

# Chapter 16

## Consideration and Debate

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### A. Introductory; Initiating Consideration and Debate

#### § 1. In General; In the House

##### Generally; Initiating Consideration

Whether and how a matter is to be considered depends on many factors—the way it is brought to the floor, the nature and precedence of the proposal, and agreements reached by the leadership and membership on the method of consideration. The House may reject a proposal to consider a matter by voting on the question of consideration. See QUESTION OF CONSIDERATION.

There are four common procedures under which measures may be called up for consideration: (1) special orders of business reported from the Committee on Rules; (2) motions to suspend the rules; (3) unanimous-consent agreements; and (4) standing rules for certain measures reported as privileged under clause 5 of rule XIII. *Manual* §§ 853-868. However, non-privileged matter contained in a measure reported under clause 5 of rule

XIII destroys the privilege of the measure; and consideration must depend on one of the three remaining procedures. *Manual* §§ 854, 855.

House rules expressly preclude introduction or consideration of certain commemorative measures (clause 5 of rule XII), as well as consideration of certain private bills (clause 4 of rule XII) and measures carrying a retro-active Federal income tax rate increase (clause 5(c) of rule XXI).

Generally, questions are not considered on the floor unless reported or discharged from House committees, although rule IX and practices of the House permit the immediate consideration of introduced bills under certain circumstances. §§ 3, 4, 6 *infra*. Certain time periods or “layover” requirements may be a condition precedent to consideration in the House after a committee has reported. See COMMITTEES. If a bill or joint resolution is unreported, clause 11 of rule XXI prevents consideration until the third calendar day on which such measure has been available to Members. For recognition by the Chair to call up measures under the various procedures, see RECOGNITION.

Other factors bearing on consideration include whether the proposal has been referred to the House or Union Calendar or whether the proposal is called up from a particular special calendar, such as the Private Calendar. See § 5, *infra*.

### **Initiating Debate**

As a general rule, debate is not in order until a debatable motion has been offered and stated by the Chair or read by the Clerk. 5 Hinds §§ 4982-4985, 5304. However, debate may be initiated without motion:

- Under a reservation of the right to object to a unanimous-consent request. 4 Hinds § 3058.
- When questions of personal privilege are raised. 3 Hinds § 2546.
- When conference reports are considered, the question on agreeing being regarded as pending. *Manual* § 550; 5 Hinds § 6517.
- When the Committee of the Whole reports its recommendation to the House, unless the previous question is ordered. 4 Hinds § 4896.
- When personal explanations are made by unanimous consent. 5 Hinds § 5064.
- When special orders of business providing for consideration of a measure have been adopted. *Manual* §§ 734, 972.
- When a measure on a special calendar or on a special day has been called up. Rule XV.

## § 2. Order of Consideration

The “daily order of business” is set forth in rule XIV, which specifies the sequence in which certain matters are to be taken up. *Manual* § 869. The order of consideration may be varied by unanimous-consent agreements or by special orders of business reported from the Committee on Rules and adopted by the House. See §§ 3, 6; see also ORDER OF BUSINESS; PRIVILEGED BUSINESS; and SPECIAL ORDERS OF BUSINESS. Indeed, the preface to clause 1 of rule XIV establishes a daily order of business “unless varied by the application of other rules and except for the disposition of matters of higher precedence.”

Among the privileged matters that may affect the order of consideration are: (1) general appropriation bills under clause 5 of rule XIII; (2) conference reports under clause 7(a) of rule XXII; (3) special orders of business reported by the Committee on Rules under clause 5 of rule XIII; and (4) questions of privilege under rule IX. *Manual* §§ 698, 871; see also QUESTIONS OF PRIVILEGE.

Some propositions are privileged for consideration on certain days of the week or month. On any Monday, Tuesday, or Wednesday, for example, the Speaker may recognize Members to move to suspend the rules. *Manual* § 885; see also §§ 4, 5, *infra*.

## § 3. Use of Special Orders of Business

A major portion of the legislation taken up in the House is considered pursuant to resolutions, also called “special rules” or “special orders of business,” reported by the Committee on Rules and adopted by the House. Although the general effect of the adoption of a resolution making in order the consideration of a bill is to give the bill a privileged status, the adoption of the resolution does not make the consideration mandatory unless so stated in the resolution. Deschler Ch 21 § 16. For example, the resolution may: (1) provide that “the House shall immediately consider” the bill; (2) permit the Speaker to declare the House resolved into the Committee of the Whole for the consideration of the bill (see clause 2 of rule XVIII); or (3) provide for consideration at some specified time in the order of business. If the special order of business authorizes a specified Member to call up a bill (either directly or indirectly, such as “it shall be in order to consider”), the consideration of the bill must await the initiative of that Member. See Deschler Ch 21 § 20.17.

Special orders of business may provide for the consideration of a bill or resolution in the Committee of the Whole, in the House, or in the House as in the Committee of the Whole. Deschler Ch 21 §§ 20.16, 20.17.

A special order of business may be limited in scope, as where it provides only for initial consideration of a measure, provides for general debate, and precludes further consideration absent a further order of the House. See, *e.g.*, 105-2, H. Res. 435, May 19, 1998, pp 9742, 9743.

The resolution may waive one or more House rules that impede the consideration of the bill or amendment thereto. Points of order do not lie against the consideration of such a resolution, as it is for the House to determine, by a majority vote on the adoption of the resolution, whether certain rules should be waived. Deschler Ch 21 §§ 16.9-16.14. See generally SPECIAL ORDERS OF BUSINESS. However, section 426 of the Unfunded Mandates Reform Act of 1995 permits a point of order against consideration of a rule or order that waives points of order against a measure for violating that Act (subject to a separate vote on the question of consideration). *Manual* § 1127. In similar fashion, clause 9 of rule XXI establishes a point of order against consideration of certain measures for failure to disclose (or disclaim the presence of) certain earmarks, tax benefits, and tariff benefits, and permits a vote on the question of consideration of a rule or order waiving such a point of order. See BUDGET PROCESS.

#### § 4. Consideration Under Suspension of the Rules

A privileged motion to suspend the rules may be used to bring a matter before the House under clause 1 of rule XV. *Manual* §§ 885, 887; 5 Hinds §§ 6846, 6847. Additionally, the motion to suspend may provide for a series of procedural steps, including the reconsideration of a bill already passed, agreement to an amendment, and repassage as amended. 5 Hinds § 6849. For examples of proposals for which the motion may be used, see SUSPENSION OF RULES. However, the motion is in order only on Mondays, Tuesdays, and Wednesdays of each week and on the last six days of a session or when the House by unanimous consent or rule gives the Speaker authority to recognize for such motions on other days of the week. In any case, recognition for the motion is within the discretion of the Speaker. The motion is debatable for 40 minutes, is not amendable, and requires a two-thirds vote for adoption. See SUSPENSION OF RULES.

#### § 5. Role of Calendars

The House maintains various calendars to facilitate the consideration of different classes of legislative business. The primary calendars are (1) the Union Calendar, for business to be taken up in the Committee of the Whole, (2) the House Calendar, for matters to be considered in the House, and (3) the Private Calendar, to which all reported private bills are referred. Most

legislative business reported from committee is referred to one of these calendars. *Manual* § 828. In addition, the House maintains a Calendar of Motions to Discharge Committees. *Manual* §§ 830, 892. The former Consent Calendar and Corrections Calendar have been abolished. *Manual* §§ 898, 899. For a discussion of the various calendars, see CALENDARS.

### **§ 6. Consideration by Unanimous Consent**

The House, pursuant to a unanimous-consent agreement, sometimes permits the consideration of a measure that is not otherwise in order under the rules, for example, one not yet introduced. *Manual* §§ 381, 872, 956; 4 Hinds § 3058. For a discussion of consideration by unanimous consent (including the Speaker's guidelines requiring approval by floor and committee leaderships before recognition), see UNANIMOUS-CONSENT AGREEMENTS.

### **§ 7. In Committee of the Whole**

Certain legislative measures are referred to the Union Calendar by the Speaker for subsequent consideration in the Committee of the Whole. Their consideration therein is governed by special orders of business, orders of the House, or the standing rules applicable to the Committee. See rule XVIII; 4 Hinds §§ 3214, 4705, 4822; Deschler Ch 19 §§ 1, 4.

For comprehensive discussion of consideration of measures in Committee of the Whole, see COMMITTEES OF THE WHOLE.

### **§ 8. In the House as in the Committee of the Whole**

Bills and other measures sometimes are taken up by the House when it sits "as in" the Committee of the Whole. *Manual* § 427. This practice permits consideration of a measure under the five-minute rule rather than the hour rule, but without general debate. 4 Hinds § 4924; *Manual* § 424. For a discussion of consideration of measures in the House as in the Committee of the Whole, see COMMITTEES OF THE WHOLE.

### **§ 9. Limitations on Debate; Nondebatable Matters**

#### **Generally; Time Limitations**

Debate is subject to many limitations under the rules and precedents of the House. Most of the limitations imposed by House rule concern the duration of time allowed for the debate of a particular proposition. These include, for example, the hour rule (*Manual* § 957), the 40-minute rule (*Manual* §§ 891, 999), the 20-minute rule (*Manual* § 892), the ten-minute rule (*Manual* § 987), the five-minute rule (*Manual* § 978), and the time limits

that are imposed on the one-minute speeches or special-order speeches that are often permitted when no legislative business is pending (*Manual* § 950). For a more detailed discussion of these time limitations, see §§ 44-50, *infra*.

Most of these are rules of general applicability. In addition, the House may adopt a special order of business from the Committee on Rules that places a different limit on the duration of debate on a particular legislative proposal. This practice enables the House, by majority vote, to specify time for, and control of, debate depending on the complexity of the proposed measure.

Unless otherwise provided by House rule or by a special order of business from the Committee on Rules, a proposition considered in the House is debated under the hour rule. §§ 44, 45, *infra*. However, the various motions that may apply to a proposition often carry their own time limitations for debate and, in some instances, preclude debate entirely.

### **Matters Not Subject to Debate**

The relevant standing rule and the precedents must be consulted in order to determine whether debate on a motion or question is precluded. The following are examples of questions that are not subject to debate:

- A motion that the Journal be read in full. *Manual* § 621.
- A motion for the previous question. Deschler Ch 23 § 21.
- A motion to go into the Committee of the Whole. 4 Hinds §§ 3062, 3078; 6 Cannon § 716.
- A motion that the Committee of the Whole rise and report. 4 Hinds §§ 4766, 4782; Deschler Ch 19 § 22.4.
- A motion for a call of the House or incidental to a call of the House. *Manual* § 1024; 6 Cannon §§ 683, 688.
- A resolution authorizing the Sergeant-at-Arms to arrest absentees. 6 Cannon § 686.
- A motion that the Speaker be authorized to declare a recess or that when the House adjourns it stand adjourned to a day and time certain. Rule XVI; *Manual* § 913.
- A concurrent resolution providing for a *sine die* adjournment or for adjournment to a day certain. *Manual* § 84.
- A motion to adjourn. *Manual* § 911; Deschler-Brown-Johnson Ch 40 § 5.
- A motion to lay on the table. 6 Cannon § 415; 8 Cannon § 2465.
- A motion to reconsider an undebatable proposition. 5 Hinds §§ 5694-5699.
- A motion to close general debate or to limit five-minute debate. *Manual* § 979; 5 Hinds § 5203.
- A motion to strike unparliamentary language from the *Congressional Record*. 6 Cannon § 617.
- An incidental question of order after a demand for the previous question. *Manual* § 1000.



- An incidental question of order arising during a division. 5 Hinds § 5926.
- A motion that the Committee of the Whole take up a bill out of calendar order. 8 Cannon §§ 2331, 2333.
- A motion for a change of reference of a bill. *Manual* § 825.
- A question of consideration (with limited exceptions). *Manual* § 906.
- A question relating to the priority of business. *Manual* § 884.
- An appeal from a decision of the Chair on the priority of business. 5 Hinds § 6952; *Manual* § 884.
- An appeal from a decision of the Chair on relevancy of debate. 5 Hinds §§ 5056-5063.
- An amendment to the title of a bill. Clause 6 of rule XVI; 8 Cannon § 2907.

## B. Control and Distribution of Time for Debate

### § 10. In General; Role of Manager

Under long-standing practice, and as usually provided by special orders of business, one or more designated Members manage a bill during its consideration. Such managers are normally the chair and ranking minority member of a committee reporting the measure. § 14, *infra*.

The majority manager of a measure has procedural advantages enabling its expeditious consideration and passage. The majority manager is entitled to the prior right to recognition unless the control of time is surrendered or otherwise lost or unless a preferential motion to recommit is offered by an opponent of the bill. See RECOGNITION. If the bill is to be taken up in the House under the standing rules, the manager calling it up is entitled to one hour of debate, which may be yielded to other Members. See § 15, *infra*. The manager may at any time during such hour move the previous question, thereby bringing the matter to a vote and terminating further debate, unless control of time has been yielded to another. See § 45, *infra*; see also PREVIOUS QUESTION.

The manager of a bill enjoys a similar advantage in the Committee of the Whole where the bill is being considered under a special order of business or unanimous-consent agreement. General debate therein typically is controlled and divided by the majority and minority managers. The majority manager has the right to close general debate. *Manual* § 959. When the bill is read for amendment in the Committee, the managers have the prior right to recognition, whether to offer an amendment or oppose an amendment or to move to close or to limit debate or to move that the Committee rise. Similarly, if the bill is taken up in the House as in the Committee of the

Whole, priority in recognition is extended during debate to members in charge of the bill from the reporting committee. See RECOGNITION.

Once a measure has been approved by a standing committee of the House, its chair has a duty under the rules to report it promptly and to take steps to have the matter considered and voted upon. Clause 2(b) of rule XIII. When the measure is called up, the reporting committee manages the bill during the various stages of its consideration. The designated managers from the committee, and then other members of the committee in order of seniority, have priority in recognition at all stages of consideration. See RECOGNITION. When a chair is opposed to a bill (although rare), the responsibility for managing the bill may be delegated to the ranking majority member of the committee. Deschler-Brown Ch 29 § 26.7. Such delegation of control is ineffective where challenged unless communicated to the Chair. Deschler-Brown Ch 29 § 26.30. The chair also may relinquish control where the Committee of the Whole has adopted amendments to the bill to which the chair is opposed. Deschler-Brown Ch 29 § 26.8.

Where the measure falls within the jurisdiction of two standing committees, the chair of one of them may yield to the chair of the other to control part of the available time and to move the previous question. Deschler-Brown Ch 29 § 26.10.

For further discussion on control of debate by managers, see also § 12, *infra*.

### **§ 11. Distribution and Alternation; Closing General Debate**

The distribution of available time for debate, and the alternation of time between majority and minority Members, is governed by principles of comity and by House tradition, as well as by standing rules of the House and by special orders of business. *Manual* § 955. A division of time for debate on certain motions may be required, and a Member opposed may claim a priority to control a portion of the time. For example, clause 1(c) of rule XV requires a division of time for debate on a motion to suspend the rules between those in favor and those opposed. *Manual* § 891. Under rule XXII, one-third of the time may be claimed by a Member opposed to conference reports, motions to instruct conferees, and amendments reported from conference in disagreement, where both the majority and minority managers support the proposition.

The Chair alternates recognition between those favoring and those opposing the pending proposition where a rule or precedent gives some control to an opponent or, traditionally, between the parties where time is limited. Special orders of business commonly divide control of time for general de-

bate equally between the chair and ranking minority member of the committees reporting the measure. When a special order of business itself is being considered, the majority floor manager customarily yields half of the time to the minority. For a discussion of alternation generally, see RECOGNITION.

A majority manager of the bill who represents the primary committee of jurisdiction is entitled to close general debate, as against another manager representing an additional committee of jurisdiction. Where an order of the House divides debate on an unreported measure among four Members, the Chair will recognize for closing speeches in the reverse order of the original allocation. Similarly, where general debate on an adversely reported measure is controlled by two Members allocated time under a previous order of the House and by two other Members deriving subdivisions of that time under a later order by unanimous consent, the Chair may recognize for closing speeches in the reverse order of the original allocation, concluding with the Member who opened the debate. Where a Member derives time for debate from the manager of a measure by unanimous consent, that Member also derives the right to close debate thereon. Where a member of the minority is recognized under a special order of business to call up a Senate concurrent resolution from the Speaker's desk, such Member is recognized to open and close debate thereon. *Manual* § 959.

