

§ 31. Earmarks

Rule XXI clause 9(e),⁽¹⁾ defines a “congressional earmark” as “a provision or report language included primarily at the request of a Member, Delegate, Resident Commissioner, or Senator providing, authorizing or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.”⁽²⁾

The House requires disclosure of these earmarks or a disclaimer that a measure contains no such earmarks. A point of order may be raised under Rule XXI clause 9(a)⁽³⁾ against consideration of reported and unreported bills and joint resolutions, “manager’s” amendments to bills or joint resolutions (offered at the outset of consideration), or conference reports that do not contain the requisite disclosures. These disclosure requirements, depending on the measure, must be made in the committee report, printed in the *Congressional Record*, or contained in the joint explanatory statement of managers. The point of order is not applicable to motions to dispose of Senate amendments.⁽⁴⁾

Rule XXI clause 9(b)⁽⁵⁾ provides a similar disclosure requirement for conference reports on annual appropriation bills. That paragraph requires the joint explanatory statement of managers to include an earmark statement listing the congressional earmarks, tax, and tariff benefits contained in the conference report of either House (or a statement that the proposition contains no such earmarks or tax or tariff benefits). Such a requirement was designed to disclose any earmarks originating in conference (“air-dropped”) and not subject to prior consideration by either House.

It is important to note that the rule does not contemplate the Chair making any determination that a particular provision does or does not constitute an earmark, a limited tax benefit, or a limited tariff benefit. Rather, the Chair merely determines whether or not the required disclosure statement has been published as required and does not rule on the sufficiency of such a statement.⁽⁶⁾

1. *House Rules and Manual* § 1068d (2011). The clause was added in the 110th Congress. A similar point of order operated during part of the 109th Congress. See 152 CONG. REC. 18316, 109th Cong. 2d Sess., Sept. 14, 2006 (H. Res. 1000).
2. Rule XXI clause 9(f) defines “limited tax benefit” and Rule XXI clause 9(g) defines “limited tariff benefit.” *House Rules and Manual* § 1068d (2011).
3. *House Rules and Manual* § 1068d (2011).
4. See § 31.4, *infra*.
5. *House Rules and Manual* § 1068d (2011).
6. See § 31.2, *infra*.

Rule XXI clause 9(c)⁽⁷⁾ provides a point of order against a special order of business reported from the Committee on Rules waiving the application of either clause 9(a) or 9(b) of Rule XXI.⁽⁸⁾ That point of order is disposed of by the question of consideration. A special order “self-executing” the adoption of an amendment does not in so doing waive the application of Rule XXI clause 9(a) and thus is not subject to clause 9(c).⁽⁹⁾

In addition to the earmark disclosure requirements of Rule XXI clause 9, the House also added earmark disclosures as an element of the Code of Official Conduct (Rule XXIII).⁽¹⁰⁾ Rule XXIII clause 17⁽¹¹⁾ requires any Member who requests a congressional earmark, limited tax or limited tariff benefit in a measure to submit to the chairman and ranking minority member of the committee of jurisdiction a written statement containing the following: (1) the name of the requesting Member; (2) identification of the intended recipient of the congressional earmark (or potential beneficiary of a tax or tariff benefit); (3) the purpose of the earmark, tax or tariff benefit; and (4) a certification that the Member (or spouse) has no financial interest in such congressional earmark, tax, or tariff benefit. Committees of the House are required by clause 17(b) to maintain publicly-accessible files on all such requests.

Disclosure Requirements

§ 31.1 A point of order does not lie under Rule XXI clause 9⁽¹⁾ against an unreported bill where the chairman of the committee of initial referral has caused to be printed in the *Congressional Record* a statement that the bill contains no congressional earmarks, limited tax benefits, or limited tariff benefits (sustained by tabling of appeal).

On Jan. 31, 2007,⁽²⁾ the following occurred:

POINT OF ORDER

Mr. [Patrick] McHENRY [of North Carolina]. Mr. Speaker, I rise to make a point of order.

