

CRS Report for Congress

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Points of Order, Rulings, and Appeals in the Senate

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The Senate's presiding officer typically does not have responsibility for pro-actively ensuring that matters under consideration comply with the rules. Instead, Senators may enforce the Senate's legislative rules and precedents by making points of order whenever they believe that one of those rules or precedents is, or is about to be, violated. Under some circumstances, a ruling by the presiding officer determines whether or not the point of order is well taken. Under others, the Senate itself decides the point of order, usually by majority vote. For more information on legislative process, see [<http://www.crs.gov/products/guides/guidehome.shtml>].¹

Senate Rule XX states in part that “[a] question of order may be raised at any stage of the proceedings, except when the Senate is voting or ascertaining the presence of a quorum, and, unless submitted to the Senate, shall be decided by the Presiding Officer without debate, subject to an appeal to the Senate.” The rule goes on to confirm that the presiding officer may “submit any question of order for the decision of the Senate.”

Points of Order. Under most circumstances, a Senator may make a point of order against a question (whether it be a bill, amendment, motion, or something else) at any time that the question is pending before the Senate. The primary exception arises when the Senate is debating a question — usually an amendment or motion — under a unanimous consent agreement that limits the time for debating it. Under this circumstance, no point of order can be made until all time for debating the question has expired or has been yielded back. While Senate rules preclude debate on points of order themselves, the presiding officer may, by precedent, entertain discussion at his or her discretion.²

¹ Paul S. Rundquist, former Specialist in American National Government at CRS, originally wrote this report. Dr. Rundquist has retired. The listed author updated this report and is available to respond to inquiries on the subject.

² Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure*, 101st Cong., 2nd sess., S. Doc. 101-28 (Washington: GPO, 1992), p. 989.

Rulings. In most situations, the presiding officer rules on all points of order.³ Under two circumstances, however, the point of order is decided by the Senate. First, the presiding officer may, in rare instances, decline to rule and, instead, submit the point of order directly for the Senate to decide by majority vote. The presiding officer is most likely to do so when the procedural question has not arisen before, and there is no Senate rule or precedent on which to base a ruling. Second, only the Senate, not its presiding officer, is empowered to decide certain points of order. Under Rule XVI, for example, the question of whether an amendment to an appropriations bill is germane is usually submitted to the Senate to decide by majority vote. Also, by precedent, if a Senator makes the point of order that the question pending before the Senate is unconstitutional, the Senate must decide that question by majority vote. If the presiding officer submits a point of order to the Senate to decide under either of these circumstances, it is subject to a nondebatable motion to table (or kill) the matter, which would dispose of the question permanently and adversely.⁴ In any situation in which the presiding officer submits the question to the whole Senate, it is debatable under the regular rules of the Senate.⁵

Appeals. In most cases, rulings made by the presiding officer in response to points of order are subject to appeal. When the presiding officer rules on a question of order, any Senator who disagrees with the ruling may challenge it. That Senator rises and states, “Mr. President, I appeal from the decision of the Chair.” Such an appeal usually is debatable, though the Senate may end the debate and dispose of the appeal by agreeing to a motion to table (or kill) it, which would uphold the ruling of the chair. Absent a successful motion to table, debate on the appeal is subject to extended consideration under the regular rules of the Senate.⁶ By precedent, decisions of the presiding officer concerning recognition of Senators are not subject to appeal.⁷ In addition, when the Senate has invoked cloture, Rule XXII gives the presiding officer the authority to hold an appeal to be dilatory and, therefore, not in order. (Also under Rule XXII, when the Senate is operating under cloture, points of order and appeals are to be decided without debate.)

After any debate on the appeal takes place, the Senate votes on whether “the decision of the Chair will stand as the judgment of the Senate.” Senators who support the ruling vote “‘aye’; those who oppose it vote ‘no’.” Appeals usually are decided by simple majority vote. A three-fifths vote of the entire Senate — 60 if no vacancies — is needed to overturn rulings by the presiding officer on most budget process points of order.⁸

³ Assuming no action has been taken on the amendment on which a point of order has been laid, the presiding officer may, by precedent, allow modification to the amendment prior to ruling on the point of order. See *Riddick’s*, pp. 65, 988.

⁴ *Riddick’s*, pp. 52-54, p. 989.

⁵ *Riddick’s*, pp. 716, 736.

⁶ *Riddick’s*, p. 725. Under this circumstance, only a majority vote is required to overturn the ruling of the chair, but ending debate on the appeal may require a three-fifths vote to invoke cloture.

⁷ *Riddick’s*, p. 147.

⁸ The three-fifths threshold is required for those points of order for which a three-fifths vote would be required for a waiver. For more information on budget points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

Precedents. Rulings by the presiding officer invariably reflect the advice that the Senate Parliamentarian gives based on his or her examination of how presiding officers decided similar questions in the past.⁹ The presiding officer follows these precedents, and in similar fashion, new rulings become precedents on which presiding officers will rely in the future.

By the same token, when the presiding officer submits a point of order for the Senate to decide, or when the Senate decides a point of order by overruling the decision of the chair on appeal, that decision of the Senate also becomes a guiding precedent. In 2000, for example, the Senate determined (through a successful appeal from a ruling of the chair) that sense-of-the-Senate or sense-of-Congress amendments to appropriations bills must comply with Rule XVI regarding germaneness, just as substantive amendments to appropriations must.¹⁰ Nevertheless, although it is not unusual for Senators to appeal the rulings of the chair, the Senate only rarely overturns the rulings of its presiding officer. To routinely do so would undermine the continuity of Senate rules and the consistency of rule interpretation essential to legislative work.

The most authoritative precedents are those established by vote of the Senate itself. Rulings of the chair on which the Senate does not vote are of somewhat less probative value. Still weaker as precedents are statements and opinions by presiding officers in reply to parliamentary inquiries. A parliamentary inquiry is a question posed by a Senator to the chair about the Senate's procedures or the current procedural situation. The presiding officer's reply is not a ruling, so it is not subject to appeal. In addition, successful motions to *waive* a Budget Act point of order do not establish precedents. A successful motion to table would likewise not establish a precedent because the Senate would not have voted directly on the question or appeal. It could, however, have precedential value if it allowed a ruling of the chair to stand.

For additional information, see *Riddick's Senate Procedure* (Washington: GPO, 1992), especially pp. 145-149 ("Appeals") and 987-996 ("Points of Order"). In using *Riddick's Senate Procedure*, care should be exercised in distinguishing between references supported by footnotes using the phrase "see" or "see also," and those which do not use such terms. Footnotes with "see" or "see also" refer to statements by the chair in response to parliamentary inquiries. Footnotes without such forms refer to rulings of the chair or decisions of the Senate by vote in response to points of order.

⁹ In addition, rulings on certain budget points of order require examination of estimates supplied by the Senate Budget Committee, which monitors the compliance of measures with the Congressional Budget Act of 1974, as amended (Titles I-IX of P.L. 93-344; 2 U.S.C. 601-688).

¹⁰ According to the Majority Leader, who raised the point of order, no chair rulings or votes on appeal had previously subjected sense-of-the-Senate and sense-of-Congress amendments to this germaneness requirement for appropriations bills. Sen. Trent Lott, "Military Construction Appropriations," remarks in the Senate, *Congressional Record*, vol. 146, May 17, 2000, pp.8283-8286.