

Committee on Rules Legislative Process Program

Section 4 – *House Floor Procedure and Rules*

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The Rules of the House

Section 4, chapter 1 of 5

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The Rules of the House

Section 4 chapter 1 of 5

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Sources of Rules and Procedure for the House:

The operation of the House is governed primarily by the Rules of the House. The Constitution specifically allows each House to determine the rules of its proceedings. In addition, House procedure is governed by the Constitution, statute, resolutions of the House, and Jefferson's Manual. Interpretations of the written sources of House rules have been compiled into a vast body of precedents. Custom and tradition fill gaps in the written rules and precedent. Committees, the Democratic Caucus and the Republican Conference all have their own sets of rules.

The Constitution

For the purposes of a House staff person, some of the provisions of the Constitution most relevant to the operation of the House and to the House's role in the Federal government include:

Vesting Clause –

Article I, §1: *All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.*

This provision is relevant, for example, when the House considers measures that could be seen as providing for delegation of legislative functions to other branches of government. For example, the Supreme Court struck down the Line Item Veto Act of 1996 on the grounds that giving the President the power to remove individual provisions of a bill was an unconstitutional delegation of the Congress' power to the President.

It is also relevant when trying to find the legal basis for the power of Congress to conduct investigations. When Congress subpoenas a witness, for instance, what obliges a witness to comply? In a line of cases, the Supreme Court has held that the Constitutional power to legislate or appropriate in an area of policy includes the power to investigate.

House Officers –

Article I, §2, clause 5: *The House of Representatives shall chuse their Speaker and other Officers.*

While it would take a constitutional amendment to do away with the position of Speaker, other officer positions can be created and eliminated by the House as it sees fit.

Quorum to Do Business –

Article I, §5, clause 1: *[A] Majority of each [House] shall constitute a Quorum to do Business.*

This clause specifically sets out a formula for determining a quorum in the House. However, when the House resolves itself into the Committee of the Whole, it is effectively holding a meeting of a House committee that just happens to be composed of all the House's Members. The standing rules of the House establish a different quorum for this committee.

Note that some have raised questions about the application of this constitutional provision and its relationship with clause 5(c) of House rule XX, which lays out procedures for conducting the business of the House with a "provisional quorum" in the aftermath of a catastrophic event that results in the apparent inability of the House to establish a quorum because of the inability of a number of Members to attend the proceedings of the House.

Rules of Proceedings –

Article I, §5, clause 2: *Each House may determine the Rules of its Proceedings.*

This broad power given to the House in the Constitution is the source of authority for much of the House's procedural activity. See Chapter 50, §1 of House Practice for more information on this subject. It is because of this clause in the Constitution that the House (and the Senate) has the power to alter or suspend the operation of statutory provisions that set rules for the House's proceedings; no statute can strip the House of a power given to the House by the Constitution.

Yeas and Nays –

Article I, §5, clause 3: *[T]he Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.*

The implication of this clause is that, while in most respects the House can decide for itself how to conduct its business, roll call votes will always be available if one of five Members present demand them. The House rules specify other ways in which Members can obtain a recorded vote, but this one method comes directly from the Constitution.

Origination Clause –

Article I, §7, clause 1: *All Bills for raising Revenue shall originate in the House of Representatives.*

House Practice, Chapter 4, §2 discusses the inclusion of appropriations measures in the Constitution's reference to "bills for raising revenue":

The House has traditionally taken the view that this prerogative encompasses the sole power to originate all general appropriation bills. Deschler Ch 25 Sec. 13. On more than one occasion, the House has returned to the Senate a Senate bill or joint resolution appropriating money on the ground that it invaded the prerogatives of the House. Deschler Ch 13 Sec. Sec. 20.2, 20.3. In 1962, when the Senate passed a joint resolution continuing funds for the Department of Agriculture, the House passed a resolution declaring that the Senate's action violated article I, section 7 of the Constitution and was an infringement of the privileges of the House. Deschler Ch 13 Sec. 20.2. In support of the view that the House has the sole power to originate appropriation bills, it has been noted that at the time of the adoption of the Constitution the phrase "raising revenue" was equivalent to "raising money and appropriating the same." 62-1, The Supply Bills, S. Doc. No. 872.

BLUE-SLIPPING: THE ORIGINATION CLAUSE IN THE HOUSE OF REPRESENTATIVES

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Article I, Section 7, clause 1 of the U.S. Constitution is known generally as the Origination Clause because it requires:

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

As generally understood, this clause carries two kinds of prohibitions. First, the Senate may not originate any measure that includes a provision for raising revenue, and second, the Senate may not propose any amendment that would raise revenue to a non-revenue measure. However, the Senate may generally amend a House-originated revenue measure as it sees fit.

The House's primary method for enforcement of the Origination Clause is through a process known as "blue-slipping."¹ Blue-slipping is the term applied to the act of returning to the Senate a measure that the House has determined violates its prerogatives as defined by the Origination Clause. The House takes this action by adopting a resolution stating that a Senate bill [or Senate amendment(s) to a non-revenue House bill] "in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill [or such bill with the Senate amendment(s) thereto] be respectfully returned to the Senate with a message communicating this resolution." This process is called blue-slipping because historically the resolution returning the offending bill to the Senate is printed on blue paper. This process is provided for under House rule IX, clause 2(a)(1), which states:

A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or *offered as privileged under clause 1, section 7, article I of the Constitution* [emphasis added], shall have precedence of all other questions except motions to adjourn.

Any Member of the House may offer such a resolution, but normally it is the Chairman of the Ways and Means Committee who would do so, although another member of the committee may be designated. Consideration of the resolution takes place in the House of Representatives under the one-hour rule. Clause 2(a)(2) of House rule IX further provides:

The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

Because enforcement of the Origination Clause in the House is based on a constitutional privilege of the House, it is not subject to restrictions based on timeliness as points of order based on House rules would be. The House can assert its privilege at any time it is in possession of the bill and related papers (that is, anytime the actual documents are not physically in the possession of the Senate or a conference committee). The House is not limited to enforcing its prerogative through blue-slipping a measure upon its initial receipt from the Senate or during its consideration on the House floor.