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- 7. *House Rules and Manual* § 1068d (2011).
 - 8. See § 31.5, *infra*.
 - 9. See § 31.6, *infra*.
 - 10. *House Rules and Manual* § 1095 (2011).
 - 11. *Id.*
 - 1. *House Rules and Manual* § 1068d (2011).
 - 2. 153 CONG. REC. 2737, 2738, 110th Cong. 1st Sess.

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The SPEAKER pro tempore (Mr. DEFAZIO).⁽³⁾ The gentleman will state his point of order.

Mr. McHENRY. Under the new House rules, there is an anti-earmark rule that governs the House, which the rule governing this bill does not waive that rule of the House; and sections of this legislation actually go forward and violate that anti-earmark legislation. Therefore, I rise to make a point of order against H.J. Res. 20, as title I, section 101(a)(2), violates rule XXI, clause 9, of the House rules, stating, "There shall be no Member-directed earmarks," which this legislation does possess.

The SPEAKER pro tempore. Does any Member wish to be heard?

The Chair recognizes the gentleman from Wisconsin.

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I would simply note that on page 2543 of the CONGRESSIONAL RECORD there is listed the following statement:

Under clause 9(a) of rule XXI, lists or statements on congressional earmarks, limited tax benefits or limited tariff benefits are submitted as follows offered by myself: H.J. Res. 20 making further continuing appropriations for fiscal year 2007, and for other purposes, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Mr. McHENRY. Will the gentleman yield?

Mr. OBEY. No.

Mr. McHENRY. The gentleman will not yield for the question.

The SPEAKER pro tempore. On a point of order there is no yielding. The chair will hear each Member in turn. Does the gentleman from North Carolina wish to be heard on his point of order?

Mr. McHENRY. Yes. I wish to speak further.

The SPEAKER pro tempore. The gentleman is recognized.

Mr. McHENRY. Mr. Speaker, the gentleman is stating, simply because legislation states that there are no earmarks, that you can contain thousands of earmarks after that statement. It defies logic and defies reason.

And, furthermore, your section explaining that there shall be no congressional earmarks is further on in the legislation. Therefore, it is not operational over the violation that I am stating in section 101. Therefore, under the legislation here, it is not operational. Therefore, it is a very crafty way, and I have got to compliment the gentleman for putting together a very crafty piece of legislation to try to slip this by. But under these House rules, this is a clear violation of the anti-earmarking provision that is very important to the rules of debate, even when the minority is not able to offer any amendments, even when the minority has no other means of removing congressional earmarks.

The SPEAKER pro tempore. The gentleman will restrict himself to the point of order.

Mr. OBEY. Mr. Speaker, I ask for a ruling from the Chair.

The SPEAKER pro tempore. Under clause 9(a) of rule XXI, it is not in order to consider an unreported bill or joint resolution unless the chairman of each committee of initial referral has caused to be printed in the CONGRESSIONAL RECORD a list of congressional earmarks, limited tax benefits, or limited tariff benefits contained in the measure, or a statement that the measure contains no such earmarks or benefits.

Under clause 9(c) of rule XXI, a point of order under clause 9(a) of rule XXI may be based only on the failure of the submission to the CONGRESSIONAL RECORD to include such a list or statement.

3. Peter DeFazio (OR).

The Chair has examined the CONGRESSIONAL RECORD and finds that it contains the statement contemplated by clause 9(a) of rule XXI.

Accordingly, the point of order is overruled.

Mr. MCHENRY. Mr. Speaker, I appeal the ruling of the Chair.

MOTION TO TABLE OFFERED BY MR. OBEY

Mr. OBEY. Mr. Speaker, I move to table the appeal.

The SPEAKER pro tempore. The question is on the motion to table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCHENRY. Division. I ask for a division vote, Mr. Speaker.⁽⁴⁾

Mr. OBEY. Mr. Speaker, I ask for the yeas and nays.

Mr. MCHENRY. Wait a second, Mr. Speaker. I asked for a division vote.

The SPEAKER pro tempore. Under the Constitution, the yeas and nays have precedence over a request for a division.