### **§ 12. Management by Committee; Closing Controlled Debate on an Amendment**

Special orders of business providing “modified rules” governing the amendment process commonly limit and divide control of debate between a proponent and an opponent of the amendment. Deschler-Brown Ch 29 § 28. Similarly, the Committee of the Whole may by unanimous consent limit and divide control of debate between a proponent and a Member in opposition. Deschler-Brown Ch 29 § 27.3. Under clause 3(c) of rule XVII, the manager of a bill or other representative of the committee in opposition—and not the proponent of an amendment—has the right to close debate on an amendment where debate has been so limited and allocated without regard to the party affiliation of the proponent. *Manual* § 959. Clause 3(c) is an exception to the rule set forth in clause 3(a) of rule XVII, which otherwise provides that the mover, proposer, or introducer of the pending matter has the right to open and close debate. The exceptional treatment of the right to close debate on an amendment elevates the manager's prerogative over the proponent's burden of persuasion. This is so even when the majority manager offers an amendment that has not been recommended by the

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committee. In that case, a member of the committee in opposition to such amendment has the right to close. 107-2, July 25, 2002, p 14723.

Clause 3(c) applies to the manager of an unreported measure, even where the rule providing for the consideration of the unreported measure designates managers who do not serve on a committee of jurisdiction. It also applies to a measure reported by the committee without recommendation. The minority manager may claim the right to close debate under clause 3(c), as may a member of a committee of sequential referral to close debate against an amendment to a provision recommended by that committee. *Manual* § 959. However, the proponent of an amendment has the right to close where a manager does not oppose the amendment but nevertheless, by unanimous consent, claims the time reserved for opposition. *Manual* § 959.

For further discussion on control of debate by managers, see § 10, *supra*.

### **§ 13. Designation of Member Who May Call Up a Measure**

The committee reporting a measure occasionally designates the Member who may call up a measure for consideration, in which case the Chair may recognize only that Member. Deschler-Brown Ch 29 §§ 27.1, 27.2. A special order of business also may designate the Member. § 14, *infra*. If a Member has not been specifically designated, the Chair has the discretion to recognize a committee member to call up a measure. 91-1, Dec. 23, 1969, p 40982.

### **§ 14. Effect of Special Orders of Business**

#### **Generally**

The designation of certain Members to control debate on a measure is frequently provided by special order of business from the Committee on Rules. Typically the Committee on Rules will draft a special order of business providing that debate be equally divided and controlled by the chair and ranking minority member of the reporting committee or committees. Deschler-Brown Ch 29 § 28. That control can be delegated to a designee on the committee.

#### **Dividing Debate Between Multiple Committees**

A special order of business from the Committee on Rules may specify that debate be divided between and controlled by two or more standing committees. Deschler-Brown Ch 29 § 28.13. The special order of business may provide that debate be controlled by the chairs and ranking minority members of the several committees reporting a bill, sometimes with the sec-

ondary committees controlling a lesser amount of time. Deschler-Brown Ch 29 § 28.16. Debate also may be divided between the standing committee reporting a bill and a permanent select committee. 95-1, Sept. 9, 1977, p 28367.

Where a special order of business divides the control of general debate on a bill among the chairs and ranking members of two standing committees, but does not specify the order of recognition, recognition is within the Chair's discretion. The Chair may allow one committee to use its time before recognizing the other, or may rotate among the four managers. Deschler-Brown Ch 29 § 28.18.

If the rule divides control of debate among a primary reporting committee and several sequentially reporting committees in a designated order, the Chair may allocate time between the chair and ranking minority member of each committee in the order listed, if and when present on the floor, and permit only the primary committee to reserve a portion of its time to close general debate. Deschler-Brown Ch 29 § 28.16. When the Chair has announced the intention to permit the primary committee to so reserve a portion of its time, the sequential committees are required to use all of their time before the closing debate by the primary committee. 99-1, Dec. 5, 1985, pp 34638, 34644. A majority manager of the bill who represents the primary committee of jurisdiction is entitled to close general debate (as against another manager representing an additional committee of jurisdiction). *Manual* § 959.

#### **Division of Time Between a Member in Favor and a Member Opposed**

In the event that a specified amount of time for debate is equally divided and controlled between the proponent of the amendment and a Member opposed thereto, only one Member may be recognized to control the time in favor of the amendment and only one Member may be recognized to control the time in opposition, though each may in turn yield blocks of time to other Members. 99-2, Aug. 11, 1986, pp 20678, 20679. Pro forma amendments are not permitted where second degree amendments are prohibited unless so specified. 99-2, Aug. 14, 1986, p 21655. Time for debate on the amendment having been divided between the proponent and an opponent, the Chair has the discretion to recognize the manager of the bill in opposition, there being no requirement for recognition of the minority party. Indeed, the Chair ordinarily recognizes the chair of the committee managing the bill if such individual qualifies as opposed to the amendment. *Manual* § 959; § 10, *supra*.

A special order of business may provide that, after general debate divided between the chair and ranking minority member of the reporting com-

mittee, a certain amount of time for general debate be divided and controlled by a Member in favor of and a Member opposed to a certain section of the bill. 96-1, Sept. 13, 1979, pp 24168, 24192. In one instance, the House adopted a special order of business providing for one hour of general debate to be equally divided and controlled by the chair and ranking minority member of the reporting committee, and two hours to be divided and controlled by Members to be designated by the chair. 95-2, July 31, 1978, p 23451.

### § 15. Yielding Time—For Debate

#### In General; Who May Yield

In an earlier era, a Member could not yield time for debate without losing the right to reoccupy the floor. A Member could not yield the floor unless it was yielded unconditionally. 5 Hinds §§ 5023, 5026. That practice began to change with the adoption of the hour rule for debate in 1841. 5 Hinds § 5021.

Under current practice, a Member controlling the time during debate may yield blocks of time for debate to others, be seated, and still retain the right to resume debate or move the previous question. 8 Cannon § 3383. The yielding of time for debate is discretionary with the Members who have control thereof. Deschler-Brown Ch 29 §§ 31.1, 31.2. A Member may not yield for purposes of debate when rising merely to make or reserve a point of order. Deschler-Brown Ch 31 § 7.5. A Member may not yield to another for debate while under recognition merely for a parliamentary inquiry. Deschler-Brown Ch 29 § 20.7.

A Member who seeks yielded time should address the Chair and request the permission of the Member speaking. Deschler-Brown Ch 29 § 42. Where a Member interrupts another Member during debate without being yielded to, the time consumed by such remarks are not charged against the time for debate of the Member controlling the floor and the remarks are not carried in the *Congressional Record. Manual* § 946.

The time used by yielding is ordinarily charged against the yielding Member. Deschler-Brown Ch 29 § 29.5. Unused time reverts to the yielding Member. Deschler-Brown Ch 29 § 31.36. A Member may yield to another for a parliamentary inquiry, but the time consumed by the inquiry and the response of the Chair comes out of the time of the Member yielding. Deschler-Brown Ch 29 § 29.5.

Clause 3(b) of rule XVII, which prohibits a Member who is not a manager from speaking more than once on a question, often is superseded in modern practice by special orders of business that vest control of debate in

designated Members and permit them to yield more than once to other Members. *Manual* § 959.

### **In the House**

The Member in control of debate in the House under the hour rule has the discretion to yield for debate. Deschler-Brown Ch 29 § 29. Indeed, although not required to do so by standing rule, majority members in control under the hour rule frequently yield one-half the time to the minority. Deschler-Brown Ch 29 § 29.15. Of course, the yielding of time must be consistent with any division of time that is required by House rule or a special order of business from the Committee on Rules.

### **In the Committee of the Whole**

In the Committee of the Whole, a Member in control of time for general debate may yield a block of time (up to one hour) to another Member. Deschler-Brown Ch 29 § 31.24.

During five-minute debate Members may yield, as for a question or comment, but may not yield blocks of time. 5 Hinds §§ 5035-5037. A Member yielding to a colleague during debate under the five-minute rule should remain standing to protect such Member's right to the floor. Deschler-Brown Ch 29 § 29.8. If a Member uses only part of the time, such five-minute period is treated as exhausted, as it cannot be reserved, and another Member cannot claim recognition for the unused time. 8 Cannon § 2571. However, where debate on an amendment is limited or allocated by a unanimous-consent agreement or motion, or by a special order of business, to a proponent and an opponent, the five-minute rule is abrogated and the Members controlling the debate may yield blocks of time or reserve time. *Manual* § 980.

### **Yielding During Debate on Special Orders of Business**

The traditional practice with regard to resolutions from the Committee on Rules providing special orders of business for the consideration of measures is for the Member in charge of the resolution to yield one-half of the time to the minority, who then may yield specified portions thereof. Although the minority member of the Committee on Rules to whom one-half of the time for debate is yielded customarily yields portions of that time to other Members, another Member to whom a portion of time is yielded may in turn yield blocks of that time only by unanimous consent. Deschler-Brown Ch 29 § 31.23. However, where a Member has been recognized under the hour rule following refusal of the previous question on such a resolution, such Member has control of the time and is under no obligation

to yield half of that time as is the customary practice of the Committee on Rules. Deschler-Brown Ch 29 § 15.20.

### **Yielding Time During Yielded Time**

A Member to whom time has been yielded during debate under the hour rule in the House may, while remaining standing, yield to a third Member for comments or questions but may not in turn yield blocks of time, except by unanimous consent. Deschler-Brown Ch 29 § 31.21. A similar rule is followed in the Committee of the Whole. Deschler-Brown Ch 29 § 31.24.

Where a Member is yielded time in the House for debate only, time may not be yielded to a third Member for purposes other than debate. Deschler-Brown Ch 29 § 31.19.

## **§ 16. — Yielding for Amendment**

### **In General**

A measure being considered in the House is not subject to amendment by a Member not in control of the time unless the Member in control yields for that purpose. Deschler-Brown Ch 29 §§ 30.1, 30.4. A Member may not offer an amendment in time secured for debate only or request unanimous consent to offer an amendment unless yielded to for that purpose by the Member controlling the floor. *Manual* § 946; 8 Cannon § 2474; Deschler-Brown Ch 29 § 30.6.

Members to whom time is yielded for the purpose of offering an amendment in the House are recognized in their own right to discuss the amendment for one hour and may themselves yield time. 8 Cannon §§ 2471, 2478; Deschler-Brown Ch 29 § 30.11.

### **Loss of Control by Yielding Member**

A Member may not yield to another Member to offer an amendment without losing the floor. 5 Hinds §§ 5021, 5030, 5031; 8 Cannon § 2476; *Manual* § 946. Where a Member controlling the time on a measure in the House yields for the purpose of amendment, another Member may move the previous question on the measure before the Member yielded to is recognized to debate the amendment. *Manual* § 997. The previous question takes precedence over an amendment. Clause 4 of rule XVI; *Manual* § 911. If the Member calling up a measure offers an amendment and then yields to another Member to offer an amendment to that amendment, the first Member loses the floor and the Member yielded to is recognized for one hour and may move the previous question on the amendments and on the measure itself. Deschler-Brown Ch 29 § 33.9.



**Under the Five-Minute Rule**

A Member recognized under the five-minute rule may not yield to another Member to offer an amendment. It is the prerogative of the Chair to recognize Members offering amendments under the five-minute rule. *Manual* § 946. However, a Member recognized under the five-minute rule may by unanimous consent yield the balance of the time to another Member, who may thereafter offer an amendment when separately recognized by the Chair for that purpose. Deschler-Brown Ch 29 § 19.25.

A Member offering a pro forma amendment under the five-minute rule may not yield to another Member during that time to offer an amendment. *Manual* § 981.

**§ 17. Interruptions; Losing or Surrendering Control****In General**

With few exceptions, a Member may interrupt another Member in debate only if yielded to. A Member desiring to interrupt another in debate should address the Chair to obtain the permission of the Member speaking. The Member speaking may then decide whether or not to yield. The Chair will take the initiative in preserving order when a Member declining to yield in debate continues to be interrupted by another Member. Deschler-Brown Ch 29 § 42.14; *Manual* § 946.

A Member in control of time for debate in the House may voluntarily surrender the floor by simply so stating or by withdrawing the measure. A Member recognized under the hour rule may yield the floor upon expiration of that hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour. *Manual* § 957. A Member also may lose the floor if ruled out of order for disorderly language. Deschler-Brown Ch 29 § 33. Finally, a Member loses the floor if yielding for other legislative business (8 Cannon § 2468) or for an amendment (§ 16, *supra*).

A Member may be interrupted by a point of order or by the presentation of certain privileged matter, such as a conference report. 5 Hinds § 6451; 8 Cannon § 3294. In addition, it is customary for the Speaker to request a Member to yield for the reception of a message. *Manual* § 946. However, a parliamentary inquiry may not be used to interrupt a Member. *Manual* § 628a.

Although a motion proposed by the Member in charge may be displaced by a preferential motion, a Member may not by offering such motion

deprive the Member in charge of the floor. 8 Cannon § 3259. A Member having the floor may not be deprived of the floor:

- By a motion to adjourn. 5 Hinds §§ 5369, 5370; 8 Cannon § 2646.
- By a demand for the previous question. 8 Cannon § 2609.
- By a question of personal privilege. 5 Hinds § 5002; 8 Cannon § 2459; 98-1, Sept. 29, 1983, pp 26508, 26509.

### **Interruptions for Parliamentary Inquiries**

An interruption for a parliamentary inquiry is not in order unless the Member having the floor yields for that purpose. *Manual* § 628a; 8 Cannon §§ 2455-2458. If a Member does yield for that purpose, control of the floor is not lost because the right to resume is retained. Thus, a Member who has been yielded time for a parliamentary inquiry may not during such inquiry move that the House adjourn, for that would deprive the Member holding the floor of the right to resume. 88-2, June 3, 1964, p 12522.

Where the Member controlling the time yields to another for debate, the latter may, during the time so yielded, propound a parliamentary inquiry. 90-1, July 17, 1967, p 19033. The time consumed to state and answer the inquiry is deducted from the time for debate. 94-1, Sept. 25, 1975, p 30196. When the Member holding the floor during general debate yields solely for a parliamentary inquiry, such Member's time continues to run. Deschler-Brown Ch 31 § 15.6. However, when the Chair entertains a parliamentary inquiry before the Member managing the pending measure in the House has been recognized for debate, or between recognitions, the time consumed by the inquiry does not come out of the manager's time. Deschler-Brown Ch 31 § 15.8.

## **C. Relevancy in Debate**

### **§ 18. In General; In the House**

Members addressing the House must confine themselves "to the question under debate. . . ." Clause 1 of rule XVII; *Manual* § 945. The rule, which was adopted in 1811, enables the House to expedite proceedings when a specific proposition is before it for action. *Manual* § 945; 5 Hinds §§ 4979, 5043-5048; 8 Cannon § 2481. The rule is directed against irrelevant discussion, not mere redundancy. Although *Jefferson's Manual* enjoins superfluous or tedious remarks, in practice the House has never suppressed debate of this character, the hour rule being regarded as sufficiently restrictive in that regard. *Manual* § 359.

Debate on a reported resolution pending before the House should be confined thereto and should not be extended to an unreported bill even though on the same subject. 5 Hinds § 5053. The rule is also applicable to debate on private bills. 8 Cannon § 2590. On a motion to suspend the rules, debate is confined to the object of the motion and may not range to the merits of a bill not scheduled for such consideration. *Manual* § 948.

It was the custom of earlier Speakers to hold the Member speaking strictly to the question before the House, without waiting for the point to be made on the floor. See 5 Hinds § 5043 (note). Under modern practice, however, the Chair waits for a point of order to be made and rarely calls a Member to order *sua sponte* for speaking on an unrelated question. *Manual* § 948.

Under modern practice Speakers have applied the rule of relevancy with more tolerance and latitude than under the earlier practice. Deschler-Brown Ch 29 § 35. A Member is sometimes permitted to discuss matters other than the pending measure by unanimous consent. Deschler-Brown Ch 29 § 35. Absent unanimous consent, if a point of order is made and sustained, the Speaker must direct the Member speaking to confine remarks to the question (5 Hinds §§ 5044-5048) and to maintain an ongoing “nexus” between the pending bill and any broader policy issues (*Manual* § 948).

The relevancy requirement of rule XVII is applicable to floor debate on pending propositions. It is not normally applicable to a Member making a one-minute or special-order speech. See § 50, *infra*. However, if a unanimous-consent request for a Member to address the House for one hour specifies the subject of the address, the Chair may enforce the rule of relevancy in debate by requiring that the remarks be confined to the subject so specified. *Manual* § 948.

When a resolution reported from the Committee on Rules is pending, debate must be confined to that special order of business and to the merits of the bill made in order thereby. Debate should not extend to the merits of a bill that is not to be considered under the special order of business. *Manual* § 948. However, debate may extend to the merits of a germane amendment to the special order of business, which a proponent is prepared to offer in the case that the previous question is not ordered on the special order of business.