Historically, the House has used a variety of methods to enforce the Origination Clause. On a number of occasions the House has chosen to ignore a Senate passed bill, and instead taken action on a corresponding House bill. The House may also refer a questionable Senate measure to a committee. In such instances, a committee may choose simply to report a House bill, rather than consider the Senate bill further. The House may also decide to use a conference committee as a venue for deciding Origination Clause questions. It may do so by having the subject committed to conference, or it may determine that an offending provision can be removed in conference without having to take the formal step of blue-slipping. Such an accommodation would not prevent the House from enforcing its prerogatives through blue-slipping after a conference if the offending provision remained in the measure.

¹ The term "blue-slipping" is also sometimes used in an unrelated sense by the Senate in connection with the nomination of federal judges.

The Constitution does not provide specific guidelines as to what constitutes a bill for raising revenue. What constitutes "a bill for raising revenue" is therefore a question of interpretation. The precedents and practices of the House apply a broad standard and construe the House's prerogatives broadly to include any "meaningful revenue proposal." This standard is based on whether the measure in question has revenue affecting potential, and not simply whether it would directly raise or lower revenues. Examples of legislation for which this standard would be applicable would include not only legislation to make changes in the tax code directly, but also legislation involving any fees not intended as payment for a specific government service, as well as any change in import restrictions because of their potential impact on tariff revenues.

For additional information on the Origination Clause, see *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno at <http://apps.crs.gov/products/rl/pdf/RL31399.pdf>.

Powers of Congress – Article I, §8

Section 8 of clause 18 contains many grants of powers to Congress. Some are specific, such as the power to collect taxes, establish post offices or declare war. Some are extremely broad, such as the power to "provide for the common Defence and general Welfare of the United States," "to regulate Commerce with foreign Nations, and among the several States" and "to make all Laws which shall be necessary and proper for carrying into Execution" the other powers given by the Constitution to the legislative branch and the rest of the Federal government.

Note that clause 3(d) of House rule XIII requires committee reports on bills and joint resolutions to include a reference to the specific constitutional provision granting Congress the power to pass the reported legislation. If you read committee reports, you will frequently see references to constitutional provisions in Article I, §8.

Appropriations Power – Article I, §9, clause 7:

No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.

Terms of Representatives –Amendment XX, §1:

[T]he terms of Senators and Representatives [shall end] at noon on the 3d day of January.

Assembling of Congress – Amendment XX, §2:

The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

For relevant House precedents and broader, more in-depth discussion regarding the constitutional provisions above, and others, see the annotated Constitution printed in the front of the House Rules and Manual or CRS' "United States Constitution: Analysis and Interpretation (Constitution Annotated)" at: <http://www.crs.gov/analysis/Pages/constitutionannotated.aspx> .

Rule-Making Statute

House Practice, Chapter 50, §1 says of rule-making statutes:

In some cases, Congress has enacted statutes setting forth rules and procedures to be followed when the House considers certain kinds of legislation, for example, the Congressional Budget and Impoundment Control Act of 1974. Such statutes are enacted as an exercise of the rule-making power of Congress, are reincorporated by reference in the preface of the resolution adopting the rules of each House, and are carried in the House Rules and Manual. Manual Sec. 1127-1130; Deschler Ch 5 Sec. 3.

Chapter 50, §4 says of changing or waiving statutory rules:

Pursuant to its authority under article I, section 5 of the Constitution, the House may change or waive the rules governing its proceedings. This is so even with respect to rules enacted by statute. Manual Sec. 857.

Note that this is in contrast to virtually any other provision of statutory law: once a statute is enacted, it normally takes enactment of a subsequent statute to change its effect.

Examples of statutory provisions enacted as an exercise of the House and Senate's power to make their own rules can be found in the back of the House Rules and Manual. Among the statutes excerpted there are:

- The Legislative Reorganization Act of 1946
- The Congressional Budget Act of 1974 and several subsequent statutes amending the Act
- The Budget Enforcement Act of 1990
- The War Powers Resolution
- a number of trade-related and "fast track" provisions
- The Defense Base Closure and Realignment Act of 1990

In almost every instance, rule-making provisions in statute are designated as such in the text of the statute itself.

Standing Rules of the House

The standing rules of the House from one Congress do not carry over to the next Congress. New rules are adopted on the first day of each Congress and govern the operation of the House for the rest of that Congress unless the Constitution, statute or a resolution passed by the House say otherwise.²

The rules lay out how the House handles everything from the powers of the Speaker, to the decorum of Members, to how bills are introduced and make their way through committees to get to the Floor, to ethics rules for Members and staff, etc.³

When seeking an answer to a question about procedure in the House, the two places to start (other than calling the Parliamentarian's Office) are the House Rules and Manual, an annotated version of the rules, and House Practice. Although the rules as printed in the Manual take up almost 1,000 pages, the rules without annotation (available in booklet form from the Clerk's Office) are just over 50 pages long. Of course, the hundreds of pages of annotations are indispensable for actually understanding how a rule is applied. Keep in mind, however, that the House Rules and Manual is only printed once per Congress and that during that Congress the rules or precedents may change, so the standing rules found in the Manual may not always be 100% up-to-date. Likewise, the House Practice was last published in the 108th Congress, so changes to rules and precedents since its publishing are not reflected in that book.

² See the "Rule Adoption: Opening Day" section below for more on adoption of the opening day rules package, and on resolutions that alter the rules temporarily – such as special rules from the Rules Committee – or for the duration of the Congress.

³ See "A Quick and Partial Tour of the Standing Rules of the House" at the end of this packet for a brief overview of the Rules of the House.