The yeas and nays are requested. Those favoring a vote by the yeas and nays will rise. A sufficient number having risen, the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 226, nays 184, not voting 25, as follows:

[Roll No. 70]

Cognizability

§ 31.2 Under Rule XXI clause 9(a),⁽¹⁾ a point of order against consideration of a reported bill may be based only on the failure of the committee report to contain either a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the bill, or a statement that the bill contains no such earmarks or benefits and the Chair does not rule on the accuracy or sufficiency of such lists or statements.

On May 10, 2007,⁽²⁾ the following occurred:

POINT OF ORDER

Mr. [Lynn] WESTMORELAND [of Tennessee]. Mr. Speaker, I make a point of order. The SPEAKER pro tempore.⁽³⁾ The gentleman will state his point of order.

Mr. WESTMORELAND. I make a point of order under clause 9(a) of rule XXI regarding the earmarks in this bill, H.R. 2082. The list of earmarks in this bill fails to meet the requirements of clause 9(a) in that the list is deficient. One of the earmarks listed was included in the bill even though it failed to meet the requirement that the requesting Member notify in writing the chairman and ranking minority member of the committee.

4. See Deschler-Brown Precedents Ch. 30 § 14.1, *supra*.

1. *House Rules and Manual* § 1068d (2011).

2. 153 CONG. REC. 12190, 12191, 110th Cong. 1st Sess.

3. John Tierney (MA).

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The SPEAKER pro tempore. Under clause 9(a) of rule XXI, the Chair is constrained to ask a threshold question relating to the cognizability of the point of order.

Is the gentleman from Georgia alleging the absence of an entry in the report of the Permanent Select Committee on Intelligence in compliance with clause 9(a) of rule XXI?

Mr. WESTMORELAND. Mr. Speaker, I am saying that under clause 9(a) of rule XXI, that the list is deficient and did not include a notice to the ranking minority member on the committee of the earmark.

The SPEAKER pro tempore. The Chair finds the entry on pages 50 and 51 of the Report of the Permanent Select Committee on Intelligence constitutes compliance with clause 9(a) of rule XXI.

The point of order is overruled.

§ 31.3 In response to a parliamentary inquiry, the Speaker advised that pursuant to Rule XXI clause 9(d),⁽¹⁾ a point of order raised under clause 9(a) of that rule⁽²⁾ may be based only on the failure of proper publication of either a list of congressional earmarks, limited tax benefits, and limited tariff benefits in the measure or a statement that a measure contains no such earmarks or benefits and may not be based on the content of the list.

On May 10, 2007,⁽³⁾ in response to a parliamentary inquiry, the Speaker advised that Rule XXI clause 9(d)⁽⁴⁾ does not require the Chair to evaluate the content of a statement published pursuant to clause 9(a) of that rule:⁽⁵⁾

PARLIAMENTARY INQUIRIES

Mr. [Lynn] WESTMORELAND [of Tennessee]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore.⁽⁶⁾ The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Is the Chair saying that the mere existence of a list is sufficient, even though it includes an earmark where the requesting Member failed to notify the ranking minority member of his request, as required under clause 17 of rule XXIII?

The SPEAKER pro tempore. The Chair cannot render advisory opinions or respond on hypothetical premises.

Mr. WESTMORELAND. Mr. Chairman, further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Is the Chair saying that the mere existence of a list is sufficient, even though the list fails to include an earmark contained in the bill?

The SPEAKER pro tempore. Again, the Chair does not purport to issue such an advisory opinion.

1. *House Rules and Manual* § 1068d (2011).
2. *Id.*
3. 153 CONG. REC. 12191, 110th Cong. 1st Sess.
4. *House Rules and Manual* § 1068d (2011).
5. *Id.*
6. John Tierney (MA).

Mr. WESTMORELAND. Mr. Speaker, I don't believe this is a hypothetical situation, but I want to make further parliamentary inquiry, if I could.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Is the Chair saying that the mere existence of a list is sufficient, even though it includes an earmark where the requesting Member failed to certify he has no financial interest in the earmark?

The SPEAKER pro tempore. The Chair's response must remain the same.