Debate on a question of personal privilege must be confined to the statements or issue that gave rise to the question of privilege. 5 Hinds §§ 5075-5077; 6 Cannon §§ 576, 608; 8 Cannon §§ 2448, 2481; Deschler-Brown Ch 29 § 36. Debate on a privileged resolution recommending disciplinary action against a Member may include comparisons with other such actions taken by or reported to the House for purposes of measuring the se-

verity of punishment but should not extend to the conduct of another Member who is not the subject of a committee report. Debate on a resolution electing a Member to committee should not extend to that committee's agenda. *Manual* § 948.

### § 19. In the Committee of the Whole—General Debate

In the Committee of the Whole, during the general debate that precedes the reading of the bill for amendment under the five-minute rule, a Member is allowed great freedom and latitude in debate. 5 Hinds §§ 5234-5238. “Anything may be discussed which may by the liveliest imagination be supposed to relate to the state of the Union in any particular or in any degree, however remote.” 8 Cannon § 2590. However, such license is normally suppressed by the special order of business or other House order setting the duration and scope of the debate. 5 Hinds §§ 5233-5238; 8 Cannon § 2590; Deschler-Brown Ch 29 § 37. If the bill is being considered under the terms of a special order of business that requires that debate be confined to the bill, a Member may exceed those bounds only by unanimous consent. Deschler-Brown Ch 29 § 37.3.

### § 20. — Under the Five-Minute Rule

The scope of debate under the five-minute rule is more narrowly confined than is the scope of general debate. *Manual* § 948; 5 Hinds §§ 5240-5256; 8 Cannon § 2591. Debate on a pending amendment must be confined to the subject of the amendment and its relation to the bill. Deschler-Brown Ch 29 §§ 38.5, 38.11. This is due in part to the language of clause 5 of rule XVIII, which states that a Member is to be allowed five minutes “to explain” an offered amendment. *Manual* § 978. It has been held that remarks on the general merits of the bill are not in order as “explaining” an amendment, and remarks touching on the demerits of the bill are not in order as opposing an amendment. 5 Hinds § 5242. Nevertheless, the Chair may accord Members latitude to put their amendment in context, such as permitting debate on a series of amendments in the nature of a substitute to a concurrent resolution on the budget to include amendments not yet offered. 106-1, Mar. 25, 1999, pp 5725-27, 5733-44.

Relevancy in debate may be enforced even if a Member is attempting to respond to previous extraneous remarks in debate against which no point of order was raised. Deschler-Brown Ch 29 § 38.13; 110-1, July 31, 2007, p 21963. However, a Member may speak to another subject by unanimous consent. This is permitted even where the Committee of the Whole is proceeding pursuant to the provisions of a special order of business permitting

only designated amendments to be offered. Deschler-Brown Ch 29 § 38.17. Where a general provisions title is pending, debate may relate to any subject covered by the bill. *Manual* § 948.

## D. Disorder in Debate

### § 21. In General

#### Generally

Among the oldest rules of the House are those that authorize the Speaker to maintain order and decorum in the House (clause 2 of rule I) and to call a Member who had transgressed the rules of the House “in speaking or otherwise” to order (clause 4 of rule XVII). This language makes it clear that Members must not only follow all the rules and requirements for the conduct of business in the House, but must also observe the principles of decorum and courtesy in debate, as set forth in rule XVII and by related provisions in *Jefferson’s Manual*. *Manual* §§ 353-379, 945-962.

Time consumed by proceedings incident to a call to order is not charged against the time of the Member under recognition. 102-2, Oct. 3, 1992, p 31009.

A Member may be called to order by another Member’s timely demand that the words used be taken down and read aloud at the Clerk’s desk. The Speaker then rules whether the words or actions of the Member are disorderly. Whether an offending Member is to be allowed to proceed in order or is to be disciplined is determined by the House. § 26, *infra*.

#### Disorderly Acts

Decorum or comportment in the conduct and behavior of Members on the floor of the House is governed in part by clause 5 of rule XVII. *Manual* § 962. Prohibited conduct under the rule includes:

- Walking out of or across the hall while the Speaker is addressing the House.
- Passing between the Chair and a Member under recognition.
- Wearing a hat.
- Using a mobile electronic device that impairs decorum.
- Remaining by the Clerk’s desk during roll calls.
- Smoking.
- Wearing a communicative badge while under recognition.

A Member’s comportment may constitute a breach of decorum even though the content of that Member’s speech is not, itself, unparliamentary. Deschler-Brown Ch 29 § 41.2; 103-2, July 29, 1994, p 18609.

Demonstrations of approval or disapproval, such as applause, are not a part of the formal proceedings of the House and are not carried in the *Congressional Record*. Deschler-Brown Ch 29 §41.8. A Member having the floor may not request Members to conduct a straw vote, such as showing hands or rising in support of a certain measure. Deschler-Brown Ch 29 § 41.10.

The Chair may entertain a demand to clear the well in the event of disorder therein. 88-1, Dec. 9, 1963, p 23831. Under clause 3 of rule II, the Sergeant-at-Arms attends the sittings of the House and the Committee of the Whole and maintains order under the direction of the Speaker or Chair. *Manual* § 656; 1 Hinds § 257. On one occasion the Speaker requested the Sergeant-at-Arms to assist him in maintaining decorum disrupted by a former Member. *Manual* § 622. Former Members may be banned from the floor for indecorous behavior as a matter of privilege. *Manual* § 680.

Acts of physical violence by one Member or between two Members during or after heated debate have occurred. 2 Hinds §§ 1642-1644, 1655, 1656. Assaults or affrays in the Committee of the Whole are dealt with by the House. 2 Hinds §§ 1648-1651.

### **Attire**

The Speaker has announced as proper the customary traditional attire for Members while in attendance in the House Chamber, including a coat and tie for male Members and appropriate attire for female Members. In one instance, the Speaker refused to recognize for debate a Member in violation of the practice that Members were expected to follow traditional standards of dress, and requested the Member in question to remove himself from the floor and don proper attire. The House subsequently agreed to a resolution, offered as a question of privilege, requiring Members to wear proper attire as determined by the Speaker, and denying noncomplying Members the privilege of the floor. *Manual* § 622.

### **Exhibits and Charts; Badges**

Under clause 6 of rule XVII, the Chair has the discretion to submit to the House the question of the use of an exhibit, such as a chart, during debate. In addition, the Speaker's responsibility to preserve decorum requires that an exhibit in debate that would be demeaning to the House or that would be disruptive of its proceedings be disallowed. *Manual* §§ 622, 963; see § 61, *infra*.

In recent years, Members occasionally have worn badges on the floor to convey political messages to their colleagues and to the television audience. The Speaker has advised Members that the wearing of badges on the

floor while engaging in debate is inappropriate and in contravention of clause 1 of rule XVII. *Manual* § 945.

### **Speaker's Announcements**

On the opening day of recent Congresses, the Speaker has stressed the importance of various rules of decorum in the House. The Speaker has prefaced this customary announcement with a general statement concerning decorum in the House, including adjurations against engaging in personalities, addressing remarks to spectators, and passing in front of the Member addressing the Chair. "It is essential," the Speaker said, "that the dignity of the proceedings of the House be preserved, not only to assure that the House conducts its business in an orderly fashion but to permit Members to properly comprehend and participate in the business of the House." 107-1, Jan. 3, 2001, p 40. See also §§ 60-62, *infra*.

At the beginning of the 112th Congress, the Speaker's announcement regarding recognition for special-order speeches affirmed that the Speaker retains the ability to withdraw such recognition should circumstances (such as disorderly conduct) so warrant. 112-1, Jan. 5, 2011, p \_\_\_\_.

### **§ 22. Disorderly Language**

Members have been censured or otherwise disciplined for the use of disorderly words in debate, whether the words were uttered in the House or the Committee of the Whole. *Manual* § 960; 2 Hinds §§ 1254, 1259, 1305; 6 Cannon § 236. A Member may likewise be disciplined for the insertion of disorderly words in the *Congressional Record*. 6 Cannon § 236. Members have been cautioned against the use of vulgarity or profanity in debate. *Manual* § 945. The Chair may call to order a Member engaging in or tending toward personalities in debate or for a verbal outburst following the expiration of time for debate. *Manual* §§ 361, 622. For a discussion of critical references to Members, see § 37, *infra*.

Remarks in debate have been the subject of a resolution collaterally raising a question of the privileges of the House, such resolution alleging that the remarks brought discredit upon the House and proposing that the Member in question be censured. 110-1, Oct. 23, 2007, p 27966; see also QUESTIONS OF PRIVILEGE.

The context of the debate itself must be considered in determining whether the words objected to constitute disorderly criticism or do in fact fall within the boundaries of appropriate parliamentary discourse. The present-day meaning of language, the tone and intent of the Member speaking, and the subject of the remarks, must all be taken into account by the Speaker. There have been instances in which the same or similar word has

on one occasion been ruled permissible and on another ruled unparliamentary. Thus the word “damn” has been ruled out of order, whereas “damnable” has been permitted. Deschler-Brown Ch 29 § 43.

### § 23. — Critical References to the Senate and to Senators

A rule of comity prohibiting most references in debate to the Senate was first enunciated in *Jefferson’s Manual* and was strictly enforced in the House through the 108th Congress (albeit with certain exceptions adopted in the 100th and 101st Congresses). *Manual* § 945. The former rule prohibited most references to the Senate except in a general or neutral way and prohibited any references to individual Senators (beyond their status as sponsors of legislation).

In the 109th Congress, the rule was changed to permit references to the Senate generally and to subject individual Senators to the same standards of debate used for Members of the House. Thus, Members may not engage in “personalities” with regard to individual Senators. For example, it is not in order to refer to a Senator in a derogatory fashion, to question a Senator’s personal motives, or to accuse a Senator of falsehood or deception. For further information on the kinds of personal remarks prohibited as to both House Members and Senators, see §§ 37-43, *infra*. The Chair will take the initiative to call Members to order for unparliamentary references with regard to the Senate. *Manual* § 371.

### § 24. — References to the Press, Media, or Gallery

#### References to the Media

A Member should address all remarks to the Chair, and only the Chair; it is not in order for a Member to address remarks to “the press” or to the “television audience,” including Members watching in their offices. The rule is enforced on the Chair’s own initiative. *Manual* § 945.

#### References to the Gallery

By rule of the House adopted in 1933, no Member may introduce or refer to any occupant of the galleries of the House. Clause 7 of rule XVII; *Manual* § 966. The rule is strictly enforced, and the Speaker ordinarily intervenes *sua sponte* to prevent infraction thereof. Deschler-Brown Ch 29 §§ 45.4, 45.7. The rule may not be suspended by permission to proceed out



of order, even by unanimous consent. *Manual* § 966. The rule has been invoked to prevent a Member from making references to:

- An honored guest in the gallery who had exhibited “great heroism.” Deschler-Brown Ch 29 § 45.1.
- A Member’s constituents sitting in the gallery. Deschler-Brown Ch 29 § 45.2.
- A Federal official present in the gallery who had an interest in the pending bill. Deschler-Brown Ch 29 § 45.3.
- A “disinterested, objective observer” sitting in the gallery. Deschler-Brown Ch 29 § 45.5.
- Family members present in the gallery. 99-2, July 29, 1986, p 17956.

### § 25. — References to Executive Officials

Jefferson wrote that in Parliament it was out of order to speak “irreverently or seditiously” against the King. *Manual* § 370. No analogous constraint exists in the rules of the House. Members in debate are permitted wide latitude in the use of language that is critical of the President, other officials of the executive branch, and the government itself. 5 Hinds §§ 5087-5091; 8 Cannon §§ 2499, 2500; Deschler-Brown Ch 29 § 47. Such criticism is considered as inherent in the exercise of legislative authority. As a report adopted by the House in 1909 read, “The right to legislate involves the right to consider conditions as they are and to contrast present conditions with those of the past or those desired in the future. The right to correct abuses by legislation carries the right to consider and discuss [them].” 8 Cannon § 2497. Members may employ strong language in criticizing the government, government agencies, and governmental policies. For example, it has been held in order for a Member to:

- Refer to the government as “something hated, something oppressive.” Deschler-Brown Ch 29 § 47.6.
- Refer to the President as “using legislative and judicial pork.” 8 Cannon § 2499.
- Refer to certain unnamed officials as “our half-baked nitwits who are handling the foreign affairs. . . .” Deschler-Brown Ch 29 § 47.3.
- Refer to a Federal agency as a “Socialist, Communist” experiment. Deschler-Brown Ch 29 § 47.4.
- Refer to the government as a “labor dictatorship.” Deschler-Brown Ch 29 § 47.5.

On the other hand, the rules do not permit the use of language that is personally offensive toward the President. *Manual* § 370; 5 Hinds § 5094. For example, it is out of order to call the President a “liar” or a “hypocrite” or to refer to accusations of sexual misconduct. *Manual* § 370; 8 Can-

non § 2498; Deschler-Brown Ch 29 § 47.16. A Member may refer to political motives of the President in debate. However, personal criticism, innuendo, ridicule, or terms of opprobrium are not in order. 8 Cannon § 2497. For example, a Member may not in debate describe the President's veto of a bill as "cowardly" (*Manual* § 370), charge that the President has been "intellectually dishonest" (Deschler-Brown Ch 29 § 47.15), refer to the President as "giving aid and comfort" to the enemy (Deschler-Brown Ch 29 § 47.17), or describe the President's actions as "arrogant" (110-1, Jan. 11, 2007, p 998) or "mean-spirited" (110-2, July 15, 2008, p \_\_\_\_).

Members must abstain from personally offensive language even during impeachment proceedings. It is not in order to refer to evidence of alleged impeachable offenses by the President contained in a communication from an Independent Counsel pending before a House committee but not before the House itself. *Manual* § 370.

The Speaker has advised that the traditional protections against unparliamentary references to the President do not necessarily extend to the President's family. Deschler-Brown Ch 29 § 47.18. The Speaker enunciated a minimal standard of propriety for all debate concerning nominated candidates for the Presidency, based on the traditional proscription against personally offensive references to the President even in the capacity of candidate. *Manual* § 370.

References in debate to the Vice President are governed by the standards of reference permitted toward the President or Senators. Therefore, a Member may criticize in debate the policies or candidacy of the Vice President but may not engage in personality. *Manual* § 371.

Under rule XVII a Member may be called to order for alleged unparliamentary references to the President by a demand that the words be taken down. Deschler-Brown Ch 29 § 49.32.

## § 26. Procedure; Calls to Order

### In the House

Procedures are available under rule XVII that enable the House to deal with disorderly words or actions by Members. A Member transgressing the rules may be called to order by the Speaker or by another Member. *Manual* § 960. The Member calling the offending Member to order may demand that the words objected to be "taken down" and read to the House by the Clerk. *Manual* § 960.

Briefly summarized, procedures available to deal with disorder include:

- Point of order raised against alleged unparliamentary language.
- Demand that words be "taken down."

- The Chair gavels the proceedings to a halt and directs the offending Member to be seated.
- Words taken down reported to the House by the Clerk.
- Unanimous-consent request to withdraw words taken down.
- Motion to allow Member to explain words taken down.
- Speaker rules whether words are out of order.
- Member ruled out of order must be seated and discontinue debate.
- Motion to strike (or expunge) words.
- Censure or other disciplinary action by the House if (with certain exceptions) there has been no intervening debate or business.
- Motion that the Member be allowed to proceed in order.

Not all cases involving disorderly words require the taking down of words and other formal action by the House. In many instances, the Chair will observe that debate is becoming personal and approaching a violation of the rules, in which case the Chair may simply request that Members proceed in order. See, *e.g.*, Deschler-Brown Ch 29 § 48.1. The Chair also may caution all Members, on the Chair's own initiative or in response to a parliamentary inquiry, not to question the integrity or motivation of other Members in debate. Deschler-Brown Ch 29 § 49.36. Likewise, where a Member objects to unparliamentary remarks delivered in debate, but does not demand that the words be taken down, it is appropriate for the Chair to sustain the point of order and then direct the Member to proceed in order. Deschler-Brown Ch 29 § 49.34.

Ordinarily, a question of personal privilege may not be based upon language uttered in debate, the proper course being the timely demand that words be taken down under rule XVII. *Manual* § 708. However, remarks in debate have been the subject of a resolution collaterally raising a question of the privileges of the House, such resolution alleging that the remarks brought discredit upon the House and proposing that the Member in question be censured. 110-1, Oct. 23, 2007, p 27966; see also QUESTIONS OF PRIVILEGE.

### § 27. — Procedure in the Committee of the Whole

A point of order may be raised against the use of disorderly language during debate in the Committee of the Whole. The chair of the Committee may respond by sustaining the point of order and admonishing the offending Member to proceed in order. Deschler-Brown Ch 29 § 49.34.