Parliamentarian's Annotations⁴

Annotations prepared by the House parliamentarian appear throughout the *House Rules and Manual*. These annotations provide useful information about the history and contemporary application of specific provisions of each parliamentary reference source (e.g., clause of a House rule) compiled in the *Manual*. Citations to important precedents are presented in parentheses throughout the annotations. These citations, which refer the reader to different publications containing precedents, appear in the following format:

- *Congressional Record*: the date and (except in the case of some very recent citations) the *Congressional Record* page number (e.g., Jan. 29, 1986, p. 684). Some citations also provide additional information, such as the number of the bill involved in the precedent.
- *Hinds' and Cannon's Precedents*: a roman numeral indicating the volume number, and the section number (e.g., V, 5763).
- *Deschler's Precedents* or *Deschler-Brown Precedents*: the publication's shortened title, volume number, chapter number, and section number (e.g., *Deschler-Brown Precedents*, vol. 10, ch. 28, sec. 4.26).
- *Procedure in the U.S. House of Representatives*: the publication's title ("Procedure" is used), chapter number, and section number (e.g., *Procedure*, ch. 5, sec. 8.1).
- Pronouncements by the Speaker: the name of the Speaker, the date, and (except in very recent instances) the *Congressional Record* page number (e.g., Speaker O'Neill, Mar. 2, 1978, p. 5272).
- *United States Code* by title and section (e.g., 2 U.S.C. 287); and
- The *United States Reports*, by volume and page (e.g., 395 U.S. 486).

The discussion of precedents in the...annotations has great practical value for several reasons. First, it allows the reader to see the relationship between the operation of specific clauses in the reference source annotated and the precedents. Second, because the discussion is updated each time the *House Rules and Manual* is published, it summarizes some important precedents that are not discussed in other publications containing precedents. (These publications are described later in this report.) Last, the citations provided in parentheses can be a time-saving research tool for readers seeking precedents related to a specific clause of House rules or of the other parliamentary reference documents included in the *House Rules and Manual*.

Joint Rules

Chapter 50, §1 of House Practice says of joint rules of the House and Senate, "[j]oint rules, although in common use until 1876, are rarely used today except to govern a joint session to count electoral votes. Manual Sec. 220; Deschler Ch 10 Sec. 2.6."

With regard to conference committees, although the House and Senate each have their own single-chamber rules governing the process of going to conference to resolve differences with the other chamber, and governing the consideration of conference reports on the Floor, "[t]here are no formal rules that outline how conference meetings are to be organized," and informal practice governs much of the committee's operation. Likewise, "[f]ew formal rules guide the bargaining process, and they only may be invoked through points of order when the conference report (the compromise accord) is submitted to the House and Senate for consideration." (CRS Report 98-708 GOV)

⁴ Thomas P. Carr, "Parliamentary Reference Sources: House of Representatives", CRS Report RL 30787, Updated April 4, 2008, p. 7-8.
<http://www.congress.gov/erp/rl/html/RL30787.html>

Separate and Special Orders

The Constitution and the standing rules of the House both recognize the ability of a majority in the House to change the rules of the House. As discussed above, this can be accomplished through an amendment to the standing rules. It can also come in the form of a separate, stand-alone resolution adopted by the House, existing alongside the standing rules. For example, H.Res. 491 in the 110th Congress, adopted on June 18, 2007, governs earmark disclosure in concert with the standing rules.

The operation of rulemaking provisions in statute, standing rules, and separate orders can also be temporarily altered by “special orders” or “special rules.” Special rules are normally privileged resolutions reported from the Rules Committee. They are frequently used to set the procedures by which a specific measure is considered on the House Floor, change the schedule of the House, or resolve differences between conflicting versions of a bill reported by different committees. Special rules do not have any effect unless and until adopted by the House.

Precedent

Chapter 50, §1 of House Practice discusses rules based on precedent and custom:

As Asher Hinds noted in his work on the precedents of the House, much of what is known as parliamentary law is not part of the formal written rules of the House but springs from precedent or long-standing custom. 1 Hinds, Introduction, p iii. Such precedent may be invoked to resolve a procedural question in the absence of an express written rule on the subject. Deschler Ch 5 Sec. 3; see also 6 Cannon, Preface, p v; Deschler, Preface, pp iii-xiv. More frequently, the precedents of the House are used to show the scope and application of one of its formal rules. A noteworthy example is the House germaneness rule, which is set forth in less than a sentence in rule XVI clause 7, yet has been interpreted through thousands of precedents since its adoption in 1789. Manual Sec. Sec. 928-940; Deschler-Brown Ch 28.

The precedents of the House, which are based primarily on the rulings of the Speaker or Chairman of the Committee of the Whole, are compiled in Hinds' Precedents (1907), Cannon's Precedents (1936), Deschler's Precedents (1977) and Deschler-Brown Precedents.

Published Precedents of the House⁵

Several publications provide information about House precedents...[S]elected precedents are discussed in the parliamentarian's annotations in the *House Rules and Manual*. Moreover, procedural floor exchanges that establish House precedents are recorded in the *Congressional Record* on the date when the precedent-setting exchange occurred...

Members needing to find precedents to support or rebut an argument might wish to seek the advice of Office of the House Parliamentarian (5-7373).

Hinds' and Cannon's Precedents of the House of Representatives of the United States

Hinds' and Cannon's Precedents of the House of Representatives of the United States (hereafter referred to as Hinds' and Cannon's Precedents) is an 11-volume series containing selected rulings of the chair made, and other precedents established, between 1789 and 1936. The publication provides valuable coverage of the historical origins and evolution of House procedures from 1789 to 1936. Volumes 1-5, titled Hinds' Precedents and published in 1907,

⁵ Richard S. Beth and Megan Suzanne Lynch, “Parliamentary Reference Sources: House of Representatives”, CRS Report RL 30787, Updated April 4, 2008 p. 18-19.
<http://www.congress.gov/erp/rl/html/RL30787.html>

were written by Asher Hinds (clerk at the Speaker's table for many years, and a Representative from Maine from 1911 until 1917). Volumes 6-11, titled Cannon's Precedents and published in 1936, were prepared by Clarence Cannon (House parliamentarian from 1915 to 1920, and a Representative from Missouri from 1923 to 1964). Volumes 6-8 of Cannon's Precedents are organized around the same topics as volumes 1-5 of Hinds' Precedents, and essentially serve as supplements. Volumes 9-11 of Cannon's Precedents provide indexes to the entire 11-volume set. The precedents are numbered sequentially throughout Hinds' Precedents, and similarly throughout Cannon's Precedents. Each precedent (or group of precedents) appears with a headnote in bold type indicating the principle established by the precedent. The procedural exchanges establishing the precedent are then summarized, with text and citations to the Congressional Record often provided. (Hinds' Precedents also furnishes citations to the Journal and predecessors of the Record.) Information about specific procedural topics can be located using the detailed table of contents in each volume or the indexes (volumes 9-11), which present the headnotes of relevant precedents according to procedural topics. Cannon's Procedure, discussed in the next section, also serves as an index to Hinds' and Cannon's Precedents. While Hinds' and Cannon's Precedents is an important reference source for an extensive understanding of House parliamentary procedure, readers unversed in the publication's historical context may find the 11-volume set to be of limited practical value for contemporary House practices. Hinds' and Cannon's Precedents is very useful, however, when other reference sources cite a specific precedent in the 11- volume set. These citations usually provide volume and section numbers (e.g., vol. VIII, sec. 2661).

