



# Record Voting in the House of Representatives: Issues and Options

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## Summary

Record voting in the House of Representatives appears to be a straightforward process but is an activity steeped in parliamentary complexity. While this report analyzes the evolution of voting beginning with the Legislative Reorganization Act of 1970 (LRA), some House rules related to voting have existed since the First Congress. The House has had nearly 220 years of experience with voting that manifests itself in precedents relevant today.

The LRA contained two major departures related to record voting. First, it authorized development of an electronic voting system. Second, it allowed record votes in the Committee of the Whole House on the state of the Union, the form in which the House usually operates to consider amendments to legislation.

Since the LRA's enactment, there have been notable developments in record voting procedures in the House. In general, the House through rules changes and precedents has limited votes that might be viewed as dilatory rather than substantive, and has expanded opportunities for votes that might be viewed as substantive. Changes in rules have also authorized the presiding officer to postpone and cluster votes and to reduce voting time to five minutes; largely ended pairing; and allowed Delegates and the Resident Commissioner to vote in the Committee of the Whole. Policy announcements by the Speaker and rulings by presiding officers have ended the correction of Members' votes; sought to limit the duration of votes; and dictated the manner by which Members may change a vote once cast.

Controversies have arisen on occasion. Some were related to the use of the electronic voting system, some to Members being able to cast or change a vote after the 15-minute minimum voting-time had expired. Others were related to a perception that a vote had been "held open" beyond a reasonable amount of time. Only a very few controversies have resulted in an investigation. The Standards of Official Conduct Committee has made three investigations. A select committee is currently investigating the manner by which a vote was ended.

Should the House wish to address rules, precedents, or practices, or the sources of particular controversies, it has a number of possible vehicles and potential options. Vehicles include House and party rules, the Speaker's policies, and administrative policies. Changes might be made to the electronic voting system, operations on the Speaker's dais, Members' ability to vote after the 15-minute minimum, and other aspects of voting in the House.

Complementary analyses to this report may be found in CRS Report RL34366, *Electronic Voting System in the House of Representatives: History and Evolution*, by (name redacted), and CRS Report 98-396, *Guide to Individuals Seated on the House Dais*, by (name redacted). See also supplementary information at the CRS Congressional Processes website, <http://www.crs.gov/products/guides/guidehome.shtml>. This report will be updated after the Select Committee to Investigate the Voting Irregularities of August 2, 2007 issues its final report.

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Member voting is perhaps the most important activity of any legislature—determining the fate of bills, resolutions, amendments, and other matters. With record votes, legislators and their parties put themselves on the public record for or against specific questions. The action of voting in the House of Representatives appears to be a straightforward process, but it is an activity steeped in parliamentary complexity.

Rules, precedents, and practices govern voting in the House and the Committee of the Whole House on the state of the Union (hereafter, the Committee of the Whole). Largely, voting procedures in the House and the Committee of the Whole have evolved to become similar since the Legislative Reorganization Act of 1970 (LRA).<sup>1</sup> The first purpose of this report is to discuss the two momentous changes in record voting procedures that the House included in the LRA and to analyze the evolution of rules, precedents, and practices on record voting procedures since that time.

The conduct of record votes in the House, moreover, has demonstrated a need for flexibility on some occasions and generated controversy on others. The Standards of Official Conduct Committee and the House Administration Committee as well as a select committee have been called on formally or informally to investigate some controversies. The second purpose of this report is to discuss how the House has adapted to exigencies in conducting record votes, and to analyze the occasion and resolution of controversies that have arisen.

The House in the 110<sup>th</sup> Congress adopted a rules change that sought to terminate record votes in a manner that allowed all Members to vote but did not purposely reverse “an already-established outcome.”<sup>2</sup> Yet, a vote taken on August 2, 2007, resulted in the House establishing a select committee to investigate the termination of that vote. The third purpose of this report is to identify options and mechanisms available to the House if it wishes to address some of the rules, precedents, practices, exigencies, and controversies that have defined voting procedures.

The different forms of voting available in the House and the Committee of the Whole—voice, division, and record<sup>3</sup>—and the procedures for obtaining these votes are succinctly explained in **Appendix B**. The constitutional provisions and rules of the 110<sup>th</sup> Congress pertinent to voting, and the Speaker’s policy in the 110<sup>th</sup> Congress on voting by electronic device, appear in **Appendix A**. Points of order and parliamentary inquiries pertinent to voting in the 110<sup>th</sup> Congress, through May 2008, appear in **Appendices C and D**, respectively. (The parliamentarian’s notes in the *Constitution, Jefferson’s Manual and Rules of the House of Representatives of the United States* regularly cite practices and actions that established precedent, in addition to citing rulings on points of order and responses to parliamentary inquiries. This document is published early in the first session of each Congress, to incorporate rules changes and to update the parliamentarian’s notes.)

This report is divided by first-level headings into sections. The sections are divided into parts. Cross references within the report will therefore refer to another section or to another part.

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<sup>1</sup> P.L. 91-510; 84 Stat. 1140 (1970).

<sup>2</sup> Rule XX, cl. 2(a). U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, 110<sup>th</sup> Congress*, H.Doc. 109-157, 109<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by John V. Sullivan (Washington, DC: GPO, 2007), p. 808. (Hereafter, *House Rules and Manual, 110<sup>th</sup> Congress*.)

<sup>3</sup> “Record vote” and “recorded vote” are used in this report to include yea-and-nay votes in the House and recorded votes in the House and the Committee of the Whole.

## Changes to Record Voting in the Legislative Reorganization Act of 1970

On the eve of two momentous changes to House rules concerning voting, the features of voting that these changes overturned might seem shocking to Members and staff today. Prior to enactment of the LRA, record votes in the House were conducted by an oral, alphabetical call of the roll and the hand recording of Members' positions. In addition, record votes were not permitted in the Committee of the Whole, the form in which the House normally operates to debate and vote on amendments to measures before the House itself votes on passage.<sup>4</sup>

The House Administration Committee in the 91<sup>st</sup> Congress (1969-1971) was studying the potential of an *electronic* voting system,<sup>5</sup> but H.R. 17654, the LRA as reported by the Rules Committee, did not include a provision dealing with an automated voting system. The House nonetheless amended H.R. 17654 to authorize the development of an electronic voting system to record votes.

On the second matter—no record votes in the Committee of the Whole—the House through its history had continued to follow ancient British practice:

[The Committee of the Whole] originated in the time of the Stuarts, when taxation arrayed the Crown against the Commons, and suspicion made the Speaker a tale-bearer to the King. To avoid the Chair's espionage[,] the Commons met in secret, elected a chairman in whom it had confidence, and[,] without fear of the King[,] freely exchanged its views respecting supplies. The informality of its procedure survived the occasion for secrecy [in the House of Representatives]....<sup>6</sup>

By rule and practice, the Committee of the Whole House continues today to use a separate set of procedures from those of the House. Before the LRA's enactment, however, the forms of votes available in the Committee of the Whole were voice, division, and "teller."

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<sup>4</sup> Rule XIII, cl. 1, and Rule XVIII, cl. 3, in *House Rules and Manual*, 110<sup>th</sup> Congress, pp. 614 and 762.

<sup>5</sup> Rep. Joe D. Waggoner Jr., "Legislative Reorganization Act of 1970," *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25825.

As explained in a companion CRS report on electronic voting, Thomas Edison in 1869 demonstrated an electro-mechanical voting system to the House. Members then introduced legislation to install an electrical voting system in the House in a number of Congresses between 1886 and before World War II and in every Congress after World War II through 1969. However, only two measures were ever reported from committee, in 1915 and 1923, and none was considered by the House. CRS Report RL34366, *Electronic Voting System in the House of Representatives: History and Evolution*, by (name redacted).

<sup>6</sup> Alexander, De Alva Stanwood, *History and Procedure of the House of Representatives* (1916. Reprint. New York: Burt Franklin, 1970), p. 257.

"The yeas and nays...are not taken in Committee of the Whole...." U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States*, 91<sup>st</sup> Congress, H.Doc. 402, 90<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1969), p. 27. See also Walter Kravitz, "Congressional Procedures and the Legislative Reorganization Act of 1970," *Parliamentary Journal*, vol. XII, no. 1, January 1971, p. 13 (hereafter, Kravitz, "Congressional Procedures and the Legislative Reorganization Act of 1970").

The House rule in the 91<sup>st</sup> Congress on voting, which continued largely intact from the First Congress,<sup>7</sup> stated:

[The Speaker]...shall put questions in this form, to wit: "As many as are in favor (as the question may be), say Aye;" and after the affirmative voice is expressed, "As many as are opposed, say No;" if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative; if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one from each side of the question to tell the Members in the affirmative and negative; which being reported, he shall rise and state the decision.<sup>8</sup>

"Tell" here was used to mean "count" or "enumerate." As explained by one Member in debate on the LRA, the teller vote was conceived "as a method of voting the will of the people while escaping the wrath of a powerful and vengeful monarch.... We [kept the rule] because we said it helped expedite the often slow legislative process."<sup>9</sup>

H.R. 17654, the LRA as reported by the Rules Committee, also did not include a provision on record votes in the Committee of the Whole. During committee markup, an amendment to allow such votes failed on a 6-6 vote.<sup>10</sup> The House nonetheless amended H.R. 17654 to authorize "recorded teller votes."

## **Electronic Voting Amendment**

As noted, H.R. 17654, the LRA as reported by the Rules Committee, the committee of jurisdiction, did not include a provision pertaining to an automated voting system in the House. The chair of the special subcommittee of the House Rules Committee that had drafted the bill explained during floor debate:

Because of the work the Committee on House Administration was doing...your subcommittee felt that it probably was inappropriate, and not timely at the time, to actually attempt to amend the rules to make provision for electronic voting....<sup>11</sup>

Other Members were skeptical of the explanation, however, with one Member noting that "the Members of the [subcommittee] who have spoken [earlier] have all seemed to be against the idea."<sup>12</sup>

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<sup>7</sup> *Journal of the House of Representatives of the United States*, 1<sup>st</sup> Cong., 1<sup>st</sup> sess., vol. 1 (Washington, DC: Gales & Seaton, 1826), p. 9.

<sup>8</sup> House Rule I, cl. 5 (91<sup>st</sup> Congress), in *Journal of the House of Representatives of the United States*, 91<sup>st</sup> Cong., 1<sup>st</sup> sess. (Washington, DC: GPO, 1969), p. 1431. (While House Rule I both in the 91<sup>st</sup> Congress and today concerns the Speaker, House rules were recodified in the 106<sup>th</sup> Congress, affecting the provisions of Rule I.)

<sup>9</sup> Rep. Hale Boggs, "Legislative Reorganization Act of 1970," *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25800. (Hereafter, Rep. Boggs, remarks in the House.)

<sup>10</sup> Rep. Thomas P. "Tip" O'Neill Jr., "Legislative Reorganization Act of 1970," *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25796. (Hereafter, Rep. O'Neill, remarks in the House.)

<sup>11</sup> Rep. B.F. Sisk, "Legislative Reorganization Act of 1970," *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25828.

<sup>12</sup> Rep. Andrew Jacobs Jr., "Legislative Reorganization Act of 1970," *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25829.

Support in the House to replace oral roll-call voting with automated voting was nonetheless considerable. On July 27, 1970, Representative Robert McClory offered an amendment to H.R. 17654 to allow the use of an electronic voting system to record votes, and to authorize spending for such a system. The amendment provided:

...(a) Rule XV of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

“5. In lieu of the calling of the names of Members in the manner provided for under the preceding provision of this rule, upon any roll call or quorum call, the names of such Members voting or present may be recorded through the use of appropriate electronic equipment. In any such case, the Clerk shall enter in the Journal and publish in the Congressional Record, in alphabetical order in each category, a list of the names of those Members recorded as voting in the affirmative and those Members recorded as voting in the negative, or a list of the names of those Members voting present, as the case may be, as if their names had been called in the manner provided for under such preceding provision.”

(b) The contingent fund of the House of Representatives shall be available to provide the electronic equipment necessary to carry out the purpose of the amendment made by subsection (a).<sup>13</sup>

Republican Representative McClory and bipartisan proponents argued for the efficiency that an electronic voting system would bring to the House: an oral roll-call vote typically consumed more than 30 minutes, while a vote using an automated system was anticipated to require half that much time. Advocates also noted that oral roll calls consumed too much time as the House work load increased, and that changes in the LRA could further increase the number of roll-call votes. Some Members, having served in state legislatures, offered their experiences with automated systems as testament to the efficiency to be gained.<sup>14</sup> One Member recalled an investigation of “ghost voting” the previous year and the recommendation from the Standards of Official Conduct Committee for a new voting system.<sup>15</sup> No one spoke against automated voting during debate on the McClory amendment.

Several Members commented on the use of “may” rather than “shall” in the wording of the amendment—“the names of...Members...*may* be recorded through the use of appropriate electronic equipment.” (*Emphasis added.*) Representative McClory responded to a question on the word choice as follows:

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<sup>13</sup> Rep. Robert McClory, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25818. (Hereafter, Rep. McClory, remarks in the House.) P.L. 91-510, §121; 84 Stat. 1140, 1157 (1970).

The House agreed earlier on July 27, in adopting an amendment allowing “recorded teller votes” in the Committee of the Whole, to a compatible amendment allowing those votes to be taken by electronic device. See footnote 32 for information on the earlier amendment.

References in this report to the “Journal” mean the *Journal of the House of Representatives of the United States*.

<sup>14</sup> “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), pp. 25818-25829.

<sup>15</sup> Rep. Charles E. Bennett, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25829. See also “Communication from the Committee on Standards of Official Conduct,” *Congressional Record*, vol. 115, part 12 (June 19, 1969), p. 16629; “House Group Urges Roll-Call Reform,” *The New York Times*, December 19, 1968, p. 33; and “Three Branches Involved in Ethics Controversies,” in *Congressional Quarterly Almanac*, 1969, vol. XXV (Washington, DC: Congressional Quarterly Inc., 1970), p. 1028.

The word “may” is in there so that the House through its organized committees can proceed to complete its work and so that we can record votes in that way. However, under my amendment it would not be necessary to record votes and roll calls electronically, nor would we necessarily record all votes in that way. These are questions to be determined at a later time when details of the system are worked out.<sup>16</sup>

This argument satisfied members of the House Administration Committee, the panel with jurisdiction over an automated voting system.<sup>17</sup>

Members skeptical of the House implementing an electronic voting system, in the absence of a specific directive, supported an amendment to the McClory amendment. Representative Robert L. Leggett’s amendment, among other things, set a specific commencement date for an electronic voting system. Mr. Leggett ultimately withdrew his amendment following remarks by Representative Joe D. Waggoner Jr., chair of the House Administration Committee’s Special Subcommittee on Electrical and Mechanical Office Equipment. Mr. Waggoner explained the status of the subcommittee’s work and indicated that recommendations on an electronic voting system would be made in the current Congress.<sup>18</sup>

The McClory amendment was agreed to by voice vote in the Committee of the Whole,<sup>19</sup> and enacted when President Richard M. Nixon signed the LRA into law.<sup>20</sup>

## **Recorded Tellers Amendment**

As also noted, H.R. 17654, the LRA as reported by the Rules Committee, the committee of jurisdiction, did not include a provision to allow recorded votes in the Committee of the Whole. House rules and precedents allowed only voice, division, and teller votes in the Committee of the Whole.

When the Committee of the Whole took a vote by tellers, the chairman of the Committee of the Whole “if he still doubts [after a division vote], or a count is required by at least one-fifth of a quorum,...shall name one or more from each side of the question to tell the Members in the affirmative and negative; which being reported he shall rise and state the decision.”<sup>21</sup> Members passed in front of the appropriate teller and were counted, and only the *numbers* for and against a question were announced by the chair and reported in the *Congressional Record*.<sup>22</sup>

By the 91<sup>st</sup> Congress, teller votes had become controversial. There was growing sentiment inside and outside of the House that Members used the Committee of the Whole’s secrecy to escape accountability for votes, and that at least some controversial or well-publicized amendments that

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<sup>16</sup> Rep. McClory, remarks in the House, p. 25818.

<sup>17</sup> See, for example, Rep. Fred Schwengel, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), pp. 25824, 25827. (Hereafter, Rep. Schwengel, remarks in the House.)

<sup>18</sup> Reps. Robert L. Leggett and Joe D. Waggoner Jr., “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), pp. 25819-25824, 25825, and 25829.

<sup>19</sup> “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25829.

<sup>20</sup> P.L. 91-510, §121; 84 Stat. 1140, 1157 (1970).

<sup>21</sup> House Rule I, cl. 5 (91<sup>st</sup> Congress).

<sup>22</sup> See, for example, “Prevailing Rate Pay Systems for Government Employees,” *Congressional Record*, vol. 116, part 23 (September 9, 1970), p. 30866: “The Committee again divided, and the tellers reported that there were—ayes 73, noes 55.”

failed in the Committee of the Whole would have been agreed to had there been recorded votes.<sup>23</sup> Since the precedents of the House generally allowed a recorded vote in the House only on first-degree amendments *agreed to* in the Committee of the Whole—a practice that continues today—the precedents afforded virtually no opportunity for a recorded vote on an amendment that failed.<sup>24</sup>

To expose Members' positions on amendments voted on by tellers, citizens took seats in the House visitors' gallery, trying to see which Members stood in each line for and against an amendment. Individuals who opposed the Vietnam War, for example, sat in the visitors' gallery and attempted to see how individual Members voted on war-related amendments, and then reported whom they observed. Such observations were prone to error. These citizens were referred to as gallery "watchers" or "observers."<sup>25</sup> In the 91<sup>st</sup> Congress, votes on issues widely covered in the media and widely discussed in the electorate—the invasion of Cambodia, the anti-ballistic missile (ABM), and the supersonic transport plane (SST)—were decided by teller votes on amendments in the Committee of the Whole.<sup>26</sup>

During the Rules Committee's markup of H.R. 17654, Democratic Representative Thomas P. "Tip" O'Neill Jr. proposed an amendment to allow "recorded teller votes," or "tellers with clerks," in the Committee of the Whole. It failed on a 6-6 vote.<sup>27</sup> On July 27, 1970, Representatives O'Neill and Charles S. Gubser, a leading Republican proponent of allowing more recorded votes, offered a floor amendment to H.R. 17654 to add the following language to Rule I, cl. 5:

If before tellers are named any Member requests tellers with clerks and that request is supported by at least one-fifth of a quorum, the names of those voting on each side of the question shall be entered in the Journal. Members shall have not less than twelve minutes from the naming of tellers with clerks to be counted.<sup>28</sup>

In support of the amendment, Representative O'Neill argued:

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<sup>23</sup> Rep. O'Neill, remarks in the House, p. 25797; and Rep. Boggs, remarks in the House, p. 25800. See also Roscoe Drummond, "House Reform...Possible Vote Error Unprotected," *The Washington Post*, July 12, 1967, p. A23; and Henry Cathcart, "Inside Washington: Teller Vote Errs; Makes History," *Chicago Daily Defender*, July 20, 1967.

<sup>24</sup> Wm. Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington, DC: GPO, 2003), pp. 59-61. (Hereafter, Brown and Johnson, *House Practice*.)

At the time, a Member could offer a motion to recommit with instructions, but it was not debatable after the previous question was ordered. Opponents could therefore use the previous question vote to head off debate and an up-or-down vote on a motion to recommit. *House Rules and Manual, 110<sup>th</sup> Congress*, p. 794; Rep. William A. Steiger, "Legislative Reorganization Act of 1970," *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25811 (hereafter, Rep. Steiger, remarks in the House); and Kravitz, "Congressional Procedures and the Legislative Reorganization Act of 1970," pp. 14-15.

<sup>25</sup> Rep. Steiger, remarks in the House, p. 25811; and Rep. Fred Schwengel, remarks in the House, p. 23916. See also Norman G. Miller, "Some in House Seek to End Old Practice of Nonrecord Voting," *Wall Street Journal*, June 18, 1970, pp. 1, 3.

<sup>26</sup> Rep. O'Neill, remarks in the House, p. 25797. See also "Members Vote in Anonymity on Many Crucial Issues," *Congressional Quarterly Almanac, 1970*, vol. XXVI (Washington, DC: Congressional Quarterly Inc., 1971), p. 454; Bernard D. Nossiter, "House Rebuts Moves to Curb Nixon on Asia," *The Washington Post*, May 7, 1970, p. A1; and John W. Finney, "House Bars Curb on the President," *The New York Times*, May 7, 1970, p. 1.

<sup>27</sup> Rep. O'Neill, remarks in the House, p. 25796. For background, see "House Group Seeks More Roll Calls to Record Votes," *Congressional Quarterly Weekly Report*, vol. XXVIII, no. 26, June 26, 1970, pp. 1650-1652.

<sup>28</sup> Rep. O'Neill, remarks in the House, p. 25796.

There should be no one among us who is not willing to go on record on the vital issues of the day. There should be no one among us who is unwilling to go to his constituency on this record—his true record, based on the important votes in the Committee of the Whole.<sup>29</sup>

Other Members argued that the change would increase not only accountability of the House and its individual Members but also decrease Member absenteeism—a problem evident from the low numbers counted on various teller votes—since Members would not want to miss recorded votes.<sup>30</sup> Some noted that unrecorded teller votes were of importance when Congress met for just a few months, but that this justification had disappeared with the development of essentially a year-round Congress and the emergence of the “highly complex relationship between the people and their government.”<sup>31</sup> Members did not speak against recorded teller votes during debate on the O’Neill-Gubser amendment.

The recorded teller amendment was agreed to by voice vote in the Committee of the Whole,<sup>32</sup> and enacted when President Nixon signed the LRA into law.<sup>33</sup>

## Evolution of House Rules on Record Voting Since 1970

This section of the report, on the evolution of House rules, precedents, and practices, related to record voting procedures since the 1970 LRA, is divided into broad topics, such as Obtaining a Vote or Allowing Late-Arriving Members to Vote/Changing an Outcome. Normally, a paragraph briefly explaining rules, precedents, or key changes since 1970 begins a topic. A topic may be further divided so that the reader may easily find a topic’s constituent parts.

The changes to House rules examined in this section of the report were contained in the rules packages adopted at the beginning of new Congresses and in resolutions agreed to during various Congresses, beginning with the 92<sup>nd</sup> Congress (1971-1973). The precedents and practices examined are based on the *Congressional Record* references in the parliamentarian’s notes in the editions of *Constitution*, *Jefferson’s Manual*, and *Rules of the House of Representatives* for each Congress (referred to hereafter as the *House Rules and Manual*), from the 92<sup>nd</sup> Congress through the current Congress.

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<sup>29</sup> Ibid., p. 25797.

<sup>30</sup> See, for example, Rep. James A. Burke, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25797; and Rep. David R. Obey, p. 25810.

<sup>31</sup> See, for example, Rep. Charles S. Gubser, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25799.

<sup>32</sup> “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25818.

Before the O’Neill-Gubser amendment was agreed to, two amendments to it were also agreed to. The first amendment required the names of Members not voting on a question to be recorded, in addition to those Members voting for and against. Rep. James A. Burke, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25808. The second amendment allowed teller votes to be recorded by clerks or by electronic device. Rep. James G. O’Hara, “Legislative Reorganization Act of 1970,” *Congressional Record*, vol. 116, part 19 (July 27, 1970), p. 25813-25814.

<sup>33</sup> P.L. 91-510, §120; 84 Stat. 1140, 1157 (1970).

The focus of this section of the report is rules, precedents, and practices specifically related to record voting procedures in the House and the Committee of the Whole. This section draws principally from editions of the *House Rules and Manual*, as follows:

- sections 76 through 80, which explicate precedents related to the constitutional provision on the yeas and nays (art. I, § 5, cl. 3);
- Rule I, cl. 6 (Rule 1, cl. 5, before recodification in the 106<sup>th</sup> Congress (1999-2001)), on the Speaker putting a question;
- Rule III (Rule VIII), pertaining to Members, Delegates, and the Resident Commissioner;
- Rule XVIII, cl. 6 (Rule XXIII, cl. 2), on quorums and voting in the Committee of the Whole; and
- Rule XX (Rule I, cl. 5, and Rule XV), on quorums and voting in the House.

Even within these rules and the parliamentarian's notes on them, however, some topics are examined introductorily or not at all in this report. Quorum in the House or the Committee of the Whole is a subject covered introductorily, for example, through footnotes explaining rules changes that restricted opportunities to obtain a quorum call.<sup>34</sup> The precedence of the motion to adjourn is an example of a subject that is not examined.

There are a few subjects that are covered introductorily, however, such as the motion to recommit, that do not relate specifically to record voting procedures. They are included since a rules change increased the opportunities of Members to obtain a record vote.

The explanations in this report of precedents and practices cited in the parliamentarian's notes normally indicate whether a procedural determination occurred in the House or the Committee of the Whole. It is important to keep in mind, nonetheless, that the rules of the House generally apply to the Committee of the Whole. Rule XVIII, cl. 12, provides: "The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable."<sup>35</sup>

The reader should also keep in mind that the Rules Committee may report a special rule that, if agreed to by the House, may temporarily change or adapt House rules as they pertain to a specific piece of legislation.

For the reader's convenience, **Table 1** cross references House rules before and after recodification in the 106<sup>th</sup> Congress (1999-2001).

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<sup>34</sup> For an analysis of quorum procedures, see CRS Report 98-988, *Voting and Quorum Procedures in the House of Representatives*, by (name redacted).

<sup>35</sup> Rule XXIII, cl. 9, before recodification.

**Table 1. House Rules Before and After the 106<sup>th</sup> Congress Recodification**

<b>Rule</b>	<b>Prior to 106<sup>th</sup> Congress</b>	<b>Beginning in 106<sup>th</sup> Congress</b>
Speaker generally	Rule I	Rule I
Form of a question	Rule I, cl. 5	Rule I, cl. 6
Members' voting	Rule VIII	Rule III
Members' pairing	Rule VIII, cl. 2	Rule XX, cl. 3
Delegate voting	Rule XII, cl. 2, and Rule XXIII, cl. 2	Rule III, cl. 3, and Rule XVIII, cl. 6
Special rules and the motion to recommit	Rule XI, cl. 4, and Rule XVI, cl. 4	Rule XIII, cl. 6, and Rule XIX, cl. 2
Voting and quorums in the House	Rule I, cl. 5 and Rule XV	Rule XX
Voting and quorums in the Committee of the Whole	Rule XXIII, cl. 2	Rule XVIII, cl. 6

**Source:** Table prepared by authors from parliamentarian's notes in *House Rules and Manual*, 110<sup>th</sup> Congress.

**Note:** The recodification of House rules was contained in H.Res. 5, agreed to in the House January 6, 1999.

## Obtaining a Vote

The Speaker or chairman of the Committee of the Whole first puts a question to a voice vote. A Member on occasion may demand a division vote following a voice vote. Most often, however, a Member might seek a record vote on a question, demanding the yeas-and-nays in the House or a recorded vote in the House or the Committee of the Whole. The forms of voting and the methods for obtaining a vote are described in **Appendix B**.

For House approval of some questions, a supermajority is required. Every week when it is in session, the House typically considers a number of measures under a procedure called suspension of the rules, for which a House rule requires two-thirds of Members voting, a quorum being present, to adopt the motion to suspend the rules and pass a measure.<sup>36</sup>

The Constitution requires a two-thirds vote to override a presidential veto or to approve a constitutional amendment for submission to the states. Interestingly, passage of a resolution to amend the Constitution does not “necessarily” require a yea-and-nay vote, but the yeas-and-nays are required to pass a bill over the President’s veto.<sup>37</sup> Rules, precedents, and practices related to votes requiring a supermajority are not generally included in this report.<sup>38</sup>

<sup>36</sup> Rule XV, cl. 1 (110<sup>th</sup> Congress).

<sup>37</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 34. The constitutional requirement for the yeas and nays to override a veto is explicit: “But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.” U.S. Const. art. I, § 7, cl. 2. The requirement regarding proposed amendments to the Constitution requires a two-thirds vote but does not also contain a requirement for the yeas-and-nays. U.S. Const. art. V.

<sup>38</sup> For an explanation of votes requiring a supermajority, see CRS Report 98-778, *Super-Majority Votes in the House*, by (name redacted).

Many rules, precedents, and practices of the House related to voting are long-standing. Rule I, cl. 6, on the form of a question, for example, has existed since the First Congress.<sup>39</sup> Precedents long predate the time frame of this report that the “constitutional right of a Member to demand the yeas and nays may not be overruled as dilatory” or that the Speaker may not refuse to put a question that is in order.<sup>40</sup>

Since the LRA of 1970, the House has adopted rules, and its presiding officers—sometimes supported by the House’s membership on a vote related to an appeal of a chair’s ruling—have acted to develop its precedents and practices on voting. In some instances a rules change or action by the presiding officer has narrowed the opportunities for obtaining a vote, such as the changes pertaining to the Speaker’s approval of the Journal or resolving the House into the Committee of the Whole. These changes have tended to curtail procedural votes. In other instances a rules change or action by the presiding officer has broadened the opportunities for obtaining a vote, such as the change to Rule XIII, cl. 6 prohibiting, except in one circumstance, the Rules Committee from reporting a special rule disallowing a motion to recommit, with or without instructions.<sup>41</sup>

## *House*

For the convenience of the reader, this part of this section is divided into two subparts, the House and the Committee of the Whole. Changes to Rule XX (or its predecessor rules before recodification, Rule I, cl. 5 and Rule XV) appear in the House subpart. Changes to Rule XVIII (or its predecessor rule before recodification, Rule XXIII) appear in the Committee of the Whole subpart of this part. Precedents and practices were placed in the House or Committee of the Whole subparts based on where they occurred. Recall, nonetheless, that Rule XVIII, cl. 12 (Rule XXIII, cl. 9 before recodification) states: “The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.”

Two rules changes of procedural consequence in the House part of this section were made in the 104<sup>th</sup> Congress. One change made automatic a yea-and-nay vote on final passage of certain appropriations, tax, and budget measures. Another prohibited the Rules Committee from reporting a special rule disallowing a motion to recommit, with or without instructions.

*Approval of the Journal.* The LRA of 1970 contained an amendment to Rule I, cl. 1 pertaining to the Speaker’s approval of the Journal, replacing the requirement for reading the Journal unless dispensed with by unanimous consent. The change allowed the Speaker to approve the Journal and in his discretion to order its reading. The change also authorized a motion that the Journal be read.<sup>42</sup>

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<sup>39</sup> *Journal of the House of Representatives of the United States*, 1<sup>st</sup> Cong., 1<sup>st</sup> sess., vol. 1 (Washington, DC: Gales & Seaton, 1826), p. 9.

<sup>40</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, pp. 35 and 144.

<sup>41</sup> The precedence and availability of various motions are not otherwise included in this report.

<sup>42</sup> P.L. 91-510, §127; 84 Stat. 1140, 1160 (1970). Clause 1 was amended again in the 96<sup>th</sup> Congress (1979-1981). Rather than a vote on reading the Journal, the Speaker’s approval of the Journal was “deemed to be agreed to subject to a vote on agreeing to the Speaker’s approval....” If the motion failed, then a motion could be made to read the Journal. Para. 1 of H.Res. 5, agreed to in the House January 15, 1979.

*Presence or Absence of a Quorum* . In the 97<sup>th</sup> Congress (1981-1983), the Speaker anticipated that a Member would object to a vote on the ground that a quorum was not present (under Rule XV, cl. 4), and make a point of order that a quorum was not present. Speaker Thomas P. “Tip” O’Neill Jr. stated that he had counted the House and that a quorum was present. He established under the rule that he was not required to state what was the actual count. The yeas and nays were refused.<sup>43</sup>

Prior to a vote in the 98<sup>th</sup> Congress (1983-1985) on the Speaker’s approval of the Journal, a Speaker pro tempore announced that the electronic voting system was inoperable. A Member had caused a recorded vote to be ordered by objecting to the voice vote on the ground that a quorum was not present. In parliamentary inquiries after the record voting had begun, a Member asked whether the vote could be vacated by unanimous consent so that another voice vote could be taken. The Speaker pro tempore stated that business by unanimous consent could not be transacted once the absence of a quorum had been disclosed. A second Member asked whether the vote could be delayed. The Speaker pro tempore stated that it was not possible to postpone a vote once commenced and since the absence of a quorum had been announced by the presiding officer.<sup>44</sup>

*Speaker’s Count in Support of the Yeas and Nays* . On a demand for the yeas and nays in the 101<sup>st</sup> Congress (1989-1991), a Speaker pro tempore counted to ascertain whether one-fifth of the Members present supported the demand. As Members continued to arrive on the floor, the Speaker pro tempore continued to count them as well, both to determine the number of Members present and the number supporting the demand. The Speaker pro tempore ultimately determined that an insufficient number of Members had risen in support of the demand.<sup>45</sup>

*Voice Vote Precedes Record Vote* . The Speaker inserted in the *Congressional Record* in the 102<sup>nd</sup> Congress (1991-1993) a statement that he was “in error” in ordering the yeas and nays without first putting the question by voice vote on two roll-call votes. The Speaker indicated that the House, however, had implicitly granted unanimous consent for the vote to be taken by the yeas and nays.<sup>46</sup>

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<sup>43</sup> Speaker Thomas P. “Tip” O’Neill Jr., “Conference Report on H.J.Res. 325, Continuing Appropriations for Fiscal Year 1982,” *Congressional Record*, vol. 127, part 17 (September 30, 1981), p. 2456.

For information on House rules changes to limit the opportunities of Members to make a point of order that a quorum was not present, see footnote 79.

<sup>44</sup> Speaker Pro Tempore Barbara Boxer, “Announcement by the Speaker Pro Tempore,” *Congressional Record*, vol. 129, part 14 (July 13, 1983), p. 18844.

A Speaker pro tempore followed this precedent in the 100<sup>th</sup> Congress (1987-1989). A Member, after objecting to a voice vote on the ground that a quorum was not present and the Speaker pro tempore having stated that a quorum was not present, asked to vacate a voice vote on another measure so that he could request a recorded vote. The Speaker pro tempore stated that such business was not in order until the vote underway established a quorum. Rep. William S. Broomfield and Speaker Pro Tempore Kenneth J. Gray, “Condemning the Bombing by North Korean Agents of Korean Air Lines Flight 858,” *Congressional Record*, vol. 134, part 2 (February 24, 1988), pp. 2450-2451.

Additional information on quorums appears at footnote 79.

<sup>45</sup> Rep. Newt Gingrich and Speaker Pro Tempore Tom McMillen, “Adjournment,” *Congressional Record*, vol. 136, part 18 (September 24, 1990), p. 25522.

The presiding officer’s count on a demand for a recorded vote or the yeas and nays is not subject to appeal. *House Rules and Manual, 110<sup>th</sup> Congress*, pp. 35 and 347.

<sup>46</sup> Speaker Thomas S. Foley, “Announcement by the Speaker,” *Congressional Record*, vol. 138, part 4 (March 9, 1992), p. 4698.

(continued...)

*Timely Demand for Record Vote* . Also in the 102<sup>nd</sup> Congress, a Speaker pro tempore announced, after a voice vote on agreeing to a resolution, that the noes appeared to have it. A Member demanded the yeas and nays. However, another Member raised a point of order that the demand was not timely. The colloquy was then as follows:

The Speaker pro tempore. Yes, the gentleman from Massachusetts...was on his feet.

Mr. Thomas of California. Mr. Speaker, the whole House was on its feet for 5 minutes.

The Speaker pro tempore. The gentleman was on his feet requesting recognition, and the House was not in order.<sup>47</sup>

The Speaker pro tempore then ordered the yeas and nays. The parliamentarian's notes comment:

The yeas and nays may be demanded...even after the announcement of the vote if the House has not passed to other business...and if the Member seeking the yeas and nays is on his feet and seeking recognition for that purpose when the Chair announces the result of the voice vote....<sup>48</sup>

*Automatic Vote on Final Passage* . A vote on final passage of certain legislation was made automatic by a rules change adopted for the 104<sup>th</sup> Congress (1995-1997), organized by the newly elected Republican majority. In adopting its rules, the House amended Rule XV to add a new clause 7, to provide:

The yeas and nays shall be considered as ordered when the Speaker puts the question on final passage or adoption of any bill, joint resolution, or conference report making general appropriations or increasing Federal income tax rates, or on final adoption of any concurrent resolution on the budget or conference report thereon.<sup>49</sup>

*Motion to Recommit* . Another rules change adopted in the 104<sup>th</sup> Congress protected the minority's right to offer a motion to recommit with instructions. The rules change amended Rule XI, cl. 4(b). This paragraph had provided in part:

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(...continued)

This precedent appears in the parliamentarian's notes associated with Rule I, cl. 6. The parliamentarian's notes also indicate, "The motion as stated by the Chair in putting the question and not as stated by the Member in offering the motion, is the proposition voted on...." *House Rules and Manual*, 110<sup>th</sup> Congress, p. 348.

<sup>47</sup> Rep. Bill Thomas and Speaker Pro Tempore Dave McCurdy, "Providing for Consideration of H.R. 2929, California Desert Protection Act of 1991," *Congressional Record*, vol. 137, part 23 (November 22, 1991), p. 34075.

<sup>48</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, pp. 34-35. In response to a parliamentary inquiry in the 109<sup>th</sup> Congress (2003-2005) on the timeliness of a Member demanding the yeas and nays, a Speaker pro tempore responded that the Member seeking the record vote "was on his feet attempting to reach the microphone." Rep. Jim McDermott and Speaker Pro Tempore Charles Bass, "Manufacturing Technology Competitiveness Act of 2005," *Congressional Record*, daily edition, vol. 119 (September 21, 2005), p. H8216. See also precedents that occurred in the Committee of the Whole at footnotes 75 and 76.

<sup>49</sup> Sec. 214 of H.Res. 6, agreed to in the House January 4, 1995. A Speaker pro tempore ordered the yeas and nays pursuant to this clause in the 108<sup>th</sup> Congress (2003-2005) on a joint resolution making continuing appropriations and enacting by reference six general appropriations bills. Speaker Pro Tempore Paul E. Gillmor, "Further Continuing Appropriations, Fiscal Year 2004," *Congressional Record*, daily edition, vol. 149 (October 21, 2003), pp. H9748 and 9775.

The House adopted other changes to rules for the 104<sup>th</sup> Congress related to taxation and spending, for example, Sec. 106(a) requiring a three-fifths vote for passing a bill or joint resolution or agreeing to an amendment or conference report "carrying a Federal income tax rate increase."

...nor shall [the Committee on Rules] report any rule or order which would prevent the motion to recommit from being made as provided in clause 4 of rule XVI.<sup>50</sup>

The amendment added language after the words “rule XVI,” as follows:

[.] including a motion to recommit with instructions to report back an amendment otherwise in order (if offered by the minority leader or a designee), except with respect to a Senate bill or resolution for which the text of a House-passed measure has been substituted.<sup>51</sup>

While not specifically addressed to obtaining a vote, the added language restricted the authority of the Rules Committee and expanded the rights of the minority leader and the minority party. As a consequence, the minority, if it wished, could obtain one substantive vote on a measure, other than on final passage, even if the House considered a measure under a special rule that limited or foreclosed amendments. An exception in the rules change, however, was allowed in the instance where the House substituted the text of a House-passed measure for the text in a Senate bill or resolution.<sup>52</sup>

This restriction on the authority of the Rules Committee vis-à-vis a motion to recommit with instructions had been long sought by Republican Members.<sup>53</sup> Beginning in 1934 with the House’s sustaining on appeal a ruling of the Speaker, a special rule reported by the Rules Committee could limit the motion to recommit. The parliamentarian’s notes to Rule XI, cl. 4(b) in the 104<sup>th</sup> Congress *House Rules and Manual* explained:

From 1934 until the amendment of clause 4(b) in the 104<sup>th</sup> Congress..., it was consistently held that the Committee on Rules could recommend a special order that limited, but did not totally prohibit, a motion to recommit pending passage of a bill or joint resolution, as by precluding the motion from containing instructions relating to specified amendments...; or by omitting to preserve the availability of amendatory instructions in the case that the bill is entirely rewritten by the adoption of a substitute made in order as original text...; or by expressly allowing only a simple (“straight”) motion to recommit (without instructions)....<sup>54</sup>

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<sup>50</sup> *Journal of the House of Representatives of the United States*, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., part 2 (Washington, DC: GPO, 1998), pp. 2000-2001.

<sup>51</sup> Sec. 210 of H.Res. 6, agreed to in the House January 4, 1995.

<sup>52</sup> Rule XVI, cl. 4 (103<sup>rd</sup> Congress) also pertained to the motion to recommit. This rule provided in part:

After the previous question shall have been ordered on the passage of a bill or joint resolution one motion to recommit shall be in order, and the Speaker shall give preference in recognition for such purpose to a Member who is opposed to the bill or joint resolution. However, with respect to any motion to recommit with instructions after the previous question shall have been ordered, it always shall be in order to debate such motion for ten minutes before the vote is taken on that motion, except that on demand of the floor manager for the majority it shall be in order to debate such motion for one hour. One half of any debate on such motions shall be given to debate by the mover of the motion and one half to debate in opposition to the motion.

*Journal of the House of Representatives of the United States*, 103<sup>rd</sup> Cong., 1<sup>st</sup> sess., part 2 (Washington, DC: GPO, 1998), p. 2005.

The provision of the rule allowing 10 minutes of debate was added by the Legislative Reorganization Act of 1970 (P.L. 91-510, §123; 84 Stat. 1140, 1158 (1970)), and made part of House rules by H.Res. 5, agreed to in the House January 22, 1971. The provision allowing the majority floor manager of a bill to expand debate to one hour was added when the House adopted its rules for the 99<sup>th</sup> Congress. Para. 6 of H.Res. 7, agreed to in the House January 3, 1985.

<sup>53</sup> See CRS Report RL33610, *A Retrospective of House Rules Changes Since the 104<sup>th</sup> Congress*, by (name redacted) and (name redacted).

<sup>54</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United* (continued...)

The change to House rules was not debated when the House considered its rules for the 104<sup>th</sup> Congress. In the rules analysis inserted in the *Congressional Record* by Representative Gerald B.H. Solomon, who subsequently became chair of the Rules Committee, there was the following explanation:

It is the intent of this rule to restore the original purpose of clause 4(b) when it was adopted in 1909 to give the minority a final opportunity to offer an amendment of its choosing in a motion to recommit prior to the final passage of a bill.<sup>55</sup>

*Vote by Yeas and Nays if Vote by Electronic Device* . In adopting its rules for the 105<sup>th</sup> Congress (1997-1999), the House amended Rule I, cl. 5(a) to add a sentence on the status of a vote taken by electronic device pursuant to this paragraph: “A recorded vote taken pursuant to this paragraph shall be considered a vote by the yeas and nays.”<sup>56</sup> The purpose for this change was explained as avoiding “a possible second vote on the same question if someone should demand the Yeas and Nays.”<sup>57</sup>

### *Committee of the Whole*

One of the most consequential procedural changes of the LRA of 1970 was to allow record votes in the Committee of the Whole. When the change took effect, 20 Members were required to support a request for a recorded vote. In the 96<sup>th</sup> Congress (1979-1981), a rules change increased this number to 25 (where it stands today).

*Number Required for Record Vote* . In the 93<sup>rd</sup> Congress (1973-1975), the House Rules Committee reported a resolution (H.Res. 998) containing several rules changes. One change proposed to increase from 20<sup>58</sup> the number of Members supporting a request for a recorded vote in the Committee of the Whole in a specific circumstance. The provision of the resolution stated:

Sec. 3. Clause 2 of rule XXIII of the Rules of the House of Representatives is amended—

...(2) by adding at the end of such clause the following new paragraph:

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(...continued)

*States*, 104<sup>th</sup> Congress, H.Doc. 103-342, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 1995), p. 498.

All of the citations in the parliamentarian’s notes to Speaker’s and Speaker pro tempore’s rulings after 1934 were for the years 1990, 1991, and 1992. For example, Speaker Foley ruled on a point of order that a special rule did not protect “the right to offer a motion to recommit with amendatory instructions”:

...the Committee on Rules may, without violating clause 4(b) of rule XI, recommend a special order that limits but does not wholly preclude a motion to recommit.... ...Clause 4 of rule XVI does not guarantee that a motion to recommit...may always include instructions.

Speaker Thomas S. Foley, “Providing for Consideration of H.R. 1, Civil Rights and Women’s Equity in Employment Act of 1991,” *Congressional Record*, vol. 137, part 9 (June 4, 1991), pp. 13171-13172.

<sup>55</sup> Rep. Gerald B.H. Solomon, “Rules of the House,” *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 475.

<sup>56</sup> Sec. 24(a) of H.Res. 5, agreed to in the House January 7, 1997.

<sup>57</sup> “Section-by-Section Analysis of Resolution Adopting House Rules for the 105<sup>th</sup> Congress,” *Congressional Record*, vol. 143, part 1 (January 7, 1997), p. 128.

<sup>58</sup> One-fifth of a quorum of the Committee of the Whole, as provided in Rule I, cl. 5.

(b) In the Committee of the Whole, the Chair shall order a recorded vote on the request supported by at least twenty Members, except that support of at least forty Members shall be required to obtain a recorded vote whenever the Chair, on request of any Member at the time the recorded vote is requested, determines that more than two hundred Members are present.”

The committee of jurisdiction, the Rules Committee, had considered options ranging from leaving the number supporting a request for a recorded vote in the Committee of the Whole at 20 to increasing it to as high a number as 44. The committee reported the resolution providing that, if 200 or more Members were present when a vote was requested—twice the quorum for the Committee of the Whole—then the number of Members required to support the request for a recorded vote would also be doubled, to 40 from 20. If fewer than 200 Members were present, the existing requirement of 20 Members supporting the request would operate.

When H.Res. 998 was considered on the House floor, Representative H.R. Gross offered an amendment to strike this section. The section and Mr. Gross’s amendment consumed nearly all of the time set aside to consider the resolution.<sup>59</sup> House Rules Committee members of both parties generally supported the provision as a reasonable compromise to curtail recorded votes from being used in the Committee of the Whole as a part of “frivolous and dilatory tactics.”<sup>60</sup> In explanation, Representative B.F. Sisk, a Rules Committee member who had chaired an ad hoc subcommittee to examine proposed rules changes, cited the amending process on an energy bill that occurred in December 1973: a group of Members numbering slightly more than 20 impeded House proceedings by offering consecutive amendments and obtaining roll-call votes on them. Under the parliamentary conditions prevailing for considering that measure, the amendments could be offered but not debated.<sup>61</sup>

Members opposed to the proposed change argued that it would return votes on important amendments in the Committee of the Whole to the secrecy that existed before recorded teller votes were allowed. Representative Robert E. Bauman argued:

I think the 20-Member rule is a valuable right of the minority, any minority. When many Members seek to avoid a rollcall vote on a hot issue, such as a congressional pay raise, at least 20 Members can force a rollcall....Under this new proposal I predict what will happen; a quorum will be established and then the Chair will require 40 Members to get a vote on any given issue, and we will never get a rollcall if it is on a very unpopular matter....<sup>62</sup>

After agreeing 252-147 to the Gross amendment, the House agreed to the resolution as amended.<sup>63</sup>

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<sup>59</sup> Rep. H.R. Gross, “House Resolution 998, Changes in Certain House Procedures,” *Congressional Record*, vol. 120, part 8 (April 9, 1974), pp. 10197-10199. While Mr. Gross offered his amendment near the end of House debate on H.Res. 998, the section his amendment struck from the resolution, and alternatives to it, was the subject of discussion as soon as debate began on H.Res. 998, on p. 10181.