The use of disorderly language in the Committee of the Whole also is subject to a demand that the words be taken down and reported to the House for a ruling by the Speaker. 8 Cannon § 2539. The Chair does not rule on whether the words taken down are out of order. 8 Cannon §§ 2533,

2540. There is no debate in the Committee on the propriety of the words used. 8 Cannon § 2538. The Committee rises automatically to report the words to the House after the words are reported by the Clerk. 2 Hinds §§ 1257-1259, 1348; 8 Cannon §§ 2533, 2538, 2539. The business of the Committee is suspended until the words objected to are reported to the House. Deschler-Brown Ch 29 § 49.42.

### Form

CHAIR: M\_\_\_. Speaker, the Committee of the Whole House on the state of the Union having under consideration the bill H.R. \_\_\_\_, certain words used in debate were objected to and on request were taken down and read at the Clerk's desk, and I herewith report the same to the House.

SPEAKER (after announcing report of Chair): The Clerk will read the words reported from the committee.

All of the words objected to in the Committee of the Whole should be reported to the House. The Speaker can pass only on the words as reported; a demand that additional words uttered in Committee be reported is not in order in the House. Deschler-Brown Ch 29 § 50.10.

After the Speaker rules on the words objected to and the House has disposed of any disciplinary proceedings, the Committee of the Whole resumes its sitting without motion. 8 Cannon §§ 2539, 2541; *Manual* § 961.

### § 28. — Taking Down Words

The taking down of words objected to in debate was a practice of the House even before the procedure became part of its formal rules in 1837. Clause 4 of rule XVII; *Manual* § 960. The words taken down may consist of a single phrase (Deschler-Brown Ch 29 § 61.3) or an entire colloquy between two Members (Deschler-Brown Ch 29 § 49.13). The demand should indicate the words excepted to and the identity of the Member who uttered them. *Manual* § 960. The objecting Member may indicate briefly the basis for the demand, such as impugning the motives of a colleague; but the objecting Member may not at that time debate the grounds for a finding that the words are disorderly. Deschler-Brown Ch 29 § 49.18.

Ordinarily, debate on or interpretation of the words objected to is not in order pending a ruling by the Speaker. Although words objected to in debate may be withdrawn pursuant to a unanimous-consent request, no debate is in order pending such a request. Deschler-Brown Ch 29 § 49.20. However, the offending Member may by unanimous consent (or on motion by another Member) be permitted to explain the words. Deschler-Brown Ch 29 § 52.16; § 30, *infra*.

While a demand that a Member's words be taken down is pending, that Member should be seated immediately. *Manual* § 961. It is a breach of decorum for a Member to ignore the Chair's gavel and the instruction to be seated. Deschler-Brown Ch 29 § 41.2.

The business of the House is suspended until the words are reported to the House. Deschler-Brown Ch 29 § 49.32. During that time the Speaker may refuse to entertain a parliamentary inquiry or a unanimous-consent request that a Member be allowed to proceed for one minute. Deschler-Brown Ch 29 §§ 49.14, 49.15.

### Form

MEMBER: M\_\_ . Speaker (or M\_\_ . Chair), I ask that the gentle \_\_\_\_\_'s words be taken down.

CHAIR: The gentle \_\_\_\_\_ will be seated. The Clerk will report the words.

### Timeliness of Demand

A demand that words be taken down is in order only if made in a timely manner under rule XVII. *Manual* § 960; 110-1, Jan. 22, 2007, p 1899. The demand should be made immediately after the words are uttered. Where debate has intervened, the demand comes too late unless the objecting Member was standing and seeking recognition at the proper time. The Chair's determination whether a Member's point of order constitutes a demand that those words be "taken down," is not such intervening debate or business as to render the demand untimely. *Manual* § 961; 8 Cannon § 2528. The Chair may not respond to a parliamentary inquiry regarding the propriety of words pending a demand that words be taken down or after the words have been uttered and no such demand has been made. *Manual* § 628.

### Taking Down Words Read From Papers

Papers read during debate are subject to a timely demand that words be "taken down" as an unparliamentary reference to other sitting Members, but the demand must be made before subsequent reading intervenes. That certain words may already have been published elsewhere does not make them admissible in debate, and words not admissible in debate may not be inserted in the *Congressional Record*. Deschler-Brown Ch 29 § 83.6.

### Withdrawal of Demand

Before a ruling by the Speaker, a demand in the House or in the Committee of the Whole that words be taken down may be withdrawn by the Member making the demand, and unanimous consent is not required. *Manual* § 961.

**§ 29. — Withdrawal or Modification of Words****Generally; In the House**

Words objected to in debate in the House may be withdrawn or modified by unanimous consent, even after the words have been taken down on demand and read by the Clerk. 8 Cannon §§ 2543, 2544; Deschler-Brown Ch 29 §§ 51.1, 51.2.

Pending a demand that words spoken in debate be taken down and ruled unparliamentary, the Chair may inquire whether the Member whose remarks are challenged wishes to request unanimous consent to modify the remarks before directing the Clerk to read them. Deschler-Brown Ch 29 § 51.11. However, the withdrawal of unparliamentary language may be made even after the Speaker has ruled the language out of order or even recognized another Member on a motion to strike the words from the *Congressional Record*. 8 Cannon § 2539.

The Speaker does not rule retrospectively on the propriety of words withdrawn by unanimous consent. *Manual* § 628.

**In the Committee of the Whole**

A Member may withdraw or modify words objected to in the Committee of the Whole by unanimous consent. 8 Cannon §§ 2528, 2538. In one instance, two Members demanded that each other's words be taken down and then, by unanimous consent, withdrew their remarks in the Committee before they were reported to the House. Deschler-Brown Ch 29 § 51.5.

**Deletions From the Record**

Clause 8 of rule XVII 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. This clause establishes a standard of conduct within the meaning of that provision of the rules giving rise to the investigative jurisdiction of the Committee on Ethics.

**§ 30. — Permission to Explain**

Ordinarily, a Member whose words are taken down must sit down and may not explain the remarks pending a ruling by the Speaker. *Manual* § 961. However, the rules specifically provide for a motion to allow the Member to explain, which motion may be made only by another Member. Clause 4 of rule XVII; *Manual* § 960. Moreover, the Speaker has the discretion, before ruling on the words, to request the Member called to order to make a brief explanation of the remarks. Deschler-Brown Ch 29 § 52.16.

**§ 31. — Speaker's Ruling**

The Speaker (or Speaker pro tempore) has the sole power to rule whether words objected to constitute a breach of order in debate. *Manual* §§ 960, 961; 2 Hinds § 1249; 5 Hinds §§ 5163-5169. This determination is made by the Speaker after the words have been taken down (whether in the House or in the Committee of the Whole) and have been reported by the Clerk. The question of whether words taken down violate the rules is for the Speaker to decide and is not debatable. Deschler-Brown Ch 29 § 50.7. The Chair judges the words as read by the Clerk and not as alleged to have been uttered. *Manual* § 961. No Member may engage the Chair until the demand has been disposed of. *Manual* § 961.

The Speaker's ruling on a question of order has been appealed in the House in numerous instances, the Speaker generally being sustained. See, *e.g.*, 5 Hinds §§ 5157, 5173, 5178, 5194, 5196, 5198, 5199. Such an appeal is subject to the motion to table. *Manual* § 629. Also, the House may, by voting on a proper motion, dictate the consequences of that ruling by imposing disciplinary action or by allowing the Member to proceed in order.

The Speaker, in ruling on the words objected to, weighs the importance of freedom in debate against the need to maintain the order and dignity of the House. 5 Hinds § 5163. The Speaker considers the meaning of the words as well as the context in which they were used. Deschler-Brown Ch 29 § 50.6. Pending the ruling, the Speaker may recognize the Member who made the statement to ask unanimous consent to withdraw or modify the words. Deschler-Brown Ch 29 §§ 51.1, 51.2. The Speaker also may put questions to the offending Member about the words and may consult dictionaries to determine the meaning of certain words or terms. Deschler-Brown Ch 29 §§ 50.3, 50.4.

**§ 32. — Discipline; Post-Ruling Motions****Generally**

Censure or other disciplinary action is a matter for the House and not the Chair to decide. *Manual* § 961. However, no House action is in order until the Chair has ruled on the words objected to. Deschler-Brown Ch 29 § 51.21. If the words used are ruled to be unparliamentary, and if such words have not been withdrawn, the House may entertain certain motions enabling it to dispose of the breach of order.

**Striking Words From the Record**

Under modern practice, words ruled out of order are normally stricken from the *Congressional Record* by unanimous consent initiated by the Chair.

*Manual* § 961. If there is an objection, a motion to strike or expunge the words from the *Record* is in order. 8 Cannon §§ 2538, 2539; *Manual* § 960. A motion to expunge is in order even though the House by vote has authorized the Member to proceed. Deschler-Brown Ch 29 § 51.23. The motion, which is debatable within narrow limits under the hour rule, is not in order until the Chair has decided that the words are out of order. *Manual* § 961; Deschler-Brown Ch 29 § 51.21. The motion is not in order in the Committee of the Whole. *Manual* § 961.

### **Proceeding In Order**

After a Member's words have been ruled out of order, the Member may be permitted to proceed in order on that same day either by unanimous consent or by motion. *Manual* § 961. It is the practice to test the opinion of the House by a motion "that the gentle \_\_\_\_\_ be allowed to proceed in order." 5 Hinds §§ 5188, 5189; 8 Cannon § 2534. This motion may be stated on the initiative of the Chair. It is debatable within narrow limits of relevance under the hour rule, and is subject to the motion to lay on the table. *Manual* § 961. The motion is privileged for consideration in the House. Deschler-Brown Ch 29 § 51.22. A motion to strike the objectionable words also generally precedes a proposition to permit a Member to proceed in order. See, *e.g.*, Deschler-Brown Ch 29 § 52.7.

If a Member is not granted permission to proceed on that same day, the Member cannot speak even on yielded time and may not insert unspoken remarks in the *Congressional Record*. *Manual* § 961; 5 Hinds §§ 5147, 5196-5199. However, the Member may exercise the right to vote or to demand the yeas and nays. 8 Cannon § 2546. Whether the Member is to be allowed to proceed in order or is to be subjected to censure or other disciplinary measure is for the House to determine. *Manual* § 960.

## **E. Critical References to the House, Committees, or Members**

### **§ 33. In General; Criticism of the House**

#### **Generally**

In early Congresses it was held not in order to "cast reflections" on the House or its membership, present or past. 5 Hinds §§ 5132-5138. Today, in the interests of free and full debate in conducting legislative deliberations, Members are permitted to voice critical opinions of Congress, of the House, and of the political parties. Deschler-Brown Ch 29 § 53. Statements that are critical of Congress or a portion of its membership will not be ruled out



of order for that reason alone. Thus, a statement in debate claiming that the campaign expenses of Members were paid by certain interest groups has been held to be in order. Deschler-Brown Ch 29 § 53.1.

However, such criticism is subject to the rules and settled practices of the House that require courtesy and decorum in debate. *Jefferson's Manual* states that no one is permitted to use “indecent language” in referring to the proceedings of the House. *Manual* § 360. The language used must not be offensive in itself. 5 Hinds § 5135. The words must be stated in such a way as to avoid personal criticism of individual Members. § 37, *infra*.

### **Ruled In Order**

Following are precedents in which criticism in debate was held parliamentary or in order as not referring to any particular Member:

- A question whether it was a parliamentary inquiry to ask that a bill be printed in “words of one syllable so that [Members of the opposing party] can understand it.” Deschler-Brown Ch 29 § 53.4.
- A statement that a Member was leading his party in a policy of opportunism. Deschler-Brown Ch 29 § 53.5.
- A statement referring to “irresponsible actions by members of the President’s own party.” Deschler-Brown Ch 29 § 53.2.
- “[Y]ou have your definition of consistency. My definition is that consistency is a virtue of small minds.” Deschler-Brown Ch 29 § 62.2.
- A reference to Members as having praised a foreign dictator in prior debate. Deschler-Brown Ch 29 § 60.10.
- Words characterizing unnamed Members as taking “potshots” and as lacking judgment. Deschler-Brown Ch 29 § 51.16.
- A reference to the consideration of a bill under procedures representing “a classic example of duplicity.” 100-2, Apr. 19, 1988, pp 7330, 7335-39.

### **Ruled Out of Order**

Following are examples in which remarks in debate were held unparliamentary:

- “Talk not to me of vindicating your insulted dignity. . . . You have no dignity to vindicate.” 5 Hinds § 5132.
- “[T]he proceedings of the House had been such as not only to degrade it as a body, but also to degrade the country.” 5 Hinds § 5133.
- A statement declaring the opinions and decisions of the House “damnable heresies.” 5 Hinds § 5135.
- A reference to “[T]he right of the minority to stay indefinitely the right of the majority to legislate is as disgraceful, as dishonorable. . . .” 5 Hinds § 5136.
- “Drunken Members have reeled about the aisles—a disgrace to the Republic. Drunken speakers have debated grave issues on the floor. . . .” 5 Hinds § 5186.

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- A statement alleging that the Republican Conference believed that lynching was a “proper means of justice.” Deschler-Brown Ch 29 § 53.3.
- A statement alleging that a Member lacks “decency.” 110-1, Mar. 21, 2007, p 7074.

To show the distinction between words that are permissible and language that may be ruled out, illustrations in this chapter are drawn from debates from earlier as well as recent Congresses. However, precedents from earlier eras must be evaluated in their historical and cultural context; whether a word or expression is to be ruled out of order depends on its current meaning and usage. See § 38, *infra*.

### § 34. Criticism of Committees

A Member in debate may express general criticism of the actions of a committee, as by alleging an abuse of its powers. Deschler-Brown Ch 29 § 54.1. Criticisms of committee procedure are also permitted. Deschler-Brown Ch 29 § 54.6. However, a Member may not in debate impugn the personal motives of a committee or its members or make unparliamentary claims of unlawful activity. Deschler-Brown Ch 29 §§ 54.2, 54.3. Debate may not include critical characterizations of members of the Committee on Ethics who have investigated a Member’s conduct. *Manual* § 361.

#### Ruled In Order

Following are examples in which remarks in debate were held parliamentary:

- A reference to the action of a committee as “more or less pusillanimous.” Deschler-Brown Ch 29 § 54.7.
- An editorial read by a Member charging a committee with “pigeon-holing” certain legislation. Deschler-Brown Ch 29 § 54.6.
- “Did the gentleman’s committee also find paid agents of Hitler on the congressional payroll?” Deschler-Brown Ch 29 § 54.12.
- A reference to a committee investigation of “the recent wave of policy lynch murder in Mississippi.” Deschler-Brown Ch 29 § 54.9.
- A statement that a Member “has been the victim of the abusive, vicious, and irresponsible use of the power of a congressional committee.” Deschler-Brown Ch 29 § 54.1.

### Ruled Out of Order

Following are examples in which remarks in debate were held unparliamentary:

- A statement that certain fascist organizations exercised extensive influence on a special House committee. Deschler-Brown Ch 29 § 54.3.
- Language referring to “lies and half-truths” of a House committee report. Deschler-Brown Ch 29 § 54.4.
- “I cannot respect the actions or even the sincerity of some of the committee members.” Deschler-Brown Ch 29 § 54.5.
- A reference to the Committee on Un-American Activities as “the Un-American Committee.” Deschler-Brown Ch 29 § 54.11.

### § 35. Criticism of Speaker

The prescription of clause 1 of rule XVII that Members confine themselves to the question under debate, “avoiding personality,” has been applied to critical references to the Speaker’s personal conduct. *Manual* § 362. It is not in order in debate to refer invidiously to the Speaker. 8 Cannon § 2531. It also is not in order to speak disrespectfully of the Speaker. 2 Hinds § 1248. For example, it has been held out of order to assert that the Speaker was “kowtowing” to persons who would desecrate the U.S. flag or to refer to the Speaker as a “crybaby.” *Manual* § 362. It is not in order in debate to refer in a personally critical manner to the Speaker’s political tactics or to arraign the Speaker’s personal conduct. Deschler-Brown Ch 29 § 57. Any complaint as to the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters, such as the approval of the Journal. *Manual* § 362; 5 Hinds § 5188. Personal criticisms of the Speaker can be challenged even after debate has intervened. 2 Hinds § 1248; Deschler-Brown Ch 29 § 57.7.

It is not in order in debate for a Member to charge that the Speaker, while presiding, committed a dishonest act or that the Speaker repudiated and ignored the rules of the House. Deschler-Brown Ch 29 § 57.2. In one instance, however, an assertion of a personal belief that a sufficient number had been standing to demand a recorded vote was held parliamentary as not necessarily charging the Chair with disregard of the rules, in the context of those words alone. Deschler-Brown Ch 29 § 57.4. It is not in order to refer to official conduct of the Speaker that is either under investigation or has been resolved by the Committee on Ethics or by the House. *Manual* § 362.

If words impugning the Speaker are uttered, the Speaker may choose not to rule on the words personally but to appoint a Member to occupy the Chair and deliver a decision. Deschler-Brown Ch 29 § 57.1.

