary."

The Senate adopted its "air-drop" rule (new Rule XLIV) in 2007, which indirectly impacted the House and its committees. While normally changes in Senate rules and precedents are beyond the scope of this work, section 19.4 of chapter 33 contained a Parliamentarian's Note which analyzed the development through 2000 of treatment of scope of conference points of order in the Senate under its Rule XXVIII. The general Senate scope rule applicable to all conference reports was also amended to require three-fifths votes for waiver under either rule.

The "not entirely irrelevant" test of scope of conference espoused by the Senate Parliamentarian at the time of that note in 2000 has been informally modified to become a "common-sense relevancy" test. Under that test applicable to all points of order, rather than a strict scope test as applied in the House, a more flexible standard is utilized in the Senate taking into account the relevancy of proposed new provisions to at least some provision in the House or Senate version.

By adding new Rule XLIV, the Senate imposed a three-fifths waiver requirement on a point of order against any "earmark" provision in a spending (appropriation) bill conference report constituting "new directed spending" added for the first time by the conferees. That was defined to include "a specific level of funding for any specific account, specific program, specific

project, or specific activity, when no such provision was provided in the measure originally committed to the conferees by either House." Several rulings in the Senate since 2007 demonstrated the applicability of the rule. In the event the point of order was sustained and not waived by a three-fifths vote, the conference report on the spending bill was considered rejected in the Senate and the pending question was on the remainder of the conference report as a proposed Senate amendment to the House text (a procedure comparable to the "Byrd" rule (see chapter 41 on Budget Process) governing extraneous matter in conference reports on budget reconciliation bills). This process has directly impacted subsequent House proceedings where, although the House had previously adopted the appropriation conference report, the House was required to act again on the proposed new Senate amendment. To avoid this point of order in the Senate, the two Houses resorted to "ping-pong" disposition of amendments between the Houses rather than going to conference, through utilization of special orders in the House permitting motions to concur in Senate amendments with amendments reflecting informally negotiated compromises. Beginning in 2011, there was a return to the use of conferences on some appropriation bills, but with earmarks prohibited in both Houses (in the Senate by standing rule and in the House by party conference rule); the Senate "air-drop" rule was not invoked.

Joint Statement of Managers. In 1998, when the House by unanimous consent permitted the chair of a House committee to insert in the *Record* extraneous material to supplement a joint statement of managers, the Chair announced that the insertion did not constitute a revised joint statement of managers since not agreed upon in the Senate. Rules changes regarding matters to be included in joint statements include the Unfunded Mandates Reform Act of 1995 which requires the Director of the Congressional Budget Office to prepare a statement with respect to the unfunded costs of any additional Federal mandate in the conference agreement.

Rule XXI clause 9(a)(4) as added in 2007 (first imposed as a standing order in 2006) required joint statements of managers either to include a list of congressional earmarks, limited tax benefits and limited tariff benefits and the name of any Representative or Senator who submitted a request to the House or Senate committees of jurisdiction for inclusion, or to state that the report contained no such earmarks. Paragraph 9(b) further required that joint statements accompanying conference reports on general appropriation bills also list and identify the sponsorship of new earmarks inserted in the report which were in neither the House nor Senate version of the bill committed to conference. No conference reports in violation of this rule may be considered in response to points of order unless special orders

waiving the rule are permitted to be considered by a separate vote of the House following 20 minutes of debate.

On at least one occasion, the joint statement of the managers included only a recitation of the procedural disposition proposed to be made of the amendments between the Houses, without describing the contents of the conference report. Under earlier precedents the Chair would normally submit the question of the sufficiency of the report to the House rather than rule directly under Rule XXII clause 7(d) (5 *Hinds' Precedents* §§ 6511–13). However, where there was no required substantive explanation informing the House of "the effects of the report on matters committed to conference," the Chair could sustain the point of order absent a waiver of all points of order against consideration of the conference report.