<sup>60</sup> Rep. Spark M. Matsunaga, “House Resolution 998, Changes in Certain House Procedures,” *Congressional Record*, vol. 120, part 8 (April 9, 1974), p. 10185.

<sup>61</sup> Rep. B.F. Sisk, “House Resolution 998, Changes in Certain House Procedures,” *Congressional Record*, vol. 120, part 8 (April 9, 1974), p. 10198.

<sup>62</sup> Rep. Robert E. Bauman, “House Resolution 998, Changes in Certain House Procedures,” *Congressional Record*, vol. 120, part 8 (April 9, 1974), p. 10194.

<sup>63</sup> “House Resolution 998, Changes in Certain House Procedures,” *Congressional Record*, vol. 120, part 8 (April 9, 1974), pp. 10181-10200. Prior to Mr. Gross offering his amendment, Rep. G.V. “Sonny” Montgomery offered an (continued...)

However, a change included in the rules adopted by the House for the 96<sup>th</sup> Congress (1979-1981) increased the number of Members needed to support a request for a recorded vote in the Committee of the Whole. The number was increased to 25 from 20 with the addition of a new paragraph (b) to Rule XXIII, cl. 2. Together with new restrictions on quorum calls incorporated into clause 2, the change was justified as a means to “expedite the voting procedures in the Committee of the Whole....”<sup>64</sup>

*Demand for Record Vote vis-à-vis Division Vote or Quorum* . In the 94<sup>th</sup> Congress (1975-1977), during the counting of a division vote, the chairman of the Committee of the Whole responded to a Member demanding a recorded vote, “The Chair is counting, and a division vote in progress cannot be interrupted by a demand for a recorded vote.”<sup>65</sup>

Later in the 94<sup>th</sup> Congress, a demand for a recorded vote was refused. The demand was made a second time, and a chairman of the Committee of the Whole stated that a recorded vote had been refused. In response to a parliamentary inquiry, the chairman explained, “A recorded vote had already been refused, and it is not possible on the same amendment to have a second request for a recorded vote.”<sup>66</sup> In that same Congress, a chairman of the Committee of the Whole ruled that the chair’s count in support of a recorded vote was not subject to appeal.<sup>67</sup>

In the 95<sup>th</sup> Congress (1977-1979), after the result of a division vote was announced, a Member made a point of order that a quorum was not present. A chair sustained the point of order, and, under procedures in place at that time requiring the committee to rise in the absence of a quorum, Members recorded their presence by electronic device in the House. The committee resumed its sitting, and a recorded vote was demanded and ordered.<sup>68</sup> The parliamentarian’s notes to Rule XXIII, cl. 2 explained:

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(...continued)

amendment to set the number of Members needed to support a request for a recorded vote in the Committee of the Whole at 33 rather than 20; the amendment was defeated on a voice vote (p. 10197).

<sup>64</sup> “Rules of the House,” *Congressional Record*, vol. 125, part 1 (January 15, 1979), p. 9. Excerpts from the debate concerning rules changes to quorums and voting in both the House and the Committee of the Whole appear below in the part Postponed and Clustered Votes/Five-Minute Votes.

In addition, the House changed its rules over the years covered by this report to eliminate or restrict some *opportunities* for a recorded vote. For example, in the 98<sup>th</sup> Congress (1983-1985), the House added a new subparagraph (b) to clause 1 of Rule XXIII, Of Committees of the Whole House, to allow the Speaker to “declare the House resolved into the Committee of the Whole House on the state of the Union for the consideration of that measure [made in order by the House’s agreeing to a special rule] without intervening motion....” Previously, the House used unanimous consent or a motion to resolve into the Committee of the Whole, the latter of which could occasion a recorded vote. Para. (8) of H.Res. 5, agreed to in the House January 3, 1983. While Majority Leader Jim Wright stated the change “would simply obviate the need at each juncture for the whole House to vote, which now is largely a perfunctory matter....” Rep. David Dreier argued that the change would “unquestionably reduce the time we spend in this Chamber...it will be all but impossible to prevent bad legislation from slipping onto the floor....” Reps. Jim Wright and David Dreier, “Rules of the House,” *Congressional Record*, vol. 129, part 1 (January 3, 1983), pp. 36 and 46.

<sup>65</sup> “National Energy Conservation and Conversion Program,” *Congressional Record*, vol. 121, part 14 (June 10, 1975), p. 18048.

<sup>66</sup> “Federal Coal Leasing Amendments of 1975,” *Congressional Record*, vol. 122, part 1 (January 21, 1976), p. 508.

<sup>67</sup> “Departments of Labor and Health, Education and Welfare and Related Agencies Appropriations Bill, 1977,” *Congressional Record*, vol. 122, part 16 (June 24, 1976), p. 20390.

<sup>68</sup> “Marine Fisheries Conservation Act of 1975,” *Congressional Record*, vol. 121, part 25 (October 9, 1975), pp. 32598-32599.

While an “automatic” roll call (under Rule XV, cl. 4) is not in order in the Committee of the Whole, a point of order of no quorum may intervene between the announcement of a division vote result and prior to transaction of further business, and a demand for a recorded vote following the quorum call is not thereby precluded.<sup>69</sup>

A ruling by the chair in the 96<sup>th</sup> Congress further defined the relationship between a point of order that a quorum was not present and a request for a recorded vote. A chair ruled that a request for a recorded vote on an amendment, which had been denied, could not be renewed although the absence of a quorum was disclosed immediately following the refusal.<sup>70</sup>

However, a different sequence of events resulted in a different outcome in the 97<sup>th</sup> Congress (1981-1983). Before a chairman of the Committee of the Whole completed counting to determine if a sufficient number of Members supported a request for a recorded vote, a Member made a point of order that a quorum was not present. The chair ruled that the count was “inoperative,” directed Members to record their presence by electronic device for a quorum call, vacated further proceedings under the call once a quorum was present, and finally stated that the pending business was the demand for a recorded vote. The request for a recorded vote remained pending under this sequence.<sup>71</sup>

*Dispense with Reading an Amendment* . In adopting rules for the 97<sup>th</sup> Congress (1981-1983), the House amended Rule XXIII, cl. 5 to add a new paragraph (b) to allow a nondebatable motion to dispense with the reading of an amendment in the Committee of the Whole if the amendment had been printed in the bill as reported by a committee or had been printed in the *Congressional Record*.<sup>72</sup>

*Appeal the Ruling of the Chair* . In the 101<sup>st</sup> Congress (1989-1991), a chairman of the Committee of the Whole sustained a point of order against an amendment offered to a general appropriations bill, ruling that the amendment constituted legislation. The amendment’s proponent, Representative Tom Ridge, appealed the ruling of the chair. In response to a parliamentary inquiry, the chair stated that he would put the question in the same form that it would be put in the

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<sup>69</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, 95<sup>th</sup> Congress, H.Doc. 94-663, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1977), p. 593.

<sup>70</sup> “Housing and Community Development Act of 1979,” *Congressional Record*, vol. 125, part 11 (June 6, 1979), p. 13648. The same result was reached in a ruling in the 98<sup>th</sup> Congress (1985-1987). “Omnibus Budget Reconciliation Act of 1983,” *Congressional Record*, vol. 129, part 21 (October 25, 1983), p. 29227.

<sup>71</sup> “Salaries and Expenses Limitation Act,” *Congressional Record*, vol. 128, part 14 (August 5, 1982), pp. 19658-19659. A similar sequence resulted in the same outcome in the 108<sup>th</sup> Congress (2003-2005). “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004,” *Congressional Record*, vol. 149, part 14 (July 22, 2003), p. 18993.

A different sequence produced a different result in the 107<sup>th</sup> Congress (2001-2003). A Member demanded a recorded vote. The chairman counted and said, “An insufficient number has *apparently* arisen.” (*Emphasis added.*) The Member then made a point of order that a quorum was not present. The chairman counted and stated, “Evidently a quorum is not present.” The chairman ordered a quorum call. After the quorum call, the chairman said, “The Chair did not finally announce that a recorded vote had been refused. Therefore, under the circumstances, the gentleman’s request is pending. The Chair will count for a recorded vote.” A sufficient number arose and a recorded vote was taken. This outcome seemed to turn on use by the chairman of the word “apparently.” “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002,” *Congressional Record*, vol. 147, part 14 (October 11, 2001), pp. 19385-19386. See also Brown and Johnson, *House Practice*, p. 920.

Additional information on quorums appears at footnote 79.

<sup>72</sup> Para. 16 of H.Res. 5, agreed to in the House January 5, 1981.

House: “Shall the decision of the Chair stand as the judgment of the Committee?” He responded to another inquiry that the consequence of the chair’s decision not being sustained would be that the amendment would be debatable on its merits under the five-minute rule. Majority Leader Richard A. Gephardt demanded a recorded vote, and the decision of the chair was sustained.<sup>73</sup>

*Withdraw Demand for Record Vote* . During the 105<sup>th</sup> Congress (1997-1999), a chairman of the Committee of the Whole entertained a unanimous consent request, which the House granted, to allow a Member to withdraw a demand for a recorded vote.<sup>74</sup>

*Timely Demand for Record Vote* . Members seeking recorded votes in the Committee of the Whole made untimely demands on two occasions in the 109<sup>th</sup> Congress (2005-2007). In the first session, a Member demanded a recorded vote after a chairman announced the result of a voice vote and that the next amendment was now in order. The chairman informed the Member that the request was not timely.<sup>75</sup> In the second session, in the words of the parliamentarian’s notes in the *House Rules and Manual*, a “considerable time ha[d] elapsed” between the chairman’s announcement of the result of a voice vote and a Member’s demand for a recorded vote. The chairman informed the Member that the request was not timely.<sup>76</sup>

## **Postponed and Clustered Votes/Five-Minute Votes**

If a major procedural change of the LRA of 1970 was to allow record votes in the Committee of the Whole, thus increasing the opportunities to obtain a record vote, another important change to House rules since then has been to allow votes to be postponed and clustered and to allow voting time on clustered votes after the first 15-minute vote to be reduced to five minutes or even two minutes. In several Congresses, the House added to the list of questions that could be postponed and clustered and on which voting times could be reduced. Such changes benefitted Members by increasing predictability in the House’s schedule and by allowing debate on measures to occur at different times or even on different days from votes on those measures. Voting could also take less time away from processing legislation since debate on one or multiple measures would not be interrupted.

The Speaker was first authorized in House rules to postpone and cluster votes in the 93<sup>rd</sup> Congress (1973-1975) on motions to suspend the rules. The Speaker was first authorized in House rules to reduce voting time to five minutes in the 96<sup>th</sup> Congress (1979-1981).

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<sup>73</sup> “Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies,” *Congressional Record*, vol. 135, part 13 (August 1, 1989), pp. 17154-17156.

<sup>74</sup> “Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999,” *Congressional Record*, vol. 144, part 14 (September 17, 1998), p. 20845.

A request to withdraw the demand for a recorded vote was also granted by unanimous consent in the 108<sup>th</sup> Congress. “Energy and Water Development Appropriations Act, 2005,” *Congressional Record*, daily edition, vol. 150 (June 25, 2004), p. H5104. In that same Congress, by unanimous consent, a demand for a recorded vote was withdrawn and the request to have the chairman put the question de novo was granted. “Transportation, Treasury, and Independent Agencies Appropriations Act, 2005,” *Congressional Record*, daily edition, vol. 150 (September 22, 2004), p. H7340.

<sup>75</sup> “Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005,” *Congressional Record*, daily edition, vol. 151 (December 15, 2005), pp. H11847-H11848.

<sup>76</sup> “Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations Act, 2007,” *Congressional Record*, daily edition, vol. 152 (June 13, 2006), p. H3855. *House Rules and Manual*, 110<sup>th</sup> Congress, pp. 34-35.

See also precedents that occurred in the House at footnotes 47 and 48.

### ***Rules Changes through 100<sup>th</sup> Congress***

The House Rules Committee in the 93<sup>rd</sup> Congress (1973-1975) reported a resolution (H.Res. 998) containing several rules changes. One provision of this resolution allowed recorded votes on measures considered pursuant to a motion to suspend the rules to be postponed and clustered. The provision added a new paragraph to Rule XXVII, cl. 3:

(b)(1) On any legislative day (other than during the last six days of a session) on which the Speaker is authorized to entertain motions to suspend the rules and pass bills or resolutions, he may announce to the House, in his discretion, before entertaining the first such motion, that he will postpone further proceedings on each of such motions on which a recorded vote or the yeas and nays is ordered or on which the vote is objected to under clause 4 of Rule XV, until all of such motions on that legislative day have been entertained and any debate thereon concluded, with the question having been put and determined on each such motion on which the taking of the vote will not be postponed.

(2) When the last of all motions on that legislative day to suspend the rules and pass bills or resolutions has been entertained and any debate thereon concluded, with the question put and determined on each such motion on which further proceedings were not postponed, the Speaker shall put the question on each motion, on which further proceedings were postponed, in the order in which that motion was entertained.

(3) At any time after the vote on the question has been taken on the first motion on which the Speaker has postponed further proceedings under this paragraph, the Speaker may, in his discretion, reduce to not less than five minutes the period of time within which a recorded vote on the question may be taken on any or all of the additional motions on which the Speaker has postponed further proceedings under this paragraph.

(4) If the House adjourns before the question is put and determined on all motions on which further proceedings were postponed under this paragraph, then, on the next following legislative day on which the Speaker is authorized to entertain motions to suspend the rules and pass bills and resolutions, the first order of legislative business after the call of bills and resolutions on the Private Calendar as provided in clause 6 or Rule XXIV shall be the disposition of all such motions, previously undisposed of, in the order in which those motions were entertained.<sup>77</sup>

The proposed change generated little discussion during debate on H.Res. 998, although it institutionalized two departures from common practice in allowing votes to be postponed and clustered and in allowing the time for voting to be reduced to five minutes, subject to certain conditions but at the discretion of the presiding officer. Members of the Rules Committee defended the provision as one that would save Members' time and allow them to do other important work without frequent interruptions. Some Members expressed concern over the potential loss of Members' attention to the substance of legislation considered under suspension of the rules procedures.<sup>78</sup>

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<sup>77</sup> Sec. 3 of H.Res. 998, agreed to in the House April 9, 1974.

<sup>78</sup> "House Resolution 998, Changes in Certain House Procedures," *Congressional Record*, vol. 120, part 8 (April 9, 1974), p. 10192. Under the special rule (H.Res. 1018) governing consideration of H.Res. 998, no amendments were allowed to the relevant section.

House Rule XXVII, cl. 1 had been amended earlier in the 93<sup>rd</sup> Congress to increase the number of days on which motions to suspend the rules were in order. In addition to the first and third Mondays of each month, such motions were made in order on Tuesdays following those Mondays. H.Res. 6, agreed to in the House January 3, 1973. In the 95<sup>th</sup> (continued...)

On a day when suspension motions were in order, Speaker Carl Albert announced, before recognizing any Member to move to suspend the rules, he would

...postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 or rule XV.

After all motions to suspend the rules have been entertained and debated, and after those motions to be determined by “nonrecord” votes have been disposed of, the Chair will then put the question on each motion on which the further proceedings were postponed.<sup>79</sup>

After debate concluded on all motions to suspend the rules and several motions had been determined by “nonrecord” votes, the Speaker said,

...Pursuant to clause 3, rule XXVII, the Chair will now put the question on each motion, on which further proceedings were postponed, in the order in which that motion was entertained.

Votes will be taken in the following order:

S.J.Res. 40 (de novo).

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(...continued)

Congress, the rule was again amended to make in order such motions every Monday and Tuesday. H.Res. 5, agreed to in the House January 4, 1977. The rule continued to make such motions in order “during the last six days of a session.” For a history of motions to suspend the rules, see CRS Report RL32474, *Suspension of the Rules in the House of Representatives*, by (name redacted).

<sup>79</sup> Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 120, part 13 (June 4, 1974), p. 17521. In an earlier announcement of policies implementing H.Res. 998, Speaker Albert indicated that questions would be put in the order in which they were postponed, as provided in the resolution. Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 120, part 11 (May 13, 1974), pp. 14148-14149.

H.Res. 998 also added a new clause 6 to Rule XV to enumerate a list of instances when a point of order was not available that a quorum was not present. “House Resolution 998, Changes in Certain House Procedures,” *Congressional Record*, vol. 120, part 8 (April 9, 1974), p. 10195. Consequently, if a vote on a motion to suspend the rules was objected to on the ground that a quorum was not present, the Speaker would ask if the proponent of the point of order would withdraw it. If it was withdrawn, the Speaker would move to the next item of business. If not, the Speaker would order a call of the House. “Coast Guard Authorization for Fiscal Year 1975,” *Congressional Record*, vol. 120, part 13 (June 4, 1974), p. 17542.

A rules change in the 95<sup>th</sup> Congress (1977-1979) amended Rule XV, cl. 6 (adding para. (e)) to disallow a point of order that a quorum is not present “unless the Speaker has put the pending motion or proposition to a vote.” As a consequence of that change, when a Member objected to a vote on a motion to suspend the rules on the ground that a quorum was not present and the Speaker postponed further proceedings pursuant to Rule XXVII, cl. 3(b), the Speaker would state that the point of order was considered withdrawn, the principle being that a question, having been postponed, was no longer pending. “Authorization for the National Advisory Committee on the Oceans and Atmosphere (NACOA),” *Congressional Record*, vol. 123, part 12 (May 16, 1977), p. 14785. Under the rules change, the Speaker could in his discretion recognize a Member to move a call of the House. Rule XXIII, cl. 2 was also amended to apply the same procedure in the Committee of the Whole. H.Res. 5, agreed to in the House January 4, 1977.

Additional changes to procedures related to quorums were made in subsequent Congresses.

Most recently, in the 108<sup>th</sup> Congress (2003-2005), the Speaker was authorized to adjust the “whole number of the House” upon the “death, resignation, expulsion, disqualification, or removal of a Member.” Rule XX, cl. 5(c), added by Sec. 2(l) of H.Res. 5, agreed to in the House January 7, 2003. (Renumbered as clause 5(d) by Sec. 2(h) of H.Res. 5, agreed to in the House January 4, 2005.) In the 109<sup>th</sup> Congress, the House amended its rules to provide for “catastrophic circumstances” when the House would find itself “without a quorum.” Rule XX, cl. 5(c), added by Sec. 2(h) of H.Res. 5, agreed to in the House January 4, 2005.

S. 3373 (de novo).

H.R. 13595 (de novo).

S. 2844, by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.<sup>80</sup>

The questions on which further proceedings were postponed were put de novo (“anew” or “a second time”) if objection to the vote was made under Rule XV, cl. 4. After the first vote, a 15-minute vote, and the announcement of the result, the Speaker informed the House:

Pursuant to the provisions of clause 3(b)(3), rule XXVII, the Chair announces he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on all the additional motions to suspend the rule on which the Chair has postponed further proceedings.<sup>81</sup>

In the 95<sup>th</sup> Congress (1977-1979), the House adopted rules to authorize the Speaker in his discretion to postpone and cluster votes on the previous question and adoption of resolutions reported by the Rules Committee. Before consideration of a resolution, the Speaker would announce his intention to postpone further proceedings (for recorded votes) on the resolutions considered that day, and to put the questions in the order in which the resolutions were considered. He was also authorized to reduce to five minutes the duration of votes after the first 15-minute vote. If the House adjourned without completing votes on the resolutions, votes on the resolutions were, subject to several conditions, the first order of legislative business the next day.<sup>82</sup> This rules change was not substantively debated.<sup>83</sup>

In the 96<sup>th</sup> Congress (1979-1980), the House adopted new rules installing procedures to postpone and cluster votes to pass bills and resolutions and agree to conference reports, including allowing the time for votes in a cluster to be reduced to five minutes after the first vote. Procedures could be invoked at the discretion of the Speaker.<sup>84</sup> The addition to Rule I, cl. 5 provided:

(b)(1) On any legislative day whenever a recorded vote or the yeas and nays are ordered on the question of passing bills or resolutions or agreeing to conference reports, or when a vote is objected to under clause 4 of Rule XV on the question of passing bills or resolutions or agreeing to conference reports, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day or within two legislation days.

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<sup>80</sup> Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 120, part 13 (June 4, 1974), p. 17546.

<sup>81</sup> *Ibid.*, p. 17547.

<sup>82</sup> Para. 27 of H.Res. 5, agreed to in the House January 4, 1977. The amendment created a new clause 4(e) of Rule XI. This clause was amended in the 96<sup>th</sup> Congress (1979-1981) to permit the Speaker to postpone votes on Rules Committee resolutions to later the same legislative day or to the next legislative day. Para. 11 of H.Res. 5, agreed to in the House January 15, 1979.

<sup>83</sup> “Rules of the House,” *Congressional Record*, vol. 123, part 1 (January 4, 1977), pp. 53-70.

<sup>84</sup> “Rules of the House,” *Congressional Record*, vol. 125, part 1 (January 15, 1979), pp. 7-17.

(2) At the time designated by the Speaker for further consideration of proceedings postponed under subparagraph (1), the Speaker shall put each question on which further proceedings were postponed, in the order in which that question was considered.

(3) At any time after the vote has been taken on the first question on which the Speaker has postponed further proceedings under this paragraph, the Speaker may, in his discretion, reduce to not less than five minutes the period of time within which a rollcall vote by electronic device on the question may be taken without any intervening business on any or all of the additional questions on which the Speaker has postponed further proceedings under this paragraph.

(4) If the House adjourns before all of the questions on which further proceedings were postponed under this paragraph have been put and determined, then, on the next following legislative day the unfinished business shall be the disposition of all such questions, previously undisposed of, in the order in which the questions were considered.<sup>85</sup>

The House also made three changes related to voting in other procedural situations. First, the House amended Rule XV, cl. 5, pertaining to voting by electronic device, to allow the Speaker in his discretion to reduce to five minutes a vote on passage of a bill or resolution or adoption of a conference report following a 15-minute recorded vote on a motion to recommit.<sup>86</sup> Second, the House amended Rule XXIII, cl. 2, relating to a quorum in the Committee of the Whole, to allow the chairman to reduce to five minutes the duration of a vote following a regular quorum call.<sup>87</sup> Third, the House amended Rule XXVII, dealing with suspension of the rules, to allow the Speaker to postpone votes on motions to suspend the rules until the next legislative day.<sup>88</sup>

Majority Leader Jim Wright explained the intent of the changes as follows:

...I must conclude that most of the Members, both Democratic and Republican, would approve any such system that would save them from the repeated harassment and inconvenience [of dilatory tactics] to which the entire membership have been subjected by one or two dissident or disgruntled Members who want all the others to have to come over here and be recorded on a matter frequently—frequently in which there are two or three objections at the most. During past Congresses...almost one-third of the entire time of this House was consumed in rollcall votes and quorum calls. Now surely that is an excessive use of the time of the Members....<sup>89</sup>

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<sup>85</sup> Para. (2) of H.Res. 5, agreed to in the House January 15, 1979.

<sup>86</sup> Para. (12) of H.Res. 5, agreed to in the House January 15, 1979.

<sup>87</sup> Paras. (14) and (15), respectively, of H.Res. 5, agreed to in the House January 15, 1979.

<sup>88</sup> Para. (18) of H.Res. 5, agreed to in the House January 15, 1979. This paragraph reorganized and added to clause 1 of Rule XXVII and inserted a new clause 3 to make these changes.

An amendment to Rule XXVII, cl. 2 limited the requirement for a second on a motion to suspend the rules. (While precedent held that a right to the yeas and nays on the second did not exist, a vote could be triggered under certain circumstances when the second was sought on a motion to suspend the rules. For an explanation, see U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States*, 95<sup>th</sup> Congress, H.Doc. 94-663, 94<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1977), pp. 29 and 627.) The amendment stated that a second "shall not be required" if the measure that was the subject of the motion was available for one legislative day. Para. (17) of H.Res. 5, agreed to in the House January 15, 1979. Ultimately, in the 102<sup>nd</sup> Congress (1991-1993), clause 2 was deleted from the Rule XXVII. Para (13) of H.Res. 5, agreed to in the House January 3, 1991.

<sup>89</sup> Rep. Jim Wright, "Rules of the House," *Congressional Record*, vol. 125, part 1 (January 15, 1979), p. 15.

Minority Members, however, argued against concentrating more power in the hands of the Speaker and forsaking legislative deliberation in the name of legislative efficiency. Minority Whip Robert H. Michel argued:

...the clustering of votes at the end of the day or on the following day may expedite the business of this House, but that practice certainly will not lead to better legislation. It will actually encourage absenteeism...and will tend to inhibit open debate and discussion.<sup>90</sup>

In the 97<sup>th</sup> Congress (1981-1983), the House adopted rules that consolidated in Rule I, cl. 5(b) the Speaker's authority to postpone votes. The changes moved there the authority contained in Rule XI, cl. 4(e), related to reports from the Rules Committee, and in Rule XXVII, cl. 3(b), related to motions to suspend the rules. Rule I, cl. 5(b)(1) was reorganized, with amendments, as follows:

(b)(1) On any legislative day whenever a recorded vote is ordered or the yeas and nays are ordered, or a vote is objected to under clause 4 of Rule XV on any of the following questions, the Speaker may, in his discretion, postpone further proceedings on each such question to a designated time or place in the legislative schedule on that legislative day or within two legislative days:

(A) the question of passing bills;

(B) the question of adopting resolutions;

(C) the question of ordering the previous question on privileged resolutions reported from the Committee on Rules;

(D) the question of agreeing to conference reports; and

(E) the question of agreeing to motions to suspend the rules.<sup>91</sup>

### ***Practice through the 100<sup>th</sup> Congress***

Precedents were established in the 98<sup>th</sup> Congress (1983-1985) that allowed the Speaker to reschedule, within the limits of the rule, postponed votes from a time previously designated;<sup>92</sup> to cluster together both votes to suspend the rules on which votes were postponed and votes on final passage;<sup>93</sup> to cluster together and in the order they were considered the previous day both votes to suspend the rules on which votes were postponed and on final passage;<sup>94</sup> and to cluster votes from

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<sup>90</sup> Rep. Robert H. Michel, "Rules of the House," *Congressional Record*, vol. 125, part 1 (January 15, 1979), p. 12.

<sup>91</sup> Para. (2) of H.Res. 5, agreed to in the House January 5, 1981. H.Res. 5 also deleted Rule XI, cl. 4(e) and Rule XXVII, cl. 3(b). Rule I, cl. 5(b)(1) was again amended in the 98<sup>th</sup> Congress (1983-1985) to allow the Speaker to postpone to later that legislative day further proceedings on the Speaker's approval of the Journal. Para. (1) of H.Res. 5, agreed to in the House January 3, 1983.

<sup>92</sup> "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 130, part 11 (June 6, 1984), p. 15080.

This precedent was followed in 100<sup>th</sup> Congress. Speaker Jim Wright, "Announcement by the Speaker," *Congressional Record*, vol. 134, part 19 (October 3, 1988), p. 27782; and Speaker Pro Tempore G.V. "Sonny" Montgomery, "Further Announcement by the Speaker Pro Tempore," p. 27878.

<sup>93</sup> "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 129, part 10 (May 17, 1983), p. 12508. See also "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 135, part 16 (October 2, 1989), pp. 22724-22725.

<sup>94</sup> "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 129, part 14 (July 19, 1983), p. 19774.

a preceding day following a recorded vote on the current day, but to reduce the time for voting on the first clustered vote to five minutes only by unanimous consent.<sup>95</sup>

A precedent was also established that the Speaker could entertain a unanimous consent request, while putting questions on postponed votes on motions to suspend the rules, to allow consideration of a Senate measure similar to a House measure just passed. After Representative Parren J. Mitchell obtained unanimous consent to take a Senate measure from the Speaker's table and move to its immediate consideration, Mr. Mitchell moved to strike all after the enacting clause in the Senate bill and insert the provisions of the just-passed House bill. In responding to a parliamentary inquiry, the Speaker pro tempore stated that the unanimous consent request was in order. The motion was then agreed to by voice vote.<sup>96</sup>

A response to a parliamentary inquiry in the 99<sup>th</sup> Congress (1985-1987) explained that unanimous consent was required to postpone a vote on a motion to instruct conferees, which was not at that time listed in Rule I, cl. 5(b)(1).<sup>97</sup>

Also in the 99<sup>th</sup> Congress, the Speaker declined to recognize a Member to request unanimous consent to reduce to five minutes the first vote in a series of votes. The Speaker indicated that he did not believe that Members who were not then in the House chamber would have sufficient time to arrive in the chamber.<sup>98</sup>

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<sup>95</sup> "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 129, part 10 (May 24, 1983), p. 13539, 13595. While the chair announced the reduction of voting time to five minutes on May 24, 1983, a Member asked unanimous consent for this purpose in a similar parliamentary situation in the 104<sup>th</sup> Congress (1995-1997). "District of Columbia Appropriations Act, 1997," *Congressional Record*, vol. 142, part 13 (July 22, 1996), p. 18410.

<sup>96</sup> Reps. Parren J. Mitchell and Samuel S. Stratton and Speaker Pro Tempore Jim Wright, "8(a) Pilot Program Extension," *Congressional Record*, vol. 129, part 2 (February 15, 1983), pp. 2176-2177.

Also in the 98<sup>th</sup> Congress, following an announcement by the Speaker pro tempore that votes on motions to suspend the rules would be postponed and after debate had begun on such motions, the chairman of the House Ways and Means Committee sent a privileged resolution to the desk and asked for its immediate consideration. Since a resolution raising a question of privileges of the House took precedence over a motion to suspend the rules, the resolution was offered and voted on. "Privileges of the House—Insuring Continued Expansion of International Market Opportunities and Investment," *Congressional Record*, vol. 129, part 10 (May 17, 1983), p. 12486.

<sup>97</sup> Speaker Pro Tempore Jim Wright, "Permission to Postpone Debate and Vote on Motion to Instruct Conferees with Respect to House Joint Resolution 738, Continuing Appropriations, 1987," *Congressional Record*, vol. 132, part 20 (October 6, 1986), pp. 28704-28705.

The parliamentarian's notes suggested a general application rather than one specific to this occurrence. The notes indicated that the presiding officer's response applied to "questions not enumerated in this paragraph." U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States*, 100<sup>th</sup> Congress, H.Doc. 99-279, 99<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1987), p. 318.

<sup>98</sup> Speaker Thomas P. "Tip" O'Neill, "Food Security Act of 1985," *Congressional Record*, vol. 131, part 19 (October 8, 1985), p. 26666.

A Speaker pro tempore also responded to parliamentary inquiries in the 103<sup>rd</sup> Congress (1993-1995) that he would not entertain a unanimous consent request to reduce to five minutes all votes in the House after the first 15-minute vote (a separate vote on an amendment). He stated that there could be intervening business after separate votes on amendments and it would "not be fair" to Members who left the chamber anticipating intervening business and a 15-minute vote thereafter. Speaker Pro Tempore James L. Oberstar and Reps. Joseph M. McDade and Kweisi Mfume, "Department[s] of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1995," *Congressional Record*, vol. 140, part 11 (June 29, 1994), p. 15107.

In another situation in the 103<sup>rd</sup> Congress, however, a chairman of the Committee of the Whole established a precedent in not treating a division vote as intervening business precluding a five-minute vote in a series of votes on amendments. "Housing and Community Development Act of 1994," *Congressional Record*, vol. 140, part 12 (July 22, 1994), p. (continued...)

In the 100<sup>th</sup> Congress (1987-1989), in the course of voting on a series of postponed votes on motions to suspend the rules, the Speaker pro tempore entertained a unanimous consent request to reduce to two minutes the time for subsequent votes, after the next five-minute vote. No objection was made.<sup>99</sup>

### ***Rules Changes, 101<sup>st</sup> through 105<sup>th</sup> Congresses***

In the 101<sup>st</sup> Congress (1989-1991), the House addressed the question of postponing votes on certain motions to instruct conferees. In adopting its rules for that Congress, the House amended Rule I, cl. 5(b)(1) to allow the Speaker to postpone further proceedings on the question of agreeing to motions to instruct conferees after 20 calendar days in conference, under the same

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(...continued)

17609. In the 107<sup>th</sup> Congress (2001-2003), a Speaker pro tempore established a precedent that a voice vote did not constitute intervening business precluding a five-minute vote in a series of votes. "The Journal," *Congressional Record*, vol. 148, part 13 (September 26, 2002), pp. 18096-18097.

In the 106<sup>th</sup> Congress (1999-2001), however, a discussion of the House's schedule and an extended one-minute address were treated as intervening business, with the next postponed vote in each instance made a five-minute vote by unanimous consent. "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001," *Congressional Record*, vol. 146, part 9 (June 22, 2000), pp. 12087-12088; and "Energy and Water Development Appropriations Act, 2001," (June 27, 2000), pp. 12584-12586. A Speaker pro tempore in the 106<sup>th</sup> Congress declined to entertain a unanimous consent request to reduce all votes in a series to five-minute votes when Members had left the chamber with the expectation that the next vote would be a 15-minute vote. Speaker Pro Tempore Ray LaHood, "Department of the Interior and Related Agencies Appropriations Act, 2000," *Congressional Record*, vol. 145, part 11 (July 14, 1999), p. 16008. When a one-minute speech interrupted five-minute voting in the 107<sup>th</sup> Congress (2001-2003), a Speaker pro tem followed these precedents. "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 148, part 8 (June 25, 2002), p. 11211. A Speaker pro tempore declined in the 108<sup>th</sup> Congress (2003-2005) to entertain a unanimous consent request to reduce a vote in the House after the Committee of the Whole rose. Speaker Pro Tempore Johnny Isakson, "Intelligence Authorization Act for Fiscal Year 2005," *Congressional Record*, daily edition, vol. 150 (June 23, 2004), p. H4876. A Speaker pro tempore similarly declined in the 109<sup>th</sup> Congress (2003-2005). Speaker Pro Tempore Adam H. Putnam, "Coast Guard and Maritime Transportation Act of 2005," *Congressional Record*, daily edition, vol. 151 (September 15, 2005), p. 8056. The same precedent was again followed in the 110<sup>th</sup> Congress (2007-2009) when the House observed a moment of silence for a deceased former Member during a series of two-minute votes. "Department of Homeland Security Appropriations Act, 2008," *Congressional Record*, daily edition, vol. 153 (June 15, 2007), p. H6480.

<sup>99</sup> Minority Leader Robert H. Michel and Speaker Pro Tempore John P. Murtha, "Reducing Time for Votes on Suspensions to 2 Minutes," *Congressional Record*, vol. 134, part 19 (October 4, 1988), p. 28126.

The practice of seeking unanimous consent to reduce time to two minutes from five minutes for taking a series of votes has continued. For example, the majority leader made such requests for voting in the Committee of the Whole in the 109<sup>th</sup> Congress (2005-2007), giving notice that later votes may be two-minute votes and seeking unanimous consent in the House for authority of the chairman of the Committee of the Whole to reduce voting time. See, for example, "Announcement of Intention to Limit Voting Time" and "Permission to Reduce Time for Electronic Voting During Further Consideration of H.R. 4939, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006," *Congressional Record*, daily edition, vol. 152 (March 16, 2006), pp. H1069, H1074, and H1093; and "Permission to Reduce Time for Electronic Voting During Further Consideration of H.R. 5384, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2007" and "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 152 (May 23, 2006), pp. H3097 and H3116. Examples in the 110<sup>th</sup> Congress included one where a chairman of the Committee of the Whole announced the reduction on his own initiative, "National Science Foundation Authorization Act of 2007," *Congressional Record*, daily edition, vol. 153 (May 2, 2007), p. H4405; and one where the majority leader asked unanimous consent for the reduction, "Department of Homeland Security Appropriations Act, 2008," *Congressional Record*, daily edition, vol. 153 (June 15, 2007), p. H6487 and H6516.

conditions applicable to the other questions listed. It added one proviso, however, that the “question shall not be put if the conference report on that measure has been filed in the House.”<sup>100</sup>

The House also amended Rule XV, cl. 5 to allow the Speaker to reduce to five minutes so-called separate votes on amendments reported to the House by the Committee of the Whole. If the Committee of the Whole reported amendments to a measure, and Members demanded separate votes in the House on more than one of the amendments reported, the vote on the first amendment would be a 15-minute vote. The Speaker could reduce to five minutes the time for voting on any subsequent amendment.<sup>101</sup>

In the 102<sup>nd</sup> Congress (1991-1993), the House amended its rules to add a new paragraph (c) to Rule XXIII, cl. 2 to authorize the chairman of the Committee of the Whole to reduce to “not less than five minutes” the time to vote on clustered amendments after the first 15-minute vote.<sup>102</sup>

In adopting rules for the 103<sup>rd</sup> Congress (1993-1995), the House reorganized Rule XV, cl. 5 so that a new paragraph (a) continued to make the electronic voting system the customary method of conducting a roll call or a quorum call and to allow Members a minimum of 15 minutes to vote. A new paragraph (b) continued the existing provisions to allow the presiding officer to reduce subsequent votes to five minutes after the first 15-minute vote.<sup>103</sup>

The House also adopted a rules change to provide a process in Rule IX for considering and voting on questions of privileges of the House. If such a resolution was offered from the floor by the majority leader or minority leader, or reported from committee, the resolution would have precedence over other questions except a motion to adjourn. If offered by a Member other than the majority leader or minority leader, the Speaker could designate a time within two legislative days, at which time the resolution will have precedence over questions other than a motion to adjourn.<sup>104</sup>

When the Republican majority organized the House in the 104<sup>th</sup> Congress (1995-1997), the House amended Rule I, cl. 5(b)(1) to reorder the list of questions on which the Speaker could postpone

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<sup>100</sup> Para. (1) of H.Res. 5, agreed to in the House January 3, 1989.

<sup>101</sup> Para. (11) of H.Res. 5, agreed to in the House January 3, 1989.

<sup>102</sup> Para. (11) of H.Res. 5, agreed to in the House January 3, 1991. This authority, however, did not allow the chairman of the Committee of the Whole to entertain a unanimous consent request to postpone votes. See, for example, “Department of the Interior and Related Agencies Appropriations Act, 1996,” *Congressional Record*, vol. 141, part 13 (July 13, 1995), p. 18872; and “Teamwork for Employees and Managers Act of 1995,” *Congressional Record*, vol. 141, part 19 (September 27, 1995), p. 26611.

<sup>103</sup> Para. (10) of H.Res. 5, agreed to in the House January 5, 1993.

<sup>104</sup> Para. (4) of H.Res. 5, agreed to in the House January 5, 1993. Later in the 103<sup>rd</sup> Congress, the Speaker established the precedent that the House could proceed immediately on a resolution alleging a question of the privileges of the House without designating a subsequent time for its consideration. Speaker Thomas S. Foley, “Privileges of the House—Request to Delay Implementation of Provisions of House Rules Relating to Votes of Resident Commissioner and Delegates in the Committee of the Whole,” *Congressional Record*, vol. 139, part 2 (February 3, 1993), p. 1974.

It had been established prior to the 103<sup>rd</sup> Congress and was validated in proceedings in the 103<sup>rd</sup> Congress that a Member could appeal a decision by the Speaker sustaining a point of order against a resolution alleging a question of the privileges of the House. See, for example, Rep. John B. Anderson and Speaker Carl Albert, “A Question of Privileges of the House,” *Congressional Record*, vol. 120, part 16 (June 27, 1974), p. 21598. See also Rep. Gerald B.H. Solomon and Speaker Thomas S. Foley, “Privileges of the House—Request to Delay Implementation of Provisions of House Rules Relating to Votes of Resident Commissioner and Delegates in the Committee of the Whole,” *Congressional Record*, vol. 139, part 2 (February 3, 1993), p. 1974.

further proceedings, and to add to this list a vote to move the previous question on questions listed in this subparagraph (except a motion to suspend the rules).<sup>105</sup> Another rules change to Rule XV, cl. 5(b) allowed the Speaker to reduce to five minutes a roll-call vote occurring after a 15-minute vote on a motion to recommit.<sup>106</sup>

In adopting its rules for the 105<sup>th</sup> Congress (1997-1999), the House added to the list of votes that could be postponed. It amended Rule I, cl. 5(b) to include certain questions occurring during the consideration of bills called from the Corrections Calendar (Rule XIII, cl. 4)—agreeing to an amendment, ordering the previous question on a motion to recommit, and agreeing to a motion to recommit.<sup>107</sup>

### ***Practice, 101<sup>st</sup> through 105<sup>th</sup> Congresses***

A Speaker pro tempore in the 102<sup>nd</sup> Congress (1991-1993) established a precedent on clustering votes that amplified the Speaker's discretion. The Speaker pro tempore designated separate times for votes on postponed questions.<sup>108</sup>

In the 103<sup>rd</sup> Congress (1993-1995), a Speaker pro tempore established the precedent that it was not necessary for the Speaker to announce his intention to postpone votes at the beginning of consideration of a motion to suspend the rules. The parliamentarian's notes indicated that it is "customarily the courtesy" to make such an announcement, but that the Speaker "may postpone further proceedings after a record vote is ordered or an objection is raised under clause 4 of rule XV...."<sup>109</sup>

In the 104<sup>th</sup> Congress (1995-1997), on two occasions in one day, Members moved to reconsider the vote by which the previous question was ordered. Other Members then moved to table these motions, and the House voted to table. In each case, the Speaker pro tempore ordered a recorded vote on the underlying measure. He also announced that the vote would be a five-minute vote, establishing a precedent that the tabling motion did not constitute intervening business preventing the presiding officer from reducing to five minutes the length of the vote.<sup>110</sup>

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<sup>105</sup> Sec. 223(a) of H.Res. 6, agreed to in the House January 4, 1995.

<sup>106</sup> Sec. 223(e) of H.Res. 6, agreed to in the House January 4, 1995.

<sup>107</sup> Sec. 1 of H.Res. 5, agreed to in the House January 7, 1997. The House repealed the Corrections Calendar in the 109<sup>th</sup> Congress. Sec. 2(f) of H.Res. 5, agreed to in the House January 4, 2005.

<sup>108</sup> Speaker Pro Tempore Romano L. Mazzoli, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 138, part 3 (March 3, 1992), p. 4072.

<sup>109</sup> Speaker Pro Tempore Kweisi Mfume, "Federal Employees' Political Activities Act of 1993," *Congressional Record*, vol. 139, part 3 (February 23, 1993), p. 3281; and U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 103<sup>rd</sup> Congress*, H.Doc. 102-405, 102<sup>nd</sup> Cong. 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1993), pp. 330-331.

<sup>110</sup> Speaker Pro Tempore Jack Kingston, "Conference Report on House Concurrent Resolution 67, Concurrent Resolution on the Budget for Fiscal Years 1996-2002" (special rule), *Congressional Record*, vol. 141, part 13 (June 29, 1995), pp. 17899-17900; and Speaker Pro Tempore Joel Hefley, "Conference Report on House Concurrent Resolution 67, Concurrent Resolution on the Budget, Fiscal Years 1996-2002," pp. 17923-17925.

In the 105<sup>th</sup> Congress, the Speaker pro tempore reduced to five minutes votes on questions after a vote to table the motion to reconsider the vote to move the previous question and a vote to table the motion to reconsider the motion to recommit. Speaker Pro Tempore Jim Nussle, "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998," *Congressional Record*, vol. 143, part 11 (July 24, 1997), pp. 15713-15717.

In the 105<sup>th</sup> Congress, the House adjourned, without having voted, on the second legislative day after the postponement of votes on motions to suspend the rules. By unanimous consent, the questions were postponed to the next meeting of the House. The parliamentarian's notes indicated that the questions remained "the unfinished business on the next legislative day."<sup>111</sup>

### ***Rules Changes, 106<sup>th</sup> Congress to Present***

In the changes agreed to in adopting rules for the 106<sup>th</sup> Congress (1999-2001), the House added authority for the Speaker to postpone a vote on the original motion to instruct conferees.<sup>112</sup> As described earlier, the House in the 101<sup>st</sup> Congress allowed the Speaker to postpone further proceedings on the question of agreeing to motions to instruct conferees after 20 calendar days in conference.<sup>113</sup> Since the House in adopting its rules for the 106<sup>th</sup> Congress also recodified its rules, authority to postpone proceedings formerly codified as Rule I, cl. 5(b) was now codified as Rule XX, cl. 8.<sup>114</sup>

The House also allowed the Speaker to reduce to five minutes a vote on a "question incidental thereto" a record vote on a motion to recommit a bill, resolution, or conference report, and on passage or adoption, under the provisions of the rule on five-minute votes.<sup>115</sup> Under recodification, authority to conduct five-minute votes formerly found at Rule XV, cl. 5(b) was codified as Rule XX, cl. 9.<sup>116</sup>

The House added a new paragraph (g) to Rule XVIII, cl. 6 in the 107<sup>th</sup> Congress (2001-2003) to authorize the chairman of the Committee of the Whole to postpone a request for a recorded vote on any amendment and to resume proceedings at any time. The chairman was also authorized to reduce to five minutes votes taken on a series of questions after a 15-minute vote.<sup>117</sup> Paragraph (f) of this clause already allowed a chairman to conduct five-minute votes on series of pending amendments, but neither it nor precedents allowed a chairman to postpone votes without authorization by the House.<sup>118</sup> Rather, special rules typically authorized a chairman to cluster requests for recorded votes.<sup>119</sup>

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<sup>111</sup> "Postponement of Motions to Suspend Rules Consider by the House on Monday, September 29, 1997 to Monday October 6, 1997," *Congressional Record*, vol. 143, Part 14 (October 1, 1997), p. 20922; and U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 105<sup>th</sup> Congress*, H.Doc. 104-272, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 1997), p. 334.

In the 108<sup>th</sup> Congress (2003-2005), the House gave its unanimous consent to a request that authorized the Speaker to postpone votes on motions to instruct conferees beyond two legislative days. "Authorizing Speaker to Postpone Votes on Motions to Instruct Conferees Considered Today until Tuesday, September 23, 2003," *Congressional Record*, vol. 149, part 16 (September 17, 2003), p. 22272.

<sup>112</sup> Sec. 1 of H.Res. 5, agreed to in the House January 6, 1999.

<sup>113</sup> During the 106<sup>th</sup> Congress, a Speaker pro tempore announced two motions to instruct conferees, made after 20 days, on which proceedings had been postponed, were vitiated. The Speaker pro tempore stated that a conference report had been filed. Speaker Pro Tempore Paul Ryan, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 145, part 18 (October 19, 1999), p. 25961.

<sup>114</sup> Technical corrections to this clause were made in the 108<sup>th</sup> Congress (2003-2005). Sec. 2(u) of H.Res. 5, agreed to in the House January 7, 2003.