Deschler's Precedents of the U.S. House of Representatives

The most significant rulings of the chair, as compiled by Lewis Deschler, House parliamentarian from 1928 to 1974, and his successor, William Holmes Brown, are presented in a series of volumes known as *Deschler's Precedents*.⁶ Sixteen volumes have been published to date. The formal title for volume 10 and subsequent volumes is *Deschler-Brown Precedents*, in recognition of work done by William Holmes Brown, parliamentarian of the House from 1974 to 1994. Preparation of additional volumes is being continued by the former House parliamentarian, Charles W. Johnson III...The volumes published so far cover through chapter 33, "House-Senate Conferences."...*Deschler's Precedents* provides not only statements of the principles represented by precedents, but also descriptions and facts of the procedural exchanges in which they are embodied. Each precedent in *Deschler's Precedents* is assigned a section number and carries a headnote in bold type that summarizes the principle illustrated by the precedent. The precedent is described in a sentence or two, and for many precedents, the full text of the procedural exchange that established the precedent is provided, with a *Congressional Record* page citation. In addition, many chapters in *Deschler's Precedents* contain introductory sections that describe the general principles related to the House rule or practice under discussion, with references to important precedents. Lastly, a "parliamentarian's Note" follows a few, selected precedents to direct the reader to other parliamentary reference sources, or to clarify the principle established by the precedent. While there is not yet a consolidated index covering all volumes, each chapter includes an "Index to Precedents" contained in that chapter. This index directs readers to the relevant section number for each precedent.

The House Rarely Disregards Its Precedents

The published precedents of the House set forth how the House has interpreted and applied its rules. In practice, the published precedents both complement and supplement the rules of the House. The close interplay between the precedents and the chamber's rules is such that it may be necessary to consult the published precedents for guidance on how each rule has been applied. Historically, the House rarely disregards its precedents. Precedents are analogous to case law in their effect. Just as attorneys in court will cite previous judicial decisions to support

⁶ *Deschler's Precedents of the U.S. House of Representatives* (in 16 volumes to date; volumes 10-16 are formally titled *Deschler-Brown Precedents of the U.S. House of Representatives*), 94th Cong., 2nd sess., H.Doc. 94-661, 94th Cong., 2nd sess. (Washington: GPO, 1977-).

their arguments, Members will cite precedents of the House to support their point of order, or to defend against one. Similarly the chair will often support a ruling by citing the decisions of predecessors. In this way, precedents influence the manner in which current House rules are applied by relating past decisions to the specific case before the chamber. Most precedents are formed when the chair rules on a point of order, deciding either to sustain or overrule it. As mentioned in the previous section, the chair's ruling is rarely appealed. Precedents also can be created when the chair responds to a parliamentary inquiry, or when the House makes a decision by a majority vote (e.g., to adopt a certain type of special rule, to accept a decision of a committee). Precedents do not carry equal weight. Those based on the chair's disposition of points of order or on a decision of the House by majority vote have more weight than those based on the chair's response to parliamentary inquiries. In addition, more recent precedents generally have greater weight than earlier ones, and a precedent that is part of an evolved pattern will have more weight than one that is isolated in its effect. Moreover, all precedents must be evaluated in the historical context of the rules and practices at the time they were established. Because of the need to consider these various principles, Members needing to find precedents to support or rebut an argument might wish to seek the advice of the House parliamentarian (5- 7373).

Jefferson's Manual

Thomas Jefferson wrote Jefferson's Manual of Parliamentary Practice, based on the operation of the British House of Commons in his time, as a guide for procedure in the Senate. Although the Senate does not use Jefferson's Manual, the House has adopted it as a source of supplementary authority, to govern in certain situations. The Manual sets out rules regarding subjects such as privilege, quorum, committees, motions, bills, etc.

House rule XXIX provides that the provisions of Jefferson's Manual "shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House."

Speaker's Announced Policies

The Speaker customarily announces certain policies at the beginning of a Congress. Below is an excerpt from the Congressional Record from January 5, 2007, beginning on page H59, in which Speaker Pelosi made such announcements. To read the actual content of the policies, see the Congressional Record for that day:

ANNOUNCEMENT BY THE SPEAKER -- (House of Representatives - January 5, 2007)

The SPEAKER. The Chair customarily takes this occasion at the outset of a Congress to announce her policies with respect to particular aspects of the legislative process. The Chair will insert in the RECORD announcements concerning:

- first, privileges of the floor;
- second, introduction of bills and resolutions;
- third, unanimous-consent requests for the consideration of legislation;
- fourth, recognition for 1-minute speeches;
- fifth, decorum in debate;
- sixth, conduct of votes by electronic device;
- seventh, use of handouts on the House floor; and
- eighth, use of electronic equipment on the House floor.

These announcements, where appropriate, will reiterate the origins of the stated policies.

The Chair intends to continue in the 110th Congress the policies reflected in these statements. The policy announced in the 102nd Congress with respect to jurisdictional concepts related to clause 5(a) of rule XXI--tax and tariff measures--will

continue to govern but need not be reiterated, as it is adequately documented as precedent in the House Rules and Manual.

Without objection, the announcements will be printed in the RECORD.

There was no objection.

