

# Chapter 50

## Rules and Precedents of the House

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### Research References

U.S. Const. art. I, § 5  
8 Cannon §§ 3376-3396  
Deschler Ch 5 §§ 1-7  
*Manual* §§ 58-61a, 283-286, 387, 388, 1130

### § 1. In General

#### Adoption of Rules

The Constitution empowers each House to determine the rules of its proceedings. U.S. Const. art. I § 5; *Manual* § 58. The House may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result that is sought. However, within these limitations, the House is free to adopt such rules as it sees fit. *Yellin v. United States*, 374 U.S. 109 (1963).

It is customary for the House at the beginning of each Congress to adopt the rules by which it is to be governed during its meetings. In so doing, the House ordinarily will adopt the rules applicable in the previous Congress with such amendments as it considers necessary. Deschler Ch 1 § 10.5. Such rules are adopted or amended pursuant to a simple resolution that is called up as privileged and debated under principles of “general parliamentary law.” See ASSEMBLY OF CONGRESS. Changes in the rules from the prior Congress normally emanate from the conference or caucus of the party that commands a majority and thus has the responsibility for organizing the House.

Even before adoption of rules, it is in order to consider as privileged a resolution in the nature of a special order of business that makes in order the subsequent consideration of a resolution adopting the rules for the newly organized House. *Manual* § 60; 5 Hinds 5450.

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

- The resolution is debatable for one hour.
- The resolution is not subject to amendment unless the previous question is rejected or the manager of the resolution yields for an amendment. Deschler Ch 1 § 10.9.
- A motion to refer (with instructions) is in order before debate begins, but this motion is subject to being laid on the table. *Manual* § 60.
- A motion to commit is in order pending or following the ordering of the previous question, which is the prerogative of the minority, but the proponent need not qualify as opposed to the resolution; and it is not debatable. *Manual* § 60; 5 Hinds § 5604.
- A majority vote is required to adopt a resolution establishing rules for a new Congress.

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

### **Publication**

The standing rules of the House are published each Congress in the *House Rules and Manual* pursuant to resolution. *Manual*, p iii. This comprehensive volume also includes, among other pertinent material, portions of *Jefferson's Manual*, which was prepared by Thomas Jefferson for his own guidance while he was President of the Senate from 1797 to 1801. Under clause 1 of rule XXIX, the principles recorded in *Jefferson's Manual* govern the proceedings of the House where the principles are applicable and not inconsistent with the standing rules and orders of the House. *Manual* § 1105.

### **Statutory Rules and Joint Rules**

In some cases, Congress has enacted statutes setting forth rules and procedures to be followed when the House considers certain kinds of legislation, for example, the Congressional Budget and Impoundment Control Act of 1974. Such statutes are enacted as an exercise of the rule-making power of Congress, are reincorporated by reference in the preface of the resolution adopting the rules of each House and in clause 1 of rule XXIX, and are carried in the *House Rules and Manual*. *Manual* §§ 1127-1130; Deschler Ch 5 § 3.

Joint rules, although in common use until 1876, are rarely used today except to govern a joint session to count electoral votes. *Manual* § 220; Deschler Ch 10 § 2.6.

### Rules Based on Precedent or Custom

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

The precedents of the House, which are based primarily on the rulings of the Speaker or chair of the Committee of the Whole, are compiled in *Hinds' Precedents* (1907), *Cannon's Precedents* (1936), *Deschler's Precedents* (1977) and *Deschler-Brown Precedents*. *Deschler-Brown-Johnson Precedents*, which is currently being compiled, is authorized by 2 USC § 28b.

### § 2. Binding Effect

Parliamentary law—a term that encompasses both formal rules and usages—has come to be recognized as binding on the assembly and its members, except as it may be varied by the adoption by the membership of special rules or through some other authorized procedural device. *Landes v. State ex rel Matson*, 67 NE 189 (Ind. 1903).