<sup>115</sup> Sec. 1 of H.Res. 5, agreed to in the House January 6, 1999.

<sup>116</sup> In adopting its rules for the 108<sup>th</sup> Congress (2003-2005), the House amended Rule XX, cl. 2(a) to refer to clauses 8 and 9. Clause 2(a) mistakenly referred to clauses 9 and 10.

<sup>117</sup> Sec. of H.Res. 5, agreed to in the House January 3, 2001.

<sup>118</sup> See, for example, "Foreign Relations Authorization Act, Fiscal Years 1988 and 1989," *Congressional Record*, vol. (continued...)

The Speaker's authority to conduct five-minute votes was further perfected in the 108<sup>th</sup> Congress (2003-2005) to simplify the rule and to make it applicable to any question arising "without intervening business" after another vote. As amended, Rule XX, cl. 9 now read:

The Speaker may reduce to five minutes the minimum time for electronic voting on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote.<sup>120</sup>

The Speaker was authorized by a rules change in the 109<sup>th</sup> Congress (2005-2007) to postpone votes on agreeing to a motion to reconsider, tabling a motion to reconsider, and agreeing in the House to an amendment reported from the Committee of the Whole.<sup>121</sup>

### ***Practice, 106<sup>th</sup> Congress to Present***

During the 109<sup>th</sup> Congress, the majority leader gave notice during a series of votes in the Committee of the Whole that he would ask unanimous consent when the committee rose that a vote on a motion to recommit be a five-minute vote. The Speaker pro tempore allowed the subsequent unanimous consent request, and no Member objected.<sup>122</sup>

In the 110<sup>th</sup> Congress (2007-2009), the majority leader gave notice during a series of votes in the Committee of the Whole that he would ask unanimous consent when the committee rose that the first vote in a series in the House be a five-minute vote. After the committee rose, the majority leader made this request along with further unanimous consent requests related to voting. He asked authority for the presiding officer that

- the first vote in a series on both the bill under consideration and on the next bill to be considered be a 15-minute vote in the Committee of the Whole;

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(...continued)

133, part 12 (June 18, 1987), p. 16764.

<sup>119</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 107<sup>th</sup> Congress*, H.Doc. 106-320, 106<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 2001), p. 742. (Precedents related to postponing and clustering votes pursuant to a special rule are explained on pp. 742-743.) See, for an example of such a rule and a chair's explanation of the authority provided to the chair under the rule, H.Res. 442 (105<sup>th</sup> Congress), at "Providing for Consideration of House Joint Resolution 119, Proposing Amendment to Constitution to Limit Campaign Spending, and H.R. 2183, Bipartisan Campaign Integrity Act of 1997," *Congressional Record*, vol. 144, part 7 (May 21, 1998), pp. 10273-10274; and "Bipartisan Campaign Integrity Act of 1997," *Congressional Record*, vol. 144, part 10 (July 14, 1998), pp. 15304-15305.

<sup>120</sup> Sec. 2(n) of H.Res. 5, agreed to in the House January 7, 2003.

<sup>121</sup> Sec. 2(i) of H.Res. 5, agreed to in the House January 4, 2005.

<sup>122</sup> Rep. Tom DeLay and Speaker Pro Tempore Mac Thornberry, "Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006," *Congressional Record*, daily edition, vol. 151 (June 24, 2005), pp. H5153 and H5163-H5164.

In the 107<sup>th</sup> Congress (2001-2003), after a 15-minute vote to approve the Journal, which had been postponed, the House then voted on motions to suspend the rules, where further proceedings had also been postponed. A Speaker pro tempore reduced voting time to five minutes on these questions. Speaker Pro Tempore Michael K. Simpson, "The Journal" and "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 148, part 15 (October 16, 2002), pp. 20749 and 20750. In the Speaker's exercise of his authority under Rule XX, cl. 8 to postpone and cluster votes and to reduce time to vote on specified questions, "These categories are not mutually exclusive." Brown and Johnson, *House Practice*, p. 931.

- the first vote in the House on either of these bills be a five-minute vote; and
- subsequent votes in a series in either the Committee of the Whole or the House be two-minute votes.<sup>123</sup>

## **Recorded Teller Votes**

In agreeing to H.Res. 5 on January 22, 1971, the House adopted rules for the new, 92<sup>nd</sup> Congress (1971-1973), including “all applicable provisions of...the Legislative Reorganization Act of 1970...” The amendment to House Rule I added the provision on recorded teller votes:

If before tellers are named any Member requests tellers with clerks and that request is supported by at least one-fifth of a quorum, the names of those voting on each side of the question and the names of those not voting shall be recorded by clerks or by electronic device, and shall be entered in the Journal. Members shall have not less than twelve minutes from the naming of tellers with clerks to be counted.<sup>124</sup>

The importance of recorded teller votes was short-lived. They were a voting procedure that allowed the Committee of the Whole to take recorded votes pending the deployment of an electronic voting system. Once the electronic voting system was operating, by rule and choice it became the customary method of taking record votes.

The first recorded teller vote was taken March 3, 1971, on an amendment to a bill to increase the debt ceiling, pursuant to procedures for recorded teller votes that Speaker Albert had announced in February. Under direction from the chair, the clerk read the statement on these procedures to the Committee of the Whole before the vote commenced.<sup>125</sup> Members filled in their name, state, and district on what are called ballot or well cards—green cards for “aye,” red cards for “no,” and amber cards for “present,” which were available on a table in the well of the House chamber. The chair of the Committee of the Whole appointed tellers. Two Members, one from each party, and a clerk with a wooden ballot box took their place at the rear of the chamber to collect the green “aye” cards, and two other Members, one from each party, and a clerk with a wooden ballot box took their place at the rear of the chamber to collect the red “no” cards. Twelve minutes after the chair had directed the tellers and clerks to take their places, 391 Members had voted, and the amendment was defeated, 180-211. The roll was tabulated overnight, and the names of Members voting “aye” and “no” were printed in *Congressional Record* for March 3.<sup>126</sup>

Two changes were made in 1972, to take effect in 1973, related to recorded tellers. First, the House discontinued the role of Members in conducting teller votes, leaving the conduct of the

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<sup>123</sup> Rep. Steny H. Hoyer and Speaker Pro Tempore Michael R. McNulty, “Department of Homeland Security Appropriations Act, 2008,” *Congressional Record*, daily edition, vol. 153 (June 15, 2007), pp. H6487 and H6516.

<sup>124</sup> House Rule I, cl. 5 (92<sup>nd</sup> Congress). *Journal of the House of Representatives of the United States*, 92<sup>nd</sup> Cong., 1<sup>st</sup> sess. (Washington, DC: GPO, 1972), p. 1651.

<sup>125</sup> Speaker Carl Albert, “Recorded Teller Votes,” *Congressional Record*, vol. 117, part 4 (March 3, 1971), p. 4880. The Speaker had made his announcement previously: Speaker Carl Albert, “Announcement by the Speaker with Regard to Teller Votes,” *Congressional Record*, vol. 117, part 3 (February 25, 1971), pp. 3383-3844.

<sup>126</sup> “Public Debt and Interest Rate Limitations,” *Congressional Record*, vol. 117, part 4 (July 27, 1971), pp. 4879-4881. See also Marjorie Hunter, “First Recorded Teller Vote Is Taken in the House,” *The New York Times*, March 4, 1971, p. 21.

vote to clerks only. Second, tellers did not need to be ordered before a Member could request a recorded teller vote. Rather, a Member could directly request a recorded teller vote.<sup>127</sup>

In the 103<sup>rd</sup> Congress (1993-1995), the House repealed the general provision for demanding a vote by tellers in Rule I, cl. 5(a). The opportunity for a recorded teller vote remained.<sup>128</sup>

## **Electronic Voting System**

As already noted, in agreeing to H.Res. 5 on January 22, 1971, the House adopted rules for the new, 92<sup>nd</sup> Congress (1971-1973), including “all applicable provisions of...the Legislative Reorganization Act of 1970....” The amendment to House Rule XV added a new clause 5. This new clause allowed, but did not require, a roll call or a quorum call to be recorded by electronic device.<sup>129</sup> An electronic voting system, however, was not implemented until the 93<sup>rd</sup> Congress (1973-1975).

Just prior to the electronic voting system becoming operational, the House adopted additional rules changes to make voting by electronic device the customary form of conducting record votes and quorum calls. In addition, Speakers beginning with Speaker Albert and continuing through Speaker Nancy Pelosi have made policy announcements regarding voting by electronic device. A principal challenge that Speakers since Speaker Thomas S. Foley have attempted to meet has been to take advantage of the efficiency of the electronic voting system. A vote could presumably be conducted in little more than 15 minutes, but some Members might not arrive to vote until some time after all other Members had voted. Closely related to this challenge has been the matter of Members changing their votes. The policies of Speaker Albert and Speaker O’Neill on changing votes are still followed.

This part of this section should be read with the parts on “Allowing Late-Arriving Members to Vote/Changing an Outcome” and “Members Changing Their Vote.”

## ***Rules Changes Anticipating the Electronic Voting System***

During the 92<sup>nd</sup> Congress, in anticipation of inauguration of the new electronic voting system in the next Congress, the House on October 13, 1972, agreed to H.Res. 1123, changing Rules I, VIII, XV, and XXIII, to make voting by electronic device the customary method for conducting a roll call or quorum call<sup>130</sup> and to make conforming changes in related rules clauses.<sup>131</sup>

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<sup>127</sup> Para. (a) of H.Res. 1123, agreed to in the House October 13, 1972. Rep. B.F. Sisk, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36007.

Changes to recorded tellers included in this resolution, and specifically related to voting by electronic device, are explained in the next section, Electronic Voting System.

<sup>128</sup> Para. (1) of H.Res. 5, agreed to in the House January 5, 1993. See also Rep. Louise M. Slaughter, “Rules of the House,” *Congressional Record*, vol. 139, part 1 (January 5, 1993), p. 53.

<sup>129</sup> For a history of the electronic voting system, see CRS Report RL34366, *Electronic Voting System in the House of Representatives: History and Evolution*, by (name redacted).

“Today roll call votes ordinarily are taken only during the process of electing a Speaker—where Members respond by surname—or in the event of a malfunction of the electronic voting system. Brown and Johnson, *House Practice*, p. 924.

<sup>130</sup> In summarizing the changes contained in H.Res. 1123, House Rules Committee member B.F. Sisk, who had chaired an ad hoc subcommittee to consider options, stated, “In brief we propose that machinery be used in all appropriate voting situations, that is, whenever names of Members are to be recorded. We also propose to put in the rules (continued...)”

H.Res. 1123 amended Rule I, cl. 5 to replace the two sentences, quoted in the immediate preceding part, Recorded Teller Votes. The amendment provided:

However, if any Member requests a recorded vote and that request is supported by at least one-fifth of a quorum, such vote shall be taken by electronic device, unless the Speaker in his discretion orders clerks to tell the names of those voting on each side of the question, and such names shall be recorded by electronic device or by clerks, as the case may be, and shall be entered in the Journal, together with the names of those not voting. Members shall not have less than fifteen minutes to be counted from the ordering of the recorded vote or the ordering of clerks to tell the vote.<sup>132</sup>

The importance of this change was to make voting by electronic device the customary method of taking recorded votes in the House and the Committee of the Whole. It also increased the time to vote to a minimum of 15 minutes from a minimum of 12 minutes, the time beginning “from the ordering of the recorded vote or the ordering of clerks to tell the vote.”<sup>133</sup> As explained by Representative H. Allen Smith, the ranking Republican member of the Rules Committee:

The intent is that a request for a recorded vote shall be in order before or after a voice vote, a division vote or a teller vote. If a Member requests a recorded vote and is supported by one-fifth of a quorum, the vote will be taken by electronic device. A Member may no longer demand a vote by tellers with clerks. However, once a recorded vote is ordered, the Speaker in his discretion may order a recorded vote with clerks.<sup>134</sup>

House Administration Committee Chair Wayne L. Hays, whose committee had jurisdiction over the design and installation of the electronic voting system, also explained that Members not carrying a card to insert into a voting machine in order to vote would still be able to cast a vote. He stated that a Member could go to the Speaker’s dais and obtain a “red or green or amber ballot [card], just like we do now for a [recorded] teller vote.” After the Member completed the ballot, a clerk would enter the Member’s vote in the electronic voting system and the vote would be displayed in the chamber with the votes of other Members.<sup>135</sup>

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(...continued)

substitution of present procedures as a backup in case the machinery becomes unavailable for whatever the reason may be.... In almost all cases I think the electronic system will be used.” Rep. B.F. Sisk, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36007.

At the beginning of debate on H.Res. 1123, House Administration Committee Chairman Wayne L. Hays demonstrated the display boards, voting machines, voting cards, and monitors of the electronic voting system. The committee had jurisdiction over the design and installation of the system. Members today would feel very familiar with the system Chairman Hays demonstrated. Chairman Hays also announced that the House’s electronic bill status and summary system would be operative as early as January 1973. Rep. Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36006.

<sup>131</sup> H.Res. 1123 established an effective date for changes of January 3, 1973, immediately before noon. This timing was chosen to make the changes part of the rules of the outgoing 92<sup>nd</sup> Congress, just prior to the convening of the 93<sup>rd</sup> Congress.

H.Res. 6, agreed to in the House January 3, 1973, adopted the rules of the 92<sup>nd</sup> Congress as the rules of the 93<sup>rd</sup> Congress. Changes to House rules included in H.Res. 6 did not affect rules related to the electronic voting system.

<sup>132</sup> The text of H.Res. 1123 can be found at “Electronic Voting in the House of Representatives,” vol. 118, part 27 (October 13, 1972), pp. 36005-36006.

<sup>133</sup> Rep. H. Allen Smith, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36008.

<sup>134</sup> *Ibid.*

<sup>135</sup> Rep. Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (continued...)

The House also changed Rule VIII, cl. 2 related to the announcement of pairs. The existing rule provided that pairs be announced after the second call of the roll. With voting by electronic device, there would not be a call of the roll as anticipated by the clause. H.Res. 1123 changed the rule so that pairs would be announced immediately before the presiding officer's announcement of the result of a vote.<sup>136</sup> (See "Pairs," below, in this section.)

With regard to Rule XV, "On Calls of the Roll and House," H.Res. 1123 made the first four clauses of Rule XV subject to clause 5 of Rule XV. As already explained, this clause had been added by enactment of the Legislative Reorganization Act of 1970 and approval of H.Res. 5 at the beginning of the 92<sup>nd</sup> Congress. H.Res. 1123 amended clause 5 as follows:

5. Unless, in his discretion, the Speaker orders the calling of the names of Members in the manner provided for under the preceding provisions of this rule, upon any roll call or quorum call the names of such Members voting or present shall be recorded by electronic device. In any such case, the Clerk shall enter in the Journal and publish in the Congressional Record, in alphabetical order in each category, a list of the names of those Members recorded as voting in the affirmative, of those Members recorded as voting in the negative, and of those Members answering present, as the case may be, as if their names had been called in the manner provided for under such preceding provisions. Members shall have not less than fifteen minutes from the ordering of the roll call or quorum call to have their vote or presence recorded.<sup>137</sup>

Like the change to Rule I, cl. 5, this clause made voting by electronic device the customary system for conducting a recorded vote or a quorum call, and applied a 15-minute minimum time period to quorum calls as well as roll calls. The change also left it to the discretion of the Speaker whether to invoke a different, authorized manner of conducting a recorded vote or quorum call.

Another change made by H.Res. 1123 altered Rule XXIII, cl. 2 to direct that a quorum call in the Committee of the Whole be conducted by electronic device "under clause 5 of Rule XV," unless the chair of the Committee of the Whole invoked another procedure authorized under Rule XV.<sup>138</sup> The change conformed the quorum clause of this House rule governing the Committee of the Whole to Rule XV, as amended.

During debate, Members anticipated some of the problems and potential uses that could arise with use of an electronic voting system as designed by the House Administration Committee. Representative Margaret M. Heckler asked about the confusion of the same or similar last names, which House Administration Committee Chairman Hays indicated was an issue still being worked on before the electronic voting system's use began.<sup>139</sup> Delegate Walter E. Fauntroy asked about Members using voting cards to vote on behalf of other Members, to which Rules Committee member Sisk responded, "Members of the Congress work on their own honor....it gets down to a matter of the integrity of each Member."<sup>140</sup>

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(...continued)

(October 13, 1972), p. 36006.

<sup>136</sup> Para. (c) of H.Res. 1123, agreed to in the House October 13, 1972.

<sup>137</sup> Para. (c) of H.Res. 1123, agreed to in the House October 13, 1972.

<sup>138</sup> Para (d) of H.Res. 1123, agreed to in the House October 13, 1972.

<sup>139</sup> Reps. Margaret M. Heckler and Wayne L. Hays, "Electronic Voting in the House of Representatives," *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36007.

<sup>140</sup> Del. Walter E. Fauntroy and Rep. B.F. Sisk, "Electronic Voting in the House of Representatives," *Congressional* (continued...)

Rules Committee member John B. Anderson asked about the availability of printouts (reports) showing various voting patterns. Chairman Hays indicated that could be done in the future.<sup>141</sup> Representative John M. Ashbrook made a related observation in a colloquy with Chairman Hays:

Mr. Hays:...Mr. Speaker, someone facetiously asked me a minute ago if we would have a system for retrieval of Members who voted and rushed out of the Chamber before the respective leadership on either side can latch onto them. I can say to the gentleman there is no plan for such a retrieval system.

Mr. Ashbrook:...I think what is going to happen is that we are going to see the passage of one of the most time-honored traditions around this House. That is the system of putting pressure on Members to change their votes in the well. I think we have to be aware of the fact that a Member can vote and instantly leave the Chamber. I just asked the gentleman from Ohio [Mr. Hays] whether something can be done to equip the leadership with the proper tools, maybe a tracking device.

Mr. Hays: That is really a leadership problem. It will be possible for Members to come into the back of the room and vote and go on their way.

Mr. Ashbrook: That might help our processes.<sup>142</sup>

Representative Barber B. Conable Jr. stated that the current system discouraged Members from changing their votes, since the changes were reported. He asked whether the new system would lead to “strategic maneuvering” on close votes to allow a party’s leadership to cloak from the other side “where the votes are.” Chairman Hays acknowledged the possibility and suggested several potential responses, including programming changes and having Members announce changes in the well of the House that would then be recorded. Mr. Conable also asked about the recording of Members’ transactions with the electronic voting system. Chairman Hays responded that “all actions,” including changed votes, would be recorded, but that only a Member’s final vote would be reported.<sup>143</sup>

Representative John F. Seiberling asked whether Members’ names could be displayed so that Democrats’ names were closest to the Democratic side of the chamber and Republicans’ names were closest to the Republican side of the aisle. Chairman Hays indicated that it was indeed possible, but that it would be up to the Rules Committee and the House to make the decision to use a system different from the alphabetization of the House membership.<sup>144</sup> Representative Richard C. White inquired about procedures related to a vote by division. Chairman Hays

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*Record*, vol. 118, part 27 (October 13, 1972), pp. 36007-36008.

<sup>141</sup> Reps. John B. Anderson and Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36008.

<sup>142</sup> Reps. John M. Ashbrook and Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), pp. 36009-36010.

<sup>143</sup> Reps. Barber B. Conable Jr. and Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36009.

<sup>144</sup> Reps. John F. Seiberling and Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36010.

responded that a Member dissatisfied with the result of a division vote could ask for a recorded teller vote.<sup>145</sup>

Representative Melvin Price, who had chaired the Standards of Official Conduct Committee investigation into ghost voting in the 90<sup>th</sup> and 91<sup>st</sup> Congresses, counseled his colleagues as the last speaker in debate. Although Mr. Price supported the electronic voting system as a “giant stride toward greater efficiency and enlarged confidence in the work of the House,” he admonished his colleagues:

...I must caution my colleagues that the installation of this system opens other doors, which are not necessarily desirable. There is always the possibility the new system could be abused or misused. For example, it could lead to the practice of “ghost voting,” such as happened recently in the State government of Pennsylvania where votes were cast for members of the general assembly who were not on the floor or, in one instance, even the country. I urge my colleagues to support this improvement in House procedure, but emphasize we must guard against any misuse of the new system which could tend to destroy the credibility of Congress in the eyes of the public.<sup>146</sup>

### *Speaker's Announcements Anticipating Electronic Voting*

On January 3, 1973, Speaker Albert announced that there would be a delay in implementing the electronic voting system, noting the need to prepare voting cards for each Representative, referred to at that time as “personalized Vote-ID Cards.” The Speaker directed that the forms of roll call and quorum call used previously continue in the 93<sup>rd</sup> Congress until further notice.<sup>147</sup>

On January 15, the Speaker announced his policy on electronic voting, and stated that the electronic voting system would be operational January 23. In his policy statement, the Speaker announced:

- how the electronic voting system operated, and what information would be available on the consoles at the party tables;
- how Members were to use their Vote-ID Cards at the voting stations to cast, change, or check their votes or to register their presence on a quorum call;
- that the presiding officer would instruct Members to “record their presence or votes by means of the electronic device,” and that this instruction would initiate a 15-minute voting period, with time on the summary displays decreasing to 0:00 minutes from 15:00 minutes;
- that Members could cast, change, or check their votes until the presiding officer “declare[d] the vote to be closed and announce[d] the final result”;

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<sup>145</sup> Reps. Richard C. White and Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36010.

<sup>146</sup> Rep. Melvin Price, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36012.

<sup>147</sup> Speaker Carl Albert, “Announcement by the Speaker Concerning Electronic Voting,” *Congressional Record*, vol. 119, part 1 (January 3, 1973), p. 27.

- that voting stations would remain open until the presiding officer “declare[d] the vote to be closed and announce[d] the final result,” at which time the voting stations would be closed and the summary panel would indicate “FINAL”;
- how a Member without his or her Vote-ID Card could vote by picking up in a cloakroom or the well a green (“yea”), red (“no”), or amber (“present”) ballot card, filling in his or her name, state, and district, and handing the card to the tally clerk, who would then enter the Member’s vote and deactivate use of the Member’s Vote-ID Card on that vote;
- how a Member may pair (see Pairs, below); and
- that the presiding officer in his or her discretion would determine that recorded votes or quorum calls be taken by another procedure than electronic device.<sup>148</sup>

The electronic voting system was first used January 23, 1973, when House Administration Chairman Hays made a point of order that a quorum was not present and moved a call of the House. The call of the House was ordered, and Members’ presence was recorded by electronic device.<sup>149</sup>

### *Practice in the 93<sup>rd</sup> Congress*

Presiding officers in the 93<sup>rd</sup> Congress (1973-1975) established a number of practices and precedents related to the electronic voting system. On March 7, 1973, the Speaker announced that the electronic voting system was “not operable,” and that until further notice votes and quorum calls would be “taken by standby procedures.”<sup>150</sup> Two months later, knowing that the electronic voting system was not operating when a point of order against a vote was made, the Speaker directed the clerk to call the roll for the vote in lieu of taking the vote by electronic device.<sup>151</sup> (Instances of failures in the electronic voting system in 1973 appear in **Table 2**, below.)

On June 6, 1973, a call of the House was ordered to establish a quorum. While Members were responding to the call, a Member demanded regular order. The Speaker responded:

The regular order is the establishment of a quorum and the rule provides a minimum of 15 minutes for Members to respond. Clause 5 of rule XV states that Members have “not less than 15 minutes to have their presence recorded.”<sup>152</sup>

Since this clause was also incorporated by reference in Rule XXIII, pertaining to the Committee of the Whole, chairman of the Committee of the Whole established the same precedent in ruling

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<sup>148</sup> Speaker Carl Albert, “Electronic Voting,” *Congressional Record*, vol. 119, part 1 (January 15, 1973), pp. 1055-1057. Appended to the Speaker’s statement in the *Congressional Record* was a committee print of the House Administration Committee, “The Electronic Voting System for the U.S. House of Representatives.”

<sup>149</sup> Rep. Wayne L. Hays, “Call of the House,” *Congressional Record*, vol. 119, part 2 (January 23, 1973), p. 1793. Just prior to making his point of order, House Administration Committee Chairman Hays instructed Members on use of their voting cards.

<sup>150</sup> Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 119, part 5 (March 7, 1973), p. 6699.

<sup>151</sup> Speaker Carl Albert, “Hobby Protection Act,” *Congressional Record*, vol. 119, part 13 (May 16, 1973), p. 15860. See also footnote 172.

<sup>152</sup> Speaker Carl Albert, “The Special Constitutional Power and Duty of Impeachment by the House of Representatives,” *Congressional Record*, vol. 119, part 14 (June 6, 1973), p. 18402. See also footnote 185.

on a point of order on July 17, 1974. Representative Robert E. Bauman made a point of order that fewer than 100 Members had responded to a quorum call (a “notice quorum”) at the expiration of 15 minutes and that a “regular quorum call must then be called....” After the Member’s further explanation, the chairman stated:

The Chair understands the rule, and clause 5, rule XV provides a minimum, not a maximum, of 15 minutes for Members to respond on any quorum call. The Chair can exercise his discretion to continue the quorum call if the Chair desires to do so.<sup>153</sup>

Finally, the Speaker established one more precedent concerning voting by electronic device. Despite Members’ explanations that their votes had been wrongly recorded by the electronic voting system, Speaker Albert ruled that the presiding officer was without authority to entertain a unanimous consent agreement to make a correction. The statements appeared in the *Congressional Record*.<sup>154</sup>

### **94<sup>th</sup> - 105<sup>th</sup> Congresses**

For the reader’s convenience, this subpart is divided topically.

*Recapitulation*. In the 94<sup>th</sup> Congress (1975-1977), following a Member’s demand for the recapitulation of a vote, Speaker Albert stated, “Under the rules, a recapitulation of an electronic vote is not in order.”<sup>155</sup> Later in the same Congress, in the course of the Speaker announcing new procedures for a Member to change his or her vote, Representative Bauman, made a parliamentary inquiry whether a recapitulation of the vote would now be in order since it would be “beneficial” in close votes. The Speaker responded:

...there is no change in the ruling. That is not the reason why the prior ruling was made. The names of the Members will still appear on the panel and Members can verify their changed votes without a recapitulation. That was the basis for the original ruling, that all names, whether they are by Members inserting their voting cards or voting from the well, will appear on the voting panel for verification.<sup>156</sup>

In the 97<sup>th</sup> Congress (1981-1983), the Speaker allowed a correction to a vote taken by electronic device, which had resulted from an error in identifying the signature on a voting card.<sup>157</sup>

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<sup>153</sup> “Surface Mining Control and Reclamation Act of 1974,” *Congressional Record*, vol. 120, part 18 (July 17, 1974), p. 23673. See also footnote 186.

<sup>154</sup> Rep. Robert O. Tiernan and Speaker Carl Albert, “Personal Announcement,” *Congressional Record*, vol. 119, part 10 (April 18, 1973), p. 13081; and Rep. Ray J. Madden and Speaker Carl Albert, “Personal Announcement,” *Congressional Record*, vol. 119, part 12 (May 10, 1973), p. 15282.

A Member raised this issue again in the 99<sup>th</sup> Congress, and a Speaker pro tempore similarly refused the Member’s request for a change in a vote conducted by electronic device. Rep. Fernand J. St. Germain and Speaker Pro Tempore G.V. “Sonny” Montgomery, “Personal Explanation,” *Congressional Record*, vol. 132, part 10 (June 17, 1986), p. 14038.

<sup>155</sup> Speaker Carl Albert, “Providing for the Consideration of H.R. 2559, Amending Title 39, United States Code, To Apply Certain Provisions of Law Providing for Federal Agency Safety Programs to the U.S. Postal Service,” *Congressional Record*, vol. 121, part 20 (July 30, 1975), p. 25841.

<sup>156</sup> Rep. Robert E. Bauman and Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 121, part 22 (September 17, 1975), p. 28903.

<sup>157</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, 98<sup>th</sup> Congress, H.Doc. 97-271, 97<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, (continued...))

*Constitutionality* . A Member made a parliamentary inquiry in the 99<sup>th</sup> Congress (1985-1986) concerning the constitutionality and authority under House rules of conducting votes by electronic device. He asserted that the Constitution and House rules required that “Members of Congress, when casting their vote, do so wholly in public so that the Member’s vote is in fact known to the public at the time he or she casts that vote.” The Speaker responded,

The Constitution requires that the yeas and nays be spread upon the Journal, and that is what the rules of the House have always guaranteed, both prior to and subsequent to electronic voting. Consequently, the Chair believes that the proper method is being used and that there are precedents therefor.<sup>158</sup>

Following this exchange, the same Member objected to the voice vote on the ground that a quorum was not present, and the Speaker ordered the vote to be taken by electronic device. Having been notified that the display panels were not working but that the voting stations were operational, the Speaker exercised his discretion to continue using the electronic voting system, and suggested that Members verify their vote by re-inserting their voting cards in the same or a different voting station. The voting stations then failed, and the Speaker initiated voting by the standby procedures of Rule XV.<sup>159</sup>

*Malfunction of the Electronic Voting System* . In the 100<sup>th</sup> Congress (1987-1989), the electronic voting system malfunctioned. The chairman of the Committee of the Whole vacated a recorded vote on an amendment, and ordered the clerk to call the roll pursuant to Rule XV, cl. 1. After the chairman announced the result of the vote, he stated:

The Chair will announce that prior to the next vote Members will be advised whether or not the electronic voting system is operating. The technicians are working on the system and hopefully by the time we complete debate on the next amendment the system will be operational.<sup>160</sup>

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(...continued)

1983), p. 491.

<sup>158</sup> Rep. Robert S. Walker and Speaker Thomas P. “Tip” O’Neill Jr., “Amtrak Authorization,” *Congressional Record*, vol. 131, part 18 (September 19, 1985), p. 24245.

<sup>159</sup> Ibid. See also footnote 281. See also U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, 100<sup>th</sup> Congress*, H.Doc. 99-279, 99<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1987), p. 512.

<sup>160</sup> “National Defense Authorization Act, Fiscal Year 1989,” *Congressional Record*, vol. 134, part 7 (May 4, 1988), pp. 9846-9847. See also footnote 283.

In the 106<sup>th</sup> Congress (1999-2001), when a portion of the display boards failed, the Speaker pro tempore continued the vote using the electronic voting system, and stated, “...the Chair has been advised that those votes are indeed being recorded. Those that are in that panel, from Danner to Doyle, should recheck your vote on the electronic voting device....” Speaker Pro Tempore Doc Hastings, “Marriage Tax Penalty Relief Act of 2000,” *Congressional Record*, vol. 146, part 1 (February 10, 2000), p. 1021.

The Speaker pro tempore made a similar statement when some voting stations failed in the 107<sup>th</sup> Congress (2001-2003). Speaker Pro Tempore Judy Biggert, “The Journal,” *Congressional Record*, vol. 148, part 3 (April 9, 2002), p. 4054. Later in the 107<sup>th</sup> Congress, when display panels failed, the Speaker pro tempore made a similar statement. Speaker Pro Tempore Michael K. Simpson, “Recognizing the Teams and Players of the Negro Baseball Leagues for Their Contributions to Baseball and the Nation,” *Congressional Record*, vol. 148, part 12 (September 19, 2002), p. 17237. When a display panel failed in the 108<sup>th</sup> Congress (2003-2005), a Speaker pro tempore made a similar statement. Speaker Pro Tempore Michael K. Simpson, “Providing for Consideration of H.R. 2989, Transportation, Treasury, and Independent Agencies Appropriations Act, 2004,” *Congressional Record*, vol. 149, part 15 (September 4, 2003), p. 21151.

When the next vote was taken, the electronic voting system was used.<sup>161</sup> Malfunctions of the voting system are examined in the next section, Issues Related to Record Voting Since 1970: Inoperative Electronic Voting System.

*Speakers' Policies on Voting by Electronic Device* . In the 94<sup>th</sup> Congress (1975-1977) and 95<sup>th</sup> Congress (1977-1979), the Speakers announced policies related to Members changing their vote when voting by electronic device. These policies are described in the part below, Members Changing Their Vote.

During the 1980s, Speakers routinized the custom of announcing policies on aspects of the legislative process on the day, or in the first days, of a new Congress's convening. When the 102<sup>nd</sup> Congress (1991-1993) convened, the Speaker pro tempore, in behalf of Speaker, announced eight policies, including one on the conduct of votes by electronic device. The policy on voting was as follows:

As Members are aware, clause 5 of rule XV provides that "Members shall have not less than 15 minutes from the ordering of the rollcall or quorum call to have their vote or presence recorded."

While the rule obviously states a minimum, rather than maximum, time requirement for electronic votes, and while no occupant of the chair would attempt to prevent a Member who is in the Chamber at the expiration of that time from casting his or her vote, the Chair has noticed that in the past session inordinate delays in concluding electronic votes or quorum calls would occur when Members would notify the Chair through the Cloakrooms that they were on their way to the Chamber from a variety of locations.

The Chair would encourage all Members to depart for the Chamber promptly upon the appropriate bell and light signal, since there is no guarantee that Members can rely upon telephoned notice to the Cloakrooms in order to have votes held open. As indicated by his remarks on this subject on October 13, 1990, the minority leader joins the Chair in urging all Members to help avoid the unnecessary loss of time in conducting the business of the House.<sup>162</sup>

The Speaker continued this policy in the 103<sup>rd</sup> Congress (1993-1995), with the addition of a proscription:

...the Speaker is advising the Cloakrooms that they should not forward to the Chair individual requests to hold open a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock.<sup>163</sup>

When the new Republican majority organized the House in the 104<sup>th</sup> Congress (1995-1997), Speaker Newt Gingrich placed increased emphasis on conducting votes within a 15-minute time frame. The new policy provided, in part:

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<sup>161</sup> "National Defense Authorization Act, Fiscal Year 1989," *Congressional Record*, vol. 134, part 7 (May 4, 1988), pp. 9848-9849. See also the action taken by the Speaker following a malfunction of the electronic voting system in the section Issues Related to Voting since 1970: Inoperative Electronic Voting System, 101<sup>st</sup> Congress.

<sup>162</sup> Speaker Pro Tempore Dan Glickman, "Policies of the Chair," *Congressional Record*, vol. 137, part 1 (January 3, 1991), pp. 65-66.

<sup>163</sup> Speaker Pro Tempore Kweisi Mfume, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 139, part 1 (January 5, 1993), p. 106.

...The Chair encourages all Members to depart for the chamber promptly upon the appropriate bell and light signal. As in recent Congresses, the cloakrooms should not forward to the Chair requests to hold a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock.

Although no occupant of the Chair would prevent a Member who is in the well of the chamber before the announcement of the result from casting his or her vote, each occupant of the Chair will have the full support of the Speaker in striving to close each electronic vote at the earliest opportunity. Members should not rely on signals relayed from outside the chamber to assume that votes will be held open until they arrive in the chamber.<sup>164</sup>

The two substantive departures from Speaker Foley's policy were, first, that Members in the well, not simply in the chamber, would not be prevented from voting, and, second, the Speaker would support the presiding officer in "striving to close" a vote at "the earliest opportunity."

In addition, in his address to the House upon his election as Speaker, Speaker Gingrich mentioned the importance of schedules, referring to a bipartisan task force on the family that had been established earlier. The task force had recommended limiting votes to 17 minutes. The Speaker stated,

I hope all of my colleagues are paying attention because we are in fact going to work very hard to have 17 minute votes and it is over. So, leave on the first bell, not the second bell.<sup>165</sup>

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<sup>164</sup> Speaker Newt Gingrich, "Policies of the Chair," *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 552. The Speaker also announced this policy prior to the first recorded vote of that day. Speaker Newt Gingrich, "Making in Order Immediate Consideration of House Resolution Adopting the Rules of the House of Representatives for the 104<sup>th</sup> Congress," *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 457.

The Speaker reiterated this policy at the beginning of the 105<sup>th</sup> Congress. Speaker Pro Tempore Ray LaHood, "Announcement by the Speaker Pro Tempore on Procedures for the 105<sup>th</sup> Congress," *Congressional Record*, vol. 143, part 1 (January 7, 1997), p. 148. He also reiterated it during the 105<sup>th</sup> Congress. Speaker Newt Gingrich, "Announcement by the Speaker," *Congressional Record*, vol. 144, part 8 (June 10, 1998), pp. 11848-11849.

Speaker Dennis Hastert included Speaker Gingrich's policy on voting by electronic device in his announced policies for the 106<sup>th</sup> Congress. Speaker Pro Tempore Ed Pease, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 145, part 1 (January 6, 1999), p. 249. He included the policy as well in his announced policies for the 107<sup>th</sup>, 108<sup>th</sup>, and 109<sup>th</sup> Congresses. Speaker Pro Tempore Heather Wilson, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 147, part 1 (January 3, 2001), p. 41; Speaker Pro Tempore Ray LaHood, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 149, part 1 (January 7, 2003), p. 24; and Speaker Pro Tempore Stevan Pearce, "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 151 (January 4, 2005), p. H34-H35.

Speaker Nancy Pelosi also continued the policy, making modifications for the 110<sup>th</sup> Congress. Speaker Nancy Pelosi, "Announcement by the Speaker," *Congressional Record*, daily edition, vol. 153 (January 5, 2007), p. H60. The modifications are provided below in the part, *Allowing Late-Arriving Members to Vote/Changing an Outcome*. Speaker Pelosi's policy on voting by electronic device appears in **Appendix A**.

<sup>165</sup> Speaker Newt Gingrich, "Election of Speaker," *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 444.

In response to a parliamentary inquiry the next month after a vote had been held open for approximately 20 minutes, a Speaker pro tempore stated that the vote had been conducted "in conformity with the Speaker's advisement," and that the presiding officer "would not stop a Member from voting who is in the well." Speaker Pro Tempore Bill Barrett and Rep. Ronald D. Coleman, "Violent Criminal Incarceration Act of 1995," *Congressional Record*, vol. 141, part 3 (February 10, 1995), p. 4385.

In the 108<sup>th</sup> Congress (2003-2005), the Speaker made another attempt to shorten the duration of votes. After exhorting Members to cooperate in voting within the minimum 15 minutes available for a vote, the Speaker pro tempore stated, "The Chair will remind Members when two minutes remain on the clock." Speaker Pro Tempore Michael K. Simpson, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 149, part 1 (January 8, 2003), p. 172.

Speaker Gingrich's policy was put to the test in a dispute over a vote on June 21, 1995, as explained in the next part, *Allowing Late-Arriving Members to Vote/Changing an Outcome*, and also in the section below, *Issues Related to Voting since 1970: Members Attempting to Vote*.<sup>166</sup>

*Illuminating Display Boards Other than when a Vote Is Being Conducted*. In the 105<sup>th</sup> Congress (1997-1999), a Member asked unanimous consent to have the display boards showing all the Members to be turned on in order to have a list of Members. The Speaker pro tempore stated that such a request was not in order.<sup>167</sup>

### **106<sup>th</sup> Congress to Present**

This subpart concludes the evolution of rules and precedents related to the electronic voting system following the recodification of House rules in the 106<sup>th</sup> Congress. (See **Table 1**)

*Recodification and Amendment of Rules*. The House adopted a recodification of its rules in adopting rules for the 106<sup>th</sup> Congress (1999-2001). Rules provisions formerly found in Rule XV and other rules related to voting and quorums were recodified in a new Rule XX. The House also added a new provision, clause 2(b), to Rule XX, as follows:

When the electronic voting system is inoperable or is not used, the Speaker or Chairman may direct the Clerk to conduct a record vote or quorum call as provided in clause 3 or 4 [of Rule XX].<sup>168</sup>

The parliamentarian's notes in the *House Rules and Manual* stated that this new provision was added as a "cross reference" to backup procedures found in clauses 3 and 4 of Rule XX, and to "clarify the Chair's discretion to choose either backup procedure."<sup>169</sup>

*Malfunction of Electronic Voting System*. A Speaker pro tempore vacated a vote in the 106<sup>th</sup> Congress (1999-2001) when the electronic voting system malfunctioned and the clerk was unable to certify to the Speaker pro tempore the accuracy of the vote. A series of parliamentary inquiries by a Member displayed the specific issues and precedents that led the Speaker pro tempore to seek to announce a result based on the vote by electronic device before vacating the vote. The clerk was ultimately directed to call the roll.<sup>170</sup> Some of the exchange was as follows:

The Speaker pro tempore. ...The Speaker has the discretion, in the event of a malfunction of the electronic voting system, to, one, continue to utilize the electronic voting system, even

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<sup>166</sup> In the course of allowing Members to speak June 22 on the dispute, the Speaker reiterated his policy on voting by electronic device and his intention to limit votes to 17 minutes. Speaker Newt Gingrich, "Permission for Sundry Members to Address the House for 5 Minutes Each," *Congressional Record*, vol. 141, part 12 (June 22, 1995), p. 16815.

<sup>167</sup> Rep. David R. Obey and Speaker Pro Tempore Charles Bass, "Making Further Continuing Appropriations for Fiscal Year 1999," *Congressional Record*, vol. 144, part 18 (October 12, 1998), p. 25770.

<sup>168</sup> Sec. 1 of H.Res. 5, agreed to in the House January 6, 1999.

<sup>169</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 106<sup>th</sup> Congress*, H.Doc. 105-358, 105<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 1999), p. 761. See also "Proposed New Rules [Recodification Committee Print]." Rep. Dick Armey, "Rules of the House," *Congressional Record*, vol. 145, part 1 (January 6, 1999), p. 188.

<sup>170</sup> Rep. John D. Dingell and Speaker Pro Tempore Henry Bonilla, "Providing for Consideration of H.R. 2990, Quality Care for the Uninsured Act of 1999, and H.R. 2723, Bipartisan Consensus Managed Care Improvement Act of 1999," *Congressional Record*, vol. 145, part 17 (October 6, 1999), pp. 24198-24200.

though the electronic display panels are inoperative, where the voting stations continue in proper operation and Members are able to verify their votes; or, number two, to utilize a backup voting procedure, such as calling the roll....

Mr. Dingell: ...Could the Chair inform the Chamber what the Clerk has done to assure that the vote is reliable and correct? I have great respect for the Clerk, but we have a malfunction in the electronic system. My question is, who do we believe, the malfunctioning electronic system or the Clerk of the House?

The Speaker pro tempore. The Clerk has responded to every Member and checked every Member's vote of any Member who has come forward to question the recording of their vote....

The Speaker pro tempore. The chair will further state there have been cases in the past where the displays on the boards before the media gallery have been inoperative, but that the votes recorded by the Clerk have been accurate. There is precedent for relying on the running totals.

...Mr. Dingell. Mr. Speaker, is it the practice of the Chair, then, or would it be the practice of the Chair to inform us of whether the Clerk's certification is 100 percent correct when that process has been completed?

The Speaker pro tempore. The House will be informed of the accuracy of the vote, and the Chair just asks Members' indulgence.

...The Speaker pro tempore. The Chair has been informed that the accuracy of the vote cannot be established with 100 percent accuracy. On this occasion, the Chair will direct the Clerk to call the roll to record the yeas and nays, as provided in clause 2(b) of rule XX.<sup>171</sup>

Representative Bill Thomas, chairman of the House Administration Committee, addressed the House after the result of the vote was announced to explain the cause of the malfunction (a technical problem compounded by a human error), which resulted in an error in what Members could see on the display board rather than an error in how Members' votes were recorded.<sup>172</sup>

The parliamentarian's notes in the *House Rules and Manual* referred to this event thus: "The question whether the electronic voting system is functioning reliably is in the discretion of the Chair, who may base a judgment on certification by the Clerk."<sup>173</sup>

In the 107<sup>th</sup> Congress (2001-2003), the electronic voting system failed during a vote, and a Speaker pro tempore held the vote open for nearly 3-1/2 hours. He announced that the votes Members had cast at voting machines and the votes Members had cast by filling out a green, red, or amber ballot card, which the clerks entered into the electronic voting system, would be combined. "Together this will constitute a valid vote." He encouraged Members to fill out a ballot

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<sup>171</sup> Ibid., p. 24199.

<sup>172</sup> Rep. Bill Thomas, "Malfunctions with Voting Machine Not Unprecedented," *Congressional Record*, vol. 145, part 17 (October 6, 1999), p. 24200. See also footnote 287.

<sup>173</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 107<sup>th</sup> Congress*, H.Doc. 106-320, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 2001), p. 774.

card to verify their vote, and he stated that the vote would be held open until Members who had gone to a memorial service returned and had an opportunity to verify their votes.<sup>174</sup>

When the electronic voting system failed twice during the conduct of votes in the 108<sup>th</sup> Congress (2003-2005), the presiding officer chose a different path in each instance. On March 25, 2004, a Speaker pro tempore announced to the House, "...that some of the voting stations may have been reset during this vote." The Speaker pro tem continued the vote, requested Members to confirm their vote, and stated that the voting machines would be kept open so that Members would have the opportunity to cast or confirm a vote.<sup>175</sup>

Later, on July 13, a chairman of the Committee of the Whole first announced that there were "technical difficulties," and that Members should confirm their vote "from the well." He then announced that Members should stop voting since the electronic voting system was "inoperable and the clerk has no way of tallying the votes." He stated that the clerk was attempting to reboot the system and, if that occurred, Members would need to "cast their votes a second time." The chairman finally announced a new vote on the same question,

The Chair is advised that the electronic voting system has been restarted, and the electronic vote will be conducted anew, a totally fresh start. Members must recast their votes even if they previously cast votes under the earlier, defective electronic vote. The bells will be rung to indicate a 15-minute vote on the...amendment....<sup>176</sup>

These occurrences of electronic voting system malfunction are examined in the section below, Issues Related to Voting since 1970: Inoperative Electronic Voting System, and Inoperative Display Boards.

### **Allowing Late-Arriving Members to Vote/Changing an Outcome**

By the 102<sup>nd</sup> Congress (1991-1993), leaders and Members were frustrated by the duration of some votes. The electronic voting system had promised efficiency in the conduct of record votes and quorum calls, but Members often lagged in getting to the floor and recording or changing their votes. A practice grew up whereby Members would alert their cloakroom of their future arrival on the floor. The presiding officer could then continue to hold open a vote until the Members appeared and voted. In the 102<sup>nd</sup> Congress, Speaker Foley announced a policy to attempt to close votes shortly after the 15-minute minimum time to vote. Speaker Gingrich tightened the policy, which has been continued by subsequent Speakers.

A different issue has arisen on other occasions, where votes have been held open for a period of time well past 15 minutes. Minority Members, in particular, whether the Democrats or the Republicans organized the House, have complained over certain of these events. The 110<sup>th</sup> Congress made an attempt to provide the presiding officer with guidance in the form of a new

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<sup>174</sup> Speaker Pro Tempore John Cooksey, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 147, part 12 (September 14, 2001), p. 17103. See also footnotes 280 and 288.

<sup>175</sup> Speaker Pro Tempore Ray LaHood, "Providing for Further Consideration of House Concurrent Resolution 393, Concurrent Resolution on the Budget for Fiscal Year 2005," *Congressional Record*, daily edition, vol. 150 (March 25, 2004), pp. H1492-H1493. See also footnote 290.