## § 36. Criticism of Legislative Actions or Proposals

### Generally

Although remarks in debate may not include personal attacks against a Member or an identifiable group of Members, they may address political motivations for legislative positions. *Manual* § 363. Statements in debate, although critical of House action or of the legislation at issue, may be ruled in order if they do not improperly reflect on the House or a particular Member. Deschler-Brown Ch 29 § 58.4. Harsh words may be used to criticize a bill unless they fail to “avoid personality” as mandated by rule XVII. Deschler-Brown Ch 29 § 58.1. For example, although it may be appropriate in debate to characterize the effect of an amendment as deceptive or hypocritical, to characterize the motivation of a Member in offering an amendment with those terms is not in order. Deschler-Brown Ch 29 § 58.12. A statement in debate that “it is only demagoguery or racism which impel such an amendment” was held by the Speaker to be unparliamentary as impugning the motives of the Member offering the amendment. Deschler-Brown Ch 29 § 58.6.

### Ruled In Order

Criticisms of legislative actions or proposals or political motivations that have been held in order in debate include:

- A statement that “sinister influences” were working in the interest of certain unnamed Members opposing a bill. Deschler-Brown Ch 29 § 58.9.
- A statement accusing unnamed colleagues who opposed a measure of talking “loosely and recklessly with the truth.” Deschler-Brown Ch 29 § 58.8.
- A statement accusing unnamed Members of attempting to “cut off debate” on important legislation in order to attend an engagement at a hotel. 78-2, Feb. 3, 1944, p 1216.
- A statement that all lawyers know “that the adoption of this language neither adds to nor takes from a single item of the substance of this bill.” Deschler-Brown Ch 29 § 58.3.
- A reference accusing unnamed opponents of a proposal of “blind,” “slavish,” and “shameful” opposition. Deschler-Brown Ch 29 § 58.7.
- In reference to an amendment: “. . . where I come from . . . the people . . . do not like slippery, snide, and sharp practices.” Deschler-Brown Ch 29 § 58.5.
- A statement referring to a tactic of “withholding” votes until it could be determined whether they would be necessary on the pending question. Deschler-Brown Ch 29 § 58.10.
- A statement that a Member “has already admitted his amendment does not make sense, and he will take any alternative that is offered.” Deschler-Brown Ch 29 § 58.4.

### § 37. Critical References to Members

Jefferson stressed the importance of preserving “order, decency and regularity . . . in a dignified public body.” *Manual* § 285. The House rules provide that Members must confine themselves to the question under debate, “avoiding personality.” Rule XVII. The Chair may interrupt a Member engaging in “personalities” with respect to a fellow Member as is the case with respect to improper references to Senators or the President. However, under modern practice the Chair normally awaits a point of order from the floor with respect to references to other Members. *Manual* § 961. The Chair may announce an intention to take the initiative in calling Members to order during debate on disciplinary resolutions. *Manual* § 361.

The Speaker will hold language unparliamentary where it improperly reflects on another Member under rule XVII. *Manual* § 361. A Member may not in debate impugn the personal motives of another Member (§ 39, *infra*), charge another Member with falsehood or deception (§ 40, *infra*), or denigrate a Member’s intelligence (§ 41, *infra*). It also is not in order in debate to refer in a personally critical manner to the political tactics of a Member. *Manual* § 361. The truth of allegations involving unethical behavior of a Member is not a defense to a point of order that the remarks are unparliamentary as engaging in personalities explicitly or by innuendo. 104-1, Jan. 18, 1995, p 1444. On the other hand, it is recognized that free and full debate is necessary in conducting legislative business, and a Member is allowed considerable latitude in criticizing the position, arguments, or contentions of another Member. Deschler-Brown Ch 29 § 59.2; § 36, *supra*.

It is not in order during debate to refer to a particular Member of the House in a derogatory fashion, even though that Member is not named, and the Chair may intervene to prevent improper reference where it is evident that a particular Member is being described. *Manual* § 361. In one instance, after a Member had expressed an absence of “good faith on the other side,” he was granted unanimous consent to withdraw any reference to any individual Member. 100-1, June 18, 1987, pp 16761-63.

Members should refrain from references in debate to the official conduct of other Members where such conduct is not under consideration in the House by way of a report of the Committee on Ethics or as a question of the privileges of the House. *Manual* § 361.

The rule requiring Members to avoid “personality” during debate prohibits reference to outside accounts whose criticism of a sitting Member would be unparliamentary if uttered on the floor as the Member’s own words. *Manual* § 361.

It is not unparliamentary to describe in debate the effect that a Member's remarks may have, especially where that description includes a disclaimer disavowing any intention to impugn a Member's motives. Deschler-Brown Ch 29 § 59.8.

### **Ruled In Order**

Following are examples in which remarks in debate were held parliamentary:

- A statement that if a certain Member were to sponsor a measure it would receive only one or two votes. Deschler-Brown Ch 29 § 58.2.
- A reference to another Member's remarks as "yapping." Deschler-Brown Ch 29 § 61.13.
- A statement accusing a Member of trying "to becloud" an issue. Deschler-Brown Ch 29 § 59.1.
- A reference in debate to another Member as not representing a certain class of people in his State. Deschler-Brown Ch 29 § 60.7.
- A reference to another Member's statement as "intemperate." Deschler-Brown Ch 29 § 59.5.
- A description of a Member's statement that "this is an example of the spurious reasoning that [an interest group] has with regard to their opposition to this bill." Deschler-Brown Ch 29 § 43.2.
- A Member's statement that another Member's demand that words be taken down during a special-order speech was "an unfair stealing of time." Deschler-Brown Ch 29 § 59.10.
- A Member's assertion that "even though that may not be the intention, I think [certain statements] have the tendency to try to assassinate the character of the person making the statement rather than to effectively assassinate the argument." Deschler-Brown Ch 29 § 59.8.
- A Member's general reference that "big donors" receive "access to leadership power and decisions" because it does not identify a specific Member as receiving a contribution specifically in exchange for votes or other legislative action. *Manual* § 361.

### **Ruled Out of Order**

Following are examples in which remarks in debate were held unparliamentary:

- A reference to the remarks of another Member as "malignant shafts" or as a "base insinuation." 5 Hinds § 5162.
- A reference to another Member as a "snooper." Deschler-Brown Ch 29 § 61.11.
- "The gentleman took the floor in his self-appointed role as spokesman for the committee [and] referred to me in my absence in a disgraceful and unparliamentary manner." Deschler-Brown Ch 29 § 59.3.
- Referring to another Member as a demagogue or as a "president of the Demagogue Club." Deschler-Brown Ch 29 §§ 60.3, 60.4.

- “[D]on’t you start comparing anybody’s record, because I have got yours . . . with . . . the FBI.” Deschler-Brown Ch 29 § 60.24.
- A reference to another Member as a “pinko.” Deschler-Brown Ch 29 § 61.9.
- A reference to an identifiable group of sitting Members as the perpetrators of a crime, such as “stealing an election.” Deschler-Brown Ch 29 § 60.22.
- A reference suggesting that another Member “did not have the nerve” to make a statement on the floor. 104-2, July 25, 1996, p 19170.
- A statement alleging that a Member lacks “decency.” 110-1, Mar. 21, 2007, p 7074.

### § 38. — Use of Colloquialisms; Sarcasm

The Members are allowed considerable latitude in the use of colloquialisms, euphemisms, figures of speech, and even sarcastic comments in debate. A statement in debate that “you are going to skin us” was held merely a colloquialism that did not reflect on any Member and was held in order. Deschler-Brown Ch 29 § 61.10. In another instance, a Member used the word “crime” in referring to another Member, but the Chair ruled the term in order, finding that in the context of the debate, the term was being used as a synonym for, or figure of, speech meaning “wrong.” Deschler-Brown Ch 29 § 59.2.

The use in debate of colloquial expressions, figures of speech, or sarcasm is governed by their current meaning and by the context in which they are uttered. 5 Hinds §§ 5165, 5167. Unparliamentary references in debate, even when phrased as satiric compliments, are not in order. 112-1, July 22, 2011, p \_\_\_\_\_. The tone and mannerisms of a Member may be taken into account by the Chair in determining whether the criticism voiced is personally offensive to another Member. Deschler-Brown Ch 29 § 60.21.

#### Ruled Out of Order

Following are examples in which remarks in debate were held unparliamentary:

- A reference to another Member “whose name is synonomous [*sic*] with falsehood . . . who is the apologist of thieves; who is such a prodigy of vice and meannesses that to describe him would sicken imagination and exhaust invective.” 2 Hinds § 1251.
- “[N]obody but a gambler or cutthroat would have thought of tacking such a thing as that to such a bill as this.” 2 Hinds § 1258.
- “The devotion of the gentleman . . . to the truth is so notorious that I shall not reply.” 8 Cannon § 2545.
- A reference to another Member as a “stool pigeon.” Deschler-Brown Ch 29 § 61.12.

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- References to a Member as having a “hand like a ham,” grasping a microphone until it “groaned from mad torture,” and striding the House floor “like a wild man.” Deschler-Brown Ch 29 § 61.1.
- A reference to another Member’s proceeding in a “cheap, sneaky, sly way.” Deschler-Brown Ch 29 § 61.2.

### § 39. — Impugning Motives

In the early practice of the House, the Speaker intervened in debate to prevent even the mildest imputation on the motives of a Member. 5 Hinds § 5161. It is still the rule that Members may not in debate impugn the personal motives of other named Members in the performance of their legislative duties. *Manual* § 363. An opinion on the general motives of the House or a political party in adopting or rejecting a proposition may be expressed. § 36, *supra*. References to political motivation for legislative actions may be in order. *Manual* § 363. However, an assertion that a Member’s use of the legislative process is motivated by personal gain (5 Hinds § 5149) or by “the prospect of a junketing trip” (8 Cannon § 2546) is not in order. Merely to question the sincerity of a Member has been held to impugn the motives of such Member. 5 Hinds § 5148.

Members should refrain from references in debate to the motivations of Members who file complaints before the Committee on Ethics. *Manual* § 361.

### Ruled Out of Order

- Charging another Member, in his capacity as custodian of certain public money, with “[m]aking a parade of his charity, he has been gorging himself and speculating with this money.” 5 Hinds § 5152.
- Characterizing the motivation of a Member in offering an amendment as deceptive and hypocritical. *Manual* § 363.
- An observation that a Member stood in the well before an empty House and challenged the Americanism of other Members, “and it is the lowest thing that I have ever seen in my 32 years in Congress.” Deschler-Brown Ch 29 § 59.9.
- An observation that a Member was “one of the most impolite I have ever seen.” *Manual* § 361.
- Characterizing another Member as “speaking out of both sides of his mouth.” Deschler-Brown Ch 29 § 51.36.
- A reference to an identifiable group of sitting Members as the perpetrators of a crime, such as “stealing an election.” Deschler-Brown Ch 29 § 60.22.



### § 40. — Charging Falsehood or Deception

During debate on the floor, an assertion by one Member may be declared untrue by another. However, in so doing, an accusation of intentional misrepresentation must not be implied. *Manual* § 363; 5 Hinds §§ 5157, 5159, 5189; 8 Cannon § 2542. Any term or language implying a deliberate misstatement of the truth, for whatever motive, is unparliamentary, including allegations of lying, slander, or hypocrisy. A Member's expression of disbelief may be construed as meaning that the Member referred to was merely mistaken. Deschler-Brown Ch 29 § 63.3. In one instance, a Member's statement in referring to another Member that "That is not true, and he knows it," was held in order, the Speaker observing that the words were not uttered in an offensive tone. 5 Hinds § 5158.

A Member may refer to falsehoods in the media without violating the rules of the House, even if such remarks are made during debate with another Member. Deschler-Brown Ch 29 § 63.2.

#### Ruled In Order

Following are examples in which remarks in debate were held parliamentary:

- A Member's statement that he did "not believe a word that [another Member] said." Deschler-Brown Ch 29 § 63.3.
- A statement referring to another Member "when he comes here to defend some slime-monger who goes on the radio and lies about me. . . ." Deschler-Brown Ch 29 § 63.2.
- "Let us be sincere and honest about this thing." 78-2, Jan. 21, 1944, p 560.

#### Ruled Out of Order

Following are examples in which remarks in debate were held unparliamentary:

- A Member's declaration that the words of another Member were "a base lie." 2 Hinds § 1249.
- The use of the words "grossly false," as applied to statements made by another Member in a pamphlet published by him during a recess of Congress. 5 Hinds § 5157.
- "I cannot believe that the gentleman . . . is sincere in what he has just said." Deschler-Brown Ch 29 § 63.7.
- A statement that the remarks of a Member were "false and slanderous." Deschler-Brown Ch 29 § 63.4.
- A statement in referring to another Member that "pretexts are never wanting when hypocrisy wishes to add malice to falsehood or cowardice. . . ." Deschler-Brown Ch 29 § 63.6.

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- “I cannot respect the actions or even the sincerity of some of the committee members.” Deschler-Brown Ch 29 § 54.5.
- Language read in the House that repudiated “lies and half-truths” in a House committee report. Deschler-Brown Ch 29 § 63.5.
- Use of the word “canard”—meaning falsehood—in referring to the statement of another Member. Deschler-Brown Ch 29 § 63.1.
- Words accusing another Member of hypocrisy. *Manual* § 363.

### § 41. — Lack of Intelligence or Knowledge

A Member in debate may be critical of the understanding or knowledge of other Members or groups of Members in relation to pending bills or amendments. However, such remarks should not denigrate the intelligence of another Member because this would be personally critical and offensive. Deschler-Brown Ch 29 § 64.

### § 42. — References to Race, Creed, or Racial Prejudice

Gratuitous references in debate to the race or religion of another Member are not in order. A reference to “the Jewish gentleman from New York,” for example, has been ruled out by the Speaker. Deschler-Brown Ch 29 § 65.4.

It is not in order in debate to accuse a Member of bigotry or racism. Remarks characterizing the motives behind certain legislation as “demagogic and racist” have been ruled out of order, as has a reference to another Member as having reached “bigoted” conclusions. Deschler-Brown Ch 29 §§ 65.5, 65.6.

### § 43. — Charges Relating to Loyalty or Patriotism

Unless the subject is relevant to disciplinary proceedings then pending as the question before the House against a Member, remarks in debate impugning the patriotism or loyalty of a Member are not in order. Deschler-Brown Ch 29 § 66. Words impeaching the loyalty of a portion of the membership also have been ruled out. 5 Hinds § 5139. However, if such language is directed at the House or at its membership in general, the remarks may not be improper. See § 33, *supra*.

### Ruled In Order

Following are examples in which remarks in debate were held parliamentary:

- A statement referring to all opponents of the Committee on Un-American Activities as communist enemies. Deschler-Brown Ch 29 § 66.2.
- A statement that another Member had been published in a newspaper “dedicated to the destruction of this Government.” Deschler-Brown Ch 29 § 66.10.
- A statement referring to (unnamed) Members who give “aid and comfort” to enemies and traitors. Deschler-Brown Ch 29 § 66.3.
- A statement referring to “people” who would rip down the American flag and replace it with the Soviet flag. Deschler-Brown Ch 29 § 66.5.
- A statement characterizing the Committee of the Whole as an agency of the Soviet Union. Deschler-Brown Ch 29 § 66.11.
- A statement accusing another Member of past opposition to “every bill necessary for the defense of our country.” Deschler-Brown Ch 29 § 62.5.

### Ruled Out of Order

Following are examples in which remarks in debate were held unparliamentary:

- A statement that insertions in the *Congressional Record* by another Member were taken from “Nazi elements.” Deschler-Brown Ch 29 § 66.6.
- A statement by a Member that internal fascist organizations exercised extensive influence over a special House committee. Deschler-Brown Ch 29 § 66.7.
- A statement, in response to critical comments by another Member, that “I am not going to sit here and listen to these communistic attacks made on me.” Deschler-Brown Ch 29 § 66.1.
- “There is nothing more subversive than the kind of red baiting tactics [of] the gentleman from \_\_\_\_\_.” Deschler-Brown Ch 29 § 66.8.
- A statement referring to another Member as attempting to undermine the government. Deschler-Brown Ch 29 § 66.9.
- A reference to the Committee on Un-American Activities as “the Un-American Committee.” Deschler-Brown Ch 29 § 66.12.
- A reference to certain Members as “apostles of doom” whose utterances would give “great aid and comfort” to the Soviet Union. Deschler-Brown Ch 29 § 66.4.
- A reference to another Member as “kowtowing” to persons who would desecrate the flag. *Manual* § 362.

## F. Duration of Debate in House

### § 44. In General

#### Limitations on Time for Debate

Before 1841, there was no limit on the time that a Member might occupy once in possession of the floor. 5 Hinds § 5221. Under the modern practice, the duration of debate in the House is invariably limited. Such limitations are imposed pursuant to the standing rules of the House, special orders of business from the Committee on Rules, and unanimous-consent agreements adopted by the House. Certain types of legislative propositions, such as concurrent resolutions on the budget, are subject to statutory time limitations. § 48, *infra*.

