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# Points of Order, Rulings, and Appeals in the House of Representatives

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The Speaker<sup>1</sup> usually does not take the initiative to prevent the House from considering proposals or taking actions that would violate the House’s rules.<sup>2</sup> Instead, whenever a Member believes that the House’s legislative procedures are being violated in some way, or are about to be violated, that Member may insist that the House’s procedures be enforced by making a point of order against the alleged violation. Points of order against measures or amendments may be waived in the House pursuant to a special rule reported from the Rules Committee and adopted by majority vote on the floor, or by unanimous consent, or via suspension of the rules.

## Points of Order

A Member who wishes to make a point of order must do so at the appropriate time. For example, in most circumstances, a point of order may be made against an amendment only after it has been read (or designated, if it does not need to be read) but before debate on the amendment has begun.<sup>3</sup> Once a Member begins to explain an amendment that he or she has offered, it is too late to make a point of order against the amendment.

Sometimes a Member will *reserve* a point of order, usually against an amendment, which also allows other Members to later insist on the point of order; the Member need not state the reason for reserving the point of order.<sup>4</sup> Reserving a point of order defers action on the point of order until after there has been some debate on the amendment. A Member may reserve a point of order because he or she is not yet sure if a point of order lies against the amendment or because the Member wishes to give the sponsor of the amendment an opportunity to explain it before the chair rules on the point of order. On the demand for the “regular order,” however, the Member must either make his or her point of order at that time or lose the opportunity to do so.

If a Member does make a point of order at the appropriate time, the Speaker gives that Member an opportunity to explain precisely what rule or precedent is being violated and why. The Member whose action is in question may then respond to the point of order. The Speaker may allow other Members to speak on the point of order; if the bill manager concedes the point of order, the Speaker need not entertain debate before ruling.<sup>5</sup> Any debate on a point of order is at the discretion of the chair and is only for the purpose of advising the chair on the procedural issue that the point of order raises.

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<sup>1</sup> What is said here about the Speaker applies equally to any Member presiding over the House as Speaker pro tempore and to any Member presiding as chairman of the Committee of the Whole. The right to make points of order described herein for Members also equally applies to Delegates and the Resident Commissioner.

<sup>2</sup> See *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, by Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr. (Washington: GPO, 2017), ch. 37, §2.

<sup>3</sup> House Rule XXI provides some circumstances under which a point of order may be raised against certain amendments (e.g., amendments carrying appropriations) at any time during pendency of the measure for amendment (provided that points of order against amendments have not been waived, for example, pursuant to a special rule). For additional information on appropriate timing for raising certain points of order on these types of amendments, see *House Practice*, ch. 2, §34.

<sup>4</sup> Pursuant to House Rule XXI, clause 1, all points of order against provisions in a general appropriations measure are considered as reserved.

<sup>5</sup> *House Practice*, ch. 37, §9.

## Rulings

It is the responsibility of the Speaker to rule on each point of order that is made. The Speaker's rulings are based on information and advice provided by the House parliamentarian, which reflect the House's voluminous published precedents that document how Speakers ruled on similar questions in the past.<sup>6</sup> In turn, each new ruling by the Speaker becomes a precedent on which he or she and successors may rely in the future. The Speaker is not required to explain the reasons for the rulings but often does so whenever the procedural question at issue is complex, difficult, or controversial. If the Speaker sustains a point of order on consideration of a measure, it is recommitted to either its previous place on the relevant calendar or to the reporting committee. If a point of order is raised and sustained against specific language in a measure, the language is struck; sustained points of order against a portion of an amendment may invalidate the entire amendment.<sup>7</sup>

## Appeals

In most cases, any Member who disagrees with the Speaker's ruling can challenge it and ask Members to decide (by majority vote) whether the House will agree to be bound by that ruling. Clause 5 of House Rule I states in part that the Speaker shall "decide all questions of order, subject to appeal by a Member, Delegate, or Resident Commissioner." Anyone wishing to invoke this right simply stands and announces, before any other business has taken place, that he or she appeals the ruling of the chair.