<sup>176</sup> "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005," *Congressional Record*, daily edition, vol. 150 (July 13, 2004), pp. H5579-H5580. See also footnote 291.

House rule to prevent votes from being held open “for the sole purpose of reversing the outcome” of a vote.

### *Prior to Voting by Electronic Device*

Prior to the 91<sup>st</sup> Congress (1969-1971), a Member was not allowed to vote after the clerk had called the roll and then called the names of Members not voting a second time. House Rule XV, cl. 1 provided, in part, at that time:

...and after the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting; and thereafter the Speaker shall not entertain a request to record a vote or announce a pair....<sup>177</sup>

However, under certain conditions, a Member was nonetheless allowed to vote after his or her name had been called twice. In notes on Rule XV, cl. 1, the parliamentarian explained:

A Member who has failed to respond when his name was called may not as a constitutional right demand that his vote be recorded before the announcement of the result.... But when a Member declares that he was listening when his name should have been called and failed to hear it, he is permitted to record his vote.... In order to qualify to vote the Member must have been within the Hall...and listening...when his name was called, and it is the duty of the Speaker to qualify a Member asking to vote at the end of the roll, but it is for the Member and not the Speaker to determine whether he was in the Hall and listening when his name was called, and unless he answer categorically in the affirmative he may not vote....<sup>178</sup>

With the approval of H.Res. 7 on January 3, 1969, the House amended Rule XV, cl. 1. The phrase disallowing the Speaker from recording a vote after a Member’s name had been called twice was replaced as follows:

...and after the roll has been once called, the Clerk shall call in their alphabetical order the names of those not voting. Members appearing after the second call, but before the result is announced, may vote or announce a pair.<sup>179</sup>

Therefore, “Members appearing after their names are called but before the announcement of the result may vote or announce a pair.”<sup>180</sup>

Following the change in House rules to allow recorded teller votes, effective in the 92<sup>nd</sup> Congress (1971-1973), Speaker Albert announced a policy to explain how a late-arriving Member could vote. The Speaker stated that, after the second teller had reported the “noes” on a vote, Members who arrived

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<sup>177</sup> House Rule XV, cl. 1 (90<sup>th</sup> Congress). *Journal of the House of Representatives of the United States*, 90<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington, DC: GPO, 1967), p. 1489. Rule XV was titled, “On Calls of the Roll and House.”

<sup>178</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, 90<sup>th</sup> Congress, H.Doc. 529, 89<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1967), p. 387.

<sup>179</sup> House Rule XV, cl. 1 (91<sup>st</sup> Congress). *Journal of the House of Representatives of the United States*, 91<sup>st</sup> Cong., 1<sup>st</sup> sess. (Washington, DC: GPO, 1969), p. 1438.

<sup>180</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, 91<sup>st</sup> Congress, H.Doc. 402, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1969), p. 387.

within the allotted time—which under the rule must be at least 12 minutes from the naming of tellers with clerks—will be permitted to fill in the card, be counted, and recorded.... The Chair will then announce the vote, but not before the expiration of at least 12 minutes from the naming of tellers with clerks, nor until the chair ascertains that no further Members are present who desire to be recorded.<sup>181</sup>

The Speaker also explained how a Member could vote present: “Immediately after the Chair has announced the vote and before any further business is conducted, Members wishing to be recorded as “present” will announce their presence to the Chair.”<sup>182</sup>

### *Advent of the Electronic Voting System*

In the course of House debate in the 92<sup>nd</sup> Congress on H.Res. 1123, inaugurating voting by electronic device, House Administration Committee Chairman Hays explained the relationship between the electronic voting system and Members’ opportunity to vote:

When [the electronic voting system’s clock] comes to zero, the Speaker will bang down his gavel and will say, “All time has expired,” or “Are there any Members in the Chamber who desire to vote?” It is just like we do it now on a teller vote. If there are any who desire to vote, he will give them a minute or two more to do so, and then he will lock the machine out, and that is the end of it.<sup>183</sup>

On January 15, 1973, as noted above, Speaker Albert announced his policy on electronic voting, and stated that the electronic voting system would be operative eight days later. In his policy statement, the Speaker announced that, when the time to vote had reached “0:00,” vote stations would remain open “until the Chair declares the vote to be closed and announces the final result.” He added that vote stations would be closed at this point to the “acceptance of further votes.”<sup>184</sup>

During the 93<sup>rd</sup> Congress (1973-1975), following inauguration of voting by electronic device, presiding officers established practices and precedents related to the electronic voting system and affecting the duration of a vote. While Members were responding to a quorum call (an example mentioned earlier), a Member demanded regular order. The Speaker responded:

The regular order is the establishment of a quorum and the rule provides a minimum of 15 minutes for Members to respond. Clause 5 of rule XV states that Members have “not less than 15 minutes to have their presence recorded.”<sup>185</sup>

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<sup>181</sup> Speaker Carl Albert, “Announcement by the Speaker with Regard to Teller Votes,” *Congressional Record*, vol. 117, part 3 (February 25, 1971), pp. 3383-3844.

<sup>182</sup> *Ibid.*

<sup>183</sup> Rep. Wayne L. Hays, “Electronic Voting in the House of Representatives,” *Congressional Record*, vol. 118, part 27 (October 13, 1972), p. 36006.

<sup>184</sup> Speaker Carl Albert, “Electronic Voting,” *Congressional Record*, vol. 119, part 1 (January 15, 1973), p. 1055.

<sup>185</sup> Speaker Carl Albert, “The Special Constitutional Power and Duty of Impeachment by the House of Representatives,” *Congressional Record*, vol. 119, part 14 (June 6, 1973), p. 18402. See also footnote 152.

In the 105<sup>th</sup> Congress (1997-1999), when a Member demanded regular order after a vote had continued beyond 15 minutes, the Speaker stated that 15 minutes was a minimum, that the presiding officer “has the option of keeping the vote open longer,” and that “this is regular order.” Rep. Steny H. Hoyer and Speaker Newt Gingrich, “District of Columbia Appropriations, Medical Liability Reform, and Education Reform Act of 1998,” *Congressional Record*, vol. 143, part 15 (October 9, 1997), p. 22017.

A Member made a parliamentary inquiry in the 108<sup>th</sup> Congress (2003-2005) about the duration of a vote past 17 (continued...)

Since this clause was also incorporated by reference in Rule XXIII, cl. 2 pertaining to the Committee of the Whole, a chairman of the Committee of the Whole, as mentioned earlier, established the same precedent in ruling on a point of order that fewer than 100 Members had responded to a quorum call. The chairman stated:

The Chair understands the rule, and clause 5, rule XV provides a minimum, not a maximum, of 15 minutes for Members to respond on any quorum call. The Chair can exercise his discretion to continue the quorum call if the Chair desires to do so.<sup>186</sup>

In the 94<sup>th</sup> Congress (1975-1977), Speaker Albert announced a procedure that affected Members seeking to vote after the 15-minute voting period. He stated that the voting machines would be turned off and that Members who had not yet voted could continue to vote but only by submitting a ballot card. While the purpose of turning off the voting machines was principally aimed at Members wishing to change a vote (as explained in the next part, *Members Changing Their Vote*), any late-arriving Member who had not yet voted was also affected.<sup>187</sup>

In the 96<sup>th</sup> Congress (1979-1981), a Member made a point of order after a Speaker pro tempore stated that all time had expired. One or more Members apparently had not voted or had not yet changed their vote. Representative John M. Ashbrook cited precedents that a Member who failed to vote could insist that his or her vote be recorded, even if the presiding officer had declared the result of a vote. The Speaker pro tempore responded, "Those precedents apply only to rollcalls preceding the installation of the electronic device and are not a precedent for holding the vote by electronic device open indefinitely."<sup>188</sup>

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(...continued)

minutes. The Speaker pro tempore responded, "...the Chair has the discretion either to close a vote and to announce the result at any time after 15 minutes have elapsed or to allow additional time for Members to record their votes before announcing the result." Rep. Steny H. Hoyer and Speaker Pro Tempore Mac Thornberry, "District of Columbia Appropriations Act, 2004," *Congressional Record*, vol. 149, part 16 (September 9, 2003), p. 21556. Several Members in the 108<sup>th</sup> Congress inquired about the duration of a five-minute vote that lasted more than five minutes, and the Speaker pro tempore responded, "There is no House rule that limits the time. Rule XX provides a minimum time," and that the vote would be held open, "[u]ntil all the Members wishing to vote have voted." Speaker Pro Tempore Michael K. Simpson, "Motion to Instruct Conferees on S.Con.Res. 95, Concurrent Resolution on the Budget for Fiscal Year 2005," *Congressional Record*, daily edition, remarks in the House, vol. 150 (March 30, 2004), p. H1661. The Speaker pro tempore reiterated the minimum duration of a 15-minute vote in response to parliamentary inquiries on another vote in the 108<sup>th</sup> Congress. Speaker Pro Tempore Steven C. LaTourette, "Providing for Consideration of H.R. 2828, Water Supply, Pipeline Reliability, and Environmental Improvement Act," *Congressional Record*, daily edition, vol. 150 (July 9, 2004), p. H5409. A similar response was made to a parliamentary inquiry in the Committee of the Whole. "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005," *Congressional Record*, daily edition, vol. 150 (July 8, 2004), p. H5374.

<sup>186</sup> "Surface Mining Control and Reclamation Act of 1974," *Congressional Record*, vol. 120, part 18 (July 17, 1974), p. 23673. See also footnote 153.

In the 108<sup>th</sup> Congress (2003-2005), several Members made parliamentary inquiries about the duration of a 15-minute vote after more than 15 minutes had passed. The chairman of the Committee of the Whole responded that the "minimum" time to vote was 15 minutes and, "...if there are Members in the well attempting to vote, the vote will remain open." "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005," *Congressional Record*, daily edition, vol. 150 (July 8, 2004), p. H5374.

<sup>187</sup> Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 121, part 22 (September 17, 1975), p. 28903.

<sup>188</sup> Rep. John M. Ashbrook and Speaker Pro Tempore Lloyd Meeds, "The Journal," *Congressional Record*, vol. 124, part 6 (March 14, 1978), p. 6839.

A Member in the 100<sup>th</sup> Congress (1987-1989) made a parliamentary inquiry about voting after a Speaker pro tempore announced on a vote, “All time has expired.” The Member asked whether, after the announcement, Members could cast votes. The Speaker pro tempore responded, “The Chair will state that the rules of the House state that the rollcall will be open for a minimum of 15 minutes, and that beyond that it is at the discretion of the Chair.”<sup>189</sup>

A motion to adjourn and a record vote on it followed. Representative Mickey Edwards made a parliamentary inquiry into the length of votes:

Mr. Speaker, you have now announced that all time has expired. I am quite familiar with the policy of this Chair. Under the rules of the House could the Parliamentarian instruct us whether under the rules at this point additional votes may be cast now that the Chair has announced that time has expired?

Speaker Jim Wright responded that the chair “will state that the rules of the House state that the rollcall will be open for a minimum of 15 minutes, and that beyond that it is at the discretion of the Chair.”<sup>190</sup>

This specific situation is discussed more below in the section Issues Related to Voting since 1970: Holding Votes Open.

### ***Speakers’ Policies, 102<sup>nd</sup> - 105<sup>th</sup> Congresses***

Speaker Foley announced a new policy on voting by electronic device in the 102<sup>nd</sup> Congress (1991-1993). Regarding late-arriving Members, the Speaker’s policy was exhortatory. He indicated that the presiding officer would not “attempt to prevent a Member who is in the Chamber at the expiration of [the minimum 15 minutes] from casting his or her vote....” Rather, the Speaker “would encourage” all Members to leave their locations for the floor “promptly” when the bells were sounded to indicate a vote.<sup>191</sup> The Speaker continued this policy in the 103<sup>rd</sup> Congress (1993-1995), but added that he was “advising the Cloakrooms that they should not forward to the Chair individual requests to hold open a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock.”<sup>192</sup>

In the 104<sup>th</sup> Congress (1995-1997), Speaker Gingrich made a firmer policy announcement. The two substantive departures from Speaker Foley’s policy were, first, that Members in the well, not simply in the chamber, would not be prevented from voting, and, second, the Speaker would support the presiding officer in “striving to close” a vote at “the earliest opportunity.”<sup>193</sup> He also

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<sup>189</sup> Rep. Mickey Edwards and Speaker Pro Tempore Brian J. Donnelly, “Adjournment,” *Congressional Record*, vol. 133, part 21 (October 29, 1987), p. 30239.

<sup>190</sup> Rep. Mickey Edwards and Speaker Jim Wright, “Parliamentary Inquiry,” *Congressional Record*, vol. 133, part 21 (October 29, 1987), p. 30239.

<sup>191</sup> Speaker Pro Tempore Dan Glickman, “Policies of the Chair,” *Congressional Record*, vol. 137, part 1 (January 3, 1991), pp. 65-66.

<sup>192</sup> Speaker Pro Tempore Kweisi Mfume, “Announcement by the Speaker Pro Tempore,” *Congressional Record*, vol. 139, part 1 (January 5, 1993), p. 106.

<sup>193</sup> Speaker Newt Gingrich, “Policies of the Chair,” *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 552.

indicated in remarks to the House following his election as Speaker that the House would attempt to hold votes to a 17-minute duration.<sup>194</sup>

Speaker Gingrich's policy was put to the test in a dispute over a vote on June 21, 1995. The ayes and noes stood at 213-214 when the chairman of the Committee of the Whole announced the result of a vote.<sup>195</sup> Two Democratic Members, who reportedly intended to vote "aye," were apparently rushing down the aisles into the well when the chairman announced the result. Pursuant to the Speaker's policy on the duration of votes, this vote had been open for about 17 minutes: the Republican leader the next day said 17 minutes and 10 seconds; two Democratic Members who had been prevented from voting said 16 minutes and 45 seconds; and the Democratic leader said other votes, including the vote following the disputed tally, were held open longer than 17 minutes to accommodate Members.<sup>196</sup>

The next day, June 22, Majority Leader Dick Armey stated that, after reviewing the videotape of the vote, "it is quite clear that the Chair...was on solid parliamentary ground when he called the vote...." He said the chairman had already stopped the announcement of the result to allow a Democratic Member to vote, that the well was empty of Members, and that a Republican Member subsequently arrived too late to vote and was unable to do so. Nonetheless, prior to asking unanimous consent in the House to vacate the June 21 vote in the Committee of the Whole and to allow a vote de novo, Mr. Armey explained why he was pursuing this course:

...I know all too well that once the perception of unfairness and arbitrariness has set in, it is difficult to undo regardless of the facts of the matter. ...we should all, in each and every act of conduct, no matter how small, always put the honor and the dignity of this body ahead of the politics or even, for that matter the political subtlety of the moment.<sup>197</sup>

Minority Leader Richard A. Gephardt stated that the Democrats' "version of the facts is different" from the majority leader's, but that what the majority leader was seeking to do was "right." He stated that the Members "were in the Chamber, were trying very much to get into the well...."<sup>198</sup> Representative Thomas M. Foglietta, one of the Democratic Members who sought to vote, said that a Member had cried out, "One more vote, one more vote!" as Mr. Foglietta passed him.<sup>199</sup>

Since there was no objection to the majority leader's unanimous consent request for a vote de novo in the Committee of the Whole, the Speaker ordered it and then reiterated his policy on voting by electronic device.<sup>200</sup> The House later resolved into the Committee of the Whole and the

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<sup>194</sup> Speaker Newt Gingrich, "Election of Speaker," *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 444. See also footnote 165 regarding a Speaker pro tempore's response, a month after Speaker Gingrich's announcement, to a parliamentary inquiry on holding a vote open for approximately 20 minutes to allow late-arriving Members to vote.

<sup>195</sup> "Legislative Branch Appropriations Act, 1996," *Congressional Record*, vol. 141, part 12 (June 21, 1995), p. 16683.

<sup>196</sup> Reps. Dick Armey, Thomas M. Foglietta, Earl F. Hilliard, and Richard A. Gephardt, "Fairness in House Voting Procedures," "Vacation of Rollcall 405 and Making in Order De Novo Vote on Amendment Offered by Mr. Fazio of California, As Amended," and "Permission for Sundry Members to Address the House for 5 Minutes Each," *Congressional Record*, vol. 141, part 12 (June 22, 1995), pp. 16814-16816.

<sup>197</sup> Rep. Dick Armey, "Fairness in House Voting Procedures," *Congressional Record*, vol. 141, part 12 (June 22, 1995), p. 16814.

<sup>198</sup> Rep. Richard A. Gephardt, "Vacation of Rollcall 405 and Making in Order De Novo Vote on Amendment Offered by Mr. Fazio of California, As Amended," *Congressional Record*, vol. 141, part 12 (June 22, 1995), pp. 16814-16815.

<sup>199</sup> Rep. Thomas M. Foglietta, "Permission for Sundry Members to Address the House for 5 Minutes Each," *Congressional Record*, vol. 141, part 12 (June 22, 1995), pp. 16815-16816.

<sup>200</sup> Speaker Newt Gingrich, "Permission for Sundry Members to Address the House for 5 Minutes Each," (continued...)

amendment was agreed to, 220-204.<sup>201</sup> (More information on the dispute over this vote appears below in the section Issues Related to Voting since 1970: Members Attempting to Vote.)

At the convening of the 105<sup>th</sup> Congress (1997-1999), Speaker Gingrich reiterated his policy.<sup>202</sup> Later in the 105<sup>th</sup> Congress, after consultation with the minority leader, the Speaker announced a “reaffirmation” of the policy, stating as well that the presiding officer would seek to close votes “after no more than 17 minutes.” The Speaker continued:

Although no occupant of the chair will prevent a Member who is visible to the Chair before the announcement of the result from casting or changing his or her vote, each occupant of the chair will have the full support of the Speaker in striving to close each electronic vote at the earliest opportunity.<sup>203</sup>

### **106<sup>th</sup> Congress to the Present**

In the 108<sup>th</sup> Congress (2003-2005), a vote in the House was held open for approximately three hours. The *Congressional Record* does not show any parliamentary inquiries occurring during the conduct of the vote, although after the vote Members coupled criticism of the duration of the vote with parliamentary inquiries that ultimately resulted in a record vote on the motion to table the motion to reconsider the vote on agreeing to a conference report.<sup>204</sup>

Subsequently, Minority Leader Nancy Pelosi raised a question of the privileges of the House and submitted a resolution that recited certain facts concerning the duration of the vote and House policies and practices and allegations about pressures brought to bear to influence one Member’s vote. The resolve clause of the resolution stated:

That the House denounces this action in the strongest terms possible, rejects the practice of holding votes open beyond a reasonable period of time for the sole purpose of circumventing the will of the House, and directs the Speaker to take such steps as necessary to prevent any further abuse.<sup>205</sup>

The Speaker pro tempore ruled that the resolution constituted a question of the privileges of the House.<sup>206</sup> While after debate the House voted to table the resolution, the parliamentarian’s notes

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(...continued)

*Congressional Record*, vol. 141, part 12 (June 22, 1995), p. 16815.

<sup>201</sup> “Legislative Branch Appropriations Act, 1996,” *Congressional Record*, vol. 141, part 12 (June 22, 1995), pp. 16823-16825.

<sup>202</sup> Speaker Pro Tempore Ray LaHood, “Announcement by the Speaker Pro Tempore on Procedures for the 105<sup>th</sup> Congress,” *Congressional Record*, vol. 143, part 1 (January 7, 1997), p. 148.

<sup>203</sup> Speaker Newt Gingrich, “Announcement by the Speaker,” *Congressional Record*, vol. 144, part 8 (June 10, 1998), pp. 11848-11849.

In the 109<sup>th</sup> Congress (2005-2007), a Speaker pro tempore in response to a parliamentary inquiry concerning the duration of a vote indicated that a vote would be held open until “he believes that Members have finished voting.” Speaker Pro Tempore Lee Terry, “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006,” *Congressional Record*, daily edition, vol. 151 (November 17, 2005), p. H10530.

<sup>204</sup> “Conference Report on H.R. 1, Medicare Prescription Drug, Improvement, and Modernization Act of 2003,” *Congressional Record*, daily edition, vol. 149 (November 21, 2003), pp. H12295-H12296.

<sup>205</sup> Rep. Nancy Pelosi, “Privileges of the House—Circumventing the Will of the House by Holding Votes Open beyond a Reasonable Period,” *Congressional Record*, daily edition, vol. 149 (December 8, 2003), p. H12846.

<sup>206</sup> *Ibid.* (Speaker Pro Tempore Steven C. LaTourette.) Debate and voting on the resolution appear in the *Congressional* (continued...)

cited the Speaker's ruling for its precedential value.<sup>207</sup> This matter is discussed more fully in the section below, Issues Related to Voting since 1970: Exchanging a Vote for a Benefit.<sup>208</sup>

When Democrats organized the House after winning the majority in the 110<sup>th</sup> Congress (2007-2009), a widely publicized change<sup>209</sup> was made to House Rule XX, cl. 2, the clause that makes voting by electronic device the customary method of voting and that establishes a minimum voting time of 15 minutes. The rules change to this clause added the sentence:

A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such.<sup>210</sup>

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(...continued)

Record on pp. H12486-H12854.

Minority Leader Pelosi called up a second, similar privileges of the House resolution in the 109<sup>th</sup> Congress (2005-2007), noting the "recurring practice" of holding votes open and reciting additional assertions over the events surrounding the November 21, 2003, prescription drug conference report vote. The Speaker pro tempore ruled that Rep. Pelosi's resolution presented a question of the privileges of the House. After the reading of the resolution and the Speaker pro tempore's ruling, a motion to table was made, which was agreed to. "Privileges of the House," *Congressional Record*, daily edition, vol. 151 (December 8, 2005), pp. H11264-H11266.

"[N]o point of order lies against the decision of the Chair in his discretion to close a vote taken by electronic device after 15 minutes have elapsed." Brown and Johnson, *House Practice*, pp. 926-927.

<sup>207</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 109<sup>th</sup> Congress*, H.Doc. 108-241, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by John V. Sullivan (Washington, DC: GPO, 2005), p. 799.

<sup>208</sup> An incidence of a quorum call being closed too early occurred in the 106<sup>th</sup> Congress (1999-2001). A chairman of the Committee of the Whole apparently announced the result of a quorum call while several Members were in the well with cards to record their presence. After announcing the result of the quorum, the chair immediately put the question on an amendment. After the result of the vote was announced, a Member asked what remedy there was for the Members who were in the well for the quorum call. The chair stated, "There is no remedy under the rules to reopen the quorum call." The Member then moved that the committee rise, and a recorded vote was demanded and ordered. After the result of this vote was announced—the motion was defeated—the chair made this statement:

The Chair would apologize to Members for failing to notice them in the Chamber attempting to record their presence until after he had announced the result of quorum call No. 285. The Chair mistakenly believed that he had embarked on a subsequent vote and that it was too late to permit Members to record their presence. The Chair specifically apologizes to the following members: Mr. Bishop, Mr. Scarborough, Mr. Doggett, Ms. Millender-McDonald, Ms. McKinney, and Mr. Abercrombie, and if any other Member feels similarly afflicted, if they would notify the Chair, the Chair would be happy to include them in a subsequent announcement.

Two Democratic Members thanked the chair for his "wonderful" performance in the chair, and the House moved on with the amendment process. "Department of the Interior and Related Agencies Appropriations Act, 2001," *Congressional Record*, vol. 146, part 8 (June 15, 2000), pp. 11096-11098. (Rep. Steven C. LaTourette was in the chair.)

The parliamentarian's notes concerning this incident explained, "...a recorded vote or quorum call may not be reopened once the Chair has announced the result...." U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 107<sup>th</sup> Congress*, H.Doc. 106-320, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 2001), p. 773.

In the 100<sup>th</sup> Congress (2007-2009), the manner by which a vote was terminated resulted in the creation of a temporary committee, the Select Committee to Investigate the Voting Irregularities of August 2, 2007. The dispute over this vote is explained in the section Investigations Related to Votes and Voting.

<sup>209</sup> See, for example, Susan Ferrechio, "House Democrats Keep Term Limits," *CQ Today*, January 4, 2007, pp. 1, 4; "Pelosi Elected Speaker, First Woman to Lead House," Fox News, January 4, 2007 (available online at <http://www.foxnews.com/story/0,2933,241535,00.html>); and Susan Davis, "GOP Sees Hypocrisy in Rules," *Roll Call*, January 4, 2007, pp. 1, 31.

<sup>210</sup> Added by Sec. 302 of H.Res. 6, agreed to in the House January 4, 2007.

In furtherance of this rule, when Speaker Pelosi announced the policies of the chair for the 110<sup>th</sup> Congress, she modified the policy on voting by electronic device. One phrase was deleted: “each occupant of the chair will have the full support of the Speaker in striving to close each electronic vote at the earliest opportunity.” In its place, Speaker Pelosi announced: “Members will be given a reasonable amount of time in which to accurately record their votes.”<sup>211</sup>

Parliamentary inquiries early in the 110<sup>th</sup> Congress sought to clarify the operation of this new rules provision. One inquiry asked whether the outcome of the vote was the tally when voting time expired after 15 minutes. A Speaker pro tempore stated that 15 minutes was a minimum period and that on the first vote of the day “a longer time may be necessary to complete the vote.”<sup>212</sup>

In response to a different parliamentary inquiry, a Speaker pro tempore reiterated that 15 minutes was the minimum duration of a vote and that it was the “responsibility of the Chair to see to it that each and every Member...who responds to the vote has a chance to record his or her vote.” He said, “After [15 minutes], it is in the discretion of the Chair in order to allow all Members a reasonable opportunity to vote.” The Speaker pro tempore specifically addressed the new rules provision as follows:

It is true under clause 2(a) of rule XX, a vote by electronic device “shall not be held open for the sole purpose of reversing the outcome of such vote.” In conducting a vote by electronic device, the Chair is constrained to differentiate between activity toward the establishment of an outcome on the one hand, and activity that might have as its purpose the reversal of an already-established outcome, on the other. The Chair also must be mindful that, even during a vote by electronic device, Members may vote by card in the well. So long as Members are recording their votes—even after the minimum period prescribed for a given question—the Chair will not close a vote to the disenfranchisement of a district whose representative is trying to vote.<sup>213</sup>

The language of this response, concerning the establishment as opposed to the reversal of an outcome, was used again in response to a parliamentary inquiry concerning the prevailing side. The inquiry occurred at a point some time after the minimum 15 minutes for voting. Members subsequently changed their vote, and the other side prevailed.<sup>214</sup>

Representative Lynn A. Westmoreland twice raised a point of order based on the new rule. On June 27, 2007, a chairman of the Committee of the Whole responded, “The vote was kept open to do the numerical calculation to see if the votes of the Delegates would change the outcome.”<sup>215</sup> On May 8, 2008, Mr. Westmoreland received a more extensive response from a chairman of the Committee of the Whole to his point of order:

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<sup>211</sup> Speaker Nancy Pelosi, “Announcement by the Speaker,” *Congressional Record*, daily edition, vol. 153 (January 5, 2007), p. H60. Speaker Pelosi’s policy on voting by electronic device appears in **Appendix A**.

<sup>212</sup> Speaker Pro Tempore Michael E. Capuano, “Motion to Adjourn,” *Congressional Record*, daily edition, vol. 153 (January 18, 2007), p. H678.

<sup>213</sup> Speaker Pro Tempore Michael R. McNulty, “Parliamentary Inquiries,” *Congressional Record*, daily edition, vol. 153 (March 14, 2007), pp. 2515-2516.

<sup>214</sup> Speaker Pro Tempore Nick J. Rahall II, “Department of Homeland Security Authorization Act for Fiscal Year 2008,” *Congressional Record*, daily edition, vol. 153 (May 9, 2007), p. H4714.

<sup>215</sup> “Department of the Interior, Environment, and Related Agencies Appropriations Act, 2008,” *Congressional Record*, daily edition, vol. 153 (June 27, 2007), p. 7258.

The Chair has considered whether the new sentence in clause 2(a) of rule XX should be enforceable in real time. The black letter of the rule is not dispositive. It uses the mandatory “shall.” It might just as well say “should,” inasmuch as it is setting a standard of behavior for presiding officers. For this reason the Chair thinks it more sensible to enforce the rule on collateral bases, as by a question of the privileges of the House. A set of “whereas” clauses in the preamble of a resolution could allege the facts and circumstances tending to indicate a violation more coherently than they could be articulated in argument on a point of order or in debate on an appeal. The resolving clause of a resolution could propose a fitting remedy, rather than requiring the instant selection of a remedy in the face of competing demands for vitiation of the putative result, reversal of the putative result, or admonishment of the presiding officer. The Chair finds that the new sentence in clause 2(a) of rule XX does not establish a point of order having an immediate procedural remedy. Rather than contemplating a ruling from the Chair in real time, the language should be understood to establish a standard of behavior for presiding officers that might be enforced on collateral bases.<sup>216</sup>

A number of points of order and parliamentary inquiries in the 110<sup>th</sup> Congress related to the new rule appear in **Appendices C and D**, respectively.

## **Members Changing Their Vote**

The parliamentarian’s notes in the *House Rules and Manual* prior to the use of the electronic voting system explained when Members could change their vote:

Before the result of a vote has been finally and conclusively pronounced by the Chair, but not thereafter, a Member may change his vote..., and a Member who has answered “present” may change it to “yea” or “nay”....<sup>217</sup>

When voting by electronic device began in 1973, Speaker Albert announced that voting stations would remain open until the presiding officer “declare[d] the vote to be closed and announce[d] the final result,” at which time the voting stations would be closed and the summary panel would indicate “FINAL”.<sup>218</sup>

By the 94<sup>th</sup> Congress (1975-1977), the Speaker implemented a new policy, to take effect September 22, 1975, disallowing Members from changing their votes by electronic device. The Speaker explained he had consulted with leadership and others, such as Members serving on the House Administration Committee, but did not explain what had occasioned the change. Press reports noted that the leadership of both parties wished to keep better track of Members’ votes and to reduce the number of position changes during a vote.<sup>219</sup>

The Speaker announced that, after the 15-minute voting period, he would continue the practice of asking if there were Members wishing to vote. He would then ask if there were Members wishing

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<sup>216</sup> “Neighborhood Stabilization Act of 2008,” *Congressional Record*, daily edition, vol. 154 (May 8, 2008), p. 3193.

<sup>217</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, 91<sup>st</sup> Congress, H.Doc. 402, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1969), p. 388.

<sup>218</sup> Speaker Carl Albert, “Electronic Voting,” *Congressional Record*, vol. 119, part 1 (January 15, 1973), pp. 1055-1057.

<sup>219</sup> See, for example, “House Vote Changes,” *Congressional Quarterly Weekly Report*, vol. XXXIII, no. 38, September 20, 1975, p. 1994.

to change their vote. A Member wishing to change a vote would come to the well of the House, announce the change when his or her name was called, and submit a green (“yea” or “aye”), red (“no”), or amber (“present”) ballot card to the tally clerk showing the changed vote. The tally clerk would enter the change in the electronic voting system, and the change would be shown on the display panels.<sup>220</sup>

Subsequently, Speaker Albert modified the procedure for Members to change their votes, effective March 22, 1976. He announced that Members would be able, during the first 10 minutes of a vote, to change their vote at the voting stations. To change a vote after the first 10 minutes, a Member would need to go to the well of the House and follow the procedures previously outlined. The Speaker also stated that a Member would need to go to the well to change a vote cast during a five-minute vote.<sup>221</sup>

When the 95<sup>th</sup> Congress (1977-1979) convened, Speaker O’Neill announced that the voting policies announced by Speaker Albert in the previous Congress would continue in effect, with one change. Speaker O’Neill stated that, effective immediately, Members could change their vote at voting stations throughout a five-minute vote. Once the voting machines were turned off at the completion of the five-minute voting period, a Member wishing to change a vote would need to go to the well and follow procedures for changing a vote.<sup>222</sup>

In response to a parliamentary inquiry in the 109<sup>th</sup> Congress (2005-2007), a Speaker pro tempore reiterated that, once the electronic voting machines were turned off, a Member must go to the well to change a vote.<sup>223</sup>

## **Absence, Failure to Vote, Recusal from Voting, and Proxy Voting**

Rule III, cl. 1 (Rule VIII, cl. 1 before recodification) has its origin in the First Congress.<sup>224</sup> It states:

Every Member shall be present within the Hall of the House during its sitting, unless excused or necessarily prevented, and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

The parliamentarian’s notes in the *House Rules and Manual* have stated throughout the time frame of this report, “It has been found impracticable to enforce the provision requiring every Member to vote....”<sup>225</sup> Leaves of absence—permission formally granted to be absent during

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<sup>220</sup> Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 121, part 22 (September 17, 1975), p. 28903.

<sup>221</sup> Speaker Carl Albert, “Announcement by the Speaker—Change in Electronic Voting System,” *Congressional Record*, vol. 122, part 6 (March 22, 1976), p. 7394.

<sup>222</sup> Speaker Thomas P. “Tip” O’Neill Jr., “Announcement by the Speaker,” *Congressional Record*, vol. 123, part 1 (January 4, 1977), pp. 73-74.

<sup>223</sup> Speaker Pro Tempore Lee Terry, “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006,” *Congressional Record*, daily edition, vol. 151 (November 17, 2005), p. H10530.

<sup>224</sup> *Journal of the House of Representatives of the United States*, 1<sup>st</sup> Cong., 1<sup>st</sup> sess., vol. 1 (Washington, DC: Gales & Seaton, 1826), p. 9.

<sup>225</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 376.

proceedings—are normally given for “‘official business,’ personal illness, illness in the member’s family, or military service in wartime.”<sup>226</sup>

Regarding a “personal or pecuniary interest,” the parliamentarian’s notes in the *House Rules and Manual* comment, “The weight of authority also favors the idea that there is no authority in the House to deprive a Member of the right to vote.... The Speaker has held that the Member himself and not the Chair should determine this question....”<sup>227</sup>

In addition, throughout the time frame of this report, even before the adoption of a specific rule, Members could not vote by proxy in the House.<sup>228</sup>

### ***Rules and Precedents after the LRA***

In the 94<sup>th</sup> Congress (1975-1977), Speaker Albert recognized Representative Robert E. Bauman for a parliamentary inquiry, which dealt with issues related to voting and a Member’s “direct personal or pecuniary interest” under Rule VIII, cl. 1. The inquiry was posited in anticipation of House consideration of the New York City “bailout” legislation (H.R. 10481; P.L. 94-143). Representative Bauman asked whether a vote on this legislation, by a Member who personally or whose spouse held a financial interest in New York City such as bonds or pensions, would be a conflict of interest for the Member. The measure to be considered authorized guarantees of the city’s obligations.

The Speaker divided his response into two parts. In the first part, he referred to precedents, such as a ruling by Speaker Nicholas Longworth, that “the personal interest of Members who belong to the class is not such as to disqualify them from voting.” Speaker Albert noted the general nature of the “bailout” legislation: “While it...in its present form would have an immediate effect on only one State, the reported bill comprehends all States and territories.” In the second part, Speaker Albert pointed to other precedents indicating that a Member himself must decide what is a disqualifying interest and that the presiding officer lacks “authority to deprive the constitutional right of a Member to vote....”<sup>229</sup>

Speaker O’Neill made a similar ruling on a point of order in the 96<sup>th</sup> Congress (1979-1981) that a Member named in a resolution to expel him from the House should not vote on questions related to the resolution. The Speaker stated:

Because the Chair severely doubts his authority to deprive the constitutional right of a Member to vote, and because of the overwhelming weight of precedent, the Chair holds that

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<sup>226</sup> Walter Kravitz, *American Congressional Dictionary*, 3<sup>rd</sup> ed. (Washington, DC: CQ Press, 2001), p. 134.

<sup>227</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 376.

<sup>228</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States*, 91<sup>st</sup> Congress, H.Doc. 402, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1969), p. 319.

<sup>229</sup> Rep. Robert E. Bauman and Speaker Carl Albert, “Parliamentary Inquiries,” *Congressional Record*, vol. 121, part 29 (December 2, 1975), p. 38135.

A parliamentary inquiry made in the 104<sup>th</sup> Congress was similar. The chairman of the Committee of the Whole was asked whether a Member with “substantial” business interests could vote on amendments to the Fair Labor Standards Act “since obviously this would affect very much their bottom line on their balance sheet.” The chairman responded, “Rule VIII commends questions of that sort to individual Members.” “Working Families Flexibility Act of 1996,” *Congressional Record*, vol. 142, part 14 (July 30, 1996), p. 19952.

each Member should make his or her own determination whether or not a personal or pecuniary interest in a pending matter should cause him to withhold his vote.”<sup>230</sup>

Also in the 96<sup>th</sup> Congress, the Committee on Standards of Official Conduct undertook an investigation of “ghost” voting. Although the Members investigated were not charged, the committee found House rules to be ambiguous and recommended amendment of the rules. (See the section on Issues Related to Voting since 1970: “Ghost” Voting.) In adopting its rules for the 97<sup>th</sup> Congress, the House added a new clause 3 to House Rule VIII. The new provision was as follows:

3. (a) A Member may not authorize any other individual to cast his vote or record his presence in the House or Committee of the Whole.

(b) No individual other than a Member may cast a vote or record a Member’s presence in the House or Committee of the Whole.

(c) A Member may not cast a vote for any other Member or record another Member’s presence in the House or Committee of the Whole.<sup>231</sup>

### **Members’ Announcement of Their Position after a Vote**

Following the inauguration of the electronic voting system in the 93<sup>rd</sup> Congress, Speaker Albert ruled that the presiding officer was without authority to entertain a unanimous consent agreement to make a correction to the record, despite Members’ explanations that their votes had been wrongly recorded by the electronic voting system. The statements nonetheless appeared in the *Congressional Record*.<sup>232</sup>

In the 106<sup>th</sup> Congress (1999-2001), the House adopted its rules for the new Congress and thereby deleted the previous rule on pairing in favor of a practice of Members announcing their positions. As explained by Representative David Dreier, Members could place a statement in the *Congressional Record* showing how they would have voted. If a statement was submitted to the clerk within “1 to 2 hours” of a vote, it would not need to be read, and would appear immediately after the vote. If a statement was submitted later, a Member could ask unanimous consent to have his or her statement appear immediately after the vote.<sup>233</sup> Additional discussion of position announcements appears in the section Issues Relating to Voting since 1970: Members’ Personal Explanations on Votes.

### **Pairs**

Pairing was a procedure allowing Members who were absent to voluntarily agree to offset their votes and thus not affect the outcome of a vote.<sup>234</sup> The parties had staff—pairing clerks—who

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<sup>230</sup> Speaker Thomas P. “Tip” O’Neill, “Privileges of the House—Proceedings against Charles C. Diggs Jr.,” *Congressional Record*, vol. 125, part 3 (March 1, 1979), p. 3748.

<sup>231</sup> Para. 4 of H.Res. 5, agreed to in the House January 5, 1981.

<sup>232</sup> Rep. Robert O. Tiernan and Speaker Carl Albert, “Personal Announcement,” *Congressional Record*, vol. 119, part 10 (April 18, 1973), p. 13081; and Rep. Ray J. Madden and Speaker Carl Albert, “Personal Announcement,” *Congressional Record*, vol. 119, part 12 (May 10, 1973), p. 15282.

<sup>233</sup> Rep. David Dreier, “Rules of the House,” *Congressional Record*, vol. 145, part 1 (January 6, 1999), p. 77.

<sup>234</sup> Walter Kravitz, *American Congressional Dictionary*, 3<sup>rd</sup> ed. (Washington, DC: CQ Press, 2001), p. 172.

facilitated these agreements. In a general pair, the Members' positions were unknown. In a specific pair, Members had made their position known to a pairing clerk and requested that their position be offset. In the *Congressional Record*, the Members' positions were noted. In a live pair, one Member was present, voted, then announced that he or she had a live pair with a Member who was absent and withdrew the vote, and stated the two Members' positions. Live pairs were reported in the *Congressional Record*. Live pairs are permitted in limited circumstances today, as explained below.<sup>235</sup>

Two principles worth keeping in mind were that a pair on a vote requiring two-thirds required three Members, two on one side of the question and one on the other, and that there was no recourse in the House to a Member breaking a pair (not following through on a previous commitment to make a pair).<sup>236</sup>

The House, in agreeing to H.Res. 1123 on October 13, 1972, changed Rule VIII, cl. 2 related to the announcement of pairs. This clause had directed that pairs be announced after the second call of the roll. With voting by electronic device, there would not be a roll call as anticipated by the clause. H.Res. 1123 changed the rule so that pairs would be announced immediately before the presiding officer's announcement of the result of a vote.<sup>237</sup>

On January 15, 1973, Speaker Albert announced in his policies on electronic voting that the practice of not allowing pairs in the Committee of the Whole would continue. He also announced that a Member in the chamber wishing to be paired with a Member not present should record himself as present, and, then, at the "conclusion of the voting period" seek recognition to state his desire to create a pair.<sup>238</sup>

In agreeing to H.Res. 5, adopting rules for the 94<sup>th</sup> Congress (1975-1977), the House amended Rule VIII, cl. 2 to allow pairs in the Committee of the Whole as well as the House.<sup>239</sup>

### ***106<sup>th</sup> Congress to Present***

In recodifying and amending its rules in the 106<sup>th</sup> Congress (1999-2001), the House ended the practice of pairing except for live pairs. The previous rule that allowed pairing, clause 2 of Rule VIII, was deleted. Most House rules related to voting and quorums were recodified in a new Rule XX, and Rule XX, cl. 3 now pertained to the conduct of a record vote or quorum call by call of the roll. A new last sentence to this clause provided: "Members appearing after the second call [of the roll], but before the result is announced, may vote or announce a pair."<sup>240</sup>

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<sup>235</sup> For additional information on pairing, see CRS Report 98-970, *Pairing in Congressional Voting: The House*, by (name redacted).

<sup>236</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, 91<sup>st</sup> Congress*, H.Doc. 402, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1969), p. 320.

<sup>237</sup> Para. (c) of H.Res. 1123, agreed to in the House October 13, 1972.

<sup>238</sup> Speaker Carl Albert, "Electronic Voting," *Congressional Record*, vol. 119, part 1 (January 15, 1973), p. 1055.

<sup>239</sup> Para. (2) of H.Res. 5, agreed to in the House January 14, 1975.

<sup>240</sup> Sec. 1 of H.Res. 5, agreed to in the House January 6, 1999. While the sentence on a live pair appears in Rule XX, cl. 3, pertaining to a call of the roll, a live pair was allowed on a vote taken by electronic device. See "Medicare Prescription drug and Modernization Act of 2003," *Congressional Record*, vol. 149, part 12 (June 26, 2003), p. 16594.

Representative David Dreier explained the change as follows:

The practice of pairing, which involves absent Members arranging with other absent Members on opposite sides of a specific question the ability to stipulate how they would have voted, would be eliminated in favor of the more certain system of putting a statement in the Record as to how the Member would have voted, which appears immediately after the vote. The headings for these statements will read “stated yea” or “stated nay.” These statements do not have to be read from the floor if they are submitted in a timely fashion to the clerks, generally 1 to 2 hours after the vote. If a significant time has elapsed since the vote, a Member can ask unanimous consent on the floor that his statement of how he might have voted appear immediately after the vote.<sup>241</sup>

In a section-by-section analysis of changes to House rules contained in H.Res. 5 that Mr. Dreier inserted in the *Congressional Record*, the option of a live pair was explained:

12. Abolishment of pairs other than “live pairs.” The practice of pairing, which involves absent Members arranging with other absent Members on opposite sides of a specified question the ability to stipulate how they would have voted, would no longer be permitted. However, “live pairs,” which involved an agreement between one Member who is present and voting and another on the opposite side of the question, who is absent, would continue to be permitted.<sup>242</sup>

### **Correction of a Member’s Vote**

On the advent of voting by electronic device in the House, the parliamentarian’s notes in the *House Rules and Manual* explained the prevailing parliamentary understanding for a Member to correct his or her vote:

When a vote actually given fails to be recorded...the Member may, before the approval of the Journal, demand as a matter of right that correction be made....But statements of other Members as to alleged errors in a recorded vote must be very definite and positive to justify the Speaker in ordering a change of the roll....<sup>243</sup>

Within months of the first use of the electronic voting system on January 23, 1973, Members sought to correct their positions on recorded votes. Despite Members’ explanations that their votes had been wrongly recorded by the electronic voting system, Speaker Albert ruled that the presiding officer was without authority to entertain a unanimous consent agreement to make a correction. The statements appeared in the *Congressional Record*.<sup>244</sup> The parliamentarian’s notes explained:

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<sup>241</sup> Rep. David Dreier, “Rules of the House,” *Congressional Record*, vol. 145, part 1 (January 6, 1999), p. 77.

<sup>242</sup> “Section-by-Section Summary of Substantive Changes Contained in H.Res. 5—Adopting House Rules for the 106<sup>th</sup> Congress.” Rep. David Dreier, “Rules of the House,” *Congressional Record*, vol. 145, part 1 (January 6, 1999), p. 80.

<sup>243</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, 91<sup>st</sup> Congress*, H.Doc. 402, 90<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Lewis Deschler (Washington, DC: GPO, 1969), p. 388.

<sup>244</sup> Rep. Robert O. Tiernan and Speaker Carl Albert, “Personal Announcement,” *Congressional Record*, vol. 119, part 10 (April 18, 1973), p. 13081; and Rep. Ray J. Madden and Speaker Carl Albert, “Personal Announcement,” *Congressional Record*, vol. 119, part 12 (May 10, 1973), p. 15282.

A Member raised this issue again in the 99<sup>th</sup> Congress, and a Speaker pro tempore similarly refused the Member’s request for a change in a vote conducted by electronic device. Rep. Fernand J. St. Germain and Speaker Pro Tempore (continued...)

The Speaker declines to entertain requests to correct the Journal and Record on votes taken by electronic device, based upon the technical accuracy of the electronic system if properly utilized and upon the responsibility of each Member to correctly cast and verify his vote....<sup>245</sup>

In the 97<sup>th</sup> Congress (1981-1983), however, the Speaker allowed a correction to a vote taken by electronic device, which had resulted from an error in identifying the signature on a voting card.<sup>246</sup>

In the 106<sup>th</sup> Congress (1999-2001), a correction was made by unanimous consent to the Journal and the *Congressional Record* to deal with an apparent anomalous malfunction of the electronic voting system. Representative Lucille Roybal-Allard was absent from the House on June 21, 2000, and had her voting card in her possession. Nonetheless, the voting system recorded a vote for her on one roll call. As explained more fully below (in the section Issues Related to Voting since 1970: Inoperative Display Boards), the House Administration Committee investigated the operation of the electronic voting system. In obtaining unanimous consent on June 26 to correct the vote, the Speaker pro tempore explained:

...As stated in volume 14, Section 32 of Deschler-Brown Precedents:

Since the inception of the electronic system, the Speaker has resisted attempts to permit corrections to the electronic tally after announcement of a vote. This policy is based upon the presumptive reliability of the electronic device and upon the responsibility of each Member to correctly cast and verify his or her vote.