On major bills, a special order of business typically specifies the length of time for general debate—usually a number of hours—and identifies the Members who are to control that time. § 48, *infra*. Such time limits also may be imposed pursuant to a unanimous-consent agreement. Deschler-Brown Ch 29 § 67. If a bill or resolution comes to the House floor without such a time limit, clause 2 of rule XVII applies to limit the time for debate to one hour. *Manual* § 957. A Member calling up a measure in the House pursuant to a unanimous-consent request or special order of business that does not specify time for debate controls one hour of debate thereon. Deschler-Brown Ch 29 § 68.

Other limitations on the duration of debate are found in those standing rules of the House that authorize specific motions, such as the motion to suspend the rules for which debate is limited to 40 minutes under clause 1(c) of rule XV. *Manual* § 891. For a discussion of 40-minute debate, see § 46, *infra*.

#### Discretion of Chair as Affecting Time for Debate

On certain incidental questions of order, the duration of debate is within the discretion of the Chair. This practice is followed with respect to:

- Debate on points of order. 5 Hinds §§ 6919, 6920; 8 Cannon §§ 3446-3448; Deschler-Brown Ch 29 § 67.3.
- Debate under the five-minute rule on an appeal in the Committee of the Whole. 8 Cannon § 2347.

#### Timekeeping

The Chair monitors the time of Members who take the floor in debate. The Chair announces when their time has expired under the rules, and that announcement is not subject to challenge. See, *e.g.*, Deschler-Brown Ch 29

§ 67.1. For a discussion of extensions of time, see § 48, *infra*. Traditionally, the time of the Speaker, the Majority Leader, and the Minority Leader is not monitored if they have been yielded a nominal amount of time (typically one minute) to allow such individuals the courtesy of extended and unfettered debate. *Manual* § 953.

### § 45. The Hour Rule

Clause 2 of rule XVII limits to one hour the amount of time that a Member may occupy in debate on a pending question, and no Member may address the House for more than one hour, even by unanimous consent. *Manual* § 957; Deschler-Brown Ch 29 §§ 68, 68.3; § 48, *infra*.

The practice under the hour rule often serves to limit the total time for debate on the measure itself to one hour. This is because, at the conclusion of the controlling Member's hour, ordering the previous question cuts off further debate. *Manual* § 994. If the Member controlling the hour successfully moves the previous question, all debate is terminated and the measure is voted on by the House.

If the House rejects the previous question, the measure is then open to further debate. Recognition passes to an opponent of the measure, who may offer an amendment and be recognized for one hour. See PREVIOUS QUESTION. A Member recognized under the hour rule may yield the floor upon expiration of that hour without moving the previous question, thereby permitting another Member to be recognized for a successive hour. *Manual* § 957.

The hour rule is one of general applicability; it is often overtaken by an order of the House or a special order of business from the Committee on Rules, and it is not applicable where another rule of the House specifies otherwise. The hour rule applies to the following:

- A resolution presenting a question of the privileges of the House, subject to the division of time specified in rule IX. *Manual* § 698.
- A resolution reported as a question of the privileges of the House, such as a resolution presenting impeachment charges. *Manual* § 699.
- A question of personal privilege. *Manual* § 713.
- A privileged resolution reported from committee, such as a rule, joint rule, or order of business reported from the Committee on Rules or a committee funding resolution reported from the Committee on House Administration. Deschler-Brown Ch 29 §§ 68.32, 68.37.
- A resolution of inquiry. Deschler-Brown Ch 29 § 68.33.
- A District of Columbia bill on the House Calendar called up on District Day under clause 4 of rule XV. Deschler-Brown Ch 29 § 68.5.
- A private bill called up in the House by unanimous consent. Deschler-Brown Ch 29 § 68.9.

- A measure not requiring consideration in the Committee of the Whole before the House pursuant to a motion to discharge. Deschler-Brown Ch 29 § 68.34.
- A motion to refer, or the direct consideration of, a vetoed bill. Deschler-Brown Ch 29 §§ 68.55, 68.56.
- A motion to reconsider (if debatable). *Manual* § 1010.
- A motion to discharge a committee from further consideration of a resolution disapproving a reorganization plan. Deschler-Brown Ch 29 § 68.64.
- A motion to expunge from the *Congressional Record* certain remarks used in debate and ruled out of order. Deschler-Brown Ch 29 § 68.61.
- A motion to send a bill to conference under clause 1 of rule XXII. Deschler-Brown Ch 29 § 68.26.
- A motion to instruct House managers at a conference, subject to the division of time specified in clause 7(b) of rule XXII. *Manual* § 1078.
- A conference report or a motion to dispose of a Senate amendment reported in disagreement by a conference committee, subject to the division of time specified in clause 8(d) of rule XXII. *Manual* § 1086.
- A preferential motion to insist on disagreement to a Senate amendment reported in disagreement by a conference committee, subject to the division of time specified in clause 8(b)(3) of rule XXII. Deschler-Brown Ch 29 § 68.12.
- A Senate amendment considered in the House. Deschler-Brown Ch 29 § 68.12.

The hour rule applies even before the adoption of the rules at the inception of a Congress. *Manual* § 60. Thus, a Member offering a resolution on the seating of a Member-elect is entitled to one hour of debate. Deschler-Brown Ch 29 § 68.1

#### **§ 46. Ten-minute, 20-minute, and 40-minute Debate**

The House rules specify fixed periods of time for debate, equally divided between the proponents and opponents, on certain motions and questions.

##### **Ten-minute Debate**

The House rules permit the proponent and an opponent each five minutes of time for debate on an amendment offered after closing of general debate in the Committee of the Whole, subject to additional pro forma or second-degree amendments. Similarly, 10 minutes for debate is permitted on an amendment offered after the closing of five-minute debate by the Committee under clause 8 of rule XVIII if printed as required in the *Congressional Record* and if not dilatory. *Manual* §§ 978, 981, 987.

In addition, the House rules permit five minutes in support and five minutes in opposition to the following motions:

- A motion to recommit with instructions a bill or joint resolution under clause 2 of rule XIX, with the time subject to extension under some circumstances. *Manual* § 1001.
- A motion to dispense with the call of the Private Calendar under clause 5(c) of rule XV. *Manual* § 895.

### **Twenty-minute Debate**

The House rules permit 20 minutes of time for debate on motions to discharge a committee, the time to be equally divided under clause 2 of rule XV. *Manual* § 892. The right to close such debate is reserved to the proponents of the motion. 7 Cannon § 1010a. The chair of the committee being discharged, if opposed to the motion, is recognized to control the 10 minutes in opposition. Deschler-Brown Ch 29 § 69.3. If the motion to discharge is successful, and the measure is properly before the House rather than the Committee of the Whole, the Member moving its consideration is recognized in the House under the hour rule. *Manual* § 892.

Twenty minutes of debate also is permitted where a point of order is raised against an unfunded Federal intergovernmental mandate under section 425 of the Congressional Budget Act. *Manual* § 1127. Points of order under the Act are disposed of by putting the question of consideration, debatable for 20 minutes—10 by the Member making the point of order, 10 by a Member in opposition. § 426(b)(4) of the Congressional Budget Act. Similarly, clause 9 of rule XXI establishes a point of order against consideration of certain measures for failure to disclose (or disclaim the presence of) certain earmarks, tax benefits, and tariff benefits, and permits a vote on the question of consideration of a rule waiving such a point of order. Such question of consideration is debatable for 20 minutes—10 by the Member making the point of order, 10 by a Member in opposition. See BUDGET PROCESS.

### **Forty-minute Debate**

The House rules permit 40 minutes of time for debate, to be divided between proponents and opponents, on the following:

- A motion to suspend the rules under clause 1 of rule XV. *Manual* § 891.
- A debatable proposition on which there has been no debate before the ordering of the previous question under clause 1 of rule XIX. *Manual* § 994; 5 Hinds § 6821.
- A motion to reject certain portions of a conference report or Senate amendment objected to as nongermane under clause 10 of rule XXII. *Manual* § 1089.

Other chapters in this work dealing with specific motions and questions should be consulted. See, *e.g.*, PREVIOUS QUESTION; CONFERENCES BETWEEN THE HOUSES; and SUSPENSION OF RULES.

#### **§ 47. Debate in the House as in the Committee of the Whole**

Debate on a bill being considered in the House as in the Committee of the Whole is under the five-minute rule, with no general debate. *Manual* §§ 424-427. Five minutes in favor of and five in opposition to an amendment are permitted. Deschler-Brown Ch 29 § 70.7. Members also may gain five minutes of debate by offering pro forma amendments and motions to strike the enacting clause. Deschler-Brown Ch 29 §§ 70.11, 70.12.

Normally, five-minute debate on a bill considered in the House as in the Committee of the Whole may be extended by unanimous consent. Deschler-Brown Ch 29 § 70.6. However, the Chair does not recognize for such extensions of time during consideration of a private bill in the House as in the Committee of the Whole. Deschler-Brown Ch 29 § 70.10.

#### **§ 48. Limiting or Extending Time for Debate**

##### **Generally**

The House may by unanimous consent or by special order of business limit or extend the time for debate on propositions considered in the House. Deschler-Brown Ch 29 § 71. However, a motion to extend the time for debate in the House is not in order. Deschler-Brown Ch 29 § 73.17.

##### **By Special Order of Business**

A special order of business from the Committee on Rules may extend the time for debate that may be devoted to a proposition to be considered in the House. Deschler-Brown Ch 29 § 71.1. It may specify, for example, that debate shall not exceed a certain number of hours. Deschler-Brown Ch 29 § 25.17. Similarly, though conference reports are ordinarily considered under the hour rule, a special order of business may provide for more extended debate. Deschler-Brown Ch 29 § 71.18.

##### **By Unanimous Consent**

Time for debate in the House under the hour rule may be modified by unanimous consent. Deschler-Brown Ch 29 § 71. For example, by unanimous consent, debate has been extended on a resolution presenting articles of impeachment (Deschler-Brown Ch 29 § 71.13) and on a disciplinary resolution (Deschler-Brown Ch 29 § 71.6; 107-2, July 24, 2002, p 14310).



Debate on a privileged resolution in the House is ordinarily under the hour rule, but such debate may be extended beyond one hour by unanimous consent or by rejecting the motion for the previous question. Deschler-Brown Ch 29 §§ 68.41, 68.42; § 49, *infra*. Thus, the House may agree to a unanimous-consent request to extend the time for debate in the House on a special order of business reported from the Committee on Rules. Deschler-Brown Ch 29 § 71.4.

Unanimous-consent agreements extending time may further provide for a division of time between various Members. However, a Member may not extend a special-order speech (or debate on a question of personal privilege) for more than one hour, even by unanimous consent. *Manual* § 957; Deschler Ch 11 § 22.1; Deschler-Brown Ch 29 § 71.20.

### **Effect of Statutory Time Limitations**

Time for debate on certain kinds of legislative propositions is limited by statute. *Manual* § 1130. Examples include:

- Congressional Budget Act of 1974 (limits debate on concurrent resolutions on the budget to 10 hours; specifies up to four hours for debate on economic goals and policies; amendments considered under five-minute rule). § 305(a); 2 USC § 636.
- Impoundment Control Act of 1974 (limits debate on rescission bill or impoundment resolution to not more than two hours). § 1017(c); 2 USC § 688.
- Trade Act of 1974 (limits debate on implementing bills and certain resolutions to 20 hours). 19 USC § 2191.
- Pension Reform Act (limits debate on joint resolutions approving certain schedules to not more than 10 hours). § 4006(b)(6); 29 USC § 1306(b).
- Marine Fisheries Conservation Act (limits debate on fishery agreement resolutions to not more than 10 hours). § 203(d)(4); 16 USC § 1823(d).
- Nuclear Waste Policy Act of 1982 (limits debate on certain resolutions of approval to not more than two hours). § 115(e)(4); 42 USC § 10135(e).

Such statutory provisions (compiled in *Manual* § 1130) are enacted as an exercise of the rulemaking power of both Houses, with full recognition of the ability of either House to change them at any time. In one instance, the Committee of the Whole was considering a resolution disapproving a reorganization plan pursuant to the Reorganization Act of 1949, which limited time for debate to 10 hours. The House agreed by unanimous consent to limit debate in the Committee to five hours and subsequently consented to limit further debate to 30 minutes. Deschler-Brown Ch 29 § 71.7.

**§ 49. Terminating Debate**

The usual motion for closing debate in the House (as distinguished from the Committee of the Whole) is the motion for the previous question under rule XIX. *Manual* § 994; 5 Hinds § 5456; 8 Cannon § 2662. This motion also is used to close debate in the House as in the Committee of the Whole. Deschler-Brown Ch 29 § 72.7. The Member controlling debate on a proposition in the House may move the previous question and (if ordered by the House) thereby terminate further debate. Deschler-Brown Ch 29 § 72.2. However, the House may by unanimous consent vacate the ordering of the previous question in order to extend debate. Deschler-Brown Ch 29 § 72.4. If the previous question is ordered on a debatable proposition, and that proposition has not in fact been debated, then, under clause 1 of rule XIX, 40 minutes of debate is permitted. *Manual* § 994; 5 Hinds § 6821; 8 Cannon § 2689.

Other methods of terminating or precluding debate in the House include the use of the motion to lay on the table and the raising of the question of consideration. For a discussion of such methods, see PREVIOUS QUESTION, LAY ON THE TABLE, and QUESTION OF CONSIDERATION.

**§ 50. One-minute and Special-order Speeches; Morning-hour Debates****Generally**

The ability of Members to address matters not on the daily legislative agenda is facilitated by allowing “one-minute speeches” and “special-order speeches.” Neither procedure is specifically provided for in the standing rules. Their use is permitted by a long-standing custom and is based on the Speaker’s discretionary power of recognition under clause 2 of rule XVII. *Manual* § 950.

**One-minute Speeches**

The practice of limiting recognition before legislative business to one minute began on August 2, 1937, and was reiterated by Speaker Rayburn on March 6, 1945. 75-1, Aug. 2, 1937, p 8004; Deschler Ch 21 § 6.1. One-minute speeches are normally entertained at the beginning of the legislative day, although the Speaker has discretion to recognize Members to proceed for one minute after legislative business has been completed or at some other time or place in the legislative day (for example, to follow a scheduled recess). Deschler-Brown Ch 29 § 73.6. Indeed, when the House has a heavy legislative schedule, the Speaker may refuse all requests to recognize Members for one-minute speeches. Deschler-Brown Ch 29 § 73.5. More com-

monly, the Speaker limits one-minute speeches to a certain number for each side of the aisle, entertaining any remaining requests at the end of legislative business before special-order speeches.

Where a guest chaplain leads the House in prayer at the beginning of the legislative day, it is typical for the Member representing the guest chaplain's district to give the first one-minute speech of the day in order to introduce the guest chaplain to the House. See, *e.g.*, 110-2, July 24, 2008, p 16367.

The evaluation of the time consumed on a one-minute speech is a matter for the Chair and is not subject to challenge on a point of order. Deschler-Brown Ch 29 § 73.3. The Chair has refused to put to the House unanimous-consent requests for extensions of that time. Deschler-Brown Ch 29 § 73.10. Moreover, under the Speaker's power of recognition as traditionally exercised before legislative business, a Member can be recognized for a one-minute speech only once, and a second unanimous-consent request on that day will not be entertained. *Manual* § 950.

The order of recognition for one-minute speeches before legislative business is within the discretion of the Chair and is not subject to challenge on a point of order. Deschler-Brown Ch 29 § 10.55. However, the Chair endeavors to recognize majority and then minority Members by allocating time in a nonpartisan manner. Deschler-Brown Ch 29 § 10.50. In 1984, the Speaker instituted the policy of requiring alternate recognition of majority and minority Members in the order in which they seek recognition. *Manual* § 950.

### **Morning-hour Debate**

Morning-hour debate was first initiated in the second session of the 103d Congress. The House by unanimous consent agreed that on Mondays and Tuesdays the House would convene 90 minutes earlier than the time otherwise established by order of the House, solely for the purpose of conducting morning-hour debate, to be followed by a recess declared by the Speaker. In the 104th Congress, the House extended and modified that order to accommodate earlier convening times after May 14 of each year. In the 112th Congress, the House expanded that order to include morning-hour debate on Wednesdays and Thursdays as well. Debate is limited and allocated to each party, with initial and subsequent recognition alternating daily between parties pursuant to lists submitted by the leadership. Under the customary order of the House establishing morning-hour debate, a Member may not be recognized for more than five minutes (with certain leadership exceptions). The Chair does not entertain a unanimous-consent request to extend this five-minute period. *Manual* § 951. When the House convenes solely for

morning-hour debate, the Chair does not entertain unanimous-consent requests to remove cosponsors from bills. 103-2, Apr. 26, 1994, p 8544. The Chair may receive messages during morning-hour debate (103-2, May 10, 1994, p 9697) and, beginning in the 112th Congress, privileged reports may also be filed (112-1, Jan. 5, 2011, p \_\_\_\_).