Mr. WESTMORELAND. Finally, one last parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. Finally, is the Chair saying that the mere printing of a list of earmarks, or a statement that the bill contains no earmarks, is sufficient to render the point of order against the bill as not recognized by the Chair?

The SPEAKER pro tempore. The Chair can affirm that clause 9 of rule XXI contemplates that the presence of earmarks and limited tax and tariff benefits be disclosed or disclaimed. Complying statements, listing such provisions or disclaiming their presence, must appear either in the report of a committee or conference committee or in a submission to the CONGRESSIONAL RECORD.

Paragraph (a) of clause 9 establishes a point of order. Paragraph (c) of clause 9 requires that such a point of order be predicated only on the absence of a complying statement.

Clause 9 of rule XXI does not contemplate a question of order relating to the content of the statement offered in compliance with the rule. Argument concerning the adequacy of a list or the probity of a disclaimer is a matter that may be addressed by debate on the merits of the measure or by other means collateral to the review of the Chair.

Mr. WESTMORELAND. Further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. WESTMORELAND. So, Mr. Speaker, is it my understanding, from your last comments, that even though the rule specifically state that these procedures should be followed, and that they were not followed in this particular instance, that you are going to rule that the list, even though deficient not containing all the earmarks, just the mere fact that there was a list presented, no matter how accurate, that that will stand?

The SPEAKER pro tempore. The Chair would not deign to say what the gentleman understands, but the Chair's statement speaks for itself.

Applicability to Amendments Between the Houses

§ 31.4 Rule XXI clause 9(a)⁽¹⁾ does not apply to a motion to dispose of a Senate amendment and a point of order on this basis was overruled (sustained by tabling of appeal).

On Sept. 25, 2007,⁽²⁾ a point of order was overruled as Rule XXI clause 9(a) does not apply to amendments between the Houses:

PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 976, CHILDREN'S HEALTH INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007

Mr. [James] MCGOVERN [of Massachusetts]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 675 and ask for its immediate consideration.

1. *House Rules and Manual* § 1068d (2011).

2. 153 CONG. REC. 25434, 25435, 110th Cong. 1st Sess.

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The Clerk read the resolution, as follows:

H. RES. 675

Resolved, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 976) to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes, with Senate amendments thereto, and to consider in the House, without intervention of any point of order except those arising under clause 10 of rule XXI, a single motion offered by the chairman of the Committee on Energy and Commerce or his designee that the House concur in each of the Senate amendments with the respective amendment printed in the report of the Committee on Rules accompanying this resolution. The Senate amendments and the motion shall be considered as read. The motion shall be debatable for one hour equally divided among and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce and the chairman and ranking minority member of the Committee on Ways and Means. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

POINT OF ORDER

Mr. [Mike] ROGERS of Michigan. Mr. Speaker, point of order.

The SPEAKER pro tempore (Mr. HOLDEN).⁽³⁾ The gentleman will state his point of order.

Mr. ROGERS of Michigan. Mr. Speaker, I rise for a point of order against consideration of the resolution because it violates clause 9(b) of House rule XXI for failure to disclose a taxpayer-funded earmark contained in the bill.

Section 618 of the Democrats' SCHIP bill contains an undisclosed earmark directing taxpayer funding to a facility located in Memphis, Tennessee, specifically in the district of the gentleman from Tennessee.

Under House rules, all earmarks are supposed to be disclosed, and the Member requesting the earmark is required to certify that he has no financial interest in this earmark.

The earmark contained in this bill has not been disclosed anywhere. In fact, at the Rules Committee last night, my friends in the Democratic leadership certified this bill as "earmark-free," despite the fact that this bill includes an earmark for the gentleman from Tennessee.

The requirements of full disclosure and certification that there is no financial interest have not been met here.

This earmark was not in the House-adopted bill, H.R. 976. It was not in the Senate amendment to H.R. 976. I would point out it was in the House-adopted H.R. 3192, but it was never disclosed there either. . . .

POINT OF ORDER

Mr. MCGOVERN. Mr. Speaker, will the gentleman please state his point of order?

The SPEAKER pro tempore. The gentleman from Michigan must confine his remarks to his point of order.