Based upon the explanation received from the Chairman of the Committee on House Administration and from the Clerk, the Chair will continue to presume the reliability of the electronic device, so long as the Clerk is able to give that level of assurance which justifies a continuing presumption of its integrity....<sup>247</sup>

This situation is discussed more fully in the section Issues Related to Voting since 1970: Absent, but Displayed as Voting. Additional discussion of position announcements appears in the section Issues Relating to Voting since 1970: Members' Personal Explanations on Votes.

## Delegate Voting

In adopting its rules for the 103<sup>rd</sup> Congress (1993-1995), the House allowed the Delegates and Resident Commissioner a new power: to vote in the Committee of the Whole. Two changes were made to effect this privilege. First, Rule XII was amended to contain a new clause 2:

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(...continued)

G.V. "Sonny" Montgomery, "Personal Explanation," *Congressional Record*, vol. 132, part 10 (June 17, 1986), p. 14038.

<sup>245</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States*, 95<sup>th</sup> Congress, H.Doc. 94-663, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1977), p. 501.

<sup>246</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States*, 98<sup>th</sup> Congress, H.Doc. 97-271, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1983), p. 491.

<sup>247</sup> Speaker Pro Tempore Ray LaHood, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 146, part 9 (June 26, 2000), p. 12371.

In a Committee of the Whole House on the state of the Union, the Resident Commissioner to the United States from Puerto Rico and each Delegate to the House shall possess the same powers and privileges as Members of the House.<sup>248</sup>

Second, a new paragraph (d) was added to Rule XXIII, cl. 2:

Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the Committee of the Whole shall automatically rise and the Speaker shall put that question de novo without intervening debate or other business. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.<sup>249</sup>

During debate on the House rules package, Democratic Members portrayed this change as a matter of fairness and democracy in action, and pointed out the services of citizenship undertaken by residents of the territories, Puerto Rico, and the District of Columbia. They argued that allowing the Delegates and Resident Commissioner to vote in the Committee of the Whole did not flout constitutional requirements since their votes could not affect the outcome of votes in the House.<sup>250</sup>

Republican Members' arguments against the change were based on a constitutional objection that only Representatives of states are Members of the House;<sup>251</sup> the matter that the constitutionality of Delegates and the Resident Commissioner voting on committees had not been established; the disparity in population among the territories, Puerto Rico, and the District of Columbia and between the territories and congressional districts; and the return of federal income tax receipts to the territories and Puerto Rico. Some Members also argued that, practically, the votes of the Delegates and Resident Commissioner would be sought to build a majority and, politically, the change reduced the Republicans' election gains by half since the Delegates and Resident Commissioner were all Democrats.<sup>252</sup>

During the 103<sup>rd</sup> Congress, an amendment was rejected in the Committee of the Whole by a vote of 208-213, with three Delegates and the Resident Commissioner voting and all voting in the negative. After the chairman announced the result, Members made a series of parliamentary inquiries. After stating that the result would have been the same—rejection of the amendment—had the Delegates and Resident Commissioner not voted, a chairman propounded a test of

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<sup>248</sup> Para. 9 of H.Res. 5, agreed to in the House January 5, 1993.

<sup>249</sup> Para. (14) of H.Res. 5, agreed to in the House January 5, 1993.

<sup>250</sup> "Rules of the House," *Congressional Record*, vol. 139, part 1 (January 5, 1993), pp. 49-100.

<sup>251</sup> The Constitution states: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." U.S. Const. art. I, §2, cl. 1. The Constitution also states: "No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art I, §2, cl. 2.

Several Republican Members challenged in court the granting of voting rights in the Committee of the Whole to Delegates and the Resident Commissioner. The court found the rule valid since the votes were rendered "meaningless" in instances where they would be decisive in a vote's outcome. *Michel v. Anderson*, 817 F. Supp. 126 (D.D.C. 1993), *aff'd*, 14 F.3d 623 (D.C. Cir. 1994).

<sup>252</sup> "Rules of the House," *Congressional Record*, vol. 139, part 1 (January 5, 1993), pp. 49-100.

whether their votes would be “decisive” under the rule: “But for the votes of the Delegates, the outcome would have been different.”<sup>253</sup>

As part of the rules package for the 104<sup>th</sup> Congress (1995-1997) that the new Republican majority agreed to, the two provisions described above were deleted from House rules.<sup>254</sup> While some Delegates addressed the change and argued on bases of fairness and democratic principle, no Member argued another side during debate on the House rules package.<sup>255</sup>

At the conclusion of the 105<sup>th</sup> Congress (1997-1999), District of Columbia Delegate Eleanor Holmes Norton sought to raise the issue of Delegate voting through a privileges of the House resolution (H.Res. 613). In anticipation of a vote on articles of impeachment against President Bill Clinton, Delegate Norton sought a right to vote in the House on “any resolution impeaching the President,” relying in part on the Twenty-third Amendment, which provided three electoral votes to the District of Columbia. The Speaker pro tempore allowed Ms. Norton to be heard on the matter of whether her resolution constituted a question of the privileges of the House. She argued for the resolution “to perfect the rights of District residents under the 23<sup>rd</sup> amendment,” noting that Congress under the Amendment had the authority to enforce it through legislation. The Speaker pro tempore, after citing the law giving a seat but not voting rights to a District of Columbia Delegate and Rule XII confining a Delegate’s voting rights to committee, ruled:

A question of the privileges of the House may not be invoked to effect a change in the rules or standing orders of the House. Altering the right to vote of a Delegate is tantamount to a change in the rules of the House and is not a proper question of privilege.<sup>256</sup>

The parliamentarian’s notes to the rules of the 106<sup>th</sup> Congress (1999-2001) stated, “At the organization of the House, the Delegates and Resident Commissioner are sworn...; but the Clerk does not put them on the roll....”<sup>257</sup>

In the 110<sup>th</sup> Congress (2007-2009), a rules change again allowed Delegates and the Resident Commissioner to vote in the Committee of the Whole, with the possibility of an immediate revote in the House where their votes were decisive in the outcome of a question.<sup>258</sup>

Rule III, cl. 3 was amended in part to provide:

(a) In a Committee of the Whole House on the state of the Union, each Delegate and the Resident Commissioner shall possess the same powers and privileges as Members of the House. ...

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<sup>253</sup> “National Competitiveness Act,” *Congressional Record*, vol. 149, part 7 (May 19, 1993), p. 10409.

<sup>254</sup> Sec. 212 of H.Res. 6, agreed to in the House January 4, 1995.

<sup>255</sup> See, for example, Delegates Eleanor Holmes Norton and Robert A. Underwood, “Making in Order Immediate Consideration of House Resolution Adopting the Rules of the House of Representatives for the 104<sup>th</sup> Congress,” *Congressional Record*, vol. 141, part 1 (January 4, 1995), pp. 478-479 and 480-481.

<sup>256</sup> Speaker Pro Tempore Ray LaHood and Delegate Eleanor Holmes Norton, “Privileges of the House—Providing Vote for the Delegate to Congress from the District of Columbia in Consideration of Presidential Impeachment Resolutions,” *Congressional Record*, vol. 144, part 19 (December 18, 1998), pp. 27825-27827.

<sup>257</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, 106<sup>th</sup> Congress*, H.Doc. 105-358, 105<sup>th</sup> Cong., 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 1999), p. 362. The parliamentarian’s notes cited as a contemporary reference “Official Roll of the Representatives-elect,” *Congressional Record*, vol. 145, part 1 (January 6, 1999), pp. 41-42.

<sup>258</sup> H.Res. 78, agreed to in the House January 24, 2007.

Rule XVIII, cl. 6 was amended to add a new paragraph:

(h) Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the Committee of the Whole shall rise and the Speaker shall put such question de novo without intervening motion. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.

Debate in the House was reminiscent of debate in the 103<sup>rd</sup> Congress. Proponents of the change argued on the bases of fairness and democratic principle and emphasized, since a revote in the House would occur if the Delegates' votes were decisive in the Committee of the Whole, the symbolic nature of the voting right extended to the Delegates and Resident Commissioner. Opponents of the rules change argued constitutionality, pointing to representation by states in the House and the solely procedural differences between the House and the Committee of the Whole.<sup>259</sup>

Early in the 110<sup>th</sup> Congress, responses to parliamentary inquiries interpreted the rules changes. On February 8, 2007, the colloquies excerpted here occurred:

The Speaker pro tempore. Rule XVIII contemplates automatic, immediate review in the House of certain recorded votes in the Committee of the Whole.

...Mr. Price of Georgia. Under what circumstances will a separate vote not be allowed?

The Speaker pro tempore. The Committee will not automatically rise for such an immediate review in the case where votes cast by Delegates were not decisive.

...Mr. Price of Georgia. When a vote is not decisive, but a question put loses, is there any opportunity for any Member, certified Member of the House, to ask for a separate vote?

The Speaker pro tempore. Under clause 6(h) of rule XVIII, immediate review in the House occurs automatically when recorded votes cast by Delegates were decisive, without regard to whether the question was adopted or rejected. In ordinary proceedings of the House on the ultimate report of the Committee of the Whole, the House considers only matters reported to it by the Committee of the Whole, which would not include propositions rejected in Committee.

...Mr. Price of Georgia. Mr. Chairman, since the House is sitting as the Committee of the Whole, are the Delegates and Resident Commissioner permitted to vote on all matters in the Committee of the Whole House?

The Chairman. Under clause 3(a) of rule III, the Delegates and Resident Commissioner possess the same powers and privileges as Members in the Committee of the Whole.

...Mr. Price of Georgia. ...on any matter in which the votes of the Delegates are decisive in the vote taken in the Committee of the Whole, that those votes shall be retaken in the full

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<sup>259</sup> "Providing for Consideration of H.Res. 78, Permitting Delegates and the Resident Commissioner to Cast Votes in the Committee of the Whole," and "Permitting Delegates and the Resident Commissioner to Cast Votes in the Committee of the Whole," *Congressional Record*, daily edition, vol. 153 (January 24, 2007), pp. H891-H902 and H903-H913.

House and that the Delegates and Resident Commissioner shall not be permitted to vote in the full House. Is that correct?

The Chairman. On recorded votes, yes, the gentleman is correct.

Mr. Price of Georgia. How is the Chair going to determine if the votes of the Delegates and the Resident Commissioner are decisive?

The Chairman. The test for determining whether the votes of the Delegates and Resident Commissioner are decisive under 6(h) of rule XVIII is a “but for” test, that is, would the outcome have been different had the Delegates and Resident Commission not voted. The absence of some Members is irrelevant to this determination.

...Mr. Price of Georgia. ...If the Chair determines that the votes of the Delegates and the Resident Commissioner are not decisive, but a Member believes that in fact they are, is it appropriate for a Member to lodge a point of order against the Chair’s determination?

The Chairman. The Chair’s decision on a question of order is not subject to an appeal if the decision is one that falls within the discretionary authority of the Chair ...the Chair’s count of the votes of the Delegates and Resident Commissioner is not subject to appeal.

...Mr. Price of Georgia. If the Chair determines that in fact the votes of the Delegates and the Resident Commissioner are not decisive, will the Chair include those numbers when reporting the tally of the vote?

The Chairman. The gentleman is correct.

...Mr. Price of Georgia. ...is it correct that the number of individuals allowed to vote in the Committee of the Whole shall be 440, and the number in the full House shall be 435?

The Chairman. The gentleman is correct.

...Mr. Price of Georgia. Do the Delegates and the Resident Commissioner count for the purposes of establishing and maintaining a quorum of the Committee of the Whole House?

The Chairman. The gentleman is correct.

...Mr. Price of Georgia. If the Delegates and Resident Commissioner are allowed to vote on everything in the Committee of the Whole and they vote on procedural issues that may in fact affect the substantive nature of a bill, and if a procedural vote is lost within a decisive margin, is there a mechanism to have a separate vote in the full House on that procedural vote?

The Chairman. Under clause 6(h), an immediate vote in the House is contemplated under those circumstances, given a recorded vote.

Mr. Price of Georgia. On that procedural vote?

The Chairman. The gentleman is correct.

Mr. Blunt. Mr. Chairman, on the vote just taken, the Chair announced the vote as 422-3. Should the Chair not have delineated the vote to properly reflect that the vote was 418-3 of those Representatives representing the several States as specified in the Constitution, and that the vote of those Delegates not representing States was 4-0?

The Acting Chairman. No.<sup>260</sup>

## Speaker's Vote

The Speaker's discretion to vote can be traced to the First Congress.<sup>261</sup> Rule I, cl. 7 today provides: "The Speaker is not required to vote in ordinary legislative proceedings, except when his vote would be decisive or when the House is engaged in voting by ballot." In addition, the parliamentarian's notes in the *House Rules and Manual* explain:

The Speaker may vote to make a tie and so decide a question in the negative, as he may vote to break a tie and decide a question in the affirmative.... The duty of giving a decisive vote may be exercised after the intervention of other business, or after the announcement of the result or on another day, if a correction of the roll shows a condition wherein his vote would be decisive....<sup>262</sup>

In response to a parliamentary inquiry after the Speaker had cast a tie-breaking vote in the 101<sup>st</sup> Congress (1989-1991), the Speaker explained that he announced his vote and it was entered into the electronic voting system prior to his announcement of the result.<sup>263</sup> The parliamentarian's notes in the *House Rules and Manual* explained, "On an electronic vote, the Chair directs the Clerk to record him and verifies that instruction by submitting a vote card...."<sup>264</sup>

## Interruption of the Conduct of a Vote

The parliamentarian's notes in the *House Rules and Manual* explain:

When once begun the roll call may not be interrupted even by a motion to adjourn..., a parliamentary inquiry...except in the discretion of the Chair and related to the call..., a question of personal privilege..., the arrival of the time fixed for another order of business...or for a recess..., or the presentation of a conference report.... However, it is interrupted for the reception of messages and by the arrival of the hour fixed for adjournment sine die....<sup>265</sup>

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<sup>260</sup> Reps. Tom Price and Roy Blunt, Speaker Pro Tempore Michael E. Capuano, Chairman Michael R. McNulty, and Acting Chairman John F. Tierney, "Advanced Fuels Infrastructure Research and Development Act," *Congressional Record*, daily edition, vol. 153 (February 8, 2007), pp.H1350, H1357, H1358, and H1386.

<sup>261</sup> *Journal of the House of Representatives of the United States*, 1<sup>st</sup> Cong., 1<sup>st</sup> sess., vol. 1 (Washington, DC: Gales & Seaton, 1826), p. 9. On a call of the roll, the Speaker's name is called only at his request at the end of the roll. *House Rules and Manual*, 110<sup>th</sup> Congress, p. 349.

<sup>262</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 349.

<sup>263</sup> Rep. Henry J. Hyde and Speaker Thomas S. Foley, "Intelligence Authorization Act for Fiscal Year 1991," *Congressional Record*, vol. 136, part 21 (October 17, 1990), pp. 30321-30322.

<sup>264</sup> U.S. Congress, House, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States*, 102<sup>nd</sup> Congress, H.Doc. 101-256, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., prepared by Wm. Holmes Brown (Washington, DC: GPO, 1991), p. 326. A Member other than the Speaker who is presiding votes by submitting a ballot card to the clerk. Brown and Johnson, *House Practice*, p. 914.

<sup>265</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 812. The parliamentarian's notes at this point also state: "Incidental (continued...)"

In the 98<sup>th</sup> Congress, a chair of the Committee of the Whole twice recognized a Member for a parliamentary inquiry, following the announcement of a result of a voice vote. In the first instance, he then ordered a recorded vote, indicating that the parliamentary inquiry did not constitute intervening business that prevented a demand for a recorded vote. In the second instance, a recorded vote was refused for lack of support.<sup>266</sup>

An interruption of a vote of a very different nature occurred twice in the 109<sup>th</sup> Congress (2005-2007). During two different votes, the Speaker in the first instance and a chairman of the Committee of the Whole in the second declared the House in an emergency recess. On each occasion, a plane had entered the restricted air space of the Capitol. Using authority given the Speaker when the House adopted its rules for the 108<sup>th</sup> Congress,<sup>267</sup> the presiding officer declared an emergency recess while a vote was being conducted. After the recess, the presiding officer allowed Members an additional 15 minutes to record their votes.<sup>268</sup>

Also in the 109<sup>th</sup> Congress, Members were sworn in during the conduct of record votes and cast their votes on those record votes.<sup>269</sup>

## Bells and Lights

The parliamentarian's notes in the *House Rules and Manual* explain the purpose of this signal system: "The legislative call system was designed to alert Members to certain occurrences on the floor of the House."<sup>270</sup> The Speaker revised the House's bell and light signals once in the 92<sup>nd</sup> Congress,<sup>271</sup> twice in the 93<sup>rd</sup> Congress,<sup>272</sup> and once in the 96<sup>th</sup> Congress to accommodate changes in House rules affecting voting and quorums. As a consequence of changes in House rules made

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(...continued)

questions arising during the roll call, such as the refusal of a Member to vote..., are considered after the completion of the call and before the announcement of the vote...."

<sup>266</sup> "Department of Defense Authorization Act, 1985," *Congressional Record*, vol. 130, part 10 (May 23, 1984), p. 13926; and "Education Amendments of 1984," *Congressional Record*, vol. 130, part 15 (July 26, 1984), pp. 21249-21250. In the 105<sup>th</sup> Congress (1997-1999), a Speaker pro tempore stated that remarks made by a Member who had not been recognized did not constitute intervening business after the announcement of the result of a voice vote and before a Member demanded a recorded vote. Speaker Pro Tempore John J. "Jimmy" Duncan Jr., "Bankruptcy Reform Act of 1998," *Congressional Record*, vol. 144, part 8 (June 10, 1998), pp. 11856-11857.

<sup>267</sup> Rule I, cl. 12(b), added by Sec. 2(c) of H.Res. 5, agreed to in the House January 7, 2003.

<sup>268</sup> Speaker Pro Tempore Michael K. Simpson, "Providing for Consideration of H.R. 1279, Gang Deterrence and Community Protection Act of 2005," *Congressional Record*, daily edition, vol. 151 (May 11, 2005), p. H3133; and "Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006," *Congressional Record*, daily edition, vol. 151 (June 29, 2005), pp. H5433 and H5437.

<sup>269</sup> "Rules of the House," *Congressional Record*, daily edition, vol. 151 (January 4, 2005), p. H11; "Counting Electoral Votes—Joint Session of the House and Senate Held pursuant to the Provision of Senate Concurrent Resolution 1 (House of Representatives—January 6, 2005)," *Congressional Record*, daily edition, vol. 151 (January 6, 2005), p. H127; and "Congratulating People of Ukraine for Democratic, Transparent and Fair Runoff Presidential Election," *Congressional Record*, daily edition, vol. 151 (January 25, 2005), p. H171.

<sup>270</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 811.

<sup>271</sup> Speaker Carl Albert, "Announcement by the Speaker with Regard to Teller Votes," *Congressional Record*, vol. 117, part 3 (February 25, 1971), pp. 3383-3844.

<sup>272</sup> Speaker Carl Albert, "Electronic Voting," *Congressional Record*, vol. 119, part 1 (January 15, 1973), p. 1056; and Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 120, part 11 (May 13, 1974), pp. 14148-14149.

in the 96<sup>th</sup> Congress, the Speaker inserted an extensive explanation of the changes in the *Congressional Record*, including the summary explanation that would appear on a card to be distributed to the Members, as follows:

1 bell and light—Tellers (not a recorded vote).

1 long bell and light (pause, followed by 3 bells and lights)—signals the start or continuation of a notice quorum call.

1 long bell and light—termination of a notice quorum call.

2 bells and lights—Electronically Recorded Vote.

2 bells and lights (pause, followed by 2 bells and lights)—Manual Roll Call vote (the bells will be sounded again when the Clerk reaches the R's).

2 bells and lights (pause, followed by 5 bells)—first vote under Suspension of the Rules or on clustered votes (2 bells will be rung 5 minutes later)—the first vote will take 15 minutes with successive votes at intervals of not less than 5 minutes. Each successive vote signaled by 5 bells.

3 bells and lights—Quorum call (either initially or after a notice quorum has been converted to a regular quorum). The bells are repeated 5 minutes after the first bell.

3 bells and lights (pause, followed by 3 bells and lights)—Manual Quorum Call (the bells will be sounded again when the Clerk reaches the R's).

3 bells and lights (pause, followed by 5 bells)—Quorum call in Committee of the Whole, which may be followed by a 5 minute recorded vote.

4 bells and lights—Adjournment of the House.

5 bells and lights—five-minute electronically recorded vote.

6 bells and lights—Recess of House.

12 bells—Civil Defense Warning.<sup>273</sup>

One parliamentarian's note on the bell and light system is important:

Failure of the signal bells to announce a vote does not warrant repetition of the roll call...nor does such a failure permit a Member to be recorded following the conclusion of the call....<sup>274</sup>

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<sup>273</sup> Speaker Thomas P. "Tip" O'Neill, "Announcement by the Speaker," *Congressional Record*, vol. 125, part 1 (January 23, 1979), pp. 701-702. When the House by unanimous consent authorized the Speaker to reduce the time to each vote in a cluster of votes to two minutes, two bells were rung. *House Rules and Manual*, 110<sup>th</sup> Congress, p. 811. The seventh light (on the far right) indicates that the House is in session. Brown and Johnson, *House Practice*, p. 928.

<sup>274</sup> *House Rules and Manual*, 110<sup>th</sup> Congress, p. 812. However, in the 98<sup>th</sup> Congress (1983-1985), a vote was vacated by unanimous consent and a new vote taken after Members complained of missing the vote. The problem was blamed on erroneous timekeeping on various clocks, including on television monitors. "Emergency Agricultural Credit Act of 1983," *Congressional Record*, vol. 129, part 8 (May 3, 1983), p. 10773.

## Issues Related to Record Voting Since 1970

Since the electronic voting system's first use on January 23, 1973, it has been utilized for almost all record votes in the House of Representatives. While the electronic voting system has functioned with minimal disruption, it has failed to operate properly on several occasions. The majority of these malfunctions were dealt with procedurally and adapted to flexibly within the rules of the House by the presiding officer.

Voting issues can be divided into five categories: inoperative electronic voting system, inoperative display boards, Members' personal explanations of votes, Members attempting to vote, and holding votes open. There have also been four occasions where voting issues were elevated to investigations conducted on three occasions by the Committee on Standards of Official Conduct and on one occasion by the specially created Select Committee to Investigate the Voting Irregularities of August 2, 2007. These investigations are discussed in the section, Investigations Related to Votes and Voting Since 1970.

### Inoperative Electronic Voting System

If the electronic system is not functioning, the presiding officer historically has used one of three options: vacated the results of the electronic vote and directed that the record vote be conducted by call of the roll under Rule XX, cl. 3;<sup>275</sup> continued the vote with special instructions to the Members; or directed a new electronic vote with a new 15-minute voting period.<sup>276</sup> The following events represent instances in which the electronic voting system was inoperative, showing the presiding officer's response.

#### *93<sup>rd</sup> Congress*

On March 7, 1973, Speaker Albert announced, before any votes were taken that day, that the electronic voting system was inoperative and "until further notice...all votes and quorum calls will be taken by the standby procedures which are provided in the rules."<sup>277</sup> The electronic voting system was operational for votes on March 8, 1973.

On December 21, 1973, during Roll Call No. 723, the electronic voting system malfunctioned and repairs could not be finished before the end of the day.<sup>278</sup> The House finished the vote by a call of the roll and combined the votes of those who had voted by electronic device with those who had voted orally.

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<sup>275</sup> Prior to the recodification of House rules in the 106<sup>th</sup> Congress, Rule XX, cl. 3 was codified as Rule XV, cl. 1. Another backup procedure available to the presiding officer is a vote by tellers under Rule XX, cl. 4, formerly codified at Rule XV, cl. 2.

<sup>276</sup> In addition, the House has also recessed when the electronic voting system has malfunctioned to allow for the system to be repaired, such as it did on August 3, 2007. See U.S. Congress, Clerk of the House of Representatives, *Floor Summary, Legislative Day of August 3, 2007, 110<sup>th</sup> Congress, 1<sup>st</sup> Session* <http://clerk.house.gov/floorsummary/floor.html?day=20070803&today=20080409>, accessed April 8, 2008.

<sup>277</sup> Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 119, part 6 (March 7, 1973), p. 6699.

<sup>278</sup> Speaker Carl Albert, "Providing for Agreeing to Senate Amendment to House Amendment with an Amendment to Amend S. 921, Wild and Scenic Rivers Act," *Congressional Record*, vol. 119, part 33 (December 21, 1973), p. 43288.

The Chair wishes to announce that the names of all Members who voted by means of electronic device will be included in the list of those voting on this motion so that the Record will clearly reflect the names of all Members who have voted on this matter.<sup>279</sup>

The *Congressional Record* account of the vote reflected only those who had voted yea, nay, or present and not the method of voting.<sup>280</sup>

During the first session of the 93<sup>rd</sup> Congress, between the incidents of March 7 and December 21, the Committee on House Administration identified, in an unpublished report, five additional instances of failures by the electronic voting system, ranging in duration from one hour to three days. **Table 2** lists all instances in the first session when the electronic voting system malfunctioned, the amount of time the electronic voting system was unavailable for voting, and the number of roll-call votes missed, if any.

**Table 2. Electronic Voting System Failures, 1973**

Date	Duration of Failure	Roll-Call Vote Nos. Missed
March 7, 1973 <sup>a</sup>	Entire day	35, 36, 37, and 38
March 19, 1973	Entire day	None
May 16, 1973 <sup>b</sup>	1 hour	148
July 11, 1973 <sup>c</sup>	Remainder of day after 1 <sup>st</sup> roll-call	329, 330, 331, and 332
July 16, 1973 <sup>d</sup>	3 days except one roll-call	338 through 352
September 17, 1973 <sup>e</sup>	Entire day	458
December 21, 1973 <sup>f</sup>	Last 2 roll-calls of day	723 and 724

**Source:** U.S. Congress, Committee on House Administration, *Review of the Contract with Control Data Corporation for the Design, Construction, Delivery, and Installation of Electronic Voting System for the House of Representatives*, unpublished, Oct. 1, 1974, p. 9, located at the Center for Legislative Archives, National Archives and Records Administration.

- a. Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 119, part 6 (March 7, 1973), p. 6699.
- b. Speaker Carl Albert, "Hobby Protection Act," *Congressional Record*, vol. 119, part 13 (May 16, 1973), p. 15860.
- c. "Agriculture and Consumer Protection Act of 1973," *Congressional Record*, vol. 119, part 18 (July 11, 1973), p. 23156.
- d. "Recorded Vote," *Congressional Record*, vol. 119, part 19 (July 16, 1973), p. 23971; Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 119, part 19 (July 17, 1973), p. 24171; and Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 119, part 19 (July 18, 1973), p. 24653.
- e. Speaker Carl Albert, "Announcement of the Speaker," *Congressional Record*, vol. 119, part 23 (Sept. 17, 1973), p. 29907.
- f. Speaker Carl Albert, "Providing for Agreeing to Senate Amendment to House Amendment to Amend S. 921, Wild and Scenic Rivers Act," *Congressional Record*, vol. 119, part 33 (Dec. 21, 1973), p. 43288.

<sup>279</sup> Speaker Carl Albert, "Announcement by the Speaker," *Congressional Record*, vol. 119, part 33 (December 21, 1973), p. 43292.

<sup>280</sup> Lewis Deschler and William Holmes Brown, *Deschler-Brown Precedents of the United States House of Representatives*, vol. 14, ch. 30, § 31 (Washington: GPO, 1998), p. 244. (Hereafter, *Deschler-Brown*.)

### **99<sup>th</sup> Congress**

On September 19, 1985, the electronic voting system's display boards malfunctioned as voting began on Roll Call No. 313. Consistent with previous practice, the presiding officer ordered the vote to continue, as the electronic voting system itself was operational. The electronic voting system then failed and the presiding officer ordered the clerk to call the roll. "The Chair has now been informed that the voting stations are not working. The House will revert to a standby procedure. The Clerk will call the roll."<sup>281</sup>

### **100<sup>th</sup> Congress**

On May 4, 1988, during Roll Call No. 99, the electronic voting system malfunctioned. At that time, the presiding officer announced that the vote would be vacated and that the clerk would call the roll. The presiding officer also announced that "Members will be advised whether or not the electronic voting system is operating. The technicians are working on the system and hopefully by the time we complete debate on the next amendment the system will be operational."<sup>282</sup> The electronic voting system was repaired before Roll Call No. 100.<sup>283</sup>

### **101<sup>st</sup> Congress**

On October 3, 1989, the electronic voting system malfunctioned during Roll Call No. 264. The presiding officer vacated the vote and initiated a new vote on the same question:

If the Members will bear with the Chair, we have had some problems with the electronic voting machine and the Chair is attempting to decide at this point whether to vacate the previous vote and to begin again, so if the Members will hold for just a moment, the Chair is trying to find out if the machine has been restored. The Chair would like to advise the House that the machine was not working properly. The Clerk is not certain that all the votes were recorded. So it is the intent of the Chair to vacate the vote at this point and to direct a new record vote by electronic device on the previous question on the motion to instruct conferees. The voting machine is now working. So we will begin the voting process again. The Chair is informed that some Members have left the Chamber, so this will be a full 15 minute vote in all fairness to give all Members an opportunity to vote.<sup>284</sup>

The next day, Speaker Foley announced that five Members who had voted in the vacated proceedings had not voted on the new vote, and that he had directed the clerk to record those Members' votes:

The Chair has an announcement concerning rollcall 264 of October 3, 1989. Two votes by electronic device were conducted on that question. Due to an irregularity in the electronic voting system, the first vote was aborted. The chair vacated that first vote and initiated another 15-minute vote by electronic device. However, five Members who had been recorded on the first, aborted vote were not recorded on the second vote on the same

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<sup>281</sup> Speaker Thomas P. "Tip" O'Neill Jr., "Announcement by the Speaker," *Congressional Record*, vol. 131, part 18 (September 19, 1985), p. 24245.

<sup>282</sup> "Announcement by the Chair," *Congressional Record*, vol. 134, part 7 (May 4, 1988), p. 9847.

<sup>283</sup> *Ibid*, p. 9849.

<sup>284</sup> Speaker Pro Tempore William J. Hughes, "Inadvertently Omitted From the Congressional Record of Tuesday, October 3, 1989," *Congressional Record*, vol. 135, part 16 (October 4, 1989), p. 23204.

question. The irregularity in the electronic voting system should not prejudice the Members concerned. Therefore, the Chair will direct the Clerk to record the Members concerned on rollcall 264 in conformity with the first, aborted vote and to enter those proceedings in the Journal and Record.<sup>285</sup>

### **106<sup>th</sup> Congress**

On October 6, 1999, a malfunction occurred in the electronic display panel during Roll Call No. 483 and the presiding officer could not obtain verification from the Clerk that the vote would be recorded with 100 percent accuracy. The presiding officer, therefore, vacated the results of the electronic vote and directed that the record vote be taken by call of the roll.<sup>286</sup> Committee on House Administration Chairman Thomas subsequently addressed the House to explain the cause of the problem:

There was a Member who had a card, and we all know that these new cards are much better than the old laminated ones but they do go bad. When that Member's name was adjusted on the visual screen, it was placed first, out of order alphabetically, and so when the votes were recorded they skipped one. They did not match up. I want to assure every Member that the computer is far more sophisticated than that. These lights are for visual purposes only. The machine records the vote according to a unique identifier number. Regardless of where a Member might be placed alphabetically the unique number from the card records the vote.<sup>287</sup>

### **107<sup>th</sup> Congress**

On September 14, 2001, the electronic voting system became inoperative during Roll Call No. 341. The presiding officer announced that 1) the vote would be held open until all Members were recorded; 2) the Clerk would retrieve the names of Members already recorded from the electronic display board; 3) the Clerk would combine the names of Members voting electronically and those who signed tally cards to form a valid vote; and 4) the vote would remain open for Members to confirm their vote until all Members had returned from a memorial service at the National Cathedral.<sup>288</sup>

On April 9, 2002, during Roll Call No. 80, some voting stations became temporarily inoperative. The presiding officer announced the voting station malfunction and urged "all Members to verify their votes prior to the Chair's announcement of the result."<sup>289</sup>

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<sup>285</sup> Speaker Thomas S. Foley, "Announcement by the Speaker," *Congressional Record*, vol. 135, part 16 (October 4, 1989), p. 23204.

<sup>286</sup> Speaker Pro Tempore Henry Bonilla, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 145, part 17 (October 6, 1999), pp. 24198-24199.

<sup>287</sup> Rep. Bill Thomas, "Malfunctions with Voting Machine Not Unprecedented," *Congressional Record*, vol. 145, part 17 (October 6, 1999), p. 24200.

<sup>288</sup> Speaker Pro Tempore John Cooksey, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 147, part 12 (September 14, 2001), p. 17103.

<sup>289</sup> Speaker Pro Tempore Judy Biggert, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 148, part 3 (April 9, 2002), p. 4054.

## **108<sup>th</sup> Congress**

On March 25, 2004, some of the voting stations malfunctioned during Roll Call No. 84. During the vote, a Speaker pro tempore announced:

The Chair is advised that some of the voting stations may have been reset during this vote. Members should take care to confirm their vote, and the voting machines will be kept open until Members have a chance to vote and to confirm their vote.<sup>290</sup>

On July 13, 2004, the electronic voting system malfunctioned during Roll Call No. 363. The presiding officer made three announcements on the status of the electronic voting system with instructions to the Members on how to proceed. First, the presiding officer announced that the electronic voting system may not be operational and that Members should check their votes before leaving the Chamber. The presiding officer later announced that the electronic voting system was inoperable and that votes should not be cast, even in the well, as the Clerk had no way of tallying votes and that the Clerk was working on “rebooting the voting system, which would require everyone to cast their votes a second time if they have already voted.” Finally, the presiding officer announced, “that the electronic voting system has been restarted, and the electronic vote will be conducted anew, a totally fresh start. Members must recast votes under the earlier, defective electronic vote.”<sup>291</sup>

## **Inoperative Display Boards**

In the event that the electronic voting system’s display boards are inoperative, the Speaker has the option to continue the vote and has recommended that Members check their vote either by reinserting their voting card into another voting station, by looking at one of the leadership computer monitors at the party tables on the House floor, or by confirming their vote with the clerk. Instances of inoperative display boards can be divided into two categories: when the display boards are not functioning but the electronic voting system is fully functional, and when a Member is absent but is displayed as having voted.

### **Display Board Malfunction**

Since the electronic system was first used in 1973, there have been instances when the display boards in the chamber have malfunctioned. The main display boards are located behind and above the Speaker’s dais (over the press gallery), and list each Member’s name and his or her vote. In addition, there are display boards beneath the visitors’ gallery, to the left and right of the Speaker’s dais, that provide the bill number, running vote totals, and time remaining during a roll-call. There are also monitors on the majority and minority leadership tables to track vote totals and to obtain other vote information. The following events represent instances in which the display boards or monitors have malfunctioned and indicate the presiding officer’s response.

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<sup>290</sup> Speaker Pro Tempore Ray LaHood, “Announcement by the Speaker Pro Tempore,” *Congressional Record*, daily edition, vol. 150 (March 25, 2004), p. H1493.

<sup>291</sup> “Announcement by the Chairman Pro Tempore,” remarks in the House, *Congressional Record*, daily edition, vol. 150 (July 13, 2004), p. H5580.

### **93<sup>rd</sup> Congress**

On August 7, 1974, prior to Roll Call No. 457, the presiding officer announced that the Republican monitor, used to track the progress of an electronic vote, was inoperative. “While the Chair could order the vote taken by rollcall, the Chair thinks that both sides can use the Democratic monitor and can alternate in the use of the monitor and save that much time. Therefore, the Chair will ask the Democratic operator and monitor to alternate with the Republican operator and monitor.”<sup>292</sup>

### **95<sup>th</sup> Congress**

On June 6, 1977, the presiding officer announced before any recorded votes were taken that the electronic voting system display board of Member’s names, as well as the display board with vote totals, were not functioning, but that the voting stations were operational. The presiding officer then directed that all votes be taken by electronic device and that—

the Chair has directed all vote monitoring stations to be staffed with personnel so any Member may go to any monitor and verify his or her vote. Members may also verify their votes—as they should on any vote, by reinserting their card at the same or another voting station.<sup>293</sup>

On June 21, 1978, prior to any recorded votes, the presiding officer announced that—

the board displaying each Member’s name behind the Chair and the board displaying the bill number and vote totals to the left and right of the Chair are not working today. However, all voting stations are operating; and the Chair has directed all vote monitoring stations to be staffed with personnel so any Member may go to any monitor and verify his or her vote.<sup>294</sup>

### **96<sup>th</sup> Congress**

On July 18, 1979, prior to any recorded votes, the presiding officer announced that the boards displaying Members names behind the Speaker’s dais and the boards displaying the bill number, vote totals, and time remaining on the sides of the chamber were not operational. However, the voting stations were operational and votes would be conducted using the electronic voting system. The presiding officer also directed that “all vote monitoring stations be staffed with personnel so any Member may go to any monitor and verify his or her vote.”<sup>295</sup>

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<sup>292</sup> Speaker Carl Albert, “Announcement by the Speaker,” *Congressional Record*, vol. 120, part 20 (August 7, 1974), p. 27219.

<sup>293</sup> Speaker Thomas P. “Tip” O’Neill Jr., “Announcement by the Speaker,” *Congressional Record*, vol. 123, part 14 (June 6, 1977), p. 17484. *Deschler-Brown* (p. 241) notes that similar announcements were made on June 21, 1978; July 18, 1979; September 18, 1985; and December 4, 1985.

<sup>294</sup> Speaker Pro Tempore Jim Wright, “Announcement by the Speaker Pro Tempore,” *Congressional Record*, vol. 124, part 14 (June 21, 1978), p. 18256.

<sup>295</sup> Speaker Thomas P. “Tip” O’Neill, “Announcement by the Speaker,” *Congressional Record*, vol. 125, part 15 (July 18, 1979), p. 19279.

### **99<sup>th</sup> Congress**

On September 18, 1985, during Roll Call No. 310, the display board listing Members' names behind the presiding officer was inoperative. In response to a parliamentary inquiry by Representative Trent Lott, the presiding officer stated that the electronic voting system was operational and that Members' votes were being correctly recorded:

It is the intention of the Chair to proceed with any further votes, and the Chair is informed that everything is being done to restore the display portion of the votes. The Chair would point out that on the last vote only six Members did not vote, which indicates that the membership has a clear idea of what the procedure is.<sup>296</sup>

### **106<sup>th</sup> Congress**

On February 10, 2000, the panel displaying the names from "Danner" to "Doyle" behind the Chair failed to illuminate when the system was used for Roll Call No. 14. The presiding officer announced that "the Chair has been advised that those votes are indeed being recorded. Those that are in that panel, from DANNER to DOYLE, should recheck your vote on the electronic voting device, but the Chair is advised those votes are being recorded."<sup>297</sup>

### **107<sup>th</sup> Congress**

On September 19, 2002, during Roll Call No. 402, one of the display panels was inoperative. The presiding officer announced that while the panel was not displaying votes, those Members were being recorded. The presiding officer then reminded Members that they "may verify their vote by checking at the desk or at the voting stations."<sup>298</sup>

### **108<sup>th</sup> Congress**

On September 4, 2003, during Roll Call No. 463 the presiding officer announced that "the wall display for the electronic voting system is not displaying lights in one column. The Chair would ask Members in the fourth column of names to verify their votes at a voting station before the Chair announces the results of the vote."<sup>299</sup>

### **110<sup>th</sup> Congress**

On August 3, 2007, the electronic voting system's display boards were not functioning during a vote that had yet to be assigned a roll-call number.<sup>300</sup> The presiding officer ruled that the vote

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<sup>296</sup> "Announcement by the Chairman Pro Tempore," *Congressional Record*, vol. 131, part 17 (September 18, 1985), p. 24160.

<sup>297</sup> Speaker Pro Tempore Doc Hastings, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 146, part 1 (February 10, 2000), p. 1021.

<sup>298</sup> Speaker Pro Tempore Michael K. Simpson, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 148, part 12 (September 19, 2002), p. 17237.

<sup>299</sup> Speaker Pro Tempore Michael K. Simpson, "Announcement by the Speaker Pro Tempore," *Congressional Record*, vol. 149, part 15 (September 4, 2003), p. 21151.

<sup>300</sup> A roll-call number was not assigned to this vote before the system malfunctioned and the vote was vacated by unanimous consent. See U.S. Congress, Clerk of the House of Representatives, *Floor Summary, Legislative Day of* (continued...)

could continue and that Members could check their votes by reinserting their voting cards. After a number of parliamentary inquiries, Majority Leader Steny H. Hoyer asked for unanimous consent to vacate the vote until the voting machine could be fixed. After discussion, the House gave its consent.<sup>301</sup>

## **Absent, but Displayed as Voting**

In a few instances the electronic system display boards showed a Member who is absent from the chamber as having voted. These situations are different from instances of “ghost voting” that were investigated by the Committee on Standards of Official Conduct in the 96<sup>th</sup> Congress (1979-1980) and 100<sup>th</sup> Congress (1987-1988). The instances of “ghost voting” are discussed in the section, Investigations Related to Votes and Voting Since 1970. The following examples are instances of absent Members displayed as voting, showing the presiding officer’s response.

### **96<sup>th</sup> Congress**

On November 13, 1979, Representative Frank Thompson, chairman of the Committee on House Administration, announced on the floor that a malfunction in the light next to the name of Representative Patricia Schroeder occurred while she was away from the House of Representatives in Cambodia.

I would like to assure the Members that the gentlewoman’s name is not being recorded as having voted “aye,” “nay,” or “present.” It is simply a light malfunction caused by a faulty relay. I would like to assure my colleagues that this is the situation.<sup>302</sup>

### **106<sup>th</sup> Congress**

On June 21, 2000, Representative Lucille Roybal-Allard was absent from the House but was shown as having voted on Roll Call No. 305. On June 23, Representative Thomas, chairman of the Committee on House Administration, announced that it was a “statistical anomaly” and not an instance where someone had voted for Representative Roybal-Allard:

It is not analogous to any of the situations in the past about the confusion of “I didn’t think I voted” or as we found, unfortunately, the potential of someone else using the card. It is a true anomaly. Members might imagine the concerns that the staff and we had about this. It was the fact that a 64-bit string of digital numerals was somehow at a particular terminal read wrong, and ironically the wrong reading coincided with another set that was in fact a card set.<sup>303</sup>

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(...continued)

August 3, 2007, 110<sup>th</sup> Congress, 1<sup>st</sup> Session <http://clerk.house.gov/floorsummary/floor.html?day=20070803&today=20080409>, accessed April 8, 2008.

<sup>301</sup> Rep. Steny H. Hoyer, “Permission to Vacate Vote on Motion to Adjourn,” *Congressional Record*, daily edition, vol. 153 (August 3, 2007), pp. H9669-H9671.

<sup>302</sup> Rep. Frank Thompson Jr., “Malfunction in Electronic Voting System Light,” *Congressional Record*, vol. 125, part 24 (November 13, 1979), pp. 32177-32178.

<sup>303</sup> Rep. Bill Thomas, “Regarding the House Electronic Voting System,” *Congressional Record*, vol. 146, part 9 (June 23, 2000), p. 12141.

Chairman Thomas continued by discussing the steps taken to ensure it was an anomaly and not a problem with the electronic voting system:

Since Wednesday, we have tried to re-create the event in terms of dirtying up the cards, playing with the boxes, repeating a process. We have now gone through 500,000 cycles. We will continue as a fallback to cycle this to see if we can re-create the anomaly. It is one of those situations in which you really have to say it is a statistically improbable anomaly, but it occurred.<sup>304</sup>

On June 26, Representative Roybal-Allard inserted a personal explanation in the Extension of Remarks of the *Congressional Record*:

Mr. Speaker, due to a family health emergency in Los Angeles, I was not present during the House's consideration of the VA, HUD and Independent Agencies Appropriations bill, last week. However, I was recorded as voting on an amendment to this bill offered by Mr. Collins of Georgia. The mistake was fortunately caught by the diligent staff of the Minority Leader. Nevertheless, Members should be aware that although the digital voting system used by the House of Representatives is very reliable, it is not perfect. I have been assured by both the Chairman of the Committee on House Administration and the Clerk's Office that they are thoroughly investigating the incident and that it does appear to be a true statistical anomaly which is unlikely to occur again. ...Finally, while I was mistakenly recorded as voting "aye" on the amendment, had I been present, I would have voted "nay."<sup>305</sup>

Also on June 26, the presiding officer asked unanimous consent that the *Congressional Record* be corrected to reflect that Representative Roybal-Allard was not present and had not voted during Roll Call No. 305 on June 21, 2000:

As stated by the Chairman of the Committee on House Administration on Friday, June 23, 2000, the Clerk has informed the Committee on House Administration of a recent anomaly on a recorded vote. Representative Roybal-Allard was absent on rollcall number 305 on June 21, 2000 and was in possession of her voting card. The Clerk was made aware of the fact that she was recorded on that rollcall, but on no others on that day, but due to the lateness of the hour, could not get confirmation from her by the time the vote was made public that she was absent and in possession of her voting card. Since then, the Clerk has received that confirmation. For that reason and the statistical improbability of the recurrence of that anomaly, the Chair and the Chairman of the Committee on House Administration believe that it is proper to immediately correct the *Record* and the *Journal*.

As stated in Volume 14, Section 32 of Deschler-Brown Precedents:

'Since the inception of the electronic system, the Speaker has resisted attempts to permit corrections to the electronic tally after announcement of a vote. This policy is based upon the presumptive reliability of electronic device [sic] and upon the responsibility of each Member to correctly cast and verify his or her vote.'

Based upon the explanation received from the Chairman of the Committee on House Administration and from the Clerk, the Chair will continue to presume the reliability of the electronic device, so long as the Clerk is able to give that level of assurance which justifies a

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<sup>304</sup> Ibid.