### **Special-order Speeches**

The Chair normally recognizes Members for special orders to address the House at the conclusion of business of the day. The Speaker may reserve the right to return to business. Deschler-Brown Ch 29 § 10.69. Under clause 2 of rule XVII, no Member may be recognized beyond one hour, even by unanimous consent. *Manual* § 957. Furthermore, a Member may not be recognized for two special-order speeches on the same legislative day, even though special orders have been interrupted by legislative business. Deschler-Brown Ch 29 § 73.15.

The Speaker has announced the following policies for recognition of special-order speeches:

- Recognition alternates between majority and minority Members.
- Recognition shall be only pursuant to lists submitted by the leadership.
- Recognition does not extend beyond ten o'clock in the evening.
- Recognition for special-order speeches is limited to four hours equally divided between the majority and minority.
- The first hour for each party is reserved to its respective Leader or designees. The second hour is divided into 30-minute periods.
- The first recognition within a category alternates between the parties from day to day.
- The respective Leaders may establish additional guidelines for entering requests.

*Manual* § 950.

The Chair will recognize for subdivisions of the first hour reserved for special orders only on designations (and reallocations) by the leadership concerned. A Member who is recognized to control time during special orders may yield to colleagues for such amounts of time as the Member may deem appropriate but may not yield blocks of time to be enforced by the Chair. Members regulate the duration of their yielding by reclaiming the time when appropriate. *Manual* § 950.

At the beginning of the 112th Congress, the Speaker's announcement regarding recognition for special-order speeches affirmed that the Speaker retains the ability to withdraw such recognition should circumstances (such as disorderly conduct) so warrant. 112-1, Jan. 5, 2011, p \_\_\_\_.

## G. Duration of Debate in the Committee of the Whole

### § 51. In General; Effect of Special Orders of Business

At one time, there was no limit on the time that a Member might occupy in debate in the Committee of the Whole when once in possession of the floor. A Member might speak an unlimited time, whether in general debate or on an amendment. 5 Hinds § 5221. Today time limitations on general debate are imposed on measures by unanimous consent or special order of business. Deschler-Brown Ch 29 § 74. In the unlikely event a measure is considered in the Committee of the Whole without fixing the time for general debate, each Member may be recognized for one hour. § 52, *infra*.

The chair of the Committee of the Whole monitors the time used by each Member for debate and announces the expiration thereof.

### § 52. General Debate

The duration and allocation of time for general debate in the Committee of the Whole is controlled by the House; and the Committee may not, even by unanimous consent, extend the time for general debate fixed by the House. *Manual* § 993; Deschler-Brown Ch 29 § 75.7. The House establishes such time for general debate through a unanimous-consent agreement or the adoption of a special order of business from the Committee on Rules. Deschler-Brown Ch 29 § 74.

If the House does not limit the time for general debate in the Committee of the Whole, such debate is under the hour rule. Deschler-Brown Ch 29 § 75.1. A Member having control of such time may not consume more than one hour. Deschler-Brown Ch 29 § 75.5.

Normally, the House order limiting time for general debate in the Committee of the Whole also will divide the control of the time between certain Members, such as the chair of the reporting committee and its ranking minority member. Although under the special order of business a Member may have control of more than one hour of general debate on a bill in the Committee, Members may not, under the general rules of the House, yield themselves more than one hour for debate. Deschler-Brown Ch 29 § 74.4. It also is not in order for a Member to whom time has been yielded to ask unanimous consent for additional time, for time is controlled by those to whom it is allotted by the House and is not subject to extension by the Committee. Deschler-Brown Ch 29 § 75.8.

The Committee of the Whole may not, even by unanimous consent, change the control of general debate to Members other than those specified by the House. However, unanimous consent has been permitted in the Com-

mittee to permit one of two committees controlling time under a special order of business to yield control of its time to the other. *Manual* § 993.

#### **Effect of Absence of Members in Control**

Where no member of the reporting committee is present at the appropriate time during general debate in the Committee of the Whole, the Chair may presume the time to have been yielded back. *Manual* § 978.

### **§ 53. Limiting General Debate**

#### **By Unanimous Consent in the House**

Pending a motion to resolve into the Committee of the Whole, the House may by unanimous consent limit general debate to a time certain. Deschler-Brown Ch 29 § 76.8. If objection is raised to such unanimous-consent request, the Speaker puts the question on the initial motion to go into the Committee. Deschler-Brown Ch 29 § 3.5.

#### **By Motion in the House**

After unlimited general debate has begun in the Committee of the Whole and the Committee rises, a motion in the House to close or limit further general debate is in order. *Manual* § 979; 5 Hinds §§ 5204-5206. The motion is not in order until after debate in the Committee has begun and is made in the House pending the motion that the House resolve itself into Committee for further consideration of the bill, and not after the House has voted to go into Committee. 5 Hinds §§ 5204, 5208. The motion may not apply to a series of bills, and the motion must apply to the whole and not to a part of a bill. 5 Hinds §§ 5207, 5209. The motion may not be made in the Committee. 5 Hinds § 5217; 8 Cannon § 2548.

#### **By Unanimous Consent in the Committee**

Although the motion to close general debate is not in order in the Committee of the Whole, the Committee may, in the absence of an order of the House, close debate by unanimous consent. 8 Cannon §§ 2553, 2554.

Although a bill is being considered in the Committee of the Whole under a special order of business specifying the time for general debate, the managers of the bill need not use all of the prescribed time. The Members in control of the time are permitted to yield it back and thereby shorten general debate. Deschler-Brown Ch 29 § 76.1.

## § 54. Five-minute Debate

### Generally

When general debate is closed in the Committee of the Whole, debate on amendments proceeds under the five-minute rule. Clause 5 of rule XVIII, which provides:

When general debate is concluded or closed by order of the House, the measure under consideration shall be read for amendment. A Member, Delegate, or Resident Commissioner who offers an amendment shall be allowed five minutes to explain it, after which the Member, Delegate, or Resident Commissioner who shall first obtain the floor shall be allowed five minutes to speak in opposition to it. There shall be no further debate thereon, but the same privilege of debate shall be allowed in favor of and against any amendment that may be offered to an amendment.

Under this rule the proponent of an amendment is entitled to five minutes of debate in favor of the amendment before a perfecting amendment may be offered thereto. Deschler-Brown Ch 29 § 30.20. If, after a speech in favor of an amendment, no one claims the floor in opposition, the Chair may recognize another Member favoring the amendment. 8 Cannon § 2557.

### Speaking More Than Once

Generally, a Member may speak only once for five minutes on a pending amendment, although a point of order under this rule comes too late after that Member has been recognized and has begun to speak. 92-1, June 9, 1971, p 18988. Even when the Committee of the Whole resumes consideration of an amendment that has been debated by its proponent on a prior day, the proponent may speak again for five minutes on such amendment only by unanimous consent. *Manual* § 981. A Member recognized for five minutes on an amendment may not extend the time by offering another amendment. 8 Cannon §§ 2560, 2562. However, a Member who has offered an amendment and spoken thereon is not precluded from seeking recognition to speak to a proposed amendment to that amendment. Deschler-Brown Ch 29 § 21.16. Where there is pending an amendment and a substitute therefor, the Member offering the substitute may debate it for five minutes and subsequently be recognized to speak for or against the original amendment. Moreover, if debate on the pending amendment is limited, the five-minute rule is abrogated and Members who have already spoken on an amendment may be recognized again under the limitation. Deschler-Brown Ch 29 § 22.9.

### Precluding Amendments; Effect of Special Orders of Business

The House, and not the Committee of the Whole, controls the extent to which the offering of amendments may be precluded under the five-

minute rule. The Committee cannot, even by unanimous consent, prohibit the offering of amendments otherwise in order under the rule. *Manual* § 993.

A special order of business or other order of the House providing for the consideration of a bill may preclude the offering of amendments under the five-minute rule. For example, if a special order of business permits only designated amendments and prohibits amendments to amendments, then only two five-minute speeches are in order on each designated amendment, one speech in support and one in opposition. Deschler-Brown Ch 29 § 77.19. A Member may obtain additional time for debate only by unanimous consent. Because only the two five-minute speeches are in order, pro forma amendments are not permitted, and a third Member may be recognized only by unanimous consent. *Manual* § 993. A third Member is not entitled to recognition, notwithstanding the fact that the second Member, recognized in opposition, actually spoke in favor of the amendment. Deschler-Brown Ch 29 § 21.23.

### **Yielding Time**

A Member recognized under the five-minute rule may not reserve time or yield a specific amount of time to another Member. *Manual* § 980; 5 Hinds §§ 5035-5037. Members so recognized may yield a portion of their time while remaining on their feet, but may not yield to another to offer an amendment. Deschler-Brown Ch 29 § 21.5. If a Member yields back or sits down before expiration of the five minutes, another may not be recognized for the remainder of that time. 8 Cannon § 2571.

A Member may yield during debate under the five-minute rule while remaining standing to permit another Member to pose questions, to make a comment, or to make a unanimous-consent request. However, the time consumed thereby comes out of that of the Member holding the floor. Deschler-Brown Ch 29 § 29.6. Time consumed in yielding for a parliamentary inquiry also is charged against the five minutes. Deschler-Brown Ch 31 § 15.6.

### **Extending Time**

A motion to require a certain amount of debate under the five-minute rule is not in order in the Committee of the Whole. Deschler-Brown Ch 29 § 78.101. A Member recognized under the five-minute rule may extend the time for debate (by not more than five minutes) only by unanimous consent, and a motion to that effect is not in order. Deschler-Brown Ch 29 § 21.13; § 57, *infra*.

Where debate on an amendment is limited and allocated to a proponent and an opponent, the Members controlling the debate may yield and reserve



time, whereas time for debate on amendments cannot be reserved under the five-minute rule. *Manual* § 980.

### **Pro Forma Amendments**

The pro forma amendment—to “strike the last word”—is used under the five-minute rule only for purposes of debate or explanation, the proponent having no intent to offer a substantive amendment. A Member who has been recognized for five minutes on a pro forma amendment cannot thereafter extend the time by offering a second pro forma amendment. Deschler-Brown Ch 29 § 77.8. Members who have consumed five minutes in support of an amendment that they have offered cannot obtain additional time by offering a pro forma amendment to their own amendment. However, they may extend their time or speak again on the amendment by unanimous consent. Deschler-Brown Ch 29 § 77.9. A Member who has occupied the five minutes in opposition to an amendment may subsequently offer a pro forma amendment to the amendment. 84-1, June 30, 1955, p 9614. A pro forma amendment may be offered after a substitute has been adopted and before the vote on the amendment, as amended, by unanimous consent only, because the amendment has been amended in its entirety and no further amendments, including pro forma amendments, are in order. A Member recognized on a pro forma amendment may not allocate or reserve time, but may, in yielding, indicate to the Chair an intention to reclaim time after a certain point. The Chair endeavors to alternate recognition to offer pro forma amendments between majority and minority Members (giving priority to committee members) rather than between sides of the question. *Manual* § 981.

### **Motions to Strike the Enacting Clause**

The preferential motion to rise and report back to the House with the recommendation that the enacting clause be stricken is sometimes used to gain an additional five minutes for debate in the Committee of the Whole. Clause 9 of rule XVIII; *Manual* §§ 988, 989. Debate on the preferential motion is limited to two five-minute speeches, and the Chair declines to recognize for requests for extensions of that time. Deschler Ch 19 § 13.2. Only two five-minute speeches are permitted, notwithstanding the fact that the second Member, recognized in opposition to the motion, spoke in favor thereof. Deschler Ch 19 § 13.3. Time for debate may not be reserved. *Manual* § 989. Debate may go to the merits of the underlying bill. 5 Hinds § 5336.

Members of the committee managing the bill have priority in recognition for debate in opposition to the motion. Deschler-Brown Ch 29 § 23.43.

However, the Chair will not announce in advance who will be recognized in opposition. *Manual* § 989.

If the House acts to strike the enacting clause as recommended by the Committee of the Whole, the bill is considered rejected. *Manual* § 989; 5 Hinds § 5326. For a general discussion of this motion, see COMMITTEES OF THE WHOLE.

### **§ 55. — Limiting or Extending Five-minute Debate—By House Action**

#### **By Unanimous Consent**

The House, by unanimous consent, may agree to limit or extend debate under the five-minute rule in the Committee of the Whole, whether or not that debate has commenced. The House may by unanimous consent agree to an extension of time for such debate even after the Committee has previously agreed to terminate debate at an earlier time. Deschler-Brown Ch 29 § 78.41.

#### **By Motion**

A timely motion to limit debate on a matter pending in the Committee of the Whole under the five-minute rule has been held to lie in the House as well as in the Committee once that debate has begun. In an early decision Speaker Crisp held that the Committee did not have the exclusive right to limit debate on matters pending before it, and that a motion to limit debate on a section of a bill pending in Committee would lie in the House. 5 Hinds § 5229. However, in modern practice the motion is made in the Committee under clause 8 of rule XVIII. § 56, *infra*.

### **§ 56. — By Motion in the Committee of the Whole**

#### **Generally; When in Order**

A motion in the Committee of the Whole to limit or close five-minute debate is permitted by clause 8 of rule XVIII. *Manual* § 987. The motion may propose to close debate at once or at the expiration of a designated time. 8 Cannon § 2572. As noted above, a motion to extend debate is not in order in the Committee. § 54, *supra*.

Until a bill has been read for amendment in full or its reading dispensed with by unanimous consent or special order of business, a motion to close or limit debate on the entire bill is not in order. Deschler-Brown Ch 29 § 78.27. Likewise, a motion to close debate on a portion of a bill not yet reached in the reading of the bill for amendment is not in order. Deschler-Brown Ch 29 § 78.29. A motion to close debate on a portion of a bill that

has been read and on which there has been debate is in order. Deschler-Brown Ch 29 § 78.34. For a discussion of unanimous-consent requests to close or limit debate, see § 57, *infra*.

A motion to limit or close debate under the five-minute rule is not in order until debate has begun. 5 Hinds § 5225. Thus, a motion to close debate on a section of a bill or on an amendment is not in order until there has been some debate thereon. Deschler-Brown Ch 29 § 78.22. However, the motion to close debate has been held in order after only one speech, even though brief (5 Hinds § 5226), and although the Member making the speech, after gaining recognition to strike the last word, obtained consent to speak out of order (Deschler-Brown Ch 29 § 78.25).

Under clause 8 of rule XVIII, a motion in the Committee of the Whole to close debate under the five-minute rule is privileged. However, the motion cannot deprive another Member of the floor. Deschler-Brown Ch 29 § 78.14. Once pending, the motion must be disposed of before further recognition by the Chair. Deschler-Brown Ch 29 § 22.1.

Although it is customary for the Chair to recognize the manager of the pending bill to offer motions to limit debate, any Member may, pursuant to clause 8 of rule XVIII, move to limit debate at an appropriate time in the Committee of the Whole. Deschler-Brown Ch 29 § 23.28. However, the Member managing the bill is entitled to prior recognition to move to close debate on a pending amendment (after the proponent has yielded back) over other Members seeking to debate or amend the amendment. Deschler-Brown Ch 29 § 24.16.

It is in order in the Committee of the Whole to move to limit or close debate under the five-minute rule with respect to:

- The portion of the text that is pending and all amendments thereto. Deschler-Brown Ch 29 § 78.7.
- An amendment and all amendments thereto. Deschler-Brown Ch 29 § 78.65.
- All amendments to the bill (after the bill has been read) and all amendments thereto. Deschler-Brown Ch 29 § 78.30.

A proposition to control or divide the time is not in order as a part of a motion to limit debate under the five-minute rule. 8 Cannon § 2570.

Where there is a time limitation on debate on a pending amendment in the nature of a substitute and all amendments thereto, but not on the underlying original text, debate on perfecting amendments to the original text proceeds under the five-minute rule, absent another time limitation. Where the time for debate on a pending amendment in the form of a motion to strike (and all amendments thereto) has been limited, a subsequently offered perfecting amendment considered as preferential to (rather than as an amend-

ment to) the motion to strike remains separately debatable outside the limitation. *Manual* § 987.

A limitation on debate on a section of a bill and amendments thereto does not affect debate on an amendment adding a new section to the bill. Deschler-Brown Ch 29 § 79.31. The Chair may decline to recognize a Member to offer such an amendment until perfecting amendments to the pending section have been disposed of under the limitation. Deschler-Brown Ch 29 § 79.137.