Mr. ROGERS of Michigan. Mr. Speaker, my point of order is that this bill is in violation of 9(b) of House rule XXI for failure to disclose a taxpayer-funded earmark contained in the bill.

3. Tim Holden (PA).

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

The gentleman from Michigan makes a point of order under clause 9(b) of rule XXI that the resolution waives the application of clause 9(a) of rule XXI. It is correct that clause 9(b) of rule XXI provides a point of order against a rule that waives the application of the clause 9(a) point of order.

In pertinent part, clause 9(a) of rule XXI provides a point of order against a bill, a joint resolution, or a so-called “manager’s amendment” thereto unless certain information on congressional earmarks, limited tax benefits and limited tariff benefits is disclosed. But this point of order does not lie against an amendment between the Houses.

House Resolution 675 makes in order a motion to concur in Senate amendments with amendment. Because clause 9(a) of rule XXI does not apply to amendments between the Houses, House Resolution 675 has no tendency to waive its application. The point of order is overruled.

Mr. ROGERS of Michigan. I appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE BY MR. MCGOVERN

Mr. MCGOVERN. Mr. Speaker, I move to table the appeal of the ruling of the Chair. The SPEAKER pro tempore. The question is on the motion to table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. ROGERS of Michigan. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 190, not voting 18, as follows:

[Roll No. 902] . . .

Points of Order Under Rule XXI Clause 9(c)

§ 31.5 Rule XXI clause 9(c)⁽¹⁾ prescribes a point of order against consideration of a rule that waives the application of Rule XXI clause 9(a)⁽²⁾ (disclosure of earmarks in a conference report).

On May 14, 2008,⁽³⁾ the Speaker stated that a point of order could be raised against a rule waiving earmark disclosure requirements and would be decided by a question of consideration:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 2419,
FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Mr. [Dennis] CARDOZA [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1189 and ask for its immediate consideration.

1. *House Rules and Manual* § 1068d (2011). This point of order was originally found in Rule XXI clause 9(b) prior to the 111th Congress.
2. *Id.*
3. 154 CONG. REC. 9050, 9052, 9054, 9055, 110th Cong. 2d Sess.

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The Clerk read the resolution, as follows:

H. RES. 1189

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2419) to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The previous question shall be considered as ordered on the conference report without intervening motion except (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture and (2) one motion to recommit. . . .

POINT OF ORDER

Mr. [Jeff] FLAKE [of Arizona]. Mr. Speaker, I raise a point of order against H. Res. 1189 under clause 9 of rule XXI, because the resolution contains a waiver of all points of order against the conference report and its consideration.

The SPEAKER pro tempore.⁽⁴⁾ The gentleman from Arizona makes a point of order that the resolution violates clause 9(b) of rule XXI.

Under clause 9(b) of rule XXI, the gentleman from Arizona and the gentleman from California each will control 10 minutes of debate on the question of consideration.

Following the debate, the Chair will put the question of consideration as follows: “Will the House now consider the resolution?” . . .

The SPEAKER pro tempore. The question is, Will the House now consider the resolution?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 228, nays 189, not voting 16, as follows:

[Roll No. 309] . . .

So the question of consideration was decided in the affirmative.

Applicability to Special Orders “Self-Executing” Amendments

§ 31.6 Rule XXI clause 9(c)⁽¹⁾ does not apply to a special order “self-executing” an amendment alleged to contain earmarks, limited tax benefits, or limited tariff benefits (and lacking the required disclosures) because such a rule has no tendency to waive the applicability of Rule XXI clause 9(a)⁽²⁾ within the meaning of Rule XXI clause 9(c).⁽³⁾

4. Edward Pastor (AZ).

1. *House Rules and Manual* § 1068d (2011). As noted, prior to the 111th Congress, this point of order was found in Rule XXI clause 9(b).