<sup>305</sup> Rep. Lucille Roybal-Allard, "Personal Explanation," *Congressional Record*, vol. 146, part 9 (June 26, 2000), p. 12387.

continuing presumption of its integrity. Without objection, the Chair will permit the immediate correction of the *Record* and Journal under the unique circumstances certified by the Clerk.<sup>306</sup>

Subsequently, on July 10, a correction was inserted in the *Congressional Record* stating that Representative Roybal-Allard did not vote on Roll Call No. 305:

Pursuant to the order of the House of June 26, 2000, the *Congressional Record*, of June 21, 2000, was ordered corrected to correctly reflect that Representative Roybal-Allard did not vote on rollcall number 305.... The electronic voting system had incorrectly attributed an “aye” vote to Representative Roybal-Allard.<sup>307</sup>

## Members’ Personal Explanations on Votes

Since at least the 29<sup>th</sup> Congress (1845-1847), Members have inserted “personal explanations” in the *Congressional Record* to explain how they would have voted had the Member been present for a roll-call vote.<sup>308</sup> At the time, the Speaker ruled that “[s]uch things are constantly tolerated by unanimous consent.”<sup>309</sup>

Members use personal explanations to explain how they would have voted following an absence from the House or for Members to state their belief that they were incorrectly recorded during a vote. In both instances, a Member may ask unanimous consent to have a statement appear in the *Congressional Record* following the vote,<sup>310</sup> or may submit a signed statement through their cloakroom to be printed in the *Congressional Record*. If the personal explanation is received in the cloakroom the day of the vote, it is inserted in the *Congressional Record* immediately after the vote. Otherwise, it is placed in the Extension of the Remarks.<sup>311</sup>

## Absent Members’ Voting Explanations

Absent Members use personal explanations to explain why they were absent from the floor and the position the Member would have taken had he or she been present. The following statements are examples of the vast majority of personal explanations:

Mr. Chairman, on rollcall Nos. 136, 137, and 140, I was at a subcommittee on Appropriations hearing. Had I been present, I would have voted “nay” on 137, “nay” on 136, and “yea” on 140.<sup>312</sup>

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<sup>306</sup> Speaker Pro Tempore Ray LaHood, “Announcement by the Speaker Pro Tempore,” *Congressional Record*, vol. 146, part 9 (June 26, 2000), p. 12371.

<sup>307</sup> “Correction to Congressional Record of June 21, 2000, Roll-Call Vote Number 305,” *Congressional Record*, vol. 146, part 10 (July 10, 2000), p. 13620.

<sup>308</sup> Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States: Including References to Provisions of the Constitution, the Laws, and Decisions of the United States Senate*, 60<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1907), §§ 5064-5074.

<sup>309</sup> Speaker John W. Davis, “The Secret-Service Fund,” *Congressional Globe*, vol. 15, 29<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: Blair & Rives, 1846), p. 729.

<sup>310</sup> *Deschler-Brown*, ch. 30, §41.1, p. 317.

<sup>311</sup> Brown and Johnson, *House Practice*, p. 935.

<sup>312</sup> Rep. Patrick J. Kennedy, “Personal Explanation,” *Congressional Record*, vol. 147, part 7 (May 23, 2001), p. 9262.

Mr. Speaker, on Tuesday, November 4, I was in Kentucky, tending to official business, and was not present for rollcall votes No. 602 and 603. The votes were on House Concurrent Resolutions 176 and 94, respectively. Had I been present, I would have voted “yea” on both measures.<sup>313</sup>

Mr. Speaker, on the legislative day of Friday, November 9, 2007, I was unavoidably detained and was unable to cast a vote on a number of rollcall votes. Had I been present, I would have voted: Rollcall 1077—“nay;” rollcall 1078—“nay;” rollcall 1079—“nay;” rollcall 1080—“yea;” rollcall 1081—“nay.”<sup>314</sup>

## **Incorrectly Recorded Votes**

Since the introduction of electronic voting in the 93<sup>rd</sup> Congress (1973-1975), Members have used personal explanations to correct a recorded position on a vote when the Member believed the electronic voting system incorrectly recorded his or her position.

If a Member believes his or her vote was incorrectly recorded, the Member may use a personal explanation to indicate the Member’s position. However, the personal explanation does not change the official record of the vote.<sup>315</sup> It only provides a Member an opportunity to state how the Member intended to vote. The following statements are examples of personal explanations where the electronic voting system allegedly failed to properly record a vote:

Mr. Speaker, during today’s vote on the rule for the conference report on House Resolution 402, rule No. 53, I inserted my card into the electronic voting device to vote, but the vote did not register. I ask that my vote be recorded immediately following this vote in the Record as a “no” vote. The clerk conducted a check, and verified that my card had been inserted, but when the “no” button was pushed, it did not register. If my vote had been recorded, it would have been “no.” Please amend the Record to reflect my “no” vote on this rule.<sup>316</sup>

Mr. Speaker, on December 13, I was in Washington D.C. conducting official government business. It was my intention to vote on Rollcall No. 498, H.Res. 314, which would have suspended the rules and allowed suspension bills on Wednesday December 19. However, the electronic voting machine did not properly record my vote. I request that the *Congressional Record* reflect that had my vote been properly recorded, I would have voted “nay” on Rollcall No. 498.<sup>317</sup>

Mr. Speaker, I was present and voting during the series of rollcall votes that included rollcall No. 226, final passage of the FY2007 Homeland Security Appropriations bill. While I believed that I had voted “yea” on the measure, apparently the electronic voting system did not register this vote. I would like to ensure that the record reflect that my vote, had it been recorded, would have been “yea” on rollcall No. 226.<sup>318</sup>

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<sup>313</sup> Rep. Harold Rogers, “Personal Explanation,” *Congressional Record*, vol. 149, part 20 (November 5, 2003), p. 27382.

<sup>314</sup> Rep. Devin Nunes, “Personal Explanation,” *Congressional Record*, daily edition, vol. 153 (November 9, 2007), p. H13462.

<sup>315</sup> Brown and Johnson, *House Practice*, pp. 934-935.

<sup>316</sup> Rep. Dennis Hastert, “Personal Explanation,” *Congressional Record*, vol. 138, part 5 (March 20, 1992), p. 6469.

<sup>317</sup> Rep. Loretta Sanchez, “Personal Explanation,” *Congressional Record*, vol. 147, part 20 (December 20, 2001), p. 27968.

<sup>318</sup> Rep. John B. Larson, “Personal Explanation,” *Congressional Record*, daily edition, vol. 152 (June 7, 2006), p. (continued...)

Claims of irregularities by the electronic voting system are only a small fraction of the total number of personal explanations and mentions of voting clarifications in the *Congressional Record*. Between the 95<sup>th</sup> Congress (1977-1979) and the 109<sup>th</sup> Congress (2005-2007), Members inserted at least 9,698 personal explanations into the *Congressional Record*. Of these personal explanations, the electronic voting system was accused of inaccurately recording votes 60 times (0.62 percent of the 9,698 personal explanations). These instances are listed in **Table 3**.

**Table 3. Instances of Electronic Voting Issues in Personal Explanations: 93<sup>rd</sup> Through 109<sup>th</sup> Congresses**

Congress (Years)	Total Roll Call Votes	Personal Explanations	Electronic Voting Issues	% of total explanations
93 <sup>rd</sup> (1973-1975) <sup>a</sup>	1,078	n/a	n/a	n/a
94 <sup>th</sup> (1975-1977) <sup>a</sup>	1,273	n/a	n/a	n/a
95 <sup>th</sup> (1977-1979)	1,540	346	2	0.58 %
96 <sup>th</sup> (1979-1981)	1,276	604	0	0.00 %
97 <sup>th</sup> (1981-1983)	812	266	7	2.63 %
98 <sup>th</sup> (1983-1985)	896	607	7	1.15 %
99 <sup>th</sup> (1985-1987)	890	556	11	1.98 %
100 <sup>th</sup> (1987-1989)	939	462	5	1.08 %
101 <sup>st</sup> (1989-1991)	879	472	3	0.64 %
102 <sup>nd</sup> (1991-1993)	901	441	2	0.45 %
103 <sup>rd</sup> (1993-1995)	1,094	469	4	0.85 %
104 <sup>th</sup> (1995-1997)	1,321	765	5	0.65 %
105 <sup>th</sup> (1997-1999)	1,166	836	9	1.08 %
106 <sup>th</sup> (1999-2001)	1,209	948	2	0.21 %
107 <sup>th</sup> (2001-2003)	990	791	1	0.13 %
108 <sup>th</sup> (2003-2005)	1,218	1,036	0	0.00 %
109 <sup>th</sup> (2005-2007)	1,210	1,099	2	0.18 %
Total	18,692	9,698	60	0.62 %

**Source:** Table compiled by authors from the indices of the *Congressional Record* for the years covered.

a. The *Congressional Record* did not index personal explanations for the 93<sup>rd</sup> and 94<sup>th</sup> Congresses.

## Members Attempting to Vote

Under House Rule III, “Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.”<sup>319</sup> In addition, while

(...continued)

E1035.

<sup>319</sup> *House Rules and Manual, 110<sup>th</sup> Congress*, p. 376. This rule was first adopted by the First Congress (1789-1790). *Journal of the House of Representatives of the United States*, 1<sup>st</sup> Cong., 1<sup>st</sup> sess., vol. 1 (Washington, DC: Gales & (continued...)

Speakers beginning in the 102<sup>nd</sup> Congress have announced policies to expedite the conduct of votes, these policies and practice have protected the right to vote of Members in the well attempting to vote.<sup>320</sup>

### **104<sup>th</sup> Congress**

In declaring his policy on voting by electronic device, Speaker Gingrich sought to have votes conclude with the announcement of a result as soon as possible after 15 minutes, and said in remarks to the House that he hoped to conclude votes within 17 minutes. In his policy, the Speaker said that a presiding officer would not prevent a Member from voting who “is in the well.”<sup>321</sup>

Enforcement of the Speaker’s policy to expedite the conclusion of votes resulted in a dispute over a vote on June 21, 1995. In the course of votes immediately preceding Roll Call No. 405, Members inquired about the duration of votes on the floor and about votes being taken in committee at the same time votes were being taken on the floor. Some Members, hearing the bells announcing a floor vote, left a committee markup for the floor. After their departure, the committee chair apparently conducted a roll-call vote. A chairman of the Committee of the Whole indicated that Members’ priority should be floor votes. He said he had been informed of the committee vote and had waited to close the floor vote until the committee’s chairman appeared and voted, taking that as a sign that committee members had had sufficient time to arrive on the floor and vote.<sup>322</sup> After the result of Roll Call No. 405, Minority Whip David E. Bonior used a parliamentary inquiry to say:

Mr. Chairman, we had 2 Members in the well with their voting cards out, and the vote was 214 to 213, and the gentleman in the Chair, respectfully I say to him, called the vote while two of our Members were voting. That, Mr. Chairman, is not fair.<sup>323</sup>

The presiding officer responded that Mr. Bonior had not made a parliamentary inquiry.

The next day, Majority Leader Dick Armey addressed the chamber. Mr. Armey stated that he had reviewed the videotape of the vote and concluded that the presiding officer had acted properly. He then stated:

I know all too well that once the perception of unfairness and arbitrariness has set in, it is difficult to undo regardless of the facts of the matter. It is important to this Member that fairness govern this Chamber because this Member spent over a decade attempting to do the

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(...continued)

Seaton, 1826), p. 9. See also *Deschler-Brown* (ch. 30, § 3) for additional explanation.

<sup>320</sup> Brown and Johnson, *House Practice*, p. 927.

<sup>321</sup> Speaker Newt Gingrich, “Announcement by the Speaker,” *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 457; and Speaker Newt Gingrich, “Election of Speaker,” *Congressional Record*, vol. 141, part 1 (January 4, 1995), p. 444.

<sup>322</sup> “Legislative Branch Appropriations Act, 1996,” *Congressional Record*, vol. 141, part 12 (June 21, 1995), pp. 16681, 16682.

<sup>323</sup> *Ibid.*, p. 16683.

people's business under very unfair conditions....It is for that reason I am about to make a unanimous-consent request to revisit the vote on the Fazio amendment....<sup>324</sup>

The House gave unanimous consent to vacate Roll Call No. 405 and re-vote the question when the House next resolved into the Committee of the Whole. In the Committee of the Whole, the chairman announced:

When the Committee of the Whole rose on Wednesday, June 21, 1995, amendment No. 5 printed in H.Rept. 104-146 offered by the gentleman from California...had been disposed of. ...Pursuant to the order of the House today, the Chair will now put the question de novo. The question is on the amendment offered by the gentleman from California..., as amended.<sup>325</sup>

The amendment was agreed to.

## Holding Votes Open

Votes using the electronic voting system do not usually conclude with the announcement of a result at the end of the 15-minute minimum time for voting. The announcement of a result, however, often occurs within several minutes. On occasion, votes are held open longer for a well-identified reason, such as the failure of the voting system and the absence of Members at a memorial service on September 14, 2001, which was discussed above. Sometimes, Members can see other Members continuing to arrive on the floor to vote. On other occasions, a reason is not articulated or an ambiguous reason is given.

House Rule XX, cl. 2(a), making voting by electronic device the customary method of voting, was amended in the 110<sup>th</sup> Congress to add a sentence: "A recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such a vote."<sup>326</sup>

### 100<sup>th</sup> Congress

On October 29, 1987, while conducting Roll Call No. 392, Speaker Jim Wright asked, "Are there other Members in the Chamber who desire to vote? If there are other Members who desire to vote we will accommodate their vote." The Speaker continued to make similar announcements while holding open the vote.<sup>327</sup>

Following one of the presiding officer's announcements, Representative Newt Gingrich used a parliamentary inquiry to ask how a vote could be reopened "once the Speaker has said the vote is closed and all time has expired." The Speaker replied that "the present occupant of the chair and in the Chair's observation other occupants of the chair have permitted Members to vote so long as

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<sup>324</sup> Rep. Dick Armey, "Fairness in House Voting Procedures," *Congressional Record*, vol. 141, part 12 (June 22, 1995), p. 16814.

<sup>325</sup> "Legislative Branch Appropriations Act, 1996," *Congressional Record*, vol. 141, part 12 (June 22, 1995), p. 16823.

<sup>326</sup> Sec. 302 of H.Res. 6, agreed to in the House January 4, 2007.

<sup>327</sup> Speaker Jim Wright, "Omnibus Budget Reconciliation Act of 1987," *Congressional Record*, vol. 133, part 21 (October 29, 1987), p. 30238. An article in the *Congressional Quarterly Weekly Report* stated that the vote was 205-206 until Representative Jim Chapman returned to the House floor and changed his vote, after which Speaker Wright announced the result. Elizabeth Wehr, "Wright Finds a Vote to Pass Reconciliation Bill," *Congressional Quarterly Weekly Report*, vol. 45, no. 44, October 31, 1987, pp. 2653-2655.

those Members are in the Chamber and obviously desiring to cast a vote. That is the policy of the Chair.” The presiding officer announced that “the yeas are 206, and the nays are 205. The bill is passed.”<sup>328</sup>

During the conduct of the vote, Representative Mickey Edwards used a parliamentary inquiry to ask:

Mr. Speaker, you have now announced that all time has expired. I am quite familiar with the policy of this Chair. Under the rules of the House could the Parliamentarian instruct us whether under the rules at this point additional votes may be cast now that the Chair has announced that time has expired?

The Speaker responded that “the rules of the House state that the rollcall will be open for a minimum of 15 minutes, and that beyond that it is at the discretion of the Chair.”<sup>329</sup>

### **108<sup>th</sup> Congress**

On November 21, 2003, Roll Call No. 669 was held open beyond the minimum 15 minutes, for a total of approximately three hours.<sup>330</sup> The circumstances surrounding the vote on the conference report on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 are discussed in the Investigations Related to Votes and Voting Since 1970 section of this report.

### **110<sup>th</sup> Congress**

On March 11, 2008, the House adopted H.Res. 1031, a special rule deeming H.Res. 895 adopted, which established a House Office of Congressional Ethics. Following debate, Roll Call No. 121 was taken on the previous question on H.Res. 1031. After the initial 15-minute minimum time to vote, the presiding officer held the vote open for approximately 15 additional minutes. The presiding officer then announced that the previous question was ordered.

Representative Roy Blunt used a parliamentary inquiry, referencing Rule XX, cl. 2(a), to ask, “Am I right that the rules of the House read, ‘A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote?’” The presiding officer responded that Representative Blunt was correct and that “[a]n alleged violation of clause 2(a) of Rule XX may give rise to a collateral challenge in the form of a question of the privileges of the House pursuant to Rule IX.”<sup>331</sup>

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<sup>328</sup> Rep. Newt Gingrich and Speaker Jim Wright, “Omnibus Budget Reconciliation Act of 1987,” *Congressional Record*, vol. 133, part 21 (October 29, 1987), p. 30238.

<sup>329</sup> Speaker Jim Wright, “Parliamentary Inquiry,” *Congressional Record*, vol. 133, part 21 (October 29, 1987), p. 30239.

<sup>330</sup> Rep. Steny H. Hoyer, “Parliamentary Inquiry,” *Congressional Record*, daily edition, vol. 149 (November 21, 2003), p. H12296. See also U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess. H.Rept. 108-722 (Washington: GPO, 2004), p. 4.

<sup>331</sup> Rep. Roy Blunt and Speaker Pro Tempore Earl Pomeroy, “Establishing an Office of Congressional Ethics—Continued,” *Congressional Record*, daily edition, vol. 154 (March 11, 2008), pp. H1532-H1533.

The next day, Minority Leader John A. Boehner raised a question of the privileges of the House. Mr. Boehner's resolution<sup>332</sup> sought to denounce the "practices" of holding open votes beyond a "reasonable" period of time, vacate votes on H.Res. 1031, direct the Committee on Standards of Official Conduct to investigate the Democratic leadership's "violations of House rules," and direct the Select Committee to Investigate the Voting Irregularities of August 2, 2007 to investigate and make recommendations on the previous question vote on H.Res. 1031. A motion to table the resolution was agreed to.<sup>333</sup>

## Investigations Related to Votes and Voting Since 1970

Since the House began using the electronic voting system on January 23, 1973, there have been four instances where voting anomalies were reported to the House and resulted in investigations. The first three instances were investigated by the Committee on Standards of Official Conduct and occurred in 1979, 1987, and 2003. The fourth investigation deals with Roll Call No. 814 taken on August 2, 2007, and has been undertaken by a select committee.

### "Ghost" Voting

"Ghost" voting occurs when one Member votes for another Member on the House floor, in violation of House rules. Since electronic voting began in 1973, there have been two investigations of "ghost" voting allegations. The first investigation occurred during the 96<sup>th</sup> Congress (1979-1981) and involved Representatives Morgan Murphy and Tennyson Guyer. The second investigation occurred during the 100<sup>th</sup> Congress (1987-1989) and involved Representative Austin Murphy. Both investigations were conducted by the Committee on Standards of Official Conduct.<sup>334</sup>

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<sup>332</sup> H.Res. 1039 (110<sup>th</sup> Congress).

<sup>333</sup> "Question of the Privileges of the House," *Congressional Record*, daily edition, vol. 154 (March 12, 2008), pp. H1543-H1544.

Representatives Neil Abercrombie and Ray LaHood have sent a letter to the Committee on Standards of Official Conduct requesting an investigation of whether House rules were broken during the vote on H.Res. 1031. The letter has not been made public. See Susan Crabtree, "Rep. Abercrombie questions ethics of ethics bill handling," *The Hill*, May 2, 2008, <http://thehill.com/leading-the-news/rep.-abercrombie-questions-ethics-of-ethics-bill-handling-2008-05-01.html>, accessed June 25, 2008; and Susan Crabtree, "LaHood Backs Vote Inquiry," *The Hill*, May 21, 2008, p. 6.

<sup>334</sup> Other instances of alleged "ghost" voting have been reported by the media. In the 103<sup>rd</sup> Congress (1993-1995), staff members for Speaker Thomas S. Foley and Minority Leader Robert H. Michel reviewed allegations of "ghost" voting that occurred in February and March 1994. Following the review, Speaker Foley and Mr. Michel concluded that no evidence of misconduct took place. See Paul M. Rodriguez, "'Ghost voting' in House denied," *The Washington Times*, May 19, 1994.

In the 110<sup>th</sup> Congress (2007-2009), allegations were made that Representative Julia Carson allowed others to vote on her behalf while she was ill and confined to a wheelchair. In an article in *The Hill*, a statement by Representative Carson was quoted, "On those rare days when I think I need a little help, I feel so blessed that there are 434 other members of the House who are willing to lend a hand when I cast my vote. It is, however, my vote." Jonathan E. Kaplan, "Carson's 'ghost-voting' raises health questions," *The Hill*, September 27, 2007, p. 11.

## 96<sup>th</sup> Congress

On July 31, 1979, Representative Morgan Murphy inserted a personal explanation into the *Congressional Record*, indicating that while he was in his district on official business, he had been recorded on six votes and had requested that the Committee on Standards of Official Conduct investigate the matter:

Mr. Speaker, yesterday I was holding hearings in the city of Chicago of the Select Committee on Narcotics Abuse and Control for which I had official leave of absence. I was, therefore, surprised to see the *Record* shows me recorded on votes taken yesterday and I ask unanimous consent that the permanent *Record* reflect the fact that I was not present and did not vote on Monday, July 30. I also request that the Committee on Standards of Official Conduct look into this matter and, being a member of the Committee on Standards of Official Conduct I will step aside while they look into the matter.<sup>335</sup>

On September 20, 1979, the chairman of the Standards of Official Conduct Committee, pursuant to committee rules,<sup>336</sup> designated Representatives John Murtha and Bill Thomas to serve on an investigative subcommittee. In January 1980, the subcommittee was additionally tasked with investigating three votes cast by Representative Tennyson Guyer on May 14, 1979, while he was in his Ohio district.<sup>337</sup>

The General Accounting Office (GAO)<sup>338</sup> determined that the “ghost” votes of Representatives Murphy and Guyer were not a result of equipment malfunction.<sup>339</sup> Further, the committee found no evidence that would link either Member to a scheme to vote by proxy.<sup>340</sup> The committee declined to bring charges against the two Members but did note that “[t]his results not from any view that willful and knowing abuse of the Electronic Voting System is not serious misconduct, but rather from ambiguities in the present rules when taken together with the need to rely solely on statistical data, based on assumptions and unaided by other direct evidence of wrongdoing.”<sup>341</sup>

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<sup>335</sup> Rep. Morgan Murphy, “Personal Explanation,” *Congressional Record*, vol. 125, part 17 (July 31, 1979), p. 21659.

<sup>336</sup> Rule 11(a) of the committee stated: “If the Committee determines under rule 10(b) that the allegations of a violation in a complaint filed with the Committee merit further inquiry, the Committee shall conduct a preliminary inquiry to determine whether such violation occurred.” Rule 13 of the committee stated: “Notwithstanding the absence of a complaint filed with the Committee under rule 10 of the Committee rules, the staff of the Committee shall present to it any evidence available to the staff reasonably indicating that any Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to his conduct in the performance of his duties or in the discharge of his responsibilities.” See U.S. Congress, House Committee on Rules, *Rules Adopted by the Committees of the House of Representatives*, committee print, 96<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1979), pp. 217-219.

<sup>337</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Study and Analysis of the Voting Anomalies in the House of Representatives on May 14 and July 20, 1979*, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 96-991 (Washington: GPO, 1980), p. 3.

<sup>338</sup> Now named the Government Accountability Office.

<sup>339</sup> Letter from Elmer B. Staats, comptroller general of the United States, to Representative Frank Thompson Jr., chair of the Committee on House Administration, August 31, 1979.

<sup>340</sup> Proxy voting is prohibited in the House. It has been barred since the First Congress, which adopted the rule, “No Member shall vote on any questions...in any case where he was not present when the question was put.” *Journal of the House of Representatives of the United States*, 1<sup>st</sup> Cong., 1<sup>st</sup> sess., vol. 1. (Washington, DC: Gales & Seaton, 1826), p. 9.

<sup>341</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Study and Analysis of the Voting Anomalies in the House of Representatives on May 14 and July 20, 1979*, 96<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 96-991 (Washington: GPO, 1980), p. 13.

## 100<sup>th</sup> Congress

On June 23, 1987, the Committee on Standards of Official Conduct voted to investigate allegations (among other actions) that Representative Austin Murphy allowed others to vote for him on the floor of the House of Representatives when he was not present. Pursuant to a committee resolution and committee rules, the committee investigated six counts against the Member, three of which directly related to allegations that other Members cast votes on his behalf.<sup>342</sup> The committee held a disciplinary hearing and sustained two of the three voting-related counts.

Following the disciplinary hearing, the committee also found that Representative Murphy violated House rules on two of the three non-voting-related counts. The committee sustained count four, which charged that Representative Murphy diverted resources from his district office to his former law firm in violation of 31 U.S.C. § 1301(a) and paragraph 5 of the Code of Ethics of Government Service,<sup>343</sup> as then in effect; dismissed count five, which charged that the Member permitted someone with whom he had a professional or legal relationship to benefit from expenditure of official funds through his district office lease; and sustained charge six that the Member retained an employee who did not perform duties commensurate with pay received.<sup>344</sup>

In its report, the Committee on Standards and Ethics recommended a reprimand of Representative Murphy and stated, “The Committee believes that a recommendation of the sanction of reprimand is appropriate for the violations found to have occurred.”<sup>345</sup> The House agreed to H.Res. 335 adopting the report by the Committee on Standards of Official Conduct to reprimand Representative Murphy.<sup>346</sup>

## Exchanging a Vote for a Benefit

### 108<sup>th</sup> Congress

On December 8, 2003, the Committee on Standards of Official Conduct, pursuant to Committee Rule 18 (a),<sup>347</sup> initiated informal fact finding into allegations linking Representative Nick Smith’s

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<sup>342</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representatives Austin J. Murphy*, 100<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 100-485 (Washington: GPO, 1987), pp. 1, 8-9.

<sup>343</sup> U.S. Congress, *Code of Ethics for Government Service*, 86<sup>th</sup> Cong., 1<sup>st</sup> sess., July 11, 1958, H.Doc. 86-103 [http://www.house.gov/ethics/Appendix\\_Code\\_of\\_Ethics.html](http://www.house.gov/ethics/Appendix_Code_of_Ethics.html), accessed April 2, 2008.

<sup>344</sup> U.S. Congress, House Committee on Standards of Official Conduct, *In the Matter of Representatives Austin J. Murphy*, 100<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 100-485 (Washington: GPO, 1987), pp. 4-5.

<sup>345</sup> *Ibid*, p. 5.

<sup>346</sup> H.Res. 335, agreed to in the House December 18, 1987.

<sup>347</sup> Rule 18 (a) of the Committee on Standards of Official Conduct stated: “Notwithstanding the absence of a filed complaint, the Committee may consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his or her duties or the discharge of his or her responsibilities. The Chairman and Ranking Minority Member may jointly gather additional information concerning such an alleged violation by a Member, officer, or employee unless and until and investigative subcommittee has been established.” See, U.S. Congress, House Committee on Rules, *Rules Adopted by the Committees of the House of Representatives*, committee print, 108<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2003), pp. 164-165.

support for the conference report on H.R. 1, the Medicare Prescription Drug, Improvement, and Modernization Act, with support for the congressional candidacy of his son.<sup>348</sup>

The investigative subcommittee was established in March 2004 and conducted its investigation until September 2004.<sup>349</sup> After receiving over 1,400 pages of testimony and deposing 17 Members of the House, the committee concluded that—

no group, organization, business interest, or corporation of any kind, or any individual affiliated with any such entities, offered \$100,000 or any other specific sum of money to support the congressional candidacy of Brad Smith in order to induce Representative Nick Smith to vote in favor of the Medicare Prescription Drug Act.<sup>350</sup>

The investigative subcommittee concluded that, while Representative Smith's conduct did not meet the standards of House Rule XXIII, cl. 1,<sup>351</sup> its jurisdiction to formally sanction Representative Smith should not be expanded pursuant to Committee Rule 19 (d).<sup>352</sup> "Such a step—required to obtain a formal sanction under House and Committee rules—is not justified by the circumstances and facts presented, and is outweighed by the interest in bringing this matter to closure."<sup>353</sup>

Representative Candice S. Miller and Majority Leader Tom DeLay were also implicated in the course of the investigation. The investigative subcommittee found that Representative Miller's "interaction with Representative Smith can fairly be characterized as a specific and unprovoked threat of retaliation against Representative Smith...."<sup>354</sup>

The subcommittee made the following finding concerning Majority Leader DeLay:

The Investigative Subcommittee concludes that the interaction between the Majority Leader and Representative Smith, in significant part, precipitated the public allegations by Representative Smith that ultimately led to this inquiry. At the time the offer was made, Representative Smith believed that the endorsement of his son by the Majority Leader, combined with the publicity and substantial financial support for his son's campaign that Representative Smith believed would follow the Majority Leader's endorsement, would greatly assist, if not assure, his son's election...<sup>355</sup>

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<sup>348</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-722 (Washington: GPO, 2004), p. 7.

<sup>349</sup> *Ibid.*, p. 12.

<sup>350</sup> *Ibid.*, p. 36.

<sup>351</sup> Rule XXIII, cl. 1 (108<sup>th</sup> Congress) required Members to conduct themselves at all times in a manner that reflected credibly on the House. *Constitution, Jefferson's Manual, and Rules of the House of Representatives*, 108<sup>th</sup> Congress, H.Doc. 107-284, 107<sup>th</sup> Cong. 2<sup>nd</sup> sess., prepared by Charles W. Johnson (Washington, DC: GPO, 2003), p. 882.

<sup>352</sup> U.S. Congress, House Committee on Rules, *Rules Adopted by the Committees of the House of Representatives*, 108<sup>th</sup> Cong. (Washington: GPO, 2003), p. 166. Rule 19(d) states that "upon an affirmative vote of a majority of the subcommittee members, and an affirmative vote of a majority of the full Committee, an investigative subcommittee may expand the scope of its investigation."

<sup>353</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-722 (Washington: GPO, 2004), p. 40.

<sup>354</sup> *Ibid.*, p. 41.

<sup>355</sup> *Ibid.*, p. 42.

The investigative subcommittee unanimously adopted its report on September 29, 2004. On September 30, the full committee unanimously adopted the report with this statement:

By this act of adopting the Investigative Subcommittee's Report, the Committee approved and adopted the findings, conclusions, and recommendations of the Investigative Subcommittee, including the recommendation in the Investigative Subcommittee's Report that the publication of its Report would serve as a public admonishment by the Committee to Representative Nick Smith, Representative Candice Miller, and Representative Tom DeLay regarding their conduct as described in the Report to the House.<sup>356</sup>

## Terminating a Vote

### 110<sup>th</sup> Congress

On August 2, 2007, Representative Jerry Lewis offered a motion to recommit with instructions to H.R. 3161, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2008.<sup>357</sup> During the vote on the motion, the Speaker pro tempore first announced that there were 214 yeas and 214 nays and that the motion was not agreed to. The Speaker pro tempore subsequently announced that the vote was 212 yeas and 216 nays and that the motion was not agreed to. Some Members alleged that the Speaker pro tempore's first announcement of the vote was erroneous and that, since the electronic voting display had read "FINAL 215-213," the motion had been agreed to.<sup>358</sup>

Immediately after the vote, Majority Leader Hoyer asked unanimous consent that the House vacate the vote.<sup>359</sup> Minority Leader Boehner objected and Majority Leader Hoyer then moved to reconsider Roll Call No. 814. The motion to reconsider was agreed to (Roll Call No. 815). That vote was followed by a voice vote rejection of Representative Lewis's motion to recommit and a record vote on passage of H.R. 3161.<sup>360</sup>

On August 3, Majority Leader Hoyer introduced a resolution directing the Committee on Standards of Official Conduct to review the previous day's events. The resolve clause stated:

*Resolved*, That the Committee on Standards of Official Conduct shall immediately review the regularity of events surrounding the vote on the motion to recommit on H.R. 3161, which occurred on August 2, 2007, and report back to the House.<sup>361</sup>

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<sup>356</sup> U.S. Congress, House Committee on Standards of Official Conduct, *Summary of Activities One Hundred Eighth Congress*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 108-806 (Washington: GPO, 2005), pp. 18-19.

<sup>357</sup> Rep. Jerry Lewis, "Motion to Recommit Offered by Mr. Lewis of California," *Congressional Record*, daily edition, vol. 153 (August 2, 2007), pp. H9649-H9652.

<sup>358</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Interim Report*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 110-355 (Washington: GPO, 2007), p. 2.

<sup>359</sup> Rep. Steny Hoyer, "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 153 (August 2, 2007), p. H9650.

<sup>360</sup> Rep. Jerry Lewis et al., "Motion to Recommit Offered by Mr. Lewis of California," *Congressional Record*, daily edition, vol. 153 (August 2, 2007), pp. H9650-H9652.

<sup>361</sup> Rep. Steny H. Hoyer, "Ordering Committee on Standards of Official Conduct to Immediately Review Events Surrounding Vote on H.R. 3161," *Congressional Record*, daily edition, vol. 153 (August 3, 2007), pp. H9659-H9660.

Mr. Boehner argued against referring the matter to the Committee on Standards of Official Conduct, asked that Mr. Hoyer withdraw his resolution, and proposed that the two leaders work together. Mr. Hoyer received unanimous consent to withdraw the resolution.<sup>362</sup>

Later that day, Minority Leader Boehner raised a question of the privileges of the House (H.Res. 611), directing House officers to preserve records related to the vote on the Lewis motion to recommit, establishing a select committee comprising three Members appointed by the Speaker and three Members appointed by the minority leader, authorizing the select committee to investigate “circumstances surrounding the record vote” on the Lewis motion, and requiring the select committee to report recommendations of changes to “rules and procedures of the House necessary to protect the voting rights” of Members. The resolution was agreed to by voice vote.<sup>363</sup>

The Select Committee to Investigate the Voting Irregularities of August 2, 2007 met publicly for the first time on September 27, 2007. In that meeting, the committee adopted its rules, adopted an interim report, and heard testimony from the clerk of the House and her staff about the records preserved from the August 2 vote and the duties of the clerk’s staff on the Speaker’s dais.<sup>364</sup> In addition, in its interim report the Select Committee to Investigate the Voting Irregularities of August 2, 2007 set out four areas of investigation for future hearings. These were:

Persons on the Speaker’s dais and persons responsible for conducting a vote;

Electronic voting system;

Duration of a vote; and

Sequence of events.<sup>365</sup>

To date, the select committee has taken testimony in public hearings on September 27, 2007, from Clerk of the House Lorraine Miller and her staff concerning the duties of individuals on the Speaker’s dais;<sup>366</sup> received a walk-through on the House floor on October 18, 2007, of the electronic voting system by the individuals responsible for operation of the system;<sup>367</sup> taken testimony on October 25, 2007, from Parliamentarian Emeritus of the House Charles Johnson and from Chief Tally Clerk Mark O’Sullivan;<sup>368</sup> and taken testimony from Majority Leader Hoyer,

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<sup>362</sup> Reps. Steny H. Hoyer and John Boehner, “Ordering Committee on Standards of Official Conduct to Immediately Review Events Surrounding Vote on H.R. 3161,” *Congressional Record*, daily edition, vol. 153 (August 3, 2007), pp. H9660-H9661.

<sup>363</sup> H.Res. 611, agreed to in the House August 3, 2007.

<sup>364</sup> For information on the House staff on the Speaker’s dais, see CRS Report 98-396, *Guide to Individuals Seated on the House Dais*, by (name redacted).

<sup>365</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Interim Report*, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 110-355 (Washington: GPO, 2007), pp. 4-6.

<sup>366</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Organizational Meeting on Adoption of Committee Rules; Consideration of Interim Report; and Hearing on Voting in the House of Representatives*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., September 27, 2007.

<sup>367</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Member Briefing on Voting in the House of Representatives—The Rostrum and the Electronic Voting System: A “Walkthrough” by the Clerk of the House Lorraine C. Miller*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 18, 2007.

<sup>368</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Voting in the House of Representatives—Rules, Procedures, Precedents, Customs and Practice*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2007.

Representative Michael R. McNulty (who was presiding during the conduct of Roll Call No. 814), Parliamentarian John V. Sullivan, and representatives from the Office of the Clerk, the Office of the Speaker, the Office of the Minority Leader, and the Office of the Parliamentarian.<sup>369</sup> The final report of the committee is due to the House not later than September 15, 2008.<sup>370</sup>

## Options for Addressing Issues Related to Record Voting

Electronic voting has been in use for 35 years in the House of Representatives. However, Members have been casting votes in other ways for over 200 years. The process for voting has remained relatively unchanged in all that time, and the problems associated with voting have been relatively rare. Nevertheless, no matter how infrequently problems occur, when they do, the ramifications within the chamber can reverberate for days, or even longer. Whether changes to voting procedures are warranted, or even necessary, is open to discussion.

Pursuant to H.Res. 611,<sup>371</sup> the Select Committee to Investigate the Voting Irregularities of August 2, 2007 is authorized to recommend changes to the rules and procedures of the House related to voting. Accordingly, this section discusses possible issues and options related to voting in the House. The options range from making no changes to a complete overhaul in the procedures for conducting votes in the chamber. Some options are explored in detail, while others are presented only as questions to be considered. Further, some options, or variations of those options, may appear under more than one heading. The headings are not listed in an order indicating their importance.

## Vehicles for Effecting Changes Related to Record Voting

If the House chooses to make any changes to its voting protocol, there are several options available to effect such changes. Each may carry its own advantages and disadvantages.

### House Rules

House rules are traditionally changed on the opening day of a Congress by adoption of a resolution. The rules of the House in the prior Congress are made the rules of the House for the new Congress with this resolution. The resolution also contains specific changes to those rules effective for the new Congress. The Rules Committee or the parties' leadership often solicit

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<sup>369</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Voting in the House of Representatives*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., May 13-14, 2008.

See also Jared Allen, "GOP 'stolen vote' Investigators say Dems' explanations 'implausible'," *The Hill*, May 14, 2008, <http://thehill.com/leading-the-news/gop-stolen-vote-investigators-say-dems-explanations-implausible-2008-05-14.html>, accessed May 23, 2008; Jackie Kucinich, "Rep. Hoyer calls for House voting rule to be scrapped," *The Hill*, May 14, 2008, <http://thehill.com/leading-the-news/rep-hoyer-calls-for-house-voting-rule-to-be-scrapped-2008-05-13.html>, accessed May 23, 2008; Jennifer Yachnin, "Hoyer Ready to Scrap Rule," *Roll Call*, May 14, 2008, [http://www.rollcall.com/issues/53\\_137/news/23600-1.html](http://www.rollcall.com/issues/53_137/news/23600-1.html), accessed May 23, 2008; and Jennifer Yachnin, "GOP Tries to Press Its Case Over Floor Imbroglio," *Roll Call*, May 15, 2008, p. 3.

<sup>370</sup> H.Res. 611, agreed to in the House August 3, 2007.

<sup>371</sup> Agreed to in the House August 3, 2007.

proposals or suggestions for rules changes in the late summer or fall prior to an election. The majority members of the Rules Committee, with input from the majority leadership, consolidate and evaluate the suggestions. Any changes to voting processes could be included in this opening-day rules package.

Historically, the rules resolution for a new Congress has most often been numbered either H.Res. 5 or H.Res. 6. The rules package is usually considered for one hour as an indivisible and unamendable entity, although that has not always been the case. It is therefore difficult to change any part of the resolution. The minority party routinely offers an alternative rules package, but that normally fails on a party-line vote.

On occasion, House rules are changed by the adoption of a resolution on a day other than opening day.<sup>372</sup> Again, such a resolution would likely be debatable for one hour and amendments would rarely be made in order.

House rules changes can also be effected by a so-called “self executing” or “hereby” provision in a related or unrelated special rule. This process would allow the rules change to be made without a vote on the change itself.<sup>373</sup>

In addition, although rarely successful, a measure making changes to House rules could be brought up for consideration through the use of a discharge petition, either discharging the measure itself or discharging a special rule making it in order to consider a resolution embodying the rules change.

## **Unanimous Consent**

It is possible to effect minor changes in the standing rules by unanimous consent.

## **Rulemaking Statute**

Congress may enact statutes setting forth rules and procedures to follow when the House considers certain kinds of legislation.<sup>374</sup> Such statutes are enacted pursuant to the rulemaking power of Congress and may be incorporated by reference in the preface of the resolution adopting the rules of the House. Once a statute is enacted, it normally takes enactment of a subsequent statute to change its effect, although both the House and Senate reserve authority to change rules, even those that had been effected through a statute.

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<sup>372</sup> For example, H.Res. 491, agreed to in the House June 18, 2007, governs earmark disclosure in conference reports on general appropriations bills.

<sup>373</sup> For example, the Select Committee on Energy Independence and Global Warming was created in this manner. The special rule (H.Res. 219) providing for the consideration of H.Res. 202, the committee funding resolution, contained a “hereby” clause that the “amendment in the nature of a substitute recommended by the Committee on House Administration..., modified by the amendment printed in the report of the Committee on Rules accompanying this resolution, shall be considered as adopted.” The amendment printed in the report created the select committee. H.Res. 219, agreed to in the House March 8, 2007.

<sup>374</sup> Examples of rulemaking statutes are the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344), the Budget Enforcement Act of 1990 (P.L. 101-508), the War Powers Resolution (P.L. 93-148), and the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510).

## Speaker Announcements

On opening day, or early in the first session of a new Congress, the Speaker promulgates what have been called “Speaker announcements” or “Speaker’s policies.” Such announcements are protocols relating to legislative practices that are observed during a Congress. Most of these practices reflect long-standing traditions that have not been raised to the level of inclusion in House rules, but relate to the operation of the chamber and to the legislative process.<sup>375</sup>

## Standing Order

A standing order is a continuing directive or regulation that has the force of a chamber rule but is not incorporated into the rules. In that respect it is similar to items included in the Speaker’s announcements. Standing orders are more frequently used in the Senate, although the House has, on occasion, effected change through their use.

## Administrative Order

The Office of the Clerk of the House, the Office of the Parliamentarian, and the Committee on House Administration, among other entities, have the authority to issue guidance, proclamations, or regulations related to the internal operations of the chamber, including on voting and the voting apparatus. In the 110<sup>th</sup> Congress, to use a well-publicized example of an internal change, the clerk of the House altered the process for preparing an enrolled measure for presentation to the President.<sup>376</sup>

## Custom and Tradition

In addition to the rules and procedures of the House, operations can be changed, albeit informally, through custom and tradition. Examples of such traditions include allowing party leaders time to conduct a colloquy about the work of the upcoming week, the allowance for party leaders to speak without the time being counted against controlled time, and yielding 30 minutes to the minority to debate a special rule.

## Vote Duration and Well Cards

Perhaps the major issue related to voting is: When is it too late for a Member to vote? The Constitution, one Member stated, “enshrines the right of every Member of the House of Representatives to vote on the floor of the House on behalf of the people they were elected to serve.”<sup>377</sup> Nevertheless, what does comity require in accommodating an opportunity for a Member to vote?

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<sup>375</sup> For the Speaker’s policies for the 110<sup>th</sup> Congress, see Speaker Nancy Pelosi, “Announcements by the Speaker,” *Congressional Record*, daily edition, vol. 153 (January 5, 2007), pp. H59-H61. The Speaker’s policy related to voting by electronic device appears in **Appendix A**.

<sup>376</sup> For background, see Ryan Grim, “Who’s to Blame for Farm Bill Snafu?”, *Politico*, June 3, 2008, available at <http://www.politico.com/news/stories/0608/10782.html>; and Mike Soraghan, “Fiasco Envelops Farm Bill,” *The Hill*, May 22, 2008, available at <http://thehill.com/leading-the-news/fiasco-envelops-farm-bill-2008-05-22.html>.

<sup>377</sup> Rep. Mike Pence, in U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Organizational Meeting on Adoption of Committee Rules; Consideration of Interim Report; and Hearing on* (continued...)

With regard to potential changes to voting procedures, the House could consider enforcing a firm 15-minute voting time. If a 15-minute time for voting was enforced, and the electronic voting system was closed at the end of that time, Members would be unable to continue after 15 minutes to cast or change votes. There could be a single exception to the 15-minute limit in the event the electronic voting system malfunctions. A rules change would be needed to eliminate the “minimum” voting time of 15 minutes and replace it with a fixed voting time of 15 minutes.

Closing the electronic voting system at a time certain could eliminate the use of well cards, unless they were retained solely for Members who did not have their personalized electronic voting card.<sup>378</sup> The House could seek to require all votes to be by electronic device.

If well cards were eliminated, the House could consider an increase beyond 15 minutes in the time for voting in order to accommodate Members’ travel to the House chamber. For example, a strict time limit of 20 minutes could be added to House rules.

Alternately, the House could retain the minimum 15-minute time for voting by electronic device and continue the use of well cards, but place a cap on the time for all voting after 15 minutes. A new clock could be activated, for example, to enable Members to vote by electronic device or to use well cards for a period of five additional minutes.

Members could continue the current practice for using well cards, but, in the Speaker’s policy or through another communication to the Members, it could be strongly recommended or required that Members arrive on the floor to vote within 15 minutes. Majority Leader Steny Hoyer recently made such a statement.<sup>379</sup>

Well cards are traditionally kept on the round table in the well, near the official reporter. By keeping them in this location, the table is within the view of television cameras, but Members crowd in this area, possibly blocking the view of the presiding officer and other Speaker’s dais personnel. Is this location the appropriate place for the well cards? Would another location be better for Members and for a clearer view by the presiding officer?

## **House Rules/Speaker Announcements**

The sentence on reversing the outcome of a vote in House Rule XX, cl. 2(a) was new in the 110<sup>th</sup> Congress, although its intent stemmed from concerns that had existed for some time. Although points of order and parliamentary inquiries have been raised regarding the enforcement of the rule (see Appendices C and D, respectively), there have been questions about its use and its inherent ambiguity. The rule could be repealed, or it could be clarified as to the form of a collateral

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(...continued)

*Voting in the House of Representatives*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., September 27, 2007.

<sup>378</sup> Well cards are also referred to as ballot cards or voting cards. They are paper cards of green for “aye” or “yea” votes, red for “no” votes, and amber for “present” votes. A Member fills out a well card to cast or change a vote as an alternative to voting at a voting station. The Member hands the card to a tally clerk who checks it, and who then hands it to a second tally clerk for entry into the electronic voting system. U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Organizational Meeting on Adoption of Committee Rules; Consideration of Interim Report; and Hearing on Voting in the House of Representatives*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., September 27, 2007.

<sup>379</sup> Rep. Steny H. Hoyer, “Legislative Program,” *Congressional Record*, daily edition, vol. 154 (May 7, 2008), p. H3148.

determination of whether the rule had been violated. Alternatively, a House rule could be drafted to provide a potential point of order when a presiding officer has allowed voting to continue after voting time has expired, or a potential point of order when a Member has not been allowed to vote if the Member is in the well or, alternately, in the chamber.

House rules, or Democratic Caucus or Republican Conference rules, could authorize the Speaker's announcements related to voting procedures. Such a provision could formalize a requirement that the Speaker's announcement include information on voting by electronic device and a clarification of what is the well as opposed to what is the chamber and not the well, and could provide guidance to the Speaker on the content of an announcement.

The House could clarify the relationship between House rules and the Speaker's policies over what is official policy. A point of order can be made against a violation of House rules, but there is no effective way to remedy violations of policies enunciated by the Speaker. Should there be a way, and if so, what might it be?

## **Training/Education**

A meeting of the Select Committee to Investigate the Voting Irregularities of August 2, 2007 was held on the House floor to allow the clerk of the House to explain the electronic voting system. Members of the committee commented that most Members were not aware of all that went into the conduct of a vote.<sup>380</sup>

One response to this observation could be to require Members to learn about voting procedures in the chamber generally and the operation of the electronic voting system specifically. The clerk and the parliamentarian, who participated in the select committee's walk-through, could design a training session on the voting system for new Members, and a re-introduction session for returning Members. The training could also include information on the role of each official on the Speaker's dais.<sup>381</sup> Training for Members could be provided during early organization meetings, and a second session could be held within the first several months of a Congress, after Members have had the opportunity to participate in votes.