Memorandums of Understanding Regarding Committee Jurisdiction⁷

Standing committees often develop “memorandums of understanding” (sometimes referred to as “letters of agreement”) which explain an agreement between committees about how jurisdiction over specific policy issues will be divided. These memorandums, which are usually prepared at the beginning of a new Congress, are addressed to the Speaker of the House in the form of a letter from the involved committee chairmen. In effect, a memorandum of understanding advises the Speaker on the referral of measures concerning policy issues when the jurisdictional mandate of committees may be unclear or overlap. The Speaker decides the referral of legislation with the assistance of the House parliamentarian. Referral decisions are based as much as possible on the jurisdiction of standing committees set forth in rule X and relevant precedents. In practice, the Speaker and the House parliamentarian will honor memorandums of understanding in deciding the referral of legislation. These memorandums of understanding are therefore an important parliamentary reference source for questions about jurisdiction over specific policy issues.

It could be argued that memorandums of understanding increased in importance in the 104th Congress because of rules changes adopted by the House. For example, three standing committees were abolished, and their jurisdiction was transferred to other standing committees. As a result, some committees developed memorandums of understanding about jurisdiction over issues that were previously handled by abolished committees... Another rules change eliminated joint referrals, and provided that the Speaker designate “a committee of primary jurisdiction” when referring measures to more than one committee...Hence, memorandums of understanding developed in the 104th Congress and since have sometimes specified which committees should have “primary jurisdiction” over particular issues.

Some memorandums of understanding are inserted in the *Congressional Record*, especially at the start of a new Congress, while others are not made available publicly. [Note that memorandums not made available publicly have no precedential value.]

Custom and Tradition

Certain practices of the House have arisen by custom and tradition, rather than through formal rule-making. In his introduction to *Hinds’ Precedents*, Asher Hinds explained the value and role of precedent and custom:

The value of precedents in guiding the action of a legislative body has been demonstrated by the experience of the House of Representatives for too many years to justify any arguments in their favor now. “We have no other means of building up parliamentary law, either in the Mother Country or here,” said a great lawyer, who was also an experienced legislator, ‘except by instances as they arise and treatment of them and disposition of the law and of the good reasons that should govern these considerations.’ And a great legislator, who had served a lifetime in the House of Representatives and the Senate⁸ concluded that “the great body of the rules of all parliamentary bodies are unwritten law; they spring up by precedent and custom; these precedents and customs are this day the chief law of both Houses of Congress.”

There is no established list of practices in the House that have arisen by custom and tradition, but examples include:

⁷ Richard S. Beth and Megan Suzanne Lynch, “Parliamentary Reference Sources: House of Representatives”, CRS Report RL 30787, Updated April 4, 2008, p. 34.
<http://www.congress.gov/erp/rl/html/RL30787.html>

⁸ John Sherman, in the Senate. First session Forty-fourth Congress, Record, p. 433.

- the yielding of 30 minutes of time by the Majority to a Minority Member of the Rules Committee during debate of a special rule;
- giving leaders of both parties extended time to speak when they are recognized – without counting the time consumed against the time controlled by the Member managing debate time;
- the colloquy between the Majority Leader and the Minority Whip at the end of a legislative week, in which the two leaders discuss the legislative agenda for the upcoming week. While unanimous consent is obtained by the Minority Whip to speak for one minute, the two leaders are customarily given extended time to engage in the colloquy;
- when amendments are offered to a bill from the Floor in the Committee of the Whole, priority of recognition by the Chair to Members of the committee that reported the bill (see House Practice, Chapter 46, §14).

Committee Rules

Each committee adopts its own rules at its first meeting of each Congress. These rules may govern subjects such as the circumstances under which the committee will issue a subpoena, the existence of subcommittees, and the maintenance of committee records.

Chapter 11, §15 of House Practice describes the role of each committee's rules:

House committees are required to follow the procedures prescribed by the rules of the House "so far as applicable." rule XI clause 1(a); Manual Sec. 787. They are also bound by those provisions of Jefferson's Manual that are consistent with the rules of the House. Manual Sec. Sec. 792, 1104. Finally, they are bound by their written rules which are adopted by each standing committee under rule XI clause 2(a). Manual Sec. 791...

Clause 1(a)(2) of rule XI states that each subcommittee of a committee is a part of that committee and subject to its authority, direction, and rules...

A point of order does not ordinarily lie in the House against consideration of a bill by reason of defective committee procedures occurring before the time the bill is ordered reported to the House. Manual Sec. 792. Thus, a point of order that a measure was ordered reported in violation of a committee rule requiring advance notice of the committee meeting will not lie in the House--the interpretation of committee rules being within the cognizance of the committee and not the House. Manual Sec. 791.

On the other hand, if a committee procedure directly violates a rule of the House, or if a rule specifically permits, a point of order may be raised in the House, which may result in the recommittal of the bill. Manual Sections 792, 799. For example, a point of order against a measure on the ground that the hearings on such measure were not properly conducted as required by the rules may be raised in the House by a committee member if the point of order was timely made and improperly disposed of in committee. Clause 2(g)(5) of rule XI.

Caucus and Conference Rules

The Democratic Caucus and Republican Conference each adopt their own internal rules for each Congress, typically during the period between the elections in November and opening day in January.

Because the Caucus and Conference decide matters such as who is Majority and Minority Leader, Whip and Caucus/Conference Chair, and play a central role in deciding who chairs and sits on standing and select committees, their rules have an important impact on the operation of the House.

Rule Adoption: Opening Day

The adoption of a rules package is necessary in the House each Congress because the House's constitutional power to determine the rules of its proceedings cannot be restricted by the rules or statutory enactments of a preceding House. (See House Practice, Chapter 5, §6)

House Practice, Chapter 5, §7 describes the rules the House operates under on the opening day of Congress, prior to the adoption of the new Congress' standing rules:

Before the adoption of formal rules, the House operates under general parliamentary law, as modified by certain customary House rules and practices and by portions of Jefferson's Manual. Manual Sec. 60; 5 Hinds Sec. Sec. 6761-6763; 8 Cannon Sec. 3386.