2. *Id.*

3. *Id.*

The applicability of the earmark rule to amendments is limited to those offered at the outset of consideration by a committee member designated in the report (and not to other amendments offered at other stages of the amendment process). By confining the point of order to those amendments offered at the outset of consideration, the rule targets “manager’s amendments.”⁽⁴⁾ Thus, on Sept. 27, 2007,⁽⁵⁾ the following point of order was overruled:

POINT OF ORDER

Mr. [David] DREIER [of California]. Point of order, Mr. Speaker.

Mr. Speaker, I raise a point of order against consideration of the rule.

The SPEAKER pro tempore.⁽⁶⁾ The gentleman will state his point of order.

Mr. DREIER. I raise a point of order against consideration of the resolution because it violates clause 9(b) of House rule XXI, which states that it shall not be in order to consider a rule or order that waives the application of clause 9(a) of House rule XXI, the earmark disclosure rule.

The rule waives the application of the earmark disclosure rule against the amendment printed in part A of the committee report. The amendment is self-executed by the rule and, therefore, evades the application of clause 9.

I doubt that the self-executed amendment contains any earmarks; however, there is no statement in accordance with rule 9 that it does not.

The SPEAKER pro tempore. Does any Member wish to be heard on the point of order?

Mr. DREIER. I look forward to your ruling, Mr. Speaker.

The SPEAKER pro tempore. The Chair is prepared to rule.

The gentleman from California makes a point of order that the resolution waives the application of clause 9(a) of rule XXI. It is correct that 9(b) of rule XXI provides a point of order against a rule that waives the application of the clause 9(a) point of order.

Clause 9(a) of rule XXI provides a point of order against a bill or joint resolution, a conference report on a bill or joint resolution or a so-called “manager’s amendment” to a bill or joint resolution, unless certain information on congressional earmarks, limited tax benefits and limited tariff benefits is disclosed. But this point of order does not lie against an amendment that has been “self-executed” by a special order of business resolution.

House Resolution 683 “self-executes” the amendment recommended by the Committee on Financial Services modified by the amendment printed in part A of the Rules Committee report. Because clause 9(a) of rule XXI does not apply to such amendment, House Resolution 683 has no tendency to waive its application, and the point of order is overruled.

Timeliness**§ 31.7 A point of order against a bill under Rule XXI clause 9⁽¹⁾ is untimely after consideration has begun.**

4. See 153 CONG. REC. 8, 110th Cong. 1st Sess., Jan. 4, 2007.

5. 153 CONG. REC. 25723, 110th Cong. 1st Sess.

6. Earl Blumenauer (OR).

1. *House Rules and Manual* § 1068d (2011).

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On Mar. 23, 2007,⁽²⁾ after debate had begun on H.R. 1591, the following point of order was raised:

U.S. TROOP READINESS, VETERANS' HEALTH, AND IRAQ ACCOUNTABILITY
ACT, 2007

The SPEAKER pro tempore.⁽³⁾ Pursuant to section 2 of House Resolution 261, proceedings will now resume on the bill (H.R. 1591) making emergency supplemental appropriations for the fiscal year ending September 30, 2007, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. When proceedings were postponed on Thursday, March 22, 2007, the gentleman from Wisconsin (Mr. Obey) had 59 ½ minutes remaining and the gentleman from California (Mr. Lewis) had 51 minutes remaining.

Who yields time?

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I yield myself 10 minutes. . . .

PARLIAMENTARY INQUIRY

Mr. [Patrick] MCHENRY [of North Carolina]. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MCHENRY. Mr. Speaker, how is it in order to continue to consider H.R. 1591 when rule XXI, clause 9 of the House clearly states that, and I quote, "it shall not be in order to consider a bill or joint resolution reported by a committee unless the report includes a list of congressional earmarks, limited tax benefits and limited tariff benefits in the bill or in the report, and the name of any Member, Delegate or Resident Commissioner who submitted a request to the committee for each respective item included in such list, or a statement that the proposition contains no congressional earmarks, limited tax benefits or tariff benefits"?

The SPEAKER pro tempore. No Member rose to a point of order at the appropriate point in time.

POINT OF ORDER

Mr. MCHENRY. Mr. Speaker, I make a point of order.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. MCHENRY. Mr. Speaker, is there a list of congressional earmarks with this?