Most appeals are debatable under Rule I, but it is unusual for there to be much debate on an appeal.<sup>8</sup> Debate is under the one-hour rule in the House and under the five-minute rule in the Committee of the Whole. However, the House can end the debate on an appeal by voting to order the previous question (or by voting to close debate if in Committee of the Whole). Alternatively, a motion to table an appeal is in order in the House (but not in Committee of the Whole). The Speaker puts the appeal to a vote by phrasing the question in the following way: "The question is, shall the decision of the Chair stand as the judgment of the House [or the Committee]?" Those supporting the ruling vote "aye"; those opposing it vote "no."

In the House of Representatives, appeals from rulings of the chair are quite infrequent. Through November 2018 of the 115<sup>th</sup> Congress (2017-2018), 16 appeals were taken from rulings of the chair on points of order, and no rulings of the presiding officer were overturned.<sup>9</sup> In fact, none have been overturned in over a half century. At least two reasons account for the failure of the

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<sup>6</sup> In addition, rulings on certain budget points of order require examination of estimates supplied by the House Budget Committee, which monitors the compliance of measure with the Congressional Budget Act of 1974 (P.L. 93-344). For more information on budget points of order, see CRS Report 98-876, *Congressional Budget Act Points of Order*, by (name redacted) and CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by (name redacted) .

<sup>7</sup> *House Practice*, ch. 37, §1.

<sup>8</sup> Quite often, a motion to table the appeal is offered; the ruling is sustained if the tabling motion is adopted. *House Practice*, ch. 3, §5.

<sup>9</sup> This evaluation of appeals is based on those found through a search of the *Daily Digest* and *Congressional Record* for the 115<sup>th</sup> Congress (through November 30, 2018), as well as an examination of the roll call vote data. Fifteen of the 16 appeals identified were disposed of unfavorably when the House agreed to a motion to table the appeal. (See Roll Call Votes 101, 128, 161, 182, 201, 219, 261, 274, 292, 311, and 392 in the 1<sup>st</sup> session [2017] and Votes 40, 57, 83, and 229 in the 2<sup>nd</sup> session [2018].) On the other appeal (made on September 6, 2017, during consideration of an appropriations bill), the House sustained the ruling by voice vote. Thirteen of the 16 cases were appeals of rulings in relation to raising a question of the privileges of the House.

House to overturn a ruling. First, the Speaker's rulings are based on the parliamentarian's advice, which, in turn, is based on prior rulings on similar questions. Generally, the correctness of rulings is not in doubt. Second, most members of the majority party can be expected to support a ruling made by that party's elected leader or another Member whom the Speaker has designated to preside.

Points of order are to be distinguished from parliamentary inquiries. Parliamentary inquiries are questions that Members pose to the Speaker about the current parliamentary situation. The Speaker's replies to these inquiries are explanatory; they are not rulings, so they are not subject to appeal.<sup>10</sup> Further, some decisions of the chair are not subject to appeal. For example, no Member can challenge the way in which the Speaker exercises his or her discretionary power of recognition, nor can a Member appeal the Speaker's ruling that a proposed motion is not in order because it is dilatory.<sup>11</sup>

For additional information, see *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, by Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham Jr. (Washington: GPO, 2017), chapter 2 ("Amendments"), chapter 3 ("Appeals"), chapter 37 ("Points of Order; Parliamentary Inquiries"), and chapter 50 ("Rules and Precedents of the House"). It is also available electronically at <https://www.govinfo.gov/content/pkg/GPO-HPRACTICE-115/pdf/GPO-HPRACTICE-115.pdf>.

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## Acknowledgments

The original version of this report was written by (name redacted), formerly senior specialist in the Legislative Process at CRS. The listed author has revised and updated this report and is available to respond to inquiries from congressional clients on the subject.

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<sup>10</sup> *House Practice*, ch. 3, §3.

<sup>11</sup> See *House Practice*, ch. 3, §3, for other examples of chair decisions not subject to appeal.

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