Statutes incorporated into the rules of the prior Congress do not control the proceedings of the new House. Deschler Ch 1 Sec. 10.1. They must be re-adopted as part of the rules of the new House in the resolution adopting those rules.

Before the adoption of rules by the House, rules that embody practices of long-established custom will be enforced as if already in effect. 6 Cannon Sec. 191. Thus, [for example,] before adoption of the rules, the Speaker may maintain decorum by directing a Member who has not been recognized in debate beyond an allotted time to be removed from the well or by directing the Sergeant-at-Arms to present the mace as the traditional symbol of order. Manual Sec. 60.

Chapter 50, §1 of House Practice discusses the adoption of the standing rules:

[T]he House ordinarily will adopt the rules applicable in the previous Congress with such amendments as it considers necessary. Deschler Ch 1 Sec. 10.5. Such rules are adopted or amended pursuant to a simple resolution that is called up as privileged and debated under principles of "general parliamentary law." See Assembly of Congress [Chapter 5 of House Practice].

Changes in the rules from the prior Congress normally emanate from the conference or caucus of the party that commands a majority and thus has the responsibility for organizing the House...

When a member of the majority party offers a resolution providing rules for the new Congress:

- The resolution is debatable for one hour. [The majority party manager traditionally yields half the time to the minority manager "for purposes of debate only" to discuss an alternative proposal. See CRS Report RL30725]
- The resolution is not subject to amendment unless the previous question is rejected or the manager of the resolution yields for an amendment. Deschler Ch 1 § 10.9.
- A motion to refer (with instructions) is in order before debate begins, but this motion is subject to being laid on the table. Manual § 60.
- A motion to commit is in order pending or following the ordering of the previous question, which is the prerogative of the minority but the proponent need not qualify as opposed to the motion; and it is not debatable. Manual § 60; 5 Hinds § 5604.
- A majority vote is required to adopt a resolution adopting rules for a new Congress.

The right of the House to determine the rules of its proceedings may not be impaired by repetition of dilatory motions. 5 Hinds § 5707.

Chapter 5, §6 of House Practice says of the adoption of a rules package on opening day:

Separate orders also may be adopted in the same resolution. Separate orders are not amendments to the standing rules but have the same force and effect for a Congress or portion thereof. See, e.g., 108-1, H. Res. 5, Jan. 7, 2003, p ____.

House Rules Are Generally Not Self-Enforcing⁹

The presiding officer (the Speaker when in the House; the chairman when in Committee of the Whole) does not always call to the chamber's attention that a violation of House rules is taking place. The House often can violate its procedures unless a Member makes a point of order that the proposed action violates a rule or precedent of the House, or a source of procedure that has the same standing as a House rule (e.g., rule-making statute, a special rule). When a point of order is raised, the chair makes a ruling, and often provides an explanation of the parliamentary logic behind the ruling. Rulings of the Chair on a point of order can be reversed by a majority vote of the full House, but in practice these rulings are seldom reversed.

It should be noted that parliamentary actions undertaken on the basis of an informal practice, or rules of a party caucus or conference, are not enforceable on the House floor. While informal practices and party caucus and conference rules are sources of House parliamentary procedure, they are not produced through an exercise of the constitutional rule-making authority of the House, and hence do not have the same standing as the rules of the House. Rules of each party's caucus or conference are created and enforced by one party, and informal practices evolve over the years as custom. Rules of procedure adopted by each House committee generally cannot be enforced on the House floor, though they can be enforced in the committee that adopts them.

⁹ Richard S. Beth and Megan Suzanne Lynch, "Parliamentary Reference Sources: House of Representatives", CRS Report RL 30787, Updated April 4, 2008, p. 3. <http://www.congress.gov/erp/rl/html/RL30787.html>

Changing or Waiving Rules¹⁰

Generally

Pursuant to its authority under article I, section 5 of the Constitution, the House may change or waive the rules governing its proceedings. This is so even with respect to rules enacted by statute. *Manual* § 857. Once the rules have been adopted at the convening of the House in a new Congress, further amendments to the rules are generally implemented by resolution reported from the Committee on Rules. A rule may in effect be suspended or modified through the use of certain procedural devices, such as a unanimous consent request. Deschler Ch 5 § 5.

A motion to amend the rules of the House does not present a question of “constitutional” privilege. 8 Cannon § 3377. A question of the privileges of the House may not be invoked to effect a change in the rules of the House or their interpretation. *Manual* § 706; generally, see QUESTIONS OF PRIVILEGE.

The effect of a proposed change in the rules or a proposed special order of business is a matter for debate and not within the jurisdiction of the Chair to decide on a parliamentary inquiry during its pendency. *Manual* § 628; Deschler Ch 5 § 5.12. For the motion to suspend the rules, see SUSPENSION OF RULES.

By Resolution

Amendments to the rules are generally offered in the form of a privileged resolution reported and called up by the Committee on Rules. Such a resolution may not be amended unless the Member in charge yields for that purpose or the previous question is voted down. Deschler Ch 5 § 5.8. The resolution may be considered in the Committee of the Whole pursuant to the terms of a special order reported from the Committee on Rules. Deschler Ch 5 § 5.6.

Although a resolution from the Committee on Rules to amend a House rule is privileged, a resolution offered from the floor to amend a House rule is not privileged for consideration as against a demand that business proceed in the regular order. 8 Cannon § 3377; Deschler Ch 5 § 5.1.

Rule XV clause 2, the discharge rule, has also been used to bring a proposed rules change before the House. *Manual* § 892.

By Unanimous Consent

Minor changes in the standing rules may be considered by unanimous consent. Deschler Ch 5 § 5.2. The House may by unanimous consent waive the requirements of a particular rule unless the rule itself provides that it is not subject to waiver even by unanimous consent. See, e.g., rule XVII clause 7.

¹⁰ Wm. Holmes Brown and Charles W. Johnson, “House Practice: a Guide to the Rules, Precedents, and Procedures of the House” 108th Congress, 2003, p. 826-827 – chapter 50, Sec. 4.