The SPEAKER pro tempore. Is the gentleman stating a point of order?

Mr. MCHENRY. Point of order. House rule XXI, clause 9 states, and if I shall repeat, or if the gentleman would, if the Speaker would look at House rule XXI, clause 9, is there not cause for action?

The SPEAKER pro tempore. The gentleman's point of order is not timely.

PARLIAMENTARY INQUIRIES

Mr. MCHENRY. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

2. 153 CONG. REC. 7415, 7420, 110th Cong. 1st Sess.

3. Michael Capuano (MA).

Mr. MCHENRY. Mr. Speaker, at what time would it be timely for consideration?

The SPEAKER pro tempore. It would be timely at the outset of consideration of the matter. . . .

Debate

§ 31.8 Debate on the point of order under Rule XXI clause 9(b)⁽¹⁾ should be confined to the question of considering the underlying measure.

On May 14, 2008,⁽²⁾ the Chair reminded Members to confine remarks to the subject of the point of order:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 2419, FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Mr. [Dennis] CARDOZA [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1189 and ask for its immediate consideration. . . .

Mr. [Jeff] FLAKE [of Arizona]. Mr. Speaker, I raise a point of order against H. Res. 1189 under clause 9 of rule XXI, because the resolution contains a waiver of all points of order against the conference report and its consideration.

The SPEAKER pro tempore.⁽³⁾ The gentleman from Arizona makes a point of order that the resolution violates clause 9(b) of rule XXI.

Under clause 9(b) of rule XXI, the gentleman from Arizona and the gentleman from California each will control 10 minutes of debate on the question of consideration.

Following the debate, the Chair will put the question of consideration as follows: “Will the House now consider the resolution?”

The Chair recognizes the gentleman from Arizona.

Mr. FLAKE. Mr. Speaker, this second point of order, and I will be calling for a vote on this one, is raised because of earmarks that have been airdropped into the legislation. . . .

Mr. FLAKE. Reclaiming my time, I thank the gentleman for the clarification. I still would point out we have a \$3.8 billion permanent disaster title added to the bill; and still, in addition to that, we are funding these kinds of programs directly and specifically.

The gentleman can argue that it is not an earmark. I think that a casual or a tortured reading of this would both say this is an earmark when you are naming a specific entity to receive a specific amount of money and when it wasn't in the House bill, that is an earmark. So there is a good reason for this point of order.

The gentleman said, and let me go back to the PAYGO issue. The gentleman mentioned that this rule he thinks is in compliance with PAYGO. Let me read what this conference report says and see if anybody can decipher this.

Mr. CARDOZA. Mr. Speaker, the gentleman raised a point of order with regard to earmarks, not with regard to the issue of PAYGO. That will be discussed in the rule itself. It will be germane to that later discussion.

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1. *House Rules and Manual* § 1068d (2011).
 2. 154 CONG. REC. 9050, 9052, 9053, 110th Cong. 2d Sess.
 3. Edward Pastor (AZ).

Ch. 41 § 31 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The SPEAKER pro tempore. If the gentleman may confine his remarks to the question of order.

Correcting Incomplete Reports

§ 31.9 The House, by unanimous consent, permitted a committee to file a supplemental report on a bill to correct numerous substantive omissions in the report, including a statement of congressional earmarks, limited tax benefits, and limited tariff benefits required by Rule XXI clause 9.⁽¹⁾

On July 10, 2008,⁽²⁾ the following occurred:

PERMISSION FOR PERMANENT SELECT COMMITTEE ON INTELLIGENCE TO FILE SUPPLEMENTAL REPORT ON H.R. 5959, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2009

Mr. [Silvestre] REYES [of Texas]. Madam Speaker, I ask unanimous consent that the House Permanent Select Committee on Intelligence be allowed to file a supplemental report to accompany H.R. 5959.

The SPEAKER pro tempore.⁽³⁾ Is there objection to the request of the gentleman from Texas?

There was no objection.

1. *House Rules and Manual* § 1068d (2011).
2. 154 CONG. REC. 14596, 110th Cong. 2d Sess.
3. Ellen Tauscher (CA).