Similarly, the clerk and the parliamentarian could design training sessions for all officials who work on the dais. Considering their interrelated roles, each official could benefit in performance of his or her role from understanding the roles and responsibilities of others on the dais. Further, the clerk and the parliamentarian could consider whether each role or function on the dais should be performed with limited flexibility to ensure that there is uniformity of action regardless of whether the person performing a role is a senior or junior staff member. The clerk, in rotating staff serving on the dais, could also attempt to ensure a mixture of junior and senior staff so that the dais is never occupied by exclusively junior or exclusively senior staff.

Training manuals could be prepared for both Members and dais staff. The manuals could include information on the responsibilities of each official on the dais, and information on voting

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<sup>380</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Member Briefing on Voting in the House of Representatives—The Rostrum and the Electronic Voting System: A "Walkthrough" by the Clerk of the House Lorraine C. Miller*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 18, 2007.

<sup>381</sup> In an interview, Select Committee Chairman Delahunt called for such training. See Paul Kane, "Probe of Disputed House Vote Turns into Long and Costly Saga," *The Washington Post*, March 18, 2008, p. A17.

procedures and the electronic voting system. Manuals could be distributed to Members along with other materials provided at the early organization meetings or at another time. Dais personnel could presumably receive manuals prior to the convening of a new Congress.

The House could require training for all Members who are asked to preside over the House. Concomitantly, consideration could be given to a clarification of the role of the presiding officer, including how Members are selected by the majority leadership to preside, how a Member presiding carries out the Speaker's role regarding decorum and comportment, and whether the presiding officer's role is "an impartial one."<sup>382</sup> The role of the parliamentarian, moreover, could be made more explicit, for example, whether the parliamentarian should intervene in advising the presiding officer on a parliamentary development on the floor or should await the presiding officer's request for advise.

The parliamentarian currently provides Members who preside with a brief overview document of the role of the presiding officer.<sup>383</sup> The document does not specifically address the language to be used, and it does not address issues that might arise. (Presiding officers are provided with cue cards containing the language to use in response to specific developments on the floor.) If asked, the parliamentarian will provide in-person training to individual Members prior to their time in the chair. The training, among other things, could cover what the presiding officer should look and listen for, what the appropriate language to use is, and generally, what the presiding officer's role is in maintaining decorum in the chamber and recognizing Members to speak.

## **Dais Personnel**

Because of the location of the parliamentarian and other officials on or near the rostrum, Members and floor staff often approach the dais to speak with them. It could be decided that the rostrum is to be limited only to Members or selected leadership floor staff. The number, and possibly names, of such staff could be determined by the Speaker and minority leader. Alternately, if a Member or floor staff aide wishes to speak to the parliamentarian, that conversation could be required to occur off the rostrum itself.

As already mentioned, training and an operations manual could be provided for dais personnel.

## **Official Absences**

The House could consider reinstating the use of "pairs." For much of its history, the House recognized three types of pairs to enable absent Members to have their position noted prior to a vote, or to indicate that their absence would not affect the outcome of a vote. A general pair enabled two Members to be listed without indication of how they would have voted; a specific pair indicated how two absent Members would have voted, with one supporting and one opposing a question, so that had they been present, their votes would have balanced out; and a live pair, which matched two Members, one absent and one voting present. The rules for the 106<sup>th</sup>

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<sup>382</sup> Brown and Johnson, *House Practice*, p. 637.

<sup>383</sup> It is unclear if this brief document is provided to all Members of the majority party or only those who are selected to preside. If the latter, it is unclear when it is provided, and whether a Member routinely receives it or needs to ask for training or the document.

Congress eliminated all but live pairs.<sup>384</sup> A live pair was used in 2003 on the Medicare prescription drug measure.<sup>385</sup>

The House could institute an official policy regarding statements on missed votes. For example, there could be a standard time set aside on the floor for Members to deliver a statement, or there could be a section in the *Congressional Record*, such as at the end of legislative business, where all such statements would appear.

On March 6, 2008, a Member asked unanimous consent to make a traditional missed-vote statement. Another Member reserved the right to object, and spoke not about the request but about the legislative priorities of the House. The first Member withdrew her unanimous consent request.<sup>386</sup> The unanimous consent request was successfully renewed later that day.<sup>387</sup> The House might consider allowing such statements to be made by a means other than unanimous consent.

## Tally Sheets

The absence of a “tally sheet” is integral to the investigation of the vote on August 2, 2007.<sup>388</sup> The House could require partial preparation of a tally sheet with the appropriate vote number as soon as the bells indicate the start of a vote. A vote could also be deemed final and official only after a tally sheet was completed with the official tally by a clerk and provided to the presiding officer.<sup>389</sup> To distinguish a final tally sheet, a different color could be used for it.

If one or more tally sheets are used for a vote, they could all be marked to show their order of preparation and be retained as part of the official record of the vote.<sup>390</sup>

Alternately, as the House increasingly uses automated systems, it might be asked whether tally sheets could be abandoned and the display board or a desk monitor be used by the presiding officer.

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<sup>384</sup> Sec. 1 of H.Res. 5, agreed to in the House January 6, 1999. See Rule XX, cl. 3 (110<sup>th</sup> Congress).

<sup>385</sup> “Medicare Prescription Drug and Modernization Act of 2003,” *Congressional Record*, vol. 149, part 12 (June 26, 2003), p. 16594.

<sup>386</sup> Reps. Sheila Jackson-Lee and Tom Price, *Congressional Record*, daily edition, vol. 154 (March 6, 2008), pp. H1398-H1399.

<sup>387</sup> Rep. Sheila Jackson-Lee, *Congressional Record*, daily edition, vol. 154 (March 6, 2008), p. H1399.

<sup>388</sup> Referred to by the clerks as a page or a slip from the “yea-nay pad.” A tally clerk prepares a tally sheet once the clerk believes that all Members have voted and in anticipation of the presiding officer’s readiness to announce the result of a vote. A presiding officer uses the tally sheet rather than the display board to announce a result since a tally sheet functions as the clerk’s certification of the final vote. U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Voting in the House of Representatives—Rules, Procedures, Precedents, Customs and Practice*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2007.

<sup>389</sup> The clauses of Rule XX (110<sup>th</sup> Congress) refer repeatedly to the conduct of a vote by the clerk at the direction of the presiding officer.

<sup>390</sup> If the presiding officer allows one or more late-arriving Members to vote, the tally clerk might prepare more than one tally sheet in the course of attempting to close a vote. U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Voting in the House of Representatives—Rules, Procedures, Precedents, Customs and Practice*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2007.

## **Tally (Summary) Boards**

One of the issues raised by the select committee was the appearance of the word “final” on the summary boards in the chamber, and whether the presiding officer used a summary board rather than a tally sheet to determine the vote tally. The House may want to consider when or whether the word “final” should be displayed since it refers to a step in the clerk’s termination of a vote rather than the presiding officer’s announcement of a result.<sup>391</sup>

It also might be worth considering having the presiding officer exercise greater control over both tally sheets and the summary boards. Control could also extend to activating and deactivating the bell and light system.

## **Voting Stations**

The number of voting stations in the chamber has remained constant since their installation. The number and locations of the stations was determined without actual experience and long ago, at a time when Members were called to the floor throughout the day to vote or to respond to a quorum call. With over 30 years of experience, is the number and location still appropriate? A survey could be conducted regarding the usage of each machine to determine if there should be more or fewer stations, and whether the locations of the voting stations are still appropriate.

## **Administrative/Legislative Organization**

Both the House Administration Committee and the Standards of Official Conduct Committee have jurisdiction over aspects of voting in the House. This relationship could be clarified so that all Members understand which panel would exercise authority over voting in general, and the particular problems that may arise from it. Relatedly, the House Rules Committee has responsibility over the rules of the House and potential points of order which can be raised against those rules, including those related to voting. The committee’s authority could be clarified. Further, it could be determined if the new Office of Congressional Ethics (OCE) would have any role in looking into concerns about possible voting irregularities.

The House could require reports, perhaps biennially, from the House Administration Committee or clerk, or both, on

- the operation of electronic voting system, including but not limited to preparation for, conduct of, and conclusion of daily use of the electronic voting system; use of the voting system by personnel on the Speaker’s dais; support for the system and dais personnel during the day behind the scenes; and security, including privileges accorded different staff members;
- voting in general, specifically information on official absences, points of order raised with respect to voting irregularities, and malfunction of the electronic voting system; and

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<sup>391</sup> U.S. Congress, House Select Committee to Investigate the Voting Irregularities of August 2, 2007, *Organizational Meeting on Adoption of Committee Rules; Consideration of Interim Report; and Hearing on Voting in the House of Representatives*, hearing (unpublished), 110<sup>th</sup> Cong., 1<sup>st</sup> sess., September 27, 2007.

- Members making points of personal privilege related to voting irregularities.

Each report could be prepared at the end of a Congress, printed as an official document and provided to all Members and dais personnel. The documents could also be provided at training sessions for the new Members.

## **Make No Changes**

One of the issues the House might consider is whether there is a problem associated with voting that requires action. For example, it is possible that the events of August 2, 2007, are an isolated incident. As such, the House could decide whether there is something really broken that needs to be fixed. It is possible that changes to address one situation might produce unintended consequences at some future date.

## **Appendix A. Constitutional Provisions, House Rules, and Speaker's Policies Related to Voting**

### **Constitution**

#### **Article 1, Section 5, clause 1 (excerpt)**

...and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent members, in such Manner, and under such Penalties as each House may provide.

#### **Article 1, Section 5, clause 3 (excerpt)**

...and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

#### **Article 1, Section 7, clause 2 (excerpt)**

...If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively.

#### **Article 1, Section 7, clause 3**

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

### **Rule I. The Speaker**

#### **Clause 1 (excerpt)**

##### ***Approval of the Journal***

...Having examined and approved the Journal of the last day's proceedings, the Speaker shall announce to the House his approval thereof. The Speaker's approval of the Journal shall be deemed agreed to unless a Member, Delegate, or Resident Commissioner demands a vote thereon. If such a vote is decided in the affirmative, it shall not be subject to a motion to reconsider. If such a vote is decided in the negative, then one motion that the Journal be read shall be privileged, shall be decided without debate, and shall not be subject to a motion to reconsider.

## **Clause 5 (excerpt)**

### ***Questions of order***

The Speaker shall decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner. ...

## **Clause 6**

### ***Form of a question***

The Speaker shall rise to put a question but may state it sitting. The Speaker shall put a question in this form: "Those in favor (of the question), say 'Aye.'"; and after the affirmative voice is expressed, "Those opposed, say 'No.'". After a vote by voice under this clause, the Speaker may use such voting procedures as may be invoked under rule XX.

## **Clause 7**

### ***Discretion to vote***

The Speaker is not required to vote in ordinary legislative proceedings, except when his vote would be decisive or when the House is engaged in voting by ballot.

## **Rule II. Other Officers and Officials**

### **Clause 1 (excerpt)**

There shall be elected at the commencement of each Congress, to continue in office until their successors are chosen and qualified, a Clerk, a Sergeant-at-Arms, a Chief Administrative Officer, and a Chaplain. ...

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

### **Clause 1**

#### ***Voting***

Every Member shall be present within the Hall of the House during its sittings, unless excused or necessarily prevented, and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.

### **Clause 2**

2. (a) A Member may not authorize any other person to cast his vote or record his presence in the House or the Committee of the Whole House on the state of the Union.

(b) No other person may cast a Member's vote or record a Member's presence in the House or the Committee of the Whole House on the state of the Union.

### **Clause 3(a) (excerpt)**

#### ***Delegates and the Resident Commissioner***

In a Committee of the Whole House on the state of the Union, each Delegate and the Resident Commissioner shall possess the same powers and privileges as Members of the House. ...

## **Rule X. Organization of Committees**

### **Clause 5(a)(1) (excerpt)**

#### ***Election and membership of standing committees***

The standing committees specified in clause 1 shall be elected by the House within seven days after the commencement of each Congress....

### **Clause 5(c)(1) (excerpt)**

One of the members of each standing committee shall be elected by the House....

## **Rule XIII. Calendars and Committee Reports**

### **Clause 6(a)(1)**

#### ***Privileged reports by the Committee on Rules***

A report by the Committee on Rules on a rule, joint rule, or the order of business may not be called up for consideration on the same day it is presented to the House except—

(1) when so determined by a vote of two-thirds of the Members voting, a quorum being present;

### **Clause 6(c)**

(c) The Committee on Rules may not report—

(1) a rule or order proposing that business under clause 6 of rule XV be set aside by a vote of less than two-thirds of the Members voting, a quorum being present; or

(2) a rule or order that would prevent the motion to recommit a bill or joint resolution from being made as provided in clause 2(b) of rule XIX, including a motion to recommit with instructions to report back an amendment otherwise in order, if offered by the Minority Leader or a designee, except with respect to a Senate bill or resolution for which the text of a House-passed measure has been substituted.

## **Rule XIV. Order and Priority of Business**

### **Clause 6**

All questions relating to the priority of business shall be decided by a majority without debate.

## **Rule XV. Business in Order on Special Days**

### **Clause 1(a) (excerpt)**

#### ***Suspensions***

A rule may not be suspended except by a vote of two-thirds of the Members voting, a quorum being present. ...

### **Clause 5(b)(1) (excerpt)**

#### ***Private Calendar, first and third Tuesdays***

On the third Tuesday of a month...the Speaker may direct the clerk to call the bills and resolutions on the Private Calendar. ...Two-thirds of the Members voting, a quorum being present, may adopt a motion that the House dispense with the call on this day.

### **Clause 6(a) (excerpt)**

#### ***Calendar Call of Committees, Wednesdays***

On Wednesday of each week, business shall not be in order before completion of the call of the committees (except as provided by clause 4 of rule XIV) unless two-thirds of the Members voting, a quorum being present, agree to a motion that the House dispense with the call. ...

## **Rule XVI. Motions and Amendments**

### **Clause 8(c)**

A third reading precedes passage when the Speaker states the question: “Shall the bill [or joint resolution] be engrossed [when applicable] and read a third time?” If that question is decided in the affirmative, then the bill or joint resolution shall be read the final time by title and then the question shall be put on its passage.

## **Rule XVIII. The Committee of the Whole House on the state of the Union**

### **Clause 6**

#### ***Quorum and voting***

(a) A quorum of a Committee of the Whole House on the state of the Union is 100 Members. The first time that a Committee of the Whole finds itself without a quorum during a day, the Chairman shall invoke the procedure for a quorum call set forth in clause 2 of rule XX, unless he elects to invoke an alternate procedure set forth in clause 3 or clause 4(a) of rule XX. If a quorum appears, the Committee of the Whole shall continue its business. If a quorum does not appear, the Committee of the Whole shall rise, and the Chairman shall report the names of absentees to the House.

(b)(1) The Chairman may refuse to entertain a point of order that a quorum is not present during general debate.

(2) After a quorum has once been established on a day, the Chairman may entertain a point of order that a quorum is not present only when the Committee of the Whole House on the state of the Union is operating under the five-minute rule and the Chairman has put the pending proposition to a vote.

(3) Upon sustaining a point of order that a quorum is not present, the Chairman may announce that, following a regular quorum call under paragraph (a), the minimum time for electronic voting on the pending question shall be five minutes.

(c) When ordering a quorum call in the Committee of the Whole House on the state of the Union, the Chairman may announce an intention to declare that a quorum is constituted at any time during the quorum call when he determines that a quorum has appeared. If the Chairman interrupts the quorum call by declaring that a quorum is constituted, proceedings under the quorum call shall be considered as vacated, and the Committee of the Whole shall continue its sitting and resume its business.

(d) A quorum is not required in the Committee of the Whole House on the state of the Union for adoption of a motion that the Committee rise.

(e) In the Committee of the Whole House on the state of the Union, the Chairman shall order a recorded vote on a request supported by at least 25 Members.

(f) In the Committee of the Whole House on the state of the Union, the Chairman may reduce to five minutes the minimum time for electronic voting without any intervening business or debate on any or all pending amendments after a record vote has been taken on the first pending amendment.

(g) The Chairman may postpone a request for a recorded vote on any amendment. The Chairman may resume proceedings on a postponed request at any time. The Chairman may reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes.

(h) Whenever a recorded vote on any question has been decided by a margin within which the votes cast by the Delegates and the Resident Commissioner have been decisive, the

Committee of the Whole shall rise and the Speaker shall put such question de novo without intervening motion. Upon the announcement of the vote on that question, the Committee of the Whole shall resume its sitting without intervening motion.

## **Clause 12**

### ***Applicability of Rules of the House***

The Rules of the House are the rules of the Committee of the Whole House on the state of the Union so far as applicable.

## **Rule XIX. Motions Following the Amendment Stage**

### **Clause 2(a) (excerpt)**

#### ***Recommit***

After the previous question has been ordered on passage or adoption of a measure, or pending a motion to that end, it shall be in order to move that the House recommit (or commit, as the case may be) the measure, with or without instructions, to a standing or select committee. ...

## **Rule XX. Voting and Quorum Calls**

### **Clause 1**

(a) The House shall divide after the Speaker has put a question to a vote by voice as provided in clause 6 of rule I if the Speaker is in doubt or division is demanded. Those in favor of the question shall first rise from their seats to be counted, and then those opposed.

(b) If a Member, Delegate, or Resident Commissioner requests a recorded vote, and that request is supported by at least one-fifth of a quorum, the vote shall be taken by electronic device unless the Speaker invokes another procedure for recording votes provided in this rule. A recorded vote taken in the House under this paragraph shall be considered a vote by the yeas and nays.

(c) In case of a tie vote, a question shall be lost.

### **Clause 2**

(a) Unless the Speaker directs otherwise, the Clerk shall conduct a record vote or quorum call by electronic device. In such a case the Clerk shall enter on the Journal and publish in the Congressional Record, in alphabetical order in each category, the names of Members recorded as voting in the affirmative, the names of Members recorded as voting in the negative, and the names of Members answering present as if they had been called in the manner provided in clause 3. A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote. Except as otherwise permitted under clause 8 or 9 of this rule or under clause 6 of rule XVIII, the minimum time for a record vote or quorum call by electronic device shall be 15 minutes.

(b) When the electronic voting system is inoperable or is not used, the Speaker or Chairman may direct the Clerk to conduct a record vote or quorum call as provided in clause 3 or 4.

### **Clause 3**

The Speaker may direct the Clerk to conduct a record vote or quorum call by call of the roll. In such a case the Clerk shall call the names of Members, alphabetically by surname. When two or more have the same surname, the name of the State (and, if necessary to distinguish among Members from the same State, the given names of the Members) shall be added. After the roll has been called once, the Clerk shall call the names of those not recorded, alphabetically by surname. Members appearing after the second call, but before the result is announced, may vote or announce a pair.

### **Clause 4**

(a) The Speaker may direct a record vote or quorum call to be conducted by tellers. In such a case the tellers named by the Speaker shall record the names of the Members voting on each side of the question or record their presence, as the case may be, which the Clerk shall enter on the Journal and publish in the Congressional Record. Absentees shall be noted, but the doors may not be closed except when ordered by the Speaker. The minimum time for a record vote or quorum call by tellers shall be 15 minutes.

(b) On the demand of a Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk, entered on the Journal, reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.

### **Clause 5**

(a) In the absence of a quorum, a majority comprising at least 15 Members, which may include the Speaker, may compel the attendance of absent Members.

(b) Subject to clause 7(b) a majority described in paragraph (a) may order the Sergeant-at-Arms to send officers appointed by him to arrest those Members for whom no sufficient excuse is made and shall secure and retain their attendance. The House shall determine on what condition they shall be discharged. Unless the House otherwise directs, the Members who voluntarily appear shall be admitted immediately to the Hall of the House and shall report their names to the Clerk to be entered on the Journal as present.

(c)(1) If the House should be without a quorum due to catastrophic circumstances, then—

(A) until there appear in the House a sufficient number of Representatives to constitute a quorum among the whole number of the House, a quorum in the House shall be determined based upon the provisional number of the House; and

(B) the provisional number of the House, as of the close of the call of the House described in subparagraph (3)(C), shall be the number of Representatives responding to that call of the House.

(2) If a Representative counted in determining the provisional number of the House thereafter ceases to be a Representative, or if a Representative not counted in determining the provisional number of the House thereafter appears in the House, the provisional number of the House shall be adjusted accordingly.

(3) For the purposes of subparagraph (1), the House shall be considered to be without a quorum due to catastrophic circumstances if, after a motion under clause 5(a) of rule XX has been disposed of and without intervening adjournment, each of the following occurs in the stated sequence:

(A) A call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 72 hours (excluding time the House is in recess) without producing a quorum.

(B) The Speaker—

(i) with the Majority Leader and the Minority Leader, receives from the Sergeant-at-Arms (or his designee) a catastrophic quorum failure report, as described in subparagraph (4);

(ii) consults with the Majority Leader and the Minority Leader on the content of that report; and

(iii) announces the content of that report to the House.

(C) A further call of the House (or a series of calls of the House) is closed after aggregating a period in excess of 24 hours (excluding time the House is in recess) without producing a quorum.

(4)(A) For purposes of subparagraph (3), a catastrophic quorum failure report is a report advising that the inability of the House to establish a quorum is attributable to catastrophic circumstances involving natural disaster, attack, contagion, or similar calamity rendering Representatives incapable of attending the proceedings of the House.

(B) Such report shall specify the following:

(i) The number of vacancies in the House and the names of former Representatives whose seats are vacant.

(ii) The names of Representatives considered incapacitated.

(iii) The names of Representatives not incapacitated but otherwise incapable of attending the proceedings of the House.

(iv) The names of Representatives unaccounted for.

(C) Such report shall be prepared on the basis of the most authoritative information available after consultation with the Attending Physician to the Congress and the Clerk (or their respective designees) and pertinent public health and law enforcement officials.

(D) Such report shall be updated every legislative day for the duration of any proceedings under or in reliance on this paragraph. The Speaker shall make such updates available to the House.

(5) An announcement by the Speaker under subparagraph (3)(B)(iii) shall not be subject to appeal.

(6) Subparagraph (1) does not apply to a proposal to create a vacancy in the representation from any State in respect of a Representative not incapacitated but otherwise incapable of attending the proceedings of the House.

(7) For purposes of this paragraph:

(A) The term “provisional number of the House” means the number of Representatives upon which a quorum will be computed in the House until Representatives sufficient in number to constitute a quorum among the whole number of the House appear in the House.

(B) The term “whole number of the House” means the number of Representatives chosen, sworn, and living whose membership in the House has not been terminated by resignation or by the action of the House.

(d) Upon the death, resignation, expulsion, disqualification, removal, or swearing of a Member, the whole number of the House shall be adjusted accordingly. The Speaker shall announce the adjustment to the House. Such an announcement shall not be subject to appeal. In the case of a death, the Speaker may lay before the House such documentation from Federal, State, or local officials as he deems pertinent.

## **Clause 6**

(a) When a quorum fails to vote on a question, a quorum is not present, and objection is made for that cause (unless the House shall adjourn)—

(1) there shall be a call of the House;

(2) the Sergeant-at-Arms shall proceed forthwith to bring in absent Members; and

(3) the yeas and nays on the pending question shall at the same time be considered as ordered.

(b) The Clerk shall record Members by the yeas and nays on the pending question, using such procedure as the Speaker may invoke under clause 2, 3, or 4. Each Member arrested under this clause shall be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote; and his vote shall be recorded. If those voting on the question and those who are present and decline to vote together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the requisite majority of those voting shall have determined. Thereupon further proceedings under the call shall be considered as dispensed with.

(c) At any time after Members have had the requisite opportunity to respond by the yeas and nays, but before a result has been announced, a motion that the House adjourn shall be in order if seconded by a majority of those present, to be ascertained by actual count by the Speaker. If the House adjourns on such a motion, all proceedings under this clause shall be considered as vacated.

## **Clause 7**

(a) The Speaker may not entertain a point of order that a quorum is not present unless a question has been put to a vote.

(b) Subject to paragraph (c) the Speaker may recognize a Member, Delegate, or Resident Commissioner to move a call of the House at any time. When a quorum is established pursuant to a call of the House, further proceedings under the call shall be considered as

dispensed with unless the Speaker recognizes for a motion to compel attendance of Members under clause 5(b).

(c) A call of the House shall not be in order after the previous question is ordered unless the Speaker determines by actual count that a quorum is not present.

## **Clause 8**

### ***Postponement of proceedings***

(a)(1) When a recorded vote is ordered, or the yeas and nays are ordered, or a vote is objected to under clause 6—

(A) on any of the questions specified in subparagraph (2), the Speaker may postpone further proceedings to a designated place in the legislative schedule within two additional legislative days; and

(B) on the question of agreeing to the Speaker's approval of the Journal, the Speaker may postpone further proceedings to a designated place in the legislative schedule on that legislative day.

(2) The questions described in subparagraph (1) are as follows:

(A) The question of passing a bill or joint resolution.

(B) The question of adopting a resolution or concurrent resolution.

(C) The question of agreeing to a motion to instruct managers on the part of the House (except that proceedings may not resume on such a motion under clause 7(c) of rule XXII if the managers have filed a report in the House).

(D) The question of agreeing to a conference report.

(E) The question of ordering the previous question on a question described in subdivision (A), (B), (C), or (D).

(F) The question of agreeing to a motion to suspend the rules.

(G) The question of agreeing to a motion to reconsider or the question of agreeing to a motion to lay on the table a motion to reconsider.

(H) The question of agreeing to an amendment reported from the Committee of the Whole.

(b) At the time designated by the Speaker for further proceedings on questions postponed under paragraph (a), the Speaker shall resume proceedings on each postponed question.

(c) The Speaker may reduce to five minutes the minimum time for electronic voting on a question postponed under this clause, or on a question incidental thereto, that follows another electronic vote without intervening business, so long as the minimum time for electronic voting on the first in any series of questions is 15 minutes.

(d) If the House adjourns on a legislative day designated for further proceedings on questions postponed under this clause without disposing of such questions, then on the next legislative day the unfinished business is the disposition of such questions.

## **Clause 9**

### ***Five-minute votes***

The Speaker may reduce to five minutes the minimum time for electronic voting on any question arising without intervening business after an electronic vote on another question if notice of possible five-minute voting for a given series of votes was issued before the preceding electronic vote.

## **Clause 10**

### ***Automatic yeas and nays***

The yeas and nays shall be considered as ordered when the Speaker puts the question on passage of a bill or joint resolution, or on adoption of a conference report, making general appropriations, or increasing Federal income tax rates (within the meaning of clause 5 of rule XXI), or on final adoption of a concurrent resolution on the budget or conference report thereon.

## **Clause 11**

### ***Ballot votes***

In a case of ballot for election, a majority of the votes shall be necessary to an election. When there is not such a majority on the first ballot, the process shall be repeated until a majority is obtained. In all balloting blanks shall be rejected, may not be counted in the enumeration of votes, and may not be reported by the tellers.

## **Rule XXI. Restrictions on Certain Bills**

### **Clause 5(b) (excerpt)**

#### ***Passage of tax rate increases***

A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present. ...<sup>392</sup>

## **Rule XXII. House and Senate Relations**

### **Clause 12(a) (excerpt)**

(1) Subject to subparagraph (2), a meeting of each conference committee shall be open to the public.

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<sup>392</sup> Rulemaking statutes sometimes also require record votes. See Brown and Johnson, *House Practice*, p. 921.

(2) In open session of the House, a motion that managers on the part of the House be permitted to close to the public a meeting or meetings of their conference committee shall be privileged, shall be decided without debate, and shall be decided by the yeas and nays.

## **Rule XXIII. Code of Official Conduct**

### **Clause 10**

A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

## **Speaker's Policies**

Following a tradition beginning in the 1980s, Speaker Nancy Pelosi announced policies on certain aspects of the legislative process at the beginning of the new Congress. One policy dealt with voting by electronic device. The Speaker's announced policies for the 110<sup>th</sup> Congress appeared in the *Congressional Record* (daily edition) on January 5, 2007, on pages H59-H61.

### **6. Conduct of Votes by Electronic Device**

The Speaker's policy announced on January 4, 1995, with respect to the conduct of electronic votes will continue in the 110<sup>th</sup> Congress with modifications as follows.

As Members are aware, clause 2(a) of rule XX provides that Members shall have not less than 15 minutes in which to answer an ordinary record vote or quorum call. The rule obviously establishes 15 minutes as a minimum. Still, with the cooperation of the Members, a vote can easily be completed in that time. The events of October 30, 1991, stand out as proof of this point. On that occasion, the House was considering a bill in the Committee of the Whole under a special rule that placed an overall time limit on the amendment process, including the time consumed by record votes. The Chair announced, and then strictly enforced, a policy of closing electronic votes as soon as possible after the guaranteed period of 15 minutes. Members appreciated and cooperated with the Chair's enforcement of the policy on that occasion.

The Chair desires that the example of October 30, 1991, be made the regular practice of the House. To that end, the Chair enlists the assistance of all Members in avoiding the unnecessary loss of time in conducting the business of the House. The Chair encourages all Members to depart for the Chamber promptly upon the appropriate bell and light signal. As in recent Congresses, the cloakrooms should not forward to the Chair requests to hold a vote by electronic device, but should simply apprise inquiring Members of the time remaining on the voting clock. Members should not rely on signals relayed from outside the Chamber to assume that votes will be held open until they arrive in the Chamber. Members will be given a reasonable amount of time in which to accurately record their votes. No occupant of the Chair would prevent a Member who is in the Well before the announcement of the result from casting his or her vote.

## Appendix B. House Voting Procedures: Forms and Requirements

name redacted

Government and Finance Division<sup>393</sup>

Voting is among the most public acts of Representatives. Generally, Members try not to miss a vote, because it is an important demonstration to their constituents that they are always on the job. Procedural considerations suffuse voting, and thus it is important to understand the methods of voting in both the House and in the Committee of the Whole, where much of the chamber's business is conducted.

In the House there are four ways for lawmakers to obtain a vote in the House. They are voice votes, division votes, yea and nay votes, and recorded votes.

**Voice Vote.** This means that lawmakers call out “yea” or “nay” when a question is first put by the Speaker or Speaker pro tempore. As Rule I, clause 6, states, the Speaker will first say, “Those in favor (of the question), say ‘Aye’.” Then the Speaker will ask: “Those opposed, say ‘No’.” A voice vote can be quick and easy, but it is sometimes difficult for the Speaker to determine—based on the volume of each response—whether more lawmakers shouted “aye” compared to those who shouted “no.”

**Division Vote.** Rule XX, clause 1(a), states that if the Speaker is uncertain about the outcome of a voice vote, or if a Member demands a division, the House shall divide. “Those in favor of the question shall first rise from their seats to be counted,” and then those who are opposed to the proposition shall stand to be counted. This procedure is reasonably accurate and takes only a few minutes, but it does not provide a public record of how each Member voted. Only vote totals (95 for, 65 against, for instance) are announced in this seldom-employed method of voting.

**Yea and Nay Vote.** The Constitution (Article I, Section 5) declares that “the Yeas and Nays of the Members...on any question” shall be obtained “at the Desire of one fifth of those present.” Under this provision, it does not matter if a quorum of the House (218 Members) is not present to conduct business—which the Constitution requires—because any Member can say, “Mr. Speaker, on that vote, I demand the yeas and nays.” If the demand is supported by one-fifth of those present, the Speaker will say “the yeas and nays” are ordered.

There is also an “automatic” yea and nay (or rollcall) vote provided in House Rule XX, clause 6. For example, if it is evident to a lawmaker that a quorum is not present in the chamber, he or she may object to a vote on that ground and, “automatically,” a vote will be ordered by the chair. To request an automatic vote, a Member says, “I object to the vote on the ground that a quorum is not present, and I make a point of order that a quorum is not present.” The actual vote will then simultaneously determine both issues: the presence of a quorum and the vote on the pending question. Clause 10 of Rule XX also states that the “yeas and nays shall be considered as ordered” on final passage of a limited number of measures or matters, such as concurrent budget

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<sup>393</sup> This report is available as CRS Report 98-228, *House Voting Procedures: Forms and Requirements*. As it appears here, it was updated May 19, 2008.

resolutions. The Constitution requires that votes to override presidential vetoes shall be determined by the yeas and nays.

**Recorded Vote.** Under Rule XX, clause 1(b), if any Member, Delegate, or Resident Commissioner “requests a recorded vote, and that request is supported by at least one-fifth of a quorum, such vote shall be taken by electronic device.” (Yea and nay and recorded votes are all taken by electronic device—employed since 1973—unless the computerized voting system malfunctions; then standby procedures outlined in Rule XX, clause 2(b), are used to conduct the votes.) To obtain a recorded vote, a Member states, “Mr. Speaker, on that I demand a recorded vote.” If at least one-fifth of a quorum of 218—or 44 members—stand and support the request, then the recorded vote will be taken by electronic device. Recall that the distinction between recorded votes and the yeas and nays goes to the number of Members required to support each request: one-fifth *of those present* for the yeas and nays and one-fifth *of a quorum* (44 of 218) for recorded votes.

**In the Committee of the Whole.** Three methods of voting are available in the Committee of the Whole: voice, division, and recorded. Yea and nay votes are not permitted in the committee, either the constitutional or “automatic” forms. In short, there is only one way to obtain a recorded vote in the committee—where a quorum is 100 Members—and it is outlined in Rule XVIII, clause 6(e). This rule of the House states: the “Chairman shall order a recorded vote on a request supported by at least 25 Members.” Thus, any Member may say, “I request a recorded vote,” and, if 25 lawmakers (the Member who made the request can be part of the tally, too) rise to be counted by the chair, the recorded vote will occur by electronic device. Alternatively, a lawmaker who plans to request a recorded vote even though few Members are present in the chamber will usually say, “Mr. Chairman, I request a recorded vote and, pending that, I make a point of order that a quorum is not present.” Once the chair ascertains that a quorum is not present, there is an immediate quorum call and the Member who requested the recorded vote can ask 24 other colleagues to support his request as they come onto the floor.

**Length of Time for Voting.** Under Rule XX, clause 2(a), the minimum time for a record vote by electronic device is 15 minutes in either the House or the Committee of the Whole. The 15-minute period is the *minimum*, rather than the maximum, time allowed for the conduct of a recorded vote. The chair has the discretion to hold the vote open longer. A new 110<sup>th</sup> rule states that votes are not to be held open for the sole purpose of reversing the outcome of a vote. However, this rule seems difficult to interpret in practice. There are also occasions in the House (see Rule XX, clause 9) when the Speaker has the discretion to reduce the voting time to not less than five minutes. The Speaker also has the authority under Rule XX, clause 8, to postpone and cluster certain votes. Votes in the Committee of the Whole may also be reduced to five minutes, as noted in Rule XVIII, clause 6(f).

## Appendix C. Points of Order Relating to Voting in the 110<sup>th</sup> Congress

To compile the list of points of order in the 110<sup>th</sup> Congress relating to voting in the House, a search was run using the Legislative Information System for points of order in the *Congressional Record*. The result was 443 documents that contained “point of order” between January 4, 2007, and May 23, 2008. Each individual document was examined and was again searched using Firefox’s search function. Points of order dealing with voting, the date they occurred, the Member who raised the point of order, the *Congressional Record* (CR) page number, and the colloquy with the presiding officer are displayed in the following table.

Date	Member	CR Page	Exchange
June 27, 2007	Westmoreland (GA)	H7258	Mr. WESTMORELAND. Mr. Chairman, I have a point of order. The Acting CHAIRMAN. The gentleman will state his point of order. Mr. WESTMORELAND. Mr. Chairman, rule XX, clause 2(a) says that no vote will be held open to change the outcome. The Acting CHAIRMAN. The gentleman states a fair question. The vote was kept open to do the numerical calculation to see if the votes of the Delegates would change the outcome.
September 18, 2007	Manzullo (IL)	H10446	Mr. MANZULLO. Mr. Speaker, point of order. The SPEAKER pro tempore. The gentleman will state his point of order. Mr. MANZULLO. Who was controlling the clock that puts up the word “final”? The SPEAKER pro tempore. The gentleman is not stating a point of order. Mr. MANZULLO. The computer is doing it? The SPEAKER pro tempore. The clock is for display only. As previously stated, the Chair was trying to close the vote, but Members were raising their hands indicating they had not voted, and the Chair extended them the courtesy of allowing them to vote.
May 7, 2008	Kingston (GA)	H3149	The SPEAKER pro tempore. The unfinished business is the vote on ordering the previous question on House Resolution 1174, on which the yeas and nays were ordered. The Clerk read the title of the resolution. Mr. KINGSTON. Madam Speaker, point of order. On that, I object. The SPEAKER pro tempore. The gentleman will state his point of order. Mr. KINGSTON. On resuming with 5-minute voting, I object. The SPEAKER pro tempore. That order was entered some time ago. No objection was heard. Mr. KINGSTON. Reserving my right to object. The SPEAKER pro tempore. The gentleman’s objection is not timely.

Date	Member	CR Page	Exchange
May 8, 2008	Westmoreland (GA)	H3193	<p>Mr. WESTMORELAND. Mr. Chairman, I make a point of order under clause 2(a) of rule XX that the vote just ended was held open for the sole purpose of reversing the outcome.</p> <p>The Acting CHAIRMAN. The Chair has considered whether the new sentence in clause 2(a) of rule XX should be enforceable in real time. The black letter of the rule is not dispositive. It uses the mandatory "shall." It might just as well say "should," inasmuch as it is setting a standard of behavior for presiding officers. For this reason the Chair thinks it more sensible to enforce the rule on collateral bases, as by a question of the privileges of the House. A set of "whereas" clauses in the preamble of a resolution could allege the facts and circumstances tending to indicate a violation more coherently than they could be articulated in argument on a point of order or in debate on an appeal. The resolving clause of a resolution could propose a fitting remedy, rather than requiring the instant selection of a remedy in the face of competing demands for vitiation of the putative result, reversal of the putative result, or admonishment of the presiding officer. The Chair finds that the new sentence in clause 2(a) of rule XX does not establish a point of order having an immediate procedural remedy. Rather than contemplating a ruling from the Chair in real time, the language should be understood to establish a standard of behavior for presiding officers that might be enforced on collateral bases.</p>

## Appendix D. Parliamentary Inquiries Relating to Voting in the 110<sup>th</sup> Congress

To compile the list of parliamentary inquiries in the 110<sup>th</sup> Congress relating to voting in the House, a search was run using the Legislative Information System for parliamentary inquiries in the *Congressional Record*. The result was 220 documents that contained “parliamentary inquiry” between January 4, 2007, and May 23, 2008. Each individual document was examined and was again searched using Firefox’s search function. Parliamentary inquiries dealing with voting, the date they occurred, the Member who raised the inquiry, the *Congressional Record* (CR) page number, and the colloquy with the presiding officer are displayed in the following table.

Date	Member	CR Page	Exchange
January 18, 2007	Price (GA)	H679	<p>Mr. PRICE of Georgia. Parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman will state his point of parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Mr. Speaker, on this vote that just occurred, when the clock expired, the yeas were ahead of the nays and the majority of the Members were voted. According to H.Res. 6, a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote. Would the Speaker agree with me that this vote then was in violation of the rules?</p> <p>The SPEAKER pro tempore. As the gentleman is aware, the 15-minute period is a minimum and, in the case of the first vote of the day, and an unexpected vote at that, a longer time may be necessary to complete the vote.</p>
February 8, 2007	Price (GA)	HI 350	<p>Mr. PRICE of Georgia. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Georgia will state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Mr. Speaker, since this is the first time we are adopting a rule that will allow Delegates and the Resident Commissioner to vote in the Committee of the Whole, does the rule allow for a separate vote on any question once the Committee rises?</p> <p>The SPEAKER pro tempore. Rule XVIII contemplates automatic, immediate review in the House of certain recorded votes in the Committee of the Whole.</p> <p>Mr. PRICE of Georgia. As a point of clarification on the inquiry, so any question may be put to a separate vote once the Committee rises?</p> <p>The SPEAKER pro tempore. Under clause 6(h) of rule XVIII, both affirmative and negative decisions of the Committee of the Whole may be reviewed in the House under circumstances in which votes cast by Delegates were decisive in Committee.</p>
February 8, 2007	Price (GA)	HI 350	<p>Mr. PRICE of Georgia. Further inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman may state.</p> <p>Mr. PRICE of Georgia. Under what circumstances will a separate vote not be allowed?</p> <p>The SPEAKER pro tempore. The Committee will not automatically rise for such an immediate review in the case where votes cast by Delegates were not decisive.</p>

Date	Member	CR Page	Exchange
February 8, 2007	Price (GA)	HI 350	<p>Mr. PRICE of Georgia. Further inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman may state.</p> <p>Mr. PRICE of Georgia. When a vote is not decisive, but a question put loses, is there any opportunity for any Member, certified Member of the House, to ask for a separate vote?</p> <p>The SPEAKER pro tempore. Under clause 6(h) of rule XVIII, immediate review in the House occurs automatically when recorded votes cast by Delegates were decisive, without regard to whether the question was adopted or rejected. In ordinary proceedings of the House on the ultimate report of the Committee of the Whole, the House considers only matters reported to it by the Committee of the Whole, which would not include propositions rejected in Committee. Simply put, an amendment rejected in the Committee of the Whole is not reported back to the House.</p> <p>Mr. PRICE of Georgia. On any question put?</p> <p>The SPEAKER pro tempore. Not if it is rejected in the Committee of the Whole.</p>
February 8, 2007	Price (GA)	HI 357	<p>Mr. PRICE of Georgia. Mr. Chairman, parliamentary inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. Mr. Chairman, since the House is sitting as the Committee of the Whole, are the Delegates and Resident Commissioner permitted to vote on all matters in the Committee of the Whole House?</p> <p>The CHAIRMAN. Under clause 3(a) of rule III, the Delegates and Resident Commissioner possess the same powers and privileges as Members in the Committee of the Whole.</p>
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. It is my understanding that under the rules the House has adopted, that on any matter in which the votes of the Delegates are decisive in the vote taken in the Committee of the Whole, that those votes shall be retaken in the full House and that the Delegates and Resident Commissioner shall not be permitted to vote in the full House. Is that correct?</p> <p>The CHAIRMAN. On recorded votes, yes, the gentleman is correct.</p>
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. How is the Chair going to determine if the votes of the Delegates and the Resident Commissioner are decisive?</p> <p>The CHAIRMAN. The test for determining whether the votes of the Delegates and Resident Commissioner are decisive under 6(h) of rule XVIII is a “but for” test, that is, would the outcome have been different had the Delegates and the Resident Commissioner not voted. The absence of some Members is irrelevant to this determination.</p>

Date	Member	CR Page	Exchange
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. I thank the Chair. If the Chair determines that the votes of the Delegates and the Resident Commissioner are not decisive, but a Member believes that in fact they are, is it appropriate for a Member to lodge a point of order against the Chair's determination?</p> <p>The CHAIRMAN. The Chair's decision on a question of order is not subject to an appeal if the decision is one that falls within the discretionary authority of the Chair. The Chair's count of the number rising to demand tellers, a recorded vote, or the yeas and nays is not subject to appeal, nor is the Chair's count of a quorum. Likewise, the Chair's count of the votes of the Delegates and Resident Commissioner is not subject to appeal.</p>
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. If the Chair determines that in fact the votes of the Delegates and the Resident Commissioner are not decisive, will the Chair include those numbers when reporting the tally of the vote?</p> <p>The CHAIRMAN. The gentleman is correct.</p>
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. Given that, then it is my understanding, is it correct that the number of individuals allowed to vote in the Committee of the Whole shall be 440, and the number in the full House shall be 435?</p> <p>The CHAIRMAN. The gentleman is correct.</p>
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. So the Delegates and the Resident Commissioner may not vote in the full House; is that correct?</p> <p>The CHAIRMAN. It is the understanding of the Chairman of the Committee of the Whole that the gentleman is correct.</p>
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. Do the Delegates and the Resident Commissioner count for the purposes of establishing and maintaining a quorum of the Committee of the Whole House?</p> <p>The CHAIRMAN. The gentleman is correct.</p>

Date	Member	CR Page	Exchange
February 8, 2007	Price (GA)	HI 358	<p>Mr. PRICE of Georgia. Further inquiry.</p> <p>The CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. If the Delegates and Resident Commissioner are allowed to vote on everything in the Committee of the Whole and they vote on procedural issues that may in fact affect the substantive nature of a bill, and if a procedural vote is lost within a decisive margin, is there a mechanism to have a separate vote in the full House on that procedural vote?</p> <p>The CHAIRMAN. Under clause 6(h), an immediate vote in the House is contemplated under those circumstances, given a recorded vote.</p> <p>Mr. PRICE of Georgia. On that procedural vote?</p> <p>The CHAIRMAN. The gentleman is correct.</p> <p>Mr. PRICE of Georgia. I thank the Chair. Are the Delegates and Resident Commissioner permitted to vote on the question of the Committee rising?</p> <p>The CHAIRMAN. The gentleman is correct.</p> <p>Mr. PRICE of Georgia. I thank the Chair for his indulgence.</p>
February 8, 2007	Blunt (MO)	HI 386	<p>Mr. BLUNT. Mr. Chairman, I have a parliamentary inquiry.</p> <p>The Acting CHAIRMAN. The gentleman will state it.</p> <p>Mr. BLUNT. Mr. Chairman, on the vote just taken, the Chair announced the vote as 422-3. Should the Chair not have delineated the vote to properly reflect that the vote was 418-3 of those Representatives representing the several States as specified in the Constitution, and that the votes of those Delegates not representing States was 4-0?</p> <p>The Acting CHAIRMAN. No.</p>
February 8, 2007	Blunt (MO)	HI 386	<p>Mr. BLUNT. I have a further parliamentary inquiry, Mr. Chairman. The further parliamentary inquiry is, am I accurate in believing that all of these votes can be revoted once we rise from the Committee of the Whole?</p> <p>The Acting CHAIRMAN. Those that are adopted may be revoted.</p> <p>Mr. BLUNT. I thank the chairman.</p>
February 8, 2007	Terry (NE)	HI 387	<p>Mr. TERRY. One last parliamentary inquiry, Madam Speaker. So under the rule adopted by the House last week giving Delegates and Commissioners voting rights, the standing committees of the House and the Committee of the Whole House have the same legal standing under the rules of the House?</p> <p>The SPEAKER pro tempore. The Chair is unable to affirm that. Rules X and XVIII have the same provenance. Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?</p>

