# ARTICLE

# THE STRUCTURE OF CHOICE IN THE HOUSE OF REPRESENTATIVES: THE IMPACT OF COMPLEX SPECIAL RULES*

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*The House Rules Committee, through its power to report special rules under which legislation may be considered on the floor, is chiefly responsible for regulating the flow of House business. One aspect of this responsibility involves the determination of the extent to which measures may be amended once they are brought to the floor. Formerly, legislation was considered either under an open rule, which placed no restrictions on amendments, or under a closed rule, which limited amendments to those proposed by the reporting committee. In recent years, however, a third option, which Dr. Bach calls the "complex rule," has come into use. Dr. Bach shows how the availability of this tool has permitted the Rules Committee a new degree of discretion in choosing which legislative alternatives will be presented to the House. Dr. Bach goes on to show how this discretion has been exercised — on some occasions in the interest of legislative efficiency, and on others, in the interest of partisan advantage.*

## *Introduction*

Throughout this century, the Committee on Rules has been instrumental in determining the order of legislative business on the floor of the House of Representatives. In contemporary practice, the Committee reports a resolution, known as a "rule" or special rule, that usually makes "in order" a motion that the House resolve itself into Committee of the Whole to debate and amend a specific bill or other measure.[1] Such a resolution also

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* This article is based upon a paper by the author entitled The Structure of Choice in the House of Representatives: Recent Uses of Special Rules, delivered at the 1980 Annual Meeting of the American Political Science Association, Washington, D.C., Aug. 28-31, 1980; 

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1 Special rules are reported for other purposes as well — for example, to waive points of order that otherwise might arise during consideration of general appropriation bills and conference reports, to dispose of Senate amendments to House measures, and to provide for consideration of measures in the House or in the House as in Committee of the Whole.

may waive the application of certain House rules on which Members otherwise might base points of order against consideration of the bill, or one of its provisions, or against an amendment that is expected to be offered. Each special rule is presented to the House in the form of a House resolution that is itself subject to amendment, adoption, or rejection by majority vote. It is by means of these special rules that most significant measures come before the House for consideration.

In addition to their impact on the order of business, special rules may establish special sets of parliamentary conditions for considering individual bills and resolutions. In this respect, the most important, and frequently the most controversial, provisions of special rules are those governing the amending process in Committee of the Whole. The most common distinction is one that distinguishes between open and closed rules. An open rule permits Members to offer all amendments that do not violate established House rules and precedents — for example, the requirements that an amendment must be germane and that it must be offered to the specific part of the measure that it would amend. A closed rule precludes all amendments, or all amendments except those offered at the direction of the committee or committees that recommended the measure's passage. However, this distinction does not fully capture the true variety of special rules, and the rich diversity of their provisions, that have structured the deliberations of the House of Representatives in recent years.

## I. The Emergence of Complex Rules

In addition to open and closed rules, with the waivers of House rules that frequently accompanied them, there emerged during the decade of the 1970's an increasing number of special rules — often on the most controversial and important measures — that were neither open nor closed. These rules have been considerably more complex in their provisions, and have reflected a deliberate attempt by the Rules Committee to arrange and even define the alternatives to be presented to the House during the course of the amending process in Committee of the Whole. In some cases, complex rules have expanded the range of permissible floor amendments beyond those that would have

been in order under the normal operation of House rules and precedents. In other cases, these rules have restricted the amending process, short of imposing closed rules, to permit certain non-committee amendments but prohibit others that otherwise would have been in order. Still other complex rules do not fit comfortably within either of these categories — for example, by combining elements of both or by attempting to organize the amending process without directly affecting the amendments that might be proposed.[2]

The frequency with which such complex rules have been reported by the Rules Committee has increased, in both absolute and relative terms, since the late 1960's. Their number increased tenfold from the Ninetieth through the Ninety-sixth Congress, from four in 1967-68 to forty-three in 1977-78 and forty in 1979-80. Only 2 percent of the special rules reported during the Ninetieth Congress for considering measures in Committee of the Whole were complex; this figure increased to the 12-13 percent range during the Ninety-third and Ninety-fourth Congresses, and exceeded 20 percent during the Ninety-fifth and Ninety-sixth Congresses.[3]

Despite this impressive increase, complex rules continue to constitute only a small minority of all special rules reported.[4] Yet their numbers belie their importance in two crucial respects.