The Standing Rules of the House at a Glance

Although none of the rules of the House are unimportant, outlined below are the rules you should be especially comfortable with in order to understand the legislative process and floor procedure. The list of provisions under each rule below is not exhaustive and is not meant to serve as a substitute for actually reading the standing rules – it is only a quick sketch of the contents of the rules, focusing on clauses and provisions that come up most frequently in the legislative process and omitting entirely many rules, clauses and provisions.

Rule I.—The Speaker

Clause 1: Approval of the Journal.

Clause 5: Empowers the Speaker to decide all questions of order and provides a mechanism for appeal by Members.

Clause 11: Provides that the Speaker appoints Members to select, joint and conference committees, and lays out requirements and guidelines by which the Speaker appoints conferees.

Rule II.—Other Officers and Officials

Rule III.—The Members, Delegates, and Resident Commissioner of Puerto Rico

Clause 2: Prohibits “ghost voting” – the casting of votes on behalf of Members who are not actually present to cast their votes themselves.

Rule IV.—The Hall of the House

Clauses 1 and 2: Outlines admittance to the House and states that the Speaker may not entertain motions to suspend certain rules regarding the use of and admission to the Hall of the House.

Rule V.—Broadcasting the House

Rule VI.—Official Reporters and News Media Galleries

Rule VII.—Records of the House

Rule VIII.—Response to Subpoenas

Rule IX.—Questions of Privilege

Clause 1: Defines questions of privilege as “those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings” and “those affecting the rights, reputation, and conduct of Members, Delegates, or the Resident Commissioner, individually, in their representative capacity only.”

Clause 2: Sets out rules concerning resolutions reported or offered as a question of the privileges of the House.

Rule X.—Organization of Committees

Clause 1: Lays out the legislative jurisdiction of the standing committees of the House.

Clause 2: Lays out the oversight responsibilities of the standing committees.

- Clause 3: Assigns special oversight responsibilities to certain committees.
- Clause 4: Specifies some additional functions of several committees and requires standing committees to submit views and estimates on the President's annual budget proposal.
- Clause 5: Lays out the procedure by which standing committee assignments and chairmanships are determined.
- Clause 10: Sets out rules regarding membership on select and joint committees.
- Clause 11: Establishes the Permanent Select Committee on Intelligence and sets out rules for its composition, jurisdiction, staffing, meetings and activities.

Rule XI.—Procedures of Committees and Unfinished Business

- Clause 1: Specifies that the rules of the House apply to its committees, authorizes investigations by committees, and requires certain reports on the activities of committees.
- Clause 2: Outlines committee procedures.
- Clause 3: Sets out the functions of the Committee on Standards of Official Conduct.

Rule XII.—Receipt and Referral of Measures and Matters

- Clause 2: Lays out the rules governing the Speaker's referral of measures to committees.
- Clause 5: Prohibits bills, resolutions and amendments that establish or express commemorations.
- Clause 7: Lays out the rules governing sponsorship of measures.

Rule XIII.—Calendars and Committee Reports

- Clause 1: Establishes the Union Calendar, House Calendar and Discharge Calendar.
- Clause 2: Sets out the rules concerning filing and printing of reports.
- Clause 3: Requires certain content in committee reports..
- Clause 4: Sets forth availability requirements.
- Clause 5: Grants privilege to certain reports.
- Clause 6: Sets forth procedures governing the Committee on Rules.
- Clause 7: Sets forth procedures governing resolutions of inquiry.

Rule XIV.—Order and Priority of Business

- Clause 1: Sets out the daily order of business.
- Clause 2: Provides for disposal of business on the Speaker's table.
- Clause 3: Provides for consideration of unfinished business.
- Clause 4: Provides for the call of the committees.
- Clause 5: Provides for resolution of the House into the Committee of the Whole.
- Clause 6: Provides that all questions relating to the priority of business shall be decided by a majority without debate.

Rule XV.—Business in Order on Special Days

- Clause 1: Provides for suspensions on Mondays, Tuesdays and Wednesdays, and during the last six days of a session. Limits other motions pending a motion to suspend the rules.
- Clause 2: Provides for discharge motions on the second and fourth Mondays.
- Clause 3: Provides for calling up adverse reports from the Rules Committee on the second and fourth Mondays.
- Clause 4: Sets apart the second and fourth Mondays for District of Columbia business.
- Clause 5: Provides for consideration of bills on the Private Calendar on the first and third Tuesdays.
- Clause 6: Provides for Calendar Wednesdays.

Rule XVI.—Motions and Amendments

- Clause 1: Allows a Member to demand that motions be put in writing. Specifies that dilatory motions may not be entertained by the Speaker.
- Clause 2: Provides for the withdrawal of motions.
- Clause 3: Provides for questions of consideration.
- Clause 4: Sets out the precedence of motions.
- Clause 5: Sets out rules for division of a question.
- Clause 6: Provides for amendment of propositions.
- Clause 7: Requires motions and propositions to be germane to the subject under consideration.
- Clause 8: Sets out rules regarding readings of bills and joint resolutions.

Rule XVII.—Decorum and Debate

- Clause 2: Sets out rules regarding recognition and states the “hour rule.”
- Clause 3: Sets out rules for management of debate.
- Clause 4: Sets out rules for calling a Member to order and taking down words.
- Clause 7: States that the Speaker may not entertain motions to suspend the rule prohibiting Members from bringing to the attention of the House an occupant in the galleries.
- Clause 8: Provides for deletion of unparliamentary remarks from the Congressional Record.
- Clause 9: Provides for secret sessions.

Rule XVIII.—The Committee of the Whole House on the State of the Union

- Clause 2: Provides for resolution of the House into the Committee of the Whole.
- Clause 3: Requires that initial consideration of certain measures take place in the Committee of the Whole.
- Clause 4: Specifies the rules governing the order of business in the Committee of the Whole.
- Clause 5: Provides for reading of measures for amendment and sets out the “five minute rule.”
- Clause 6: Sets forth rules for quorum and voting.
- Clause 7: Provides for dispensing with the reading of an amendment.
- Clause 8: Provides for motions to close debate on amendments, for pre-printing of amendments in the Congressional Record and for special treatment of pre-printed amendments.
- Clause 9: Provides for motions to strike the enacting clause of measures.
- Clause 10: Sets out rules for consideration of budget resolutions in the Committee of the Whole.
- Clause 11: Sets out rules for consideration of amendments to strike unfunded mandates.
- Clause 12: States that the rules of the House are the rules of the Committee of the Whole so far as applicable.