Date	Member	CR Page	Exchange
February 8, 2007	Price (GA)	HI 387	<p>Mr. PRICE of Georgia. Madam Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman will state his inquiry.</p> <p>Mr. PRICE of Georgia. Madam Speaker, during the Committee of the Whole, I had a parliamentary inquiry of the Chair about a second-degree amendment, and the response from the Chair may not have been accurate. So in an effort to clarify for the House, in the Committee of the Whole, if a second-order amendment passes but it is not a decisive vote, meaning that the Delegates and the Resident Commissioners weren't decisive in that passing, can any Member call for a re-vote of a second-degree amendment in the full House?</p> <p>The SPEAKER pro tempore. The Chair appreciates the gentleman's inquiring in this forum because an earlier response he received about second-degree amendments in the Committee of the Whole, which should not have been given in that forum in the first place, was incorrect. Under the regular order, the Chair must put the question in the House on amendments reported from the Committee of the Whole. In the instant case, the Committee of the Whole has reported a single amendment in the nature of a substitute on which the Chair will put the question to the House in due course. In addition, House Resolution 133 included language to allow any Member to seek a separate vote on any amendment adopted to that original-text substitute in the Committee of the Whole. However, this opportunity for separate votes is not availing either in the case of an amendment rejected in Committee or in the case of an amendment to an amendment to the original-text substitute.</p> <p>Mr. PRICE of Georgia. Further parliamentary inquiry, Madam Speaker.</p> <p>The SPEAKER pro tempore. The gentleman may state his inquiry.</p> <p>Mr. PRICE of Georgia. So as I understand your answer, Madam Speaker, there is no opportunity for a Member of the House of Representatives to receive a vote in the full House on a second-order amendment from the Committee of the Whole that passed by a nondecisive margin; is that correct?</p> <p>The SPEAKER pro tempore. The gentleman is correct.</p>
February 8, 2007	Westmoreland (GA)	HI 389	<p>Mr. WESTMORELAND (during the vote). Madam Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. Is the parliamentary inquiry related to this vote?</p> <p>Mr. WESTMORELAND. It is.</p> <p>The SPEAKER pro tempore. The gentleman will state it.</p> <p>Mr. WESTMORELAND. Madam Speaker, could you tell me the reason this vote is being held open and could you read the rule about holding votes open?</p> <p>The SPEAKER pro tempore. The Chair is not holding the vote open; the Chair is waiting for the clerks to process changes in the well.</p> <p>Mr. WESTMORELAND. Okay. I didn't realize there would be so much confusion about the way they voted.</p>
February 8, 2007	Feeney (FL)	HI 389	<p>Mr. FEENEY. Madam Speaker, further parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman will state it.</p> <p>Mr. FEENEY. Madam Speaker, I would like to ask unanimous consent that the Speaker close the board and all Members would have an opportunity to re-vote this issue. It might save a considerable amount of time.</p> <p>The SPEAKER pro tempore. The Clerk is processing changes of votes in the well. The gentleman's request is not in order. The Clerk will proceed.</p>

Date	Member	CR Page	Exchange
March 14, 2007	Westmoreland (GA)	H2515	<p>Mr. WESTMORELAND. Mr. Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore (Mr. McNulty). The gentleman will state it.</p> <p>Mr. WESTMORELAND. Mr. Speaker, I am sure you would like to join me in noting that clause 2(a) of rule XX provides that a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote. On the previous question vote, Rollcall Vote No. 145, I would hope that you would agree that at the expiration of time for this vote the noes were prevailing. Is that true?</p> <p>The SPEAKER pro tempore. The gentleman is correct that that particular clause says that a vote may not be held open for the sole purpose of changing an outcome. In this case, the vote remained open to allow all Members to vote.</p> <p>Mr. WESTMORELAND. Further parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his inquiry.</p> <p>Mr. WESTMORELAND. Could the Speaker tell me when an instance of the vote being held open would reverse the outcome if it is not when the "nays" are prevailing against the "yeas," or the "yeas" prevailing against the "nays," and the majority wants the outcome to be the exact opposite?</p> <p>The SPEAKER pro tempore. The Chair is not going to respond to a hypothetical question.</p> <p>Mr. WESTMORELAND. Sir, that is not a hypothetical.</p>

Date	Member	CR Page	Exchange
March 14, 2007	Westmoreland (GA)	H2516	<p>Mr. WESTMORELAND. Parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state a parliamentary inquiry.</p> <p>Mr. WESTMORELAND. I am asking you a question about the House rules. If I am not correct, further parliamentary inquiry, you are the arbitrator of those rules; is that true?</p> <p>The SPEAKER pro tempore. The gentleman is correct that the Chair may describe pending parliamentary situations.</p> <p>Mr. WESTMORELAND. Further parliamentary inquiry. According to clause 2(a) of rule XX, it says that a recorded vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote. Mr. Speaker, my parliamentary inquiry to you is: When would this rule apply to a vote where, at the end of the time, the outcome was different than what the majority wanted it to be?</p> <p>The SPEAKER pro tempore. The Chair would advise the gentleman that the rules address the duration of votes in terms of minimum times; 15 minutes is a minimum time, not the maximum. A vote ultimately is called at the Chair's discretion, trying to accommodate all Members who wish to vote.</p> <p>Mr. WESTMORELAND. Further parliamentary inquiry, Mr. Speaker.</p> <p>We are talking about a single vote. We are talking about the previous question vote, rollcall No. 145, which was held open past the 15-minute mark to change the outcome. If clause 2(a) of rule XX does not apply to that, what would it apply to?</p> <p>The SPEAKER pro tempore. The Chair is prepared to elucidate as follows: It is true that under clause 2(a) of rule XX, a vote by electronic device "shall not be held open for the sole purpose of reversing the outcome of such vote." In conducting a vote by electronic device, the Chair is constrained to differentiate between activity toward the establishment of an outcome on the one hand, and activity that might have as its purpose the reversal of an already-established outcome, on the other. The Chair also must be mindful that, even during a vote by electronic device, Members may vote by card in the well. So long as Members are recording their votes—even after the minimum period prescribed for a given question—the Chair will not close a vote to the disenfranchisement of a district whose representative is trying to vote.</p> <p>Mr. WESTMORELAND. Further parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his inquiry.</p> <p>Mr. WESTMORELAND. Could the Speaker answer me why we have a time limit on votes?</p> <p>The SPEAKER pro tempore. The 15-minute time period is not a limit. It is a minimum duration. After that, it is in the discretion of the Chair in order to allow all Members a reasonable opportunity to vote.</p>

Date	Member	CR Page	Exchange
April 24, 2007	Price (GA)	H4024	<p>Mr. PRICE of Georgia. Mr. Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Mr. Speaker, isn't it true that under the rules of the House adopted in this 110<sup>th</sup> Congress, the five Delegate Members are allowed to vote in the Committee of the Whole, but not in the whole House?</p> <p>The SPEAKER pro tempore. The gentleman is correct.</p> <p>Mr. PRICE of Georgia. Further parliamentary inquiry, Mr. Speaker. Isn't it true that the number of eligible Members to vote in the whole House is 435 when all seats are filled?</p> <p>The SPEAKER pro tempore. That is correct.</p> <p>Mr. PRICE of Georgia. Isn't it further true, Mr. Speaker, that the number of eligible votes in the Committee of the Whole is 440?</p> <p>The SPEAKER pro tempore. Currently it is 438 because of absences due to two deaths. But normally it is 440, that is correct.</p> <p>Mr. PRICE of Georgia. Four hundred forty if all seats were filled.</p> <p>The SPEAKER pro tempore. That is correct.</p> <p>Mr. PRICE of Georgia. Isn't it further true, Mr. Speaker, that the vote in the Committee of the Whole on the Gillibrand amendment was adopted by a vote of 254-165?</p> <p>The SPEAKER pro tempore. That is correct.</p>
May 2, 2007	Price (GA)	H4375 - H4376	<p>Mr. PRICE of Georgia. Mr. Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Mr. Speaker, isn't it true that under the rules adopted by this House, the number of votes allowed in the Committee of the Whole is different than the number of votes allowed when the House sits?</p> <p>The SPEAKER pro tempore. The gentleman is correct.</p> <p>Mr. PRICE of Georgia. Mr. Speaker, further parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman will state his inquiry.</p> <p>Mr. PRICE of Georgia. Isn't it further true, Mr. Speaker, that because of the rules, any re-vote in the House on an amendment that passed in the Committee of the Whole with full participation, the total votes cast would be different?</p> <p>The SPEAKER pro tempore. That is correct.</p> <p>Mr. PRICE of Georgia. I thank the Speaker.</p>

Date	Member	CR Page	Exchange
May 9, 2007	Price (GA)	H4714	<p>Mr. PRICE of Georgia. Mr. Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Mr. Speaker, isn't it true that, under the rules of the House, rule XX, clause 2 states that the vote shall not be held open for the sole purpose of changing the outcome of the vote?</p> <p>The SPEAKER pro tempore. It is true that, under clause 2(a) of rule XX, a vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote.</p> <p>Mr. PRICE of Georgia. Further inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman from Georgia will state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Isn't it true that, on the vote that was just taken, that at a point after the expiration of the time, that in fact the noes had prevailed and that individuals then changed their votes?</p> <p>The SPEAKER pro tempore. In conducting a vote by electronic device, the Chair is constrained to differentiate between activity toward the establishment of an outcome, on one hand, and activity that might have as its purpose the reversal of an already established outcome, on the other. The Chair will state that this was an ongoing vote.</p> <p>Mr. PRICE of Georgia. Final inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Is the Speaker able to inform the House as to the length of time that that vote was kept open?</p> <p>The SPEAKER pro tempore. The Chair does not have that information.</p> <p>Mr. PRICE of Georgia. I thank the Speaker.</p>
May 9, 2007	Price (GA)	H4717	<p>Mr. PRICE of Georgia. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman from Georgia is recognized for a parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. How did the Speaker call the voice vote?</p> <p>The SPEAKER pro tempore. The noes prevailed. Does the gentleman from Georgia ask for a recorded vote?</p> <p>Mr. PRICE of Georgia. I ask for a recorded vote.</p> <p>The SPEAKER pro tempore. A recorded vote is requested.</p> <p>Those in favor of a recorded vote will rise.</p>
May 9, 2007	Abercrombie (HI)	H4717	<p>Mr. ABERCROMBIE. Mr. Speaker, parliamentary inquiry. How much time has to pass before you get to stand up and ask for a vote after you've already ruled? You can't stand there forever and do that. Now let's run this thing right. The vote's over.</p> <p>The SPEAKER pro tempore. The gentleman from Georgia was on his feet and seeking recognition in a timely manner.</p>

Date	Member	CR Page	Exchange
May 9, 2007	Linder (GA)	H4717	<p>Mr. LINDER. Mr. Speaker, I have a parliamentary inquiry. Isn't it true that the motion to recommit was passed by a recorded vote?</p> <p>The SPEAKER pro tempore. Yes.</p> <p>Mr. LINDER. Isn't it further true that the motion to recommit was brought back with the bill for final passage and that last motion was on final passage and you called the vote a "no"?</p> <p>The SPEAKER pro tempore. No. The last vote was on the amendment reported back forthwith.</p> <p>Mr. LINDER. Actually, the amendment was already agreed to and it came back with the final bill. There was no call for a separate vote on the amendment again.</p> <p>The SPEAKER pro tempore. That is not correct. The adoption of the motion to recommit caused a report forthwith that placed an amendment before the House, which separately bears adoption by the House.</p> <p>Mr. LINDER. By vote about 20 minutes ago.</p> <p>The SPEAKER pro tempore. The Chairman of the Committee reported the bill back to the House with an amendment, which amendment still must be disposed of.</p> <p>Mr. LINDER. With instructions, with the amendment included in it. So the only vote left for you to put before the House is the vote on final passage, and you called it a "no" vote.</p> <p>The SPEAKER pro tempore. That is not correct. The question must be taken on the amendment reported forthwith.</p>
May 9, 2007	Hoyer (MD)	H4717	<p>The Chair recognizes the gentleman from Maryland.</p> <p>Mr. HOYER. Mr. Speaker, as I understand it, the parliamentary situation in which we find ourselves is that we adopted a motion to recommit forthwith to be reported back with an amendment. That amendment was adopted favorably. When the vote was called, you indicated that amendment was defeated. My parliamentary inquiry: Would at this point in time a motion to reconsider that vote be in order?</p> <p>The SPEAKER pro tempore. Yes..... the request for a recorded vote aside.</p> <p>Mr. HOYER. I would suggest that a motion to reconsider might solve the problem.</p> <p>Mr. Speaker, I ask unanimous consent that the last voice vote be vacated and that the question be put de novo.</p> <p>The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?</p>
May 9, 2007	Baker (LA)	H4718	<p>Mr. BAKER. Mr. Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana.</p> <p>Mr. BAKER. I believe the gentleman, in order to offer the motion to reconsider, would have to be on the prevailing side, and I would question the gentleman's vote on the matter.</p> <p>Mr. HOYER. By the way, I'm trying to help the gentleman. You may have missed that, but I'm trying to help your side. But we can do it by unanimous consent that it be done de novo. And just so that the gentleman from Louisiana knows, on a voice vote, of course, because there is not a recorded vote, anybody can ask for a motion to reconsider because there is no record as to who voted on the prevailing side or who voted on the opposing side. But, notwithstanding that, I press my motion de novo; that, in other words, the question be placed, once again, de novo.</p> <p>The SPEAKER pro tempore. Is there objection to vacating the voice vote and taking the question de novo? Without objection, so ordered.</p>

Date	Member	CR Page	Exchange
May 17, 2007	Frank (MA)	H5443	<p>Mr. FRANK of Massachusetts. Parliamentary inquiry, Mr. Chairman.</p> <p>The Acting CHAIRMAN. The gentleman may state it.</p> <p>Mr. FRANK of Massachusetts. The subsequent votes, do I understand correctly, will be 2-minute votes, Mr. Chairman?</p> <p>The Acting CHAIRMAN. The gentleman is correct. After the first vote, subsequent votes will be 2-minute votes.</p>
May 22, 2007	Bean (IL)	H5569	<p>Ms. BEAN. Mr. Speaker, I have a parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentlewoman will state her inquiry.</p> <p>Ms. BEAN. Mr. Speaker, is the gentleman from Georgia requesting a recorded revote on the bipartisan Bean-Neugebauer amendment which passed by voice vote last week?</p> <p>The SPEAKER pro tempore. Does the gentlewoman have a proper parliamentary inquiry?</p> <p>Ms. BEAN. Thank you, Mr. Speaker. I just wanted to make sure this was the bipartisan Bean-Neugebauer amendment.</p>
June 14, 2007	Price (GA)	H6428	<p>Mr. PRICE of Georgia. Parliamentary inquiry, Mr. Chairman.</p> <p>The Acting CHAIRMAN. The gentleman from Georgia is recognized to state his parliamentary inquiry.</p> <p>Mr. PRICE of Georgia. Do the rules not state that the Chair of the House is to be an impartial arbiter of the proceedings?</p> <p>The Acting CHAIRMAN. The Chair calls each voice vote as he hears it, and that call is not subject to appeal.</p> <p>Mr. PRICE of Georgia. I thank the Chair.</p>
June 27, 2007	Westmoreland (GA)	H7258	<p>Mr. WESTMORELAND. Mr. Chairman, I have a parliamentary inquiry.</p> <p>The Acting CHAIRMAN. The gentleman will state it.</p> <p>Mr. WESTMORELAND. Mr. Chairman, I understand that you hold the vote open for people not having voted, but this was a specific case of people changing their vote after the limit.</p> <p>The Acting CHAIRMAN. The vote was not kept open for the purpose of allowing Members to vote. There had to be numerical calculations on the votes of the Delegates to see if they changed the outcome of the vote. That was the purpose of the delay. It was not for any other reason.</p> <p>Mr. WESTMORELAND. Mr. Chairman, if I understand it correctly, the rule XX, clause 2(a) was put into effect to keep votes open and keep people from lobbying to change their votes. That is exactly what happened on this vote, and it is against the rules.</p>
July 19, 2007	Lewis (CA)	H8171	<p>Mr. LEWIS of California. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.</p> <p>Mr. LEWIS of California. Is it untoward for me or someone to ask for unanimous consent that this vote be a 2-minute vote rather than a more extended vote?</p> <p>The SPEAKER pro tempore. The Chair cannot entertain that request under the current circumstances. Without objection, the previous question is ordered on the motion to recommit.</p> <p>There was no objection.</p>

Date	Member	CR Page	Exchange
July 26, 2007	Manzullo (IL)	H8673	<p>Mr. MANZULLO. Madam Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his parliamentary inquiry.</p> <p>Mr. MANZULLO. Is it appropriate at this time to ask for a re-vote on each and every amendment just voted on?</p> <p>The SPEAKER pro tempore. The Chair has just queried on that matter.</p> <p>Mr. MANZULLO. Thank you.</p> <p>The SPEAKER pro tempore. If not, the Chair will put them en gros.</p>
July 31, 2007	Linder (GA)	H9254 - H9255	<p>Mr. LINDER (during the vote). Mr. Chairman, a parliamentary inquiry.</p> <p>The CHAIRMAN. The gentleman will state his parliamentary inquiry.</p> <p>Mr. LINDER. Is this a 5-minute vote that occurred because of a unanimous consent request?</p> <p>The CHAIRMAN. The gentleman will restate his parliamentary inquiry.</p> <p>Mr. LINDER. First of all, is this a 5-minute vote?</p> <p>The CHAIRMAN. The gentleman is correct.</p> <p>Mr. LINDER. Is it the result of a unanimous consent request?</p> <p>The CHAIRMAN. Pursuant to clause 6 of rule XVIII, this is a 5-minute vote.</p> <p>Mr. LINDER. It is my understanding that any intervening business requires a 15-minute vote on the following vote under the rules of the House, and there was intervening business.</p> <p>The CHAIRMAN. The Chair will repeat that pursuant to clause 6(b)(3) of rule XVIII, this is a 5-minute vote. Voting will proceed.</p>
August 2, 2007	Barton (TX)	H9649 - H9650	<p>Mr. BARTON of Texas. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his parliamentary inquiry.</p> <p>Mr. BARTON of Texas. Is the vote that is about to occur a 15-minute vote or a 5-minute vote?</p> <p>The SPEAKER pro tempore. It will be a 15-minute vote.</p> <p>Mr. BARTON of Texas. Further parliamentary inquiry. Would it be in order to ask a unanimous consent request to make it a 5-minute vote?</p> <p>The SPEAKER pro tempore. The Chair cannot entertain that request without proper notice. Proper notice has not been given.</p> <p>Mr. BARTON of Texas. Further parliamentary inquiry. What would constitute proper notice?</p> <p>The SPEAKER pro tempore. All Members would have to be given adequate notice.</p> <p>Mr. BARTON of Texas. I'm sorry, Mr. Speaker, I couldn't hear the answer. I am not being dilatory.</p> <p>The SPEAKER pro tempore. The Member may consult the leadership on standards of adequate notice.</p>
August 2, 2007	Boehner (OH)	H9650	<p>Mr. BOEHNER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The Chair first will announce the result. The Chair prematurely announced that the motion was rejected on a tie vote of 214-214. After the cards already submitted in the well were entered in the computer, the result was the same, albeit by a different total, 212-216. The motion is not adopted.</p>

Date	Member	CR Page	Exchange
August 3, 2007	Sensenbrenner (WI)	H9659	<p>Mr. SENSENBRENNER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his parliamentary inquiry.</p> <p>Mr. SENSENBRENNER. Mr. Speaker, could the Chair tell me how many Members rose to request the recorded vote and the total number of Members present in the House upon which the Chair made his decision?</p> <p>The SPEAKER pro tempore. It's up to the Chair. And let me tell you this: The vote will show that the approval would be approved by the House, as it has been. That is not a parliamentary inquiry.</p>
August 3, 2007	Sensenbrenner (WI)	H9659	<p>Mr. SENSENBRENNER. Mr. Speaker, further parliamentary inquiry. Mr. Speaker, does not the Constitution require that in order to get a yea and nay vote there has to be one-sixth of the Members present requesting a yea and nay vote?</p> <p>The SPEAKER pro tempore. One-fifth.</p> <p>Mr. SENSENBRENNER. Excuse me, one-fifth.</p> <p>The SPEAKER pro tempore. The gentleman is correct.</p>
August 3, 2007	Sensenbrenner (WI)	H9659	<p>Mr. SENSENBRENNER. Further parliamentary inquiry. Does not a recorded vote in the House require the second of 44 Members?</p> <p>The SPEAKER pro tempore. One-fifth of a quorum is required.</p> <p>Mr. SENSENBRENNER. Further parliamentary inquiry. Did one-fifth of the Members present stand?</p> <p>And, if so, how is it possible to challenge the call of the Speaker on the accuracy of the count of the Members present?</p> <p>The SPEAKER pro tempore. The Chair's decision is not subject to question.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS. Mr. Speaker, point of parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Texas.</p> <p>Mr. SESSIONS. It is my understanding that the Speaker may, has options available to him or her as it relates to electronic voting to where the Speaker could make a decision to have the Clerk record those votes manually by rollcall.</p> <p>The SPEAKER pro tempore. The voting system is operational and the vote is ongoing.</p> <p>Mr. SESSIONS. Continuing my request.</p> <p>The SPEAKER pro tempore. If the gentleman will suspend. The Chair will try to ensure that Members know of time remaining and will have an opportunity to cast their votes, and the Chair will announce the vote a number of times to allow Members to change their vote.</p> <p>Mr. SESSIONS. Mr. Speaker, how am I recorded?</p> <p>The SPEAKER pro tempore. If the gentleman will consult with the Clerk, they will tell you how you have voted.</p>

Date	Member	CR Page	Exchange
August 3, 2007	DeGette (CO)	H9668	<p>Ms. DeGETTE. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentlelady from Colorado.</p> <p>Ms. DeGETTE. Parliamentary inquiry. To speed this process, Mr. Speaker, are the computers throughout the Chamber on both sides working so Members could check the computers to see how their votes are recorded and how much time is remaining?</p> <p>The SPEAKER pro tempore. The Chair would recommend that Members check their votes at the voting machine or at the rostrum to ensure that his or her vote is recorded.</p> <p>Ms. DeGETTE. Mr. Speaker, further parliamentary inquiry. On this side of the aisle the computers in the Chamber seem to be working, and I am wondering if they are working on the other side of the aisle?</p> <p>The SPEAKER pro tempore. That is not a proper parliamentary inquiry. The voting will continue.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS. Mr. Speaker, point of parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Texas.</p> <p>Mr. SESSIONS. Mr. Speaker, point of parliamentary inquiry. When the electronic voting system is inoperable or is not used, the Speaker or Chairman may direct the Clerk to conduct a record vote or quorum call as provided in clause 3 or 4; is that correct?</p> <p>The SPEAKER pro tempore. The gentleman is correct. The voting system is working. The problem is with the display. The House will continue voting electronically.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS. Point of parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Texas.</p> <p>Mr. SESSIONS. Mr. Speaker, would it be correct to say that normal procedures of this House are not currently, as it relates to voting, in place and available to Members at this time?</p> <p>The SPEAKER pro tempore. The gentleman is correct. There is a problem with the display. The Clerk is working to address that problem. But the voting machines are working, and the tally is being held.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS. Point of parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Texas.</p> <p>Mr. SESSIONS. Mr. Speaker, the question is whether the Speaker or the Speaker's designee has the authority to make a decision to enact what we would call to conduct or direct the Clerk to conduct a record vote or quorum call as provided in clause 3 or 4.</p> <p>The SPEAKER pro tempore. The Chair has alternatives; and when it is proper to use them, the Chair may do so.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS. Point of parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Texas.</p> <p>Mr. SESSIONS. Mr. Speaker, could you please outline those options that are available to you and your thinking? Because we are in a circumstance where we believe an inoperable voting system is presently being—</p> <p>The SPEAKER pro tempore. One is a manual call, one is a vote by tellers, and one is to continue with the electronic vote. And the Chair has chosen to so continue.</p>

Date	Member	CR Page	Exchange
August 3, 2007	Dreier (CA)	H9668	<p>Mr. DREIER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from California.</p> <p>Mr. DREIER. Mr. Speaker, parliamentary inquiry. How much time is remaining on the vote that we can't see displayed any place that we are supposed to be casting?</p> <p>The SPEAKER pro tempore. There are 5 minutes and 30 seconds remaining on this vote, and the Chair will accommodate Members on this vote.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS (during the vote). Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The Chair recognizes the gentleman from Texas.</p> <p>Mr. SESSIONS. Mr. Speaker, as a result of the Members having an inability to know what time remains, can the Chair please advise us what time remains in this vote?</p> <p>The SPEAKER pro tempore. The Chair will make every effort to ensure that the Members will have every opportunity to vote, regardless of the time elapsed.</p>
August 3, 2007	Sessions (TX)	H9668	<p>Mr. SESSIONS. Further parliamentary inquiry. Mr. Speaker, can you please advise me how much time remains in this vote?</p> <p>The SPEAKER pro tempore. Will the gentleman repeat his inquiry?</p> <p>Mr. SESSIONS. I will, Mr. Speaker. Can you please tell me how much time remains in this vote?</p> <p>The SPEAKER pro tempore. The Chair has the discretion to close the vote when all Members have voted.</p>
August 3, 2007	Sessions (TX)	H9668 - H9669	<p>Mr. SESSIONS. Further parliamentary inquiry, Mr. Speaker. Recognizing the circumstances that we are under, can you please advise me how much longer you will hold the vote open for Members?</p> <p>The SPEAKER pro tempore. The Chair will use his discretion to provide for Members who have not voted or who would like to change their vote when in the Chair's discretion every Member has voted who wants to vote. The Chair will then tally the votes and announce the vote.</p>
August 3, 2007	Dreier (CA)	H9669	<p>Mr. DREIER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from California is recognized.</p> <p>Mr. DREIER. Mr. Speaker, I'd like to propound a parliamentary inquiry. I'd like to inquire of the Chair, by what means will the Chair know what the totals are on the vote that we're engaged in at this moment?</p> <p>The SPEAKER pro tempore. The Chair will use the standard method of verification.</p>
August 3, 2007	Dreier (CA)	H9669	<p>Mr. DREIER. Further parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman from California is recognized.</p> <p>Mr. DREIER. What is the traditional method of verification? For me, it is to look at the board up there and see how my State delegation had voted. Mr. Speaker, I was just asking the Chair to enlighten us as to exactly how it is through this traditional procedure of determining what the vote is that you're going to report to us. I usually look up here on the wall and see how my State delegation is voting, how some of my colleagues are voting. We don't have the ability to do that. I'm just wondering exactly how it is that the Chair will be able to make this announcement to us.</p> <p>The SPEAKER pro tempore. Members can verify their votes at any one of the various voting stations. Engineers are working on the problem.</p>

Date	Member	CR Page	Exchange
August 3, 2007	Hastings (FL)	H9669	Mr. HASTINGS of Florida. Parliamentary inquiry, Mr. Speaker. Is it not true, Mr. Speaker, that there are computer terminals on the majority side, the minority side and at the Speaker's desk; and, further, Mr. Speaker, is it not true that the Clerk of the House has the responsibility, when there are engineering problems, to fix the engineering problems? The SPEAKER pro tempore. The gentleman is correct and the engineers are working on the problem.
August 3, 2007	Kanjorski (PA)	H9669	Mr. KANJORSKI. Parliamentary inquiry, Mr. Speaker. The SPEAKER pro tempore. Will the gentleman suspend for a moment before being recognized. The House is voting on a motion to adjourn. Members may verify their votes at any of the various voting stations.
August 3, 2007	Foxx (NC)	H9669	Ms. FOXX. Parliamentary inquiry, Mr. Speaker. The SPEAKER pro tempore. The gentlewoman from North Carolina is recognized. Ms. FOXX. Mr. Speaker, can the Chair tell us how much time has elapsed since you began this voting process? The SPEAKER pro tempore. Approximately 20 minutes.
August 3, 2007	Sessions (TX)	H9669	Mr. SESSIONS. Point of parliamentary inquiry. The SPEAKER pro tempore. The gentleman from Texas is recognized. Mr. SESSIONS. Mr. Speaker, can you please at this time tell us the vote total? The SPEAKER pro tempore. The Chair will not provide the total until every Member has an opportunity to change their vote, or to vote.
August 3, 2007	Dreier (CA)	H9669	Mr. DREIER. Mr. Speaker, parliamentary inquiry, you said the Clerk is still in the process of tallying the votes? The SPEAKER pro tempore. Some of the ballot cards cast in the well are still being counted. The cards that have been submitted are still being counted. Mr. DREIER. Mr. Speaker, how long has this vote been open? I am happy to yield to the distinguished majority leader. Mr. HOYER. I asked the gentleman a question because I think it is pertinent to whether or not the computers to which the Speaker has referred are working throughout the floor. Mr. DREIER. Mr. Speaker, as I prepare to yield to the majority leader, I would like to inquire, is the vote still open? If Members want to change their votes now, they can continue to do that? If a Member were to walk into the Chamber now, they could still vote? The SPEAKER pro tempore. The gentleman is correct. The vote is still open.

Date	Member	CR Page	Exchange
August 3, 2007	Davis (TN)/Dreier (CA)	H9670	<p>Mr. LINCOLN DAVIS of Tennessee. Parliamentary inquiry, Mr. Speaker. The SPEAKER pro tempore. The gentleman will suspend.</p> <p>Mr. DREIER. Mr. Speaker, might I continue my parliamentary inquiry? The SPEAKER pro tempore. The gentleman from California is recognized.</p> <p>Mr. DREIER. Mr. Speaker, further parliamentary inquiry, in response to the question from the distinguished majority leader, I will say that we have no way of verifying what it is that is coming out of this computer here. It is not operating the way it normally does. If Members are able to still vote, we can see this screen here, but it is not operating. I don't normally operate this thing, but our crack team here has told me that it is not operating the way that it normally does. I am happy to respond to any further questions.</p>
August 4, 2007	Westmoreland (GA)	H9718	<p>Mr. WESTMORELAND. Parliamentary inquiry. The SPEAKER pro tempore. The gentleman is recognized for a parliamentary inquiry.</p> <p>Mr. WESTMORELAND. Could the Speaker tell me what the magic number was that rose in order to get a vote? The SPEAKER pro tempore. The Chair's count is not subject to challenge. The Chair counted one-fifth of those present standing.</p>
September 18, 2007	Sessions (TX)	H10445	<p>Mr. SESSIONS (during the vote). Mr. Speaker, point of parliamentary inquiry. The SPEAKER pro tempore. The gentleman will state his inquiry.</p> <p>Mr. SESSIONS. Could the Speaker please provide this body with the information about how the Chair intends to rule in regard to the clock when it says "time final," and yet you have gavelled several times, and yet you are accepting more votes. Could you please describe to us what we can count on. I think it is important for this entire body to understand so that we know when the votes are final and when they are not.</p> <p>The SPEAKER pro tempore. The Chair will inform the gentleman from Texas that the board is for display only. The Chair will also tell the gentleman from Texas that the Chair began to announce the vote several times, but noticed that Members were still trying to vote; and to extend them the courtesy to vote, the Chair waited. Members from both sides of the aisle were trying to vote.</p> <p>Mr. SESSIONS. Mr. Speaker, I appreciate that. I also did recognize what you were trying to do. I am not opposed to extending courtesies. I am very obviously concerned about the extension of any time after the vote says "final." I thank the gentleman.</p>
September 18, 2007	Garrett (NJ)	H10447	<p>Mr. GARRETT of New Jersey. Mr. Speaker, parliamentary inquiry. The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.</p> <p>Mr. GARRETT of New Jersey. Can the Speaker please clarify within the rules of the House when a bill is final in terms of not being subject to open and changing the votes? Is it when the board says final or is it when the Speaker gavels the bill down?</p> <p>The SPEAKER pro tempore. The board is for display purposes; and when the Chair hit the gavel to see if any Members wished to change their votes, several Members from both sides of the aisle indicated they had not voted, and the Chair extended the courtesy to allow Members to vote.</p>

Date	Member	CR Page	Exchange
September 18, 2007	Garrett (NJ)	HI0447	<p>Mr. GARRETT of New Jersey. Further parliamentary inquiry then.</p> <p>The SPEAKER pro tempore. The gentleman will state his further parliamentary inquiry.</p> <p>Mr. GARRETT of New Jersey. Just so I am clear, it is not upon the board, nor is it at the time of handing of the gavel down? Some other action has to occur?</p> <p>The SPEAKER pro tempore. The gentleman is correct. The Chair is advised that the word “final” appears on the wall display as an indication of the status of the computer, not of the status of the vote.</p>
September 18, 2007	Garrett (NJ)	HI0447	<p>Mr. GARRETT of New Jersey. Further parliamentary inquiry?</p> <p>The SPEAKER pro tempore. The gentleman will state his further parliamentary inquiry.</p> <p>Mr. GARRETT of New Jersey. The final element of when a vote is actually closed is when the Speaker, in this case yourself, actually hands down the gavel and not the board?</p> <p>The SPEAKER pro tempore. It is when the Chair announces the result of the vote.</p> <p>Mr. GARRETT of New Jersey. I thank the Speaker for the clarification. I appreciate it.</p>
November 7, 2007	Souder (IN)	HI3249	<p>Mr. SOUDER. Parliamentary inquiry.</p> <p>The CHAIRMAN. The gentleman will state his inquiry.</p> <p>Mr. SOUDER. Since I moved for a recorded vote before the amendment was withdrawn and because I had the right to close, how did she get recognized over my motion?</p> <p>The CHAIRMAN. The gentlewoman withdrew the amendment before the Chair put the question on the amendment.</p> <p>Mr. SOUDER. But why did you recognize her when I had the right to close?</p> <p>The CHAIRMAN. The gentleman made the closing remarks in debate. Then the amendment was withdrawn.</p>
November 7, 2007	Frank (MA)	HI3249	<p>Mr. FRANK of Massachusetts. Parliamentary inquiry.</p> <p>The CHAIRMAN. The gentleman will state his inquiry.</p> <p>Mr. FRANK of Massachusetts. Is it in order to demand a roll call before the Chair has put the voice vote?</p> <p>The CHAIRMAN. No.</p>
March 11, 2008	Blunt (MO)	HI532 - HI533	<p>Mr. BLUNT. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman is recognized.</p> <p>Mr. BLUNT. Am I right that the rules of the House read, “A record vote by electronic device shall not be held open for the sole purpose of reversing the outcome of such vote?”</p> <p>The SPEAKER pro tempore. The gentleman is correct.</p> <p>Mr. BLUNT. Mr. Speaker, am I correct that that was a rule change that was made this Congress this year?</p> <p>The SPEAKER pro tempore. At the start of this Congress, that is correct.</p>

Date	Member	CR Page	Exchange
March 11, 2008	Blunt (MO)	H1533	<p>Mr. BLUNT. Mr. Speaker, parliamentary inquiry. Am I right in inquiring that the majority has said that any vote that doesn't change for 3 minutes and then changes is a vote being changed for the purpose of changing votes?</p> <p>The SPEAKER pro tempore. Has the gentleman asked the chair to interpret what the majority has said?</p> <p>Mr. BLUNT. May I restate my parliamentary inquiry, Mr. Speaker?</p> <p>The SPEAKER pro tempore. The gentleman may restate the parliamentary inquiry.</p> <p>Mr. BLUNT. Parliamentary inquiry. Mr. Speaker, if the rule is violated that the majority put in the rules package this year, does that eviscerate the vote?</p> <p>The SPEAKER pro tempore. An alleged violation of 2(a) of rule XX may give rise to collateral challenge in the form of a question of the privileges of the House pursuant to rule IX.</p> <p>Mr. BLUNT. Parliamentary inquiry, Mr. Speaker. Does this rule have any impact at all?</p> <p>The SPEAKER pro tempore. That is not a proper parliamentary inquiry.</p>
March 11, 2008	Dreier (CA)	H1533	<p>Mr. DREIER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from California is recognized.</p> <p>Mr. DREIER. Mr. Speaker, I would like to inquire of the Chair, what is the procedure to move ahead to ensure that we have enforcement of rule IX?</p> <p>The SPEAKER pro tempore. As previously stated, an alleged violation of clause 2(a) of rule XX may give rise to collateral challenge in the form of a question of the privileges of the House pursuant to rule IX.</p>
March 11, 2008	Blunt (MO)	H1533	<p>Mr. BLUNT. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman from Missouri is recognized.</p> <p>Mr. BLUNT. If the vote is necessary for another vote to occur, what's the parliamentary way to challenge that vote before the subsequent vote occurs?</p> <p>The SPEAKER pro tempore. The challenge would occur collaterally—that is, after the fact.</p>
March 11, 2008	Blunt (MO)	H1533	<p>Mr. BLUNT. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentleman from Missouri is recognized for purposes of parliamentary inquiry.</p> <p>Mr. BLUNT. What is the proper motion to ask that that vote be reconsidered?</p> <p>The SPEAKER pro tempore. Any Member on the prevailing side may move to reconsider.</p>

Date	Member	CR Page	Exchange
March 11, 2008	Boehner (OH)	HI533	<p>Mr. BOEHNER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman from Ohio is recognized.</p> <p>Mr. BOEHNER. Mr. Speaker, did I understand that to challenge the vote on the previous question that it would rise to a question of the privileges of the House? Is that correct?</p> <p>The SPEAKER pro tempore. Such a matter could qualify as a question of privilege.</p> <p>Mr. BOEHNER. Mr. Speaker, I believe that the privileges of the House have been dishonored, that the rules have been violated.</p> <p>The SPEAKER pro tempore. Does the gentleman have a parliamentary inquiry? The gentleman is recognized for purposes of parliamentary inquiry.</p> <p>Mr. BOEHNER. Mr. Speaker, when could I introduce a privileged motion?</p> <p>The SPEAKER pro tempore. A privileged resolution may be entertained after the conclusion of the pending rule.</p>
March 11, 2008	Boehner (OH)	HI533	<p>Mr. BOEHNER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman is recognized for purposes of parliamentary inquiry.</p> <p>Mr. BOEHNER. If I can't offer a privileged resolution until this business has been completed, there will have been a vote taken on final passage of this rule, which basically takes my remedy away from me. I believe that under the rule as written by the majority that a vote cannot be held open solely for the purpose of trying to change the outcome. It was violated.</p> <p>The SPEAKER pro tempore. The Chair has described the challenge as collateral. An alleged violation of clause 2(a) of rule XX may give rise to collateral challenge in the form of a question of the privileges of the House pursuant to rule IX. The question is on the resolution.</p>
March 11, 2008	Cubin (WY)	HI533	<p>Mrs. CUBIN. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The gentlewoman from Wyoming is recognized for purposes of a parliamentary inquiry.</p> <p>Ms. CUBIN. Mr. Speaker, I'm under the impression that the delegates from the territories' vote cannot be counted when it makes a difference in the outcome of the vote. So could you tell me when those votes can be considered and when they can't be considered?</p> <p>The SPEAKER pro tempore. The rule to which the gentlewoman refers is applicable to the Committee of the Whole only.</p>
March 12, 2008	Boehner (OH)	HI544	<p>Mr. BOEHNER. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his inquiry.</p> <p>Mr. BOEHNER. As the gentleman called the vote, I couldn't hear, Mr. Speaker.</p> <p>The SPEAKER pro tempore. The Chair noted that the ayes had it.</p> <p>Mr. BOEHNER. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.</p>

Date	Member	CR Page	Exchange
March 12, 2008	Lungren (CA)	HI 544	<p>Mr. DANIEL E. LUNGREN of California. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. Please state your inquiry.</p> <p>Mr. DANIEL E. LUNGREN of California. Is it true that the rule that was the subject of the motion of the gentleman from Ohio with respect to not holding a vote open for the purpose of changing votes was adopted by this Congress at the beginning of this Congress?</p> <p>The SPEAKER pro tempore. That is correct.</p>
March 12, 2008	Lungren (CA)	HI 544	<p>Mr. DANIEL E. LUNGREN of California. Mr. Speaker, further parliamentary inquiry. Is it true that that rule was, in fact, a separate title and voted separately by this House by a vote of 430-0?</p> <p>The SPEAKER pro tempore. The Chair is not currently aware of the exact vote on that.</p>
March 12, 2008	Lungren (CA)	HI 544	<p>Mr. DANIEL E. LUNGREN of California. Mr. Speaker, further parliamentary inquiry. Consistent with the rulings of the Chair last night, is it true that the only enforcement mechanism of that rule adopted by this House is a privileged resolution such as offered by the gentleman from Ohio?</p> <p>The SPEAKER pro tempore. That is correct.</p>
March 12, 2008	Lungren (CA)	HI 544	<p>Mr. DANIEL E. LUNGREN of California. Further parliamentary inquiry, Mr. Speaker. If such a privileged resolution is tabled, as was just done by this body, is it true that there is no alternative enforcement mechanism?</p> <p>The SPEAKER pro tempore. The minority leader's resolution, House Resolution 1039, was held to present a question of privilege and was considered as such. The will of the House was that it be laid on the table.</p>
March 12, 2008	Lungren (CA)	HI 544 - HI 545	<p>Mr. DANIEL E. LUNGREN of California. Further parliamentary inquiry, Mr. Speaker. Is it available to other Members of this House who feel aggrieved by the vote last night to bring a privileged resolution similar to that brought by the gentleman from Ohio?</p> <p>The SPEAKER pro tempore. Yes, it is.</p> <p>Mr. DANIEL E. LUNGREN of California. Is it true, Mr. Speaker, that if individual Members brought such motion seriatim that that would not be considered dilatory but, rather, within the authority of each Member of this House as a separate and individual Member of this House?</p> <p>The SPEAKER pro tempore. The Chair cannot render such an advisory opinion.</p>
March 12, 2008	Lungren (CA)	HI 545	<p>Mr. DANIEL E. LUNGREN of California. Mr. Speaker, further parliamentary inquiry. Is the enforcement mechanism referred to previously, exercised by the gentleman from Ohio, also available to other individual Members of this House?</p> <p>The SPEAKER pro tempore. Rule IX may be invoked by any Member of the House.</p> <p>Mr. DANIEL E. LUNGREN of California. I thank the gentleman.</p>

Date	Member	CR Page	Exchange
March 12, 2008	Shadegg (AZ)	HI 545	<p>Mr. SHADEGG. Mr. Speaker, parliamentary inquiry.</p> <p>The SPEAKER pro tempore. The gentleman may state his parliamentary inquiry.</p> <p>Mr. SHADEGG. Is it correct that the motion just brought by the gentleman from Ohio was brought pursuant to rule IX and was on a question of the privileges of the House?</p> <p>The SPEAKER pro tempore. That is correct.</p> <p>Mr. SHADEGG. And is it correct that that motion was then tabled and that was the action the House just took?</p> <p>The SPEAKER pro tempore. The minority leader's resolution (H.Res. 1039) was held to present a question of privilege and was considered as such. The will of the House was that it be laid on the table.</p>
March 12, 2008	Shadegg (AZ)	HI 545	<p>Mr. SHADEGG. Further parliamentary inquiry. If it had not been tabled, then it would have been debatable for 1 hour, is that correct?</p> <p>The SPEAKER pro tempore. The Chair will not answer a hypothetical question. The majority leader's resolution was held to present a question of privilege and was considered as such. The will of the House was that it be laid on the table.</p> <p>Mr. SHADEGG. Is it not true that earlier this year there have been questions of the privileges of the House where they have not been tabled and they have been debated for an hour?</p> <p>The SPEAKER pro tempore. The Chair cannot serve as historian for the House, but the gentleman is correct that a question of privilege could be considered by the House.</p> <p>Mr. SHADEGG. And could be debated for an hour?</p> <p>The SPEAKER pro tempore. And could be debated.</p> <p>Mr. SHADEGG. Is it not true that in the last Congress, the then minority leader and the now Speaker raised a similar question of the privileges of the House pursuant to rule IX after a vote was held open and that on that question of privileges of the House, in fact, the majority, the then majority, now minority, allowed a debate of an hour and that the conduct of the House in holding a vote open to change the result of the vote was debated for an hour?</p> <p>The SPEAKER pro tempore. It is not the function of the Chair to render historical perspectives. The Member will have to look to the RECORD for that.</p> <p>Mr. SHADEGG. I'm sorry. The gentleman is correct?</p> <p>The SPEAKER pro tempore. The Chair is not prepared to render historical perspectives. The Member will have to look at the Record for that answer.</p> <p>Mr. SHADEGG. So the effect of immediately tabling the question of privileges raised by the gentleman from Ohio was to deny the minority the ability to debate that issue for an hour as was done when the same thing happened last Congress, is that correct?</p> <p>The SPEAKER pro tempore. It is a summary, adverse disposition.</p> <p>Mr. SHADEGG. I thank the gentleman.</p>
March 12, 2008	Westmoreland (GA)	HI 545	<p>Mr. WESTMORELAND. Parliamentary inquiry, Mr. Speaker.</p> <p>The SPEAKER pro tempore. Please state your inquiry.</p> <p>Mr. WESTMORELAND. Mr. Speaker, is it not true that the last vote was called at 10:52?</p> <p>The SPEAKER pro tempore. The Chair is not prepared to give exact figures. The gentleman can look at the Record for that.</p>

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March 12, 2008	Westmoreland (GA)	H1545	<p>Mr. WESTMORELAND. Further parliamentary inquiry.</p> <p>The SPEAKER pro tempore. Please state your inquiry.</p> <p>Mr. WESTMORELAND. Is it not true that the vote was closed at 11:22, which is approximately 30 minutes?</p> <p>The SPEAKER pro tempore. The Chair is not prepared to render an historical perspective. The gentleman can look to the Record for that.</p>
March 12, 2008	Westmoreland (GA)	H1545	<p>Mr. WESTMORELAND. Further parliamentary inquiry. According to the Democrats' election manifesto, floor votes should be completed within 15 minutes with a customary 2-minute extension to accommodate Members' ability to reach the House Chamber to cast a vote. No vote shall be held open in order to manipulate the outcome. Was that the rule that we passed on January 5, 2007?</p> <p>The SPEAKER pro tempore. It is not appropriate for the Chair to render an opinion on a document of the nature cited by the Member.</p>
April 15, 2008	Westmoreland (GA)	H2321	<p>Mr. WESTMORELAND. Madam Speaker, further parliamentary inquiry. Is it not the job of the Speaker to interpret the rules of this House?</p> <p>The SPEAKER pro tempore. Does the gentleman have an inquiry to state? Would the gentleman please state that inquiry.</p> <p>Mr. WESTMORELAND. Madam Speaker, is it not true that under rule XX of this House, that it says that no votes will be kept open to change the outcome of that vote; is that true?</p> <p>The SPEAKER pro tempore. As the Chair advised on March 11, 2008, a challenge to the Chair's actions under clause 2 of rule XX may be raised collaterally.</p>
May 8, 2008	Westmoreland (GA)	H3192 - H3193	<p>Mr. WESTMORELAND. Mr. Chairman, parliamentary inquiry.</p> <p>The Acting CHAIRMAN. The gentleman may state his inquiry.</p> <p>Mr. WESTMORELAND. Mr. Chairman, in light of the conversation that the majority leader and the minority leader had last night as far as leaving votes open, and I believe the majority leader said the vote would be for 15 minutes, and then a 2-minute courtesy period, could you tell me the tally of the vote at the end of the 15 minutes and the 2-minute courtesy period?</p> <p>The Acting CHAIRMAN. The gentleman has not stated a parliamentary inquiry.</p>

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