On the theory that a government of laws is preferable to a government of men, the House has repeatedly recognized the importance of following its precedents and obeying its well-established procedural rules. See, e.g., 2 Hinds § 1317. The House adheres to settled rulings, and will not lightly disturb procedures that have been established by prior decision of the Chair. Deschler, Preface, p vi. However, the Speaker or Chair may refuse to follow a precedent even though it is relevant to a pending question, where it is the only precedent on the point and was not carefully reasoned. 6 Cannon § 48.

### § 3. Construction

When a timely point of order is raised, it is the duty of the Chair to determine whether language in a pending measure conforms to the rules of the House, although the Chair may properly decline to do so where points of order against the provisions have been waived by a special order of business. Deschler Ch 21 § 23.3. In construing a rule, the Speaker may look be-

yond its terms and consider all the facts and circumstances in order to determine the intention of the House in adopting the rule. Deschler Ch 5 § 6.3. In construing the rules, the Chair may be guided by the general principle that the object of a parliamentary body is action, and not stoppage of action. *Manual* § 902.

The absence of a formal rule governing a particular procedure does not necessarily mean that the procedure is permitted. Indeed, acts or proceedings not expressly authorized by the rules may be deemed inconsistent with, or in violation of, the rules. Deschler Ch 5 § 6.4.

Where two rules of the House are in irreconcilable conflict, the one adopted later controls. Deschler Ch 5 § 6.1. Similarly, where the rules of the House and a subsequent legislative enactment are not consistent, the enactment must prevail. Deschler Ch 5 § 6.2. Similarly, a rule adopted after an enactment may supersede those provisions of the statute that would otherwise govern House procedure. Deschler Ch 5 § 6.

#### **§ 4. Changing or Waiving Rules**

##### **Generally**

Pursuant to its authority under article I, section 5 of the Constitution, the House may change or waive the rules governing its proceedings. 94-1, Mar. 20, 1975, p 7677; 95-1, Nov. 1, 1977, p 36310. This is so even with respect to rules enacted by statute. *Manual* § 857. Once the rules have been adopted at the convening of the House in a new Congress, further amendments to the rules are generally implemented by resolution reported from the Committee on Rules. A rule may in effect be suspended or modified through the use of certain procedural devices, such as a unanimous-consent request. Deschler Ch 5 § 5.

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

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

For the motion to suspend the rules, see SUSPENSION OF RULES.

**By Resolution**

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

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

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

**By Unanimous Consent**

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

**By Special Order of Business**

The House may adopt a special order of business from the Committee on Rules that has the effect of setting aside the standing rules of the House insofar as they impede the consideration of a particular bill. Deschler Ch 21 § 19.7. The special order of business may waive one or more—or indeed all—points of order against consideration of a particular bill or against provisions therein. For example, the special order of business may waive points of order that could otherwise be raised against legislative provisions in an appropriation bill, points of order based on the germaneness requirement, or points of order based on the Ramseyer rule. Deschler Ch 5 § 7. A rule that waives a point of order under section 425 of the Congressional Budget Act of 1974 (unfunded intergovernmental mandates) is itself subject to a point of order under section 426 of that Act. A rule that waives a point of order against earmarks (as provided for by clauses 9(a) and 9(b) of rule XXI) is not in order, and a point of order raised against such a rule is disposed of by the question of consideration, as provided by clause 9(c) of rule XXI. See BUDGET PROCESS; QUESTION OF CONSIDERATION.

A special order of business that “self-executes” the adoption of an amendment is not subject to a point of order that the amendment would oth-

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erwise be subject to because the amendment is not separately before the House during consideration of the special order of business. For example, a special order of business has been held not subject to points of order for “self-executing” an amendment that violated clause 7 of rule XVI (germaneness) (*Manual* § 928), clause 2 of rule XXI (legislation on an appropriation bill) (*Manual* § 1044), and clause 4 of rule XXI (appropriation on a legislative bill) (*Manual* § 1065).

For a full discussion of special orders of business, see SPECIAL ORDERS OF BUSINESS.