Rule XIX.—Motions Following the Amendment Stage

- Clause 1: Provides for the motion to order the previous question.
- Clause 2: Provides for the motion to recommit.
- Clause 3: Provides for the motion to reconsider.
- Clause 4: Provides that certain measures referred to a committee or reported from committee for printing and recommitment may not be brought back to the House on a motion to reconsider.

Rule XX.—Voting and Quorum Calls

- Clause 1: Sets out procedures for demanding division of a question, provides that a recorded vote will be taken if a request is supported by one-fifth of a quorum and that a tie vote on a question results in the question losing.
- Clause 2: Provides that record votes and quorum calls shall be a minimum of 15 minutes except where other House rules allow otherwise.
- Clause 3: Provides for votes by a call of the roll.
- Clause 4: Provides for votes by the tellers.
- Clause 5: Provides for the compulsion of attendance of absent Members and sets out rules for determining a provisional quorum in the event of catastrophic circumstances.
- Clause 6: Sets forth procedures for obtaining a vote by the yeas and nays in the absence of a quorum.
- Clause 7: Sets forth rules regarding a point of order that a quorum is not present and calls of the House.
- Clause 8: Sets out rules for postponement of proceedings under certain circumstances when a recorded vote or the yeas and nays are ordered, or a vote is objected to under clause 6, and allows five minute voting.
- Clause 9: Specifies circumstances under which electronic voting may be reduced to five minutes.
- Clause 10: Provides that the yeas and nays shall be considered as ordered automatically on the question of passage of a bill or joint resolution, adoption of a conference report, a general appropriations bill, an increase in Federal income tax rates, or final adoption of a budget resolution.
- Clause 11: Sets out rules for ballot votes for elections in the House.

Rule XXI.—Restrictions on Certain Bills

- Clause 1: Provides that all points of order against provisions in a general appropriations bill are automatically considered as reserved.
- Clause 2: Sets forth certain prohibitions concerning appropriations.
- Clause 3: Places limits on measures and amendments concerning transportation obligation limitations.
- Clause 4: Prohibits authorizing committees from reporting measures with appropriations provisions and prohibits amendments containing appropriating language on non-appropriations bills.
- Clause 5: Prohibits committees not having jurisdiction over tax and tariff measures (i.e., committees other than Ways and Means) from reporting measures containing tax or tariff provisions. Prohibits amendments containing tax and tariff provisions on non-tax or tariff bills. Requires a three-fifths vote to pass a measure or amendment raising Federal income tax rates. Prohibits retroactive tax rate increases.
- Clause 6: Prohibits measures and amendments naming public works after sitting Members of Congress.
- Clause 7: Prohibits budget resolutions, amendments thereto, or conference reports containing reconciliation instructions that would result in a reduction of the surplus or an increase in the deficit across specified periods of time.
- Clause 8: Applies Budget Act rules to bills that have not been reported by committees
- Clause 9: Sets forth rules regarding “earmarks.”
- Clause 10: Prohibits the consideration of any legislation affecting direct spending and revenues that has the net effect of increasing the deficit or reducing the surplus; allows for one House-passed measure to pay for spending in a separate House-passed measure if the two are linked at the engrossment stage, and also allows for exemption to pay-as-you-go (also known as “PAYGO”) principles in measures that respond to emergency situations.

Rule XXII.—House and Senate Relations

- Clause 1: Sets out rules governing the privilege of motions to disagree to Senate amendments and request or agree to a conference, and motions to insist on House amendments and request or agree to a conference.
- Clause 2: Provides that motions to dispose of House bills with Senate amendments not requiring consideration in the Committee of the Whole are privileged.
- Clause 3: Specifies that certain Senate amendments to House bills must first be considered in the Committee of the Whole.
- Clause 4: States that when the stage of disagreement has been reached on a measure with House or Senate amendments, a motion to dispose of any amendment shall be privileged.
- Clause 5: Bars House conferees from agreeing to a Senate amendment that contains unauthorized appropriations, authorizing language in an amendment to an appropriations bill, or appropriation language in a non-appropriation measure, except when the House votes to allow the agreement.
- Clause 6: During consideration of a non-tax measure, prohibits House agreement to a Senate amendment that contains tax or tariff language.
- Clause 7: Sets forth certain rules concerning conference reports and motions to instruct conferees.
- Clause 8: Requires a three-day layover for conference reports after they are available to Members in the Congressional Record (except during the last six days of a session), and a two-hour layover after actual copies are available to Members.
- Clause 9: Prohibits inclusion in a conference report of provisions that exceed the scope of the disagreement between the House and Senate.
- Clause 10: Prohibits non-germane matter in a conference report or a Senate amendment and provides a set of procedures to dispose of the non-germane matter.
- Clause 11: Requires that joint explanatory statements for conference reports accompanying tax bills must include a tax complexity analysis, or the chairman of Ways and Means must print an analysis in the Congressional Record.
- Clause 12: Sets forth certain rules for conference committee meetings, process and signing of conference reports.
- Clause 13: Prohibits the consideration of a conference report that has been altered after the time it was signed by conferees.

Rule XXIII.—Code of Official Conduct

Rule XXIV.—Limitations on Use of Official Funds

Rule XXV.—Limitations on Outside Earned Income and Acceptance of Gifts

Rule XXVI.—Financial Disclosure

Rule XXVII.—Disclosure by Members and Staff of Employment Negotiations

Rule XXVIII.—Statutory Limit on Public Debt

- Clause 1: Provides that when the House adopts a budget resolution, it is considered to have also agreed to raise the debt limit by the amount set forth in the budget resolution. (The so-called “Gephardt Rule.”)

Rule XXIX.—General Provisions

- Clause 1: Incorporates by reference the statutory provisions that contain rules for the House. Adopts Jefferson’s Manual as a supplementary source of rules for the

House wherever its provisions do not conflict with the standing rules and other orders of the House.