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2 Because some complex rules have combined restrictive and expansive provisions, the focus of later sections of this Article is on the restrictive and expansive uses of complex rules. Although many of the examples cited will be characterized as being primarily "restrictive" or primarily "expansive," some of the complex special rules discussed in these sections were, in fact, restrictive in some respects but expansive in others.

3 Data for the 90th through 92d Congresses are based upon an inspection of the texts of all special rules reported by the House Rules Committee. Data for the 93d through 96th Congresses are based, first, upon the descriptions of special rules granted, as these descriptions appear in the final Legislative Calendar of the Rules Committee for each of these Congresses, and, second, upon an examination of the texts of all complex special rules reported by the Rules Committee and considered by the House. Data have not been compiled for Congresses preceding the 90th. *See generally* J. A. ROBINSON, THE HOUSE RULES COMMITTEE (1963). Robinson defines a closed rule as one that allows "no amendments, certain amendments, or only those offered by the committee with original jurisdiction." *Id.* at 43-44. While the scope of this definition would be broad enough to include some complex special rules, Robinson focuses exclusively on truly closed rules. His treatment of this subject supports the inference that special rules restricting amendments were either unknown or rare during the period he studied.

4 Including special rules for other purposes, *see* note 1 *supra*, complex rules as a percentage of all special rules increased from 10 percent during the 93d and 94th Congresses to 17 percent during the 95th Congress and 15 percent during the 96th Congress.

First, they reflect an expansion of the range of options available to and exercised by the Rules Committee. Second, they have been the cause of much of the criticism directed in recent years at the Committee and at the groundrules for considering measures on the House floor.

Half of the complex special rules reported from 1967 through 1980 were primarily expansive in character.[5] These rules frequently made in order one or more specific amendments, other than committee amendments, and often waived points of order that otherwise could have been raised, on grounds such as germaneness, against the amendments made in order. During the Ninetieth, Ninety-first, and Ninety-second Congresses, all such rules provided that part or all of the text of one or more other measures could be proposed as amendments to the measure under consideration or to the committee amendment in the nature of a substitute for the measure. During subsequent Congresses, the types of specific amendments made in order by complex rules have become more varied — including, for example, particular amendments printed in certain editions of the *Congressional Record,* amendments on designated subjects if offered by named individual Members, and even amendments quoted verbatim in the special rules themselves.

Most other complex rules have been restrictive in one respect or another.[6] In a few cases, such rules have closed part of a measure to all but committee amendments. More commonly, restrictive complex rules have permitted only committee amendments and certain other amendments: amendments directed to certain provisions of the measure, amendments addressed to certain subjects, or amendments specifically identified in the special rules. Less restrictive rules have permitted all germane amendments to be offered, but only if printed in the *Congressional Record* by a fixed date or by a date one or more days before consideration of the measure. Special rules also have been reported that combine two or more of these restrictive features or both restrictive and expansive features. Data on the varieties of complex rules appear in Table 1.

In short, the construction of special rules has increasingly become an act of political and parliamentary craftsmanship.