#### **Consideration of Motion; Debate and Amendments**

A motion to limit debate under the five-minute rule must be reduced to writing if demanded by any Member. Deschler-Brown Ch 29 § 78.52. The motion is not debatable (*Manual* § 987), although it is subject to amendment (5 Hinds § 5227; 8 Cannon § 2578).

The motion in the Committee of the Whole to limit debate is not subject to a motion to reconsider because the motion to reconsider does not lie in the Committee. Deschler-Brown Ch 29 § 78.79. However, the Committee may by unanimous consent rescind or modify such an agreement. Deschler-Brown Ch 29 § 78.84.

### **§ 57. — By Unanimous Consent in the Committee of the Whole**

#### **Generally**

Debate under the five-minute rule in the Committee of the Whole may be closed or limited by the Committee by unanimous consent, even on portions of the bill not yet read. Deschler-Brown Ch 29 § 78.29. However, such request should include the condition that the portion of the bill sought to be limited be considered as read and open to amendment at any point. Deschler-Brown Ch 29 § 78.93. Similarly, the Committee may limit and allocate control of time for debate on amendments not yet offered by unanimous consent. *Manual* § 987.

In limiting debate by unanimous consent under the five-minute rule, the Committee of the Whole may include provisions to control and allocate the time. Deschler-Brown Ch 29 § 78.37. For example, the Committee may, by unanimous consent, limit debate to a certain number of hours, or to a time certain, to be equally divided and controlled by the managers of the bill. Deschler-Brown Ch 29 § 78.62.

#### **Rescission or Modification of Limitation**

A time limitation on debate imposed by the Committee of the Whole may be rescinded or modified by the Committee by unanimous consent (but not by motion). Deschler-Brown Ch 29 §§ 78.42, 78.43. The Committee

may by unanimous consent permit additional debate on an amendment before it is offered, notwithstanding a previous limitation imposed by the Committee on all amendments to the bill. Deschler-Brown Ch 29 § 79.63. The Committee can effect minor changes in procedures set by a special order of the House only by unanimous consent and only where congruent with the terms of the special order of business. *Manual* § 993.

### § 58. Motions Allocating or Reserving Time

A motion to limit debate under the five-minute rule in the Committee of the Whole is not in order if it includes a reservation of time for any special purpose, including a reservation of time for a particular Member. Deschler-Brown Ch 29 §§ 78.37, 78.61, 78.67, 78.72. However, the Committee may limit debate and include a reservation of time by unanimous consent. For example, part of the time under a limitation may be reserved for the reporting committee by unanimous consent. Deschler-Brown Ch 29 § 78.69.

### § 59. Timekeeping; Charging Time

#### Generally

A limitation on debate under the five-minute rule may take the form of a restriction on time for debate (for example, “for 60 minutes”) or as a limitation on debate to a time certain (for example, “until 5 p.m.”). The form of the limitation is particularly significant in determining how the time is to be accounted for under the limitation.

When time for debate on a proposition is limited to a fixed period, such as 60 minutes, the time consumed for purposes other than debate is not counted or charged against the allowable time for debate (such as votes, quorum calls, maintaining order, points of order, reading amendments, or offering and debating preferential motions to strike the enacting clause). *Manual* § 987; Deschler-Brown Ch 29 §§ 79.10, 79.13. However, if time is limited to a fixed period on the entire bill and all amendments thereto, the time for the preferential motion does consume time under the limitation. Deschler-Brown Ch 29 § 79.17.

On the other hand, where the time for debate has been fixed to a time certain, such as 5 p.m., the time consumed by matters other than debate (such as parliamentary inquiries, points of order, rereading of amendments, maintaining order, votes, quorum calls, or offering and debating preferential motions to strike the enacting clause) is charged against the time remaining. Deschler-Brown Ch 29 §§ 79.5, 79.9. Such a limitation terminates all debate at the time specified, notwithstanding any allotted time remaining. Deschler-

Brown Ch 29 § 79.8. In such cases, no point of order lies against the inability of the Chair to recognize each Member desiring recognition. Deschler-Brown Ch 29 § 22.31. The time specified can be rescinded or modified only by unanimous consent. *Manual* § 987. A unanimous consent-request or motion to close debate at a time certain should specify that the debate cease at a certain time, and not that the Committee of the Whole vote at a certain time, because the Chair cannot control time consumed by quorum calls or votes on other intervening motions. Deschler-Brown Ch 29 § 78.75. If the Committee rises before the expiration of such a limitation, and does not resume consideration before the time certain arrives, no further time for debate remains. Deschler-Brown Ch 29 § 79.128.

If debate is closed instantly on the entire bill and all amendments thereto, no further debate is in order for any purpose (including the preferential motion that the enacting clause be stricken); and further amendments may be offered but not debated unless they have been printed in the *Congressional Record*. Deschler-Brown Ch 29 §§ 79.1, 79.23.

#### **Role of the Chair in Allocating Time**

Where debate on an amendment has been limited, the Chair has several options in allocating the remaining time. The Chair may (1) continue to recognize under the five-minute rule; (2) divide the time between Members indicating a desire to speak; or (3) as is increasingly the case under the modern practice, divide time between the proponent of the amendment and an opponent (giving priority in recognition among opponents to committee members) and allow them in turn to yield time to other Members. *Manual* § 987.

The Chair also has the discretion to give priority in recognition under a limitation to those Members seeking to offer amendments, over other Members standing at the time the limitation was agreed to. Where time for debate on a bill and all amendments thereto has been limited to a time certain several hours away, the Chair has the discretion to continue to proceed under the five-minute rule until deciding to allocate remaining time on possible amendments. The Chair may then divide that time among proponents of anticipated amendments and committee members opposing those amendments. The Chair also has discretion to reallocate time to conform to the limit set by unanimous consent of the Committee of the Whole. *Manual* § 987.

#### **Time Remaining After Committee Rises**

The adoption of a motion to rise during debate on an amendment in the Committee of the Whole does not affect the time remaining on the

amendment when the bill is resumed as unfinished business in the Committee of the Whole, where debate is limited to a number of minutes and not to a time certain. Deschler-Brown Ch 29 § 79.131. However, where a measure has been limited to a time certain, and the Committee rises before that time without having completed action on the pending measure, no time is considered to be remaining when the Committee, on a later day, resumes consideration of the measure. Deschler-Brown Ch 29 § 79.127. The Committee may extend debate on the subsequent day only by unanimous consent. Deschler-Brown Ch 29 § 78.84.

Where after limiting debate under the five-minute rule the Committee of the Whole is about to rise on motion, the Chair has the discretion to defer the allocation of that time until the Committee resumes consideration of the bill on a subsequent day. Deschler-Brown Ch 29 § 79.52.

## H. Reading Papers; Displays and Exhibits

### § 60. Reading Papers

In the early practice of the House, the reading of papers, including a Member's own written speech, was usually permitted without question; and Members usually read such papers as they pleased. *Manual* § 964; 5 Hinds § 5258. However, that privilege was subject to the authority of the House if another Member objected under a former version of clause 6 of rule XVII. *Manual* § 964. If objection was made to such a reading under the former rule, the question was determined by the House without debate. The rule was amended in 1993 to apply only to exhibits and not to readings and the question no longer must be submitted to the House. *Manual* § 963.

### § 61. Use of Exhibits

#### Generally

Members often use relevant exhibits in debate for the information of other Members. The display of exhibits in debate was at one time automatically subject to House consent under clause 6 of rule XVII if objection was made. However, the clause was amended in the 107th Congress to give the Chair the discretion to submit the question of its use to the House. *Manual* § 963.

For procedures under the former rule, see *Manual* § 963.

It is not a proper parliamentary inquiry to ask the Chair to judge the accuracy of the content of an exhibit. It is not in order to request that the

electronic voting display be turned on during debate as an exhibit to accompany a Member's debate. *Manual* § 963.

Exhibits that have been permitted by the House or the Committee of the Whole, either by vote or because no objection was raised, include:

- A pair of oversized dice. Deschler-Brown Ch 29 § 84.2.
- Models prepared by the Committee on Science and Astronautics. Deschler-Brown Ch 29 § 84.4.
- Electronic voting equipment to be installed in the House Chamber. Deschler-Brown Ch 29 § 84.
- A bottle of liquor alleged to be "government rum." Deschler-Brown Ch 29 § 84.1.
- A chart showing complex funding formulas. Deschler-Brown Ch 29 § 84.5.
- Photographs of missing children. Deschler-Brown Ch 29 § 84.14.
- A display of dismantled weapons. Deschler-Brown Ch 29 § 84.17.
- A chart showing stockpiled weaponry. 99-1, June 19, 1985, p 16359.

The Speaker or chair of the Committee of the Whole may under rule I direct the removal of an exhibit from the well if the exhibit is not being used in debate. Deschler-Brown Ch 29 §§ 84.9, 84.10.

The Speaker has denied a request that a Member be permitted to use a video recorder on the floor of the House during a special-order speech, as an audio-visual display of comments by non-Members would be contrary to precedents limiting the privilege of debate to Members. Deschler-Brown Ch 29 § 80.8. The Speaker has disallowed the use of a person on the floor as a guest of the House as an "exhibit." *Manual* § 622; § 21, *supra*.

Beginning in the 111th Congress, the Speaker has announced guidelines for appropriate comportment in the chamber when the House is not in session. Such guidelines re-affirm the Speaker's responsibility for control of the Hall of the House under clause 3 of rule I, indicate that the chamber remains on static display during periods of adjournment, and prohibit any activity (including audio or video recording) that might be taken to carry the imprimatur of the House. 111-1, Jan. 6, 2009, p \_\_\_\_.

### § 62. — Decorum Requirements

The Speaker's responsibility under clause 2 of rule I to preserve decorum requires that the use of exhibits in debate that would be demeaning to the House or that would be disruptive of the decorum thereof be disallowed. Deschler-Brown Ch 29 § 84.16. Thus the Speaker may inquire of a Member's intentions as to the use of exhibits before conferring recognition to address the House. Deschler-Brown Ch 29 § 84.11. In one instance, the Chair declined to permit a bumper sticker to be attached to the lectern in the House Chamber. 101-1, Sept. 13, 1989, p 20362. In 1995, a caricature of



the Speaker presented during debate was ruled out of order. 104-1, Nov. 16, 1995, p 33393-95. In another instance, where a Member during debate on a bill funding the arts indicated his intention to show as exhibits certain photographs—some innocuous and some alleged to be pornographic—the Chair announced that he would prevent the display of *all* such exhibits on the pending bill. The Chair observed that although the first amendment to the Constitution provides that Congress shall make no law abridging the freedom of speech, the Constitution also provides in article I that the House may determine the rules of its proceedings, and in clause 2 of rule I the House has assigned to the Chair the responsibility of preserving order and decorum. *Manual* § 622.

At the request of the Committee on Ethics, the Speaker announced that (1) all handouts distributed on or adjacent to the floor must bear the name of a 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 these standards may constitute a breach of decorum and thus give rise to a question of privilege; (4) staff are prohibited in the Chamber or rooms leading thereto 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. *Manual* § 622.

## I. Secret Sessions

### § 63. In General

#### Generally; Historical Background

In the early days of the Congress, secret sessions of the House were frequent. The sessions of the Continental Congress were secret. Up to and during the War of 1812, secret sessions of the House were held often. Normally, the House sat with galleries open. When the occasion required, as on receipt of a confidential communication from the President, the galleries were cleared by House order. 5 Hinds §§ 7247, 7251 (note). Following that period, the practice fell into disuse, remaining dormant for almost a century, and there have been but few secret sessions in the modern era. 6 Cannon § 434.

It has been held that each House has a right to hold secret sessions whenever in its judgment the proceedings should require secrecy. In 1848, the Circuit Court of the District of Columbia upheld a Senate contempt proceeding conducted in a secret session arising out of the publication of a trea-

ty pending before the Senate in executive session. *Nugent v. Beale*, 18 F. Cas. 141 (C.C.D.C. 1848) (No. 10375); 2 Hinds § 1640.

### Procedure

The oath of office taken by elected House officers obligates them to “keep the secrets of the House” under clause 1 of rule II. *Manual* § 640. Clause 9 of rule XVII, dating from 1792, authorizes the holding of a secret session (1) whenever confidential communications are received from the President, or (2) whenever the Speaker or any Member informs the House that such individual has communications that such individual believes ought to be kept secret. *Manual* § 969.

The House, and not the Committee of the Whole, determines whether to conduct a secret session under clause 9 of rule XVII. *Manual* § 969; Deschler-Brown Ch 29 § 85.6. Provision for the session is generally made pursuant to a motion considered in the House. See § 64, *infra*. The material to be presented in the secret session is not required to be relevant to any particular legislation. Deschler-Brown Ch 29 § 85.9. No point of order lies in the secret session that the material in question must be produced for the Members in advance to determine whether secret or confidential communications are involved. Deschler-Brown Ch 29 § 85.14.

For procedures governing a secret session of the House called to resolve a conflict between the Permanent Select Committee on Intelligence and the President with respect to disclosure of classified information, see clause 11(g) of rule X. *Manual* § 785.

### Use of Special Orders of Business

In 1983, for the first time, a secret session was held pursuant to a special order of business reported from the Committee on Rules and adopted by the House. The special order of business provided for preliminary general debate on a bill in secret session of the Committee of the Whole and for further consideration of the bill in open session of the Committee of the Whole. 98-1, H. Res. 261, July 14, 1983, p 19133. Following the secret session, the Speaker stated that Members were bound not to release or revise or make public any of the transcript thereof until further order of the House, and that pursuant to the special order of business the transcript would be referred to the two committees reporting the bill. 98-1, July 19, 1983, pp 19776, 19777. Six months later, the Speaker laid before the House communications transmitting the recommendations of those committees that the transcript of the secret session not be publicly released. 98-2, Jan. 23, 1984, p 84.

In 2008, for the first time, a secret session was held pursuant to a unanimous-consent request that, similar to a special order of business, provided the terms for debate. *Manual* § 969.

#### § 64. Motions; Debate

A motion to go into a secret session is in order when any Member informs the House that such Member has communications that should be considered in confidence. The motion takes precedence over a motion to resolve into the Committee of the Whole for the consideration of privileged legislative business such as an appropriation bill. 8 Cannon § 3630.

The motion to resolve into secret session may be made only in the House and not in the Committee of the Whole. *Manual* § 969; Deschler-Brown Ch 29 § 85.6. The Member offering the motion must qualify by asserting that such Member has a secret communication to make to the House. Deschler-Brown Ch 29 § 85.5. The motion may be repeated on the same legislative day if the proponent asserts additional qualifying communications. *Manual* § 969. The motion is not debatable, although the Chair may explain the operation of the rule and respond to parliamentary inquiries after the motion has been agreed to and before the secret session commences. *Manual* § 969; Deschler-Brown Ch 29 §§ 85.7, 85.9. The motion to resolve into secret session is subject to the motion to lay on the table. *Manual* § 969.

After a motion to resolve into a secret session has been adopted, the Member who offered the motion may be recognized for one hour of debate. The normal rules of debate, including the principle that motions are in order only when the Member in control yields for that purpose, apply. Deschler-Brown Ch 29 § 85.13.

A motion in secret session to make the proceedings public is debatable for one hour, within narrow limits of relevancy. At the conclusion of debate in secret session, a Member may be recognized to offer a motion that the session be dissolved. Deschler-Brown Ch 29 § 85.18. In 2008, the unanimous-consent agreement pursuant to which the House resolved into secret session provided for adjournment of the House immediately following the secret session. *Manual* § 969.

#### § 65. Secrecy Restrictions and Guidelines

The Speaker may announce before a secret session commences that the galleries will be cleared. The Speaker also may announce that the Chamber will be cleared of all persons except Members and those officers and employees whose attendance is essential to the functioning of the secret session

and so specified by the Speaker, and that all proceedings in the secret session must be kept secret until otherwise ordered by the House. Deschler-Brown Ch 29 §§ 85.8, 85.9. In one instance, the Speaker directed all officers and employees designated by him as essential to the proceedings to come to the desk and sign an oath of secrecy. The Speaker announced that violation of the oath was punishable by the House and that Members and employees were subject to standards of conduct and disciplinary proceedings under House rules. Deschler-Brown Ch 29 § 85.9. Where the House has concluded a secret session and has not voted to release the transcripts of that session to the public, the injunction of secrecy remains and the Speaker may informally refer the transcripts to appropriate committees for their evaluation and report to the House as to their ultimate disposition. Deschler-Brown Ch 29 § 85.10. Under clause 13 of rule XXIII (which was added to the Code of Official Conduct in the 104th Congress), all Members, officers, and employees are required to execute an oath before they are given access to classified information. The list of Members signing this oath is published weekly in the *Congressional Record*. For a discussion of committee meetings in executive session, see COMMITTEES.