Consideration and Disposition of Conference Reports—Waiving Points of Order. Beginning in the 1990s, it became a regular practice to waive the three-day rule requiring printing of conference reports in the *Congressional Record* prior to eligibility for consideration. When the waiver of that point of order was contained in a special order reported from the Committee on Rules, the special order was subject to the one-day availability requirement in Rule XIII clause 6 unless consideration was permitted by a two-thirds vote (the "same day reported") or contained in a special order "only" waiving the three-day availability requirement (Rule XXII clause 8). In calculating the second "legislative day" requirement, numerous special orders were filed by the Committee on Rules following its meeting which often came soon after the filing of the conference report. While the Committee on Rules' policy was to insist on filing of the conference report in the House before it would meet, and on the availability of report text to the committee, that period often was measured by a matter of hours, as the committee informally received an electronic text, convened during a recess of the House, reported the special order waiver, and the House then reconvened for the filing of the rule and for adjournment of the House until the next legislative day at the previously set time, which could be the same calendar day within hours or even minutes as the day of filing. In the 112th Congress in 2011, the *Congressional Record* printing requirement was supplemented to provide that electronic availability on a proper website of the signed conference report would begin the three-day count.

Recommittal. A motion to recommit a conference report may not instruct House conferees to exceed the scope of differences by expanding definitions to include classes not committed to conference or by otherwise including new matter.

Chapters 34–40.

These chapters were separately published as volume 17 of *Deschler-Brown-Johnson Precedents* in 2011 covering a period 1928–2006. For example, in chapter 34 (Constitutional Amendments), a law, the Budget Control

Act of 2011 (Pub. L. No. 112–25, sec. 201), separately treated in chapter 41 in this volume, required a vote in both Houses by a date certain (December 31, 2011) on an unspecified joint resolution proposing a balanced budget amendment. The Act did not alter the procedures for taking up such a measure in the Senate, and therefore that body was not required to vote on passage of a constitutional amendment unless the support of 60 Senators could be secured to begin consideration. That vote was taken but was not successful in either House. Failure of both Houses to pass the joint resolution to be submitted to the States for ratification triggered the second of two conditions under which the Budget Control Act would permit an additional increase of the debt ceiling, (the other being an expedited procedure for disapproval of a presidential submission).

In chapter 36 (Ceremonies and Awards), beginning in 2011 and 2013 readings by Members during a session of the Constitution in full were made in order by standing order adopted on opening day.

House-Senate Adjournments for Differing Periods. The two Houses for the first time in 2010 adopted separate concurrent resolutions of adjournment on different days for the "August recess," with separate recall authority conferred on the Speaker and Senate Majority Leader respectively, where it appeared that the Senate might not clear a combined concurrent resolution including its own adjournment in time for the House's earlier adjournment. The Speaker exercised the recall authority and the House was reconvened for a one-day session in 2010. The Senate Majority Leader then exercised his own recall authority and the Senate was reconvened for a one-day session two days later. In 2011, the two Houses adjourned for an "August recess" to meet pro forma every fourth day but not to conduct legislative business, in order to prevent the President's "recess appointments" during a formal Senate adjournment for that period. In 2012, another series of Senate pro forma sessions at the end of the first session prompted the President to assert that the Senate had "adjourned" since it could conduct no business for a month, and to submit several controversial executive "recess appointments." Litigation ensued and the Speaker together with the Senate Minority Leader submitted an amicus brief challenging the President's recess appointments to the NLRB in 2012 (*NAM v. NLRB*, case no. 12–05086 (D.C. Cir. 2012)). In 2012, the two Houses returned to utilization of a concurrent resolution of adjournment for an "Easter recess," following informal agreement that there would be no "recess appointments" during that period by the President. Nevertheless, the House rejected a Senate adjournment resolution providing for an August adjournment in 2012, and was forced to meet pro forma until the matter was resolved by adoption of a new Senate resolution at a pro forma session several days later.

Sine Die; Where Required or Prohibited by Law. In a precedent in 1985 also contained in chapter 41, the Chair held that a *sine die* adjournment concurrent resolution offered from the floor by a minority Member which conditioned *sine die* adjournment upon adoption of a (second) budget resolution by both Houses was not privileged. In 2012, the House in the second session of the 112th Congress adjourned sine die without motion pursuant to declaration of the Chair, at four minutes prior to the expiration of the constitutional term (the Senate having adjourned sine die by motion on the previous day).

Chapter 41—Budget Process.

This chapter accompanies the publication of this appendix. It covers a period beginning in 1974—the date of the enactment of the Congressional Budget Act—through the end of the 112th Congress. Its precedents, forms and Parliamentarian's analysis over that entire period need not be further previewed in this appendix.