5 *See* Table 1 *infra.*
6 *See* Table 1 *infra.*

TABLE 1

VARIETIES OF COMPLEX SPECIAL RULES REPORTED BY THE HOUSE RULES COMMITTEE: 90TH CONGRESS - 96TH CONGRESS

| | 90th | | 91st | | 92d | | 93d | | 94th | | 95th | | 96th | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | # | % | # | % | # | % | # | % | # | % | # | % | # | % |
| Part of text closed to all but committee amendments[1] | 0 | — | 4 | 36 | 1 | 7 | 0 | — | 3 | 10 | 3 | 7 | 1 | 2 |
| Committee amendments and certain other amendments only | 0 | — | 0 | — | 5 | 36 | 2 | 8 | 8 | 26 | 13 | 30 | 15 | 38 |
| Amendments printed in the *Congressional Record* | 0 | — | 0 | — | 0 | — | 0 | — | 2 | 6 | 4 | 9 | 1 | 2 |
| Amendments on certain subjects | 0 | — | 0 | — | 0 | — | 0 | — | 1[5] | 3 | 0 | — | 3 | 8 |
| Amendments to certain provisions[2] | 0 | — | 0 | — | 3 | 21 | 2 | 8 | 1 | 3 | 1 | 2 | 0 | — |
| Amendments specifically identified in special rules | 0 | — | 0 | — | 1[5] | 7 | 0 | — | 4 | 13 | 8 | 19 | 9 | 22 |
| Combination | 0 | — | 0 | — | 1 | 7 | 0 | — | 0 | — | 0 | — | 2 | 5 |
| Other restrictive special rules | 0 | — | 1 | 9 | 0 | — | 0 | — | 1 | 3 | 0 | — | 2 | 5 |
| Specific amendments made in order[3] | 4[4] | 100 | 6[4] | 55 | 8[4] | 57 | 19[6] | 73 | 11 | 35 | 20 | 47 | 16 | 40 |
| Combination | 0 | — | 0 | — | 0 | — | 5 | 19 | 8 | 26 | 7 | 16 | 6 | 15 |
| Total number of complex rules | 4 | 100 | 11 | 100 | 14 | 100 | 26 | 100 | 31 | 100 | 43 | 100 | 40 | 100 |

[1] The text being either the text of a measure as introduced or the text of a committee amendment in the nature of a substitute to be considered as an original measure for the purpose of amendment.

[2] Certain provisions of a measure or a committee amendment in the nature of a substitute to be considered as an original measure for the purpose of amendment.

[3] Also may include restrictions on amendments to the specific amendments made in order.

[4] All provide for part or all of the texts of one or more other measures to be in order as amendments to measures or committee substitutes therefor.

[5] Committee amendments not in order.

[6] All but 5 provide for the texts of one or more other measures to be in order as amendments to measures or committee substitutes therefor.

*Sources: See* note 2 *supra.*

*Note:* This table includes data only on special rules for initial consideration in Committee of the Whole of measures other than general appropriation measures.

Through expansive provisions, the Rules Committee can bring to the floor in the form of an amendment a proposal which otherwise would be out of order and be precluded from consideration. Through restrictive provisions, the Committee can limit the aspects of a measure that Members can address through amendments and define the legislative alternatives among which Members may choose. In reporting a complex rule, rather than an open or closed rule, the members of the Rules Committee are able to play a much more discriminating part in shaping outcomes by controlling options.

As might be expected, complex rules have aroused more controversy and opposition than other special rules. The 140 complex rules reported between 1973 and 1980 constituted 16 percent of all the special rules providing for initial floor consideration of measures in Committee of the Whole. But these complex rules accounted for one-fourth of the special rules amended by the House, more than 30 percent of those defeated (or referred) or opposed unsuccessfully by more than 100 Members on roll-call votes, and almost one-half of the special rules on which the previous question had to be ordered by roll-call vote. Thus, Members of the House have been more likely to resist complex rules than open ones. Some data on the disposition of special rules are presented in Table 2.[7]

Although relatively more controversial than open rules, few complex rules were ultimately amended or defeated — of the 126 such rules considered between 1973 and 1980, only four were modified substantially on the floor and only five were rejected by the House. During this period, 93 percent of the complex rules on which the House voted were adopted without amendment, and 84 percent of the time the previous question was ordered by voice vote. Of the complex rules that were adopted as reported, nearly one in seven was subjected to an attempt at amendment in the form of a roll-call vote on ordering the previous question. But the roll-call votes on the previous question that did take place are striking. Fourteen of the twenty votes were party votes — a majority of Democrats opposed a majority of Republicans — and in twelve cases (more than half of the votes on the previous question), five or fewer Republicans

7 *See* Table 2 *infra* and sources cited therein.

TABLE 2
DISPOSITION OF ALL SPECIAL RULES REPORTED BY THE HOUSE RULES COMMITTEE: 93D CONGRESS - 96TH CONGRESS

| | 93d | | 94th | | 95th | | 96th | |
|---|---|---|---|---|---|---|---|---|
| | # | % | # | % | # | % | # | % |
| Special rules adopted as reported | 236 | 91 | 285 | 95 | 220 | 86 | 218 | 84 |
| by voice vote | 173 | 67 | 161 | 53 | 100 | 39 | 125 | 48 |
| by division vote | 1 | — | 1 | — | 1 | — | 1 | — |
| by roll call vote | 62 | 24 | 123 | 41 | 119 | 46 | 92 | 36 |
| Special rules amended and then adopted | 6 | 2 | 1 | — | 7 | 3 | 2 | 1 |
| Special rules defeated or referred | 9 | 3 | 3 | 1 | 2 | 1 | 2 | 1 |
| Special rules laid on the table or not considered | 8 | 3 | 12 | 4 | 27 | 11 | 37 | 14 |
| Special rules adopted with more than 100 Members voting in opposition | 11 | 4 | 19 | 6 | 18 | 7 | 22 | 8 |
| Special rules on which previous question ordered by roll call vote | 5 | 2 | 6 | 2 | 7 | 3 | 15 | 6 |
| Total number of special rules reported | 259 | 100 | 301 | 100 | 256 | 100 | 259 | 100 |

*Sources: See* note 2 *supra.*

voted in support of the rule as reported. The minority party was unanimous in its opposition on five occasions and suffered only one defection in each of five others.[8] After the initial organizational votes at the beginning of each Congress there are few, if any, other sets of votes on which either party can achieve such unity.

The explanation for these data lies in the fact that complex special rules have evolved in response to a series of developments within the House that have created both new institutional needs and new political opportunities.

One of the most important and visible causes of this evolution has been the frequency of multiple referrals in cases of jurisdictional overlap. Many measures do not fall solely within the jurisdiction of one of the House's twenty-two standing committees. Twice during the 1970's, the House created Select Committees on Committees and directed them to re-examine the existing division of labor among standing committees, as

8 *See* Table 2 *infra* and sources cited therein.

well as other aspects of the committee system. Neither effort, however, was conspicuously successful.

The 1973-74 Select Committee, under the leadership of Representative Bolling of Missouri, proposed fairly major changes in committee jurisdictions. Instead, the House ultimately adopted an amended version of an alternative plan, developed initially within the Democratic Caucus, that focused more on organizational and procedural than jurisdictional change.[9] The second Select Committee, created in 1979 and chaired by Representative Patterson of California, concentrated on the management of energy legislation, and proposed the creation of a standing Committee on Energy after finding that "as many as 83 House committees and subcommittees had considered aspects of energy policy during the 95th and 96th Congresses."[10] The House accepted instead a substitute proposal that made fewer jurisdictional shifts but that emphasized the energy-related responsibilities of the Committee on Interstate and Foreign Commerce (renamed the Committee on Energy and Commerce).[11]

It is arguable, however, whether the jurisdictional problems of the House could be resolved fully, much less permanently, by any reorganization scheme, no matter how carefully constructed. The shape, scope, and salience of policy issues change over time, and the set of jurisdictional alignments that are appropriate today soon will be overtaken by events. Recognizing this dimension of the problem, the Bolling Committee did more than recommend changes in existing committee jurisdictions. It proposed, and the House adopted, procedures for referring measures to two or more committees — in a joint, sequential, or split manner — to deal with jurisdictional ambiguities.[12]

Before adoption of the Committee Reform Amendments of 1974, multiple referrals had not been authorized by House

9 On the history of the Bolling Committee, *see* R. H. DAVIDSON & W. J. OLESZEK, CONGRESS AGAINST ITSELF (1977).

10 H.R. REP. No. 96-741, 96th Cong., 2d Sess. 7 (1980).

11 H.R. RES. 549, 96th Cong., 2d Sess., 126 CONG. REC. H2128-62 (daily ed. Mar. 25, 1980).

12 H.R. REP. No. 93-916, 93d Cong., 2d Sess. 59-60 (1974). In the case of a joint referral, a measure is referred in its entirety to two or more committees for concurrent consideration. In the case of a sequential referral, a measure is referred to one committee and, once reported by that committee, then is referred to a second committee, normally for a specified period of time. In the case of a split referral, different parts of a measure are referred to different committees, with each committee bearing responsibility only for those parts of the measure within its jurisdiction.

rules.[13] In its report, the Bolling Committee described the situation it proposed to change:

> Under the precedents, bills are not divided or referred jointly even though they may contain matters within the jurisdiction of several committees. . . . In the absence of some special arrangement . . . the committee to which a bill is referred receives and exercises jurisdiction over the entire bill. Other committees can ordinarily do nothing to assert control over those portions of such bills in which they have jurisdictional interest or to remove those parts that encroach on their jurisdiction.[14]

Since clause 5 of House Rule X has been modified to permit multiple referrals,[15] their number has grown rapidly. During the Ninety-fourth Congress, 1,161 measures (6 percent of all measures introduced) were referred to more than one House committee and thirty-eight multiply-referred measures were reported. During the Ninety-fifth Congress, both the number and percentage of multiply-referred measures increased: 1,855 measures (more than 10 percent of all measures) were referred in this manner, of which 84 were reported. During the first session of the Ninety-sixth Congress alone, sixty-four multiply-referred measures were reported by House committees.[16]

Whatever the advantages of multiple referrals, they have created problems for the Rules Committee and the House. In procedural terms, mechanisms have had to be perfected that allow the members of two or more committees to share influence over the control of floor debate and the course of the amending process on measures they have considered. In policy terms, choices have had to be made on the floor between conflicting recommendations of two or more presumably expert committees. One means of resolving these problems — or at least facilitating their resolution — has been through special rules.

Over time, the impact of multiple referrals has come to be reflected in the provisions of special rules governing the division

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13 H.R. RES. 988, 93d Cong., 2d Sess., 120 CONG. REC. 34469-70 (1974).

14 H.R. REP. No. 93-916, *supra* note 12, at 56.

15 For the most recent published version of the House Rules, *see* H.R. DOC. No. 96-398, 96th Cong., 2d Sess. (1981).

16 Data on multiple referrals during the 94th and 95th Congresses are taken from the final report of the Patterson Committee, H.R. REP. No. 96-866, 96th Cong., 2d Sess. 442 (1980). Data for the 96th Congress were provided by the Office of Automated Information Services of the Congressional Research Service.

and control of time for general debate in Committee of the Whole. (See Table 3.) All the special rules of the Ninetieth Congress assigned control of the time for general debate to one committee only. During the next three Congresses, other arrangements were made in a total of ten instances — generally to reflect the legitimate interest of one committee in a measure referred exclusively to another. Since then, control of time by other than one committee has become more common: such provisions were included in nineteen special rules of the Ninety-fourth Congress, twenty-seven of the Ninety-fifth, and twenty-five reported during the Ninety-sixth.[17] In a few instances, part of the time for general debate has even been placed under the control of individually named Members of the House. For instance, the special rule that permitted consideration of amendments on the oil depletion allowance, at the direction of the Democratic Caucus, gave partial control of general debate to proponents of two of the amendments.[18] Only a small minority of special rules provide for control of general debate by more than one committee, but the increasing number of such rules is a noticeable response to the development of multiple-referral practices.[19]

Coping with the impact of multiple referrals on the amending process has proven to be a more complicated task than allocating time for debate, and the Rules Committee has reported complex rules with a variety of provisions for considering amendments proposed by two or more committees. The provisions of special rules for multiply-referred measures may depend upon both the type of referral — split, sequential, or joint — and the form of committee action. In the case of a bill referred jointly to two committees, for example, one or both of the committees may report "clean" bills or may report the original bill with either an amendment in the nature of a substitute or a series of separate amendments. Special rules for considering such bills will vary accordingly. But the problems, and the manner in which the Rules Committee proposes to resolve them, also can have substantive implications. If two committees report

17 *See* Table 3 *infra* for data on control of time for general debate.

18 H. RES. 259, 94th Cong., 1st Sess., 121 CONG. REC. H4593-600 (daily ed. Feb. 27, 1975) (for consideration of H.R. 2166).

19 *See* Table 3 *infra*.

TABLE 3

CONTROL OF TIME FOR GENERAL DEBATE IN SPECIAL RULES REPORTED BY THE HOUSE RULES COMMITTEE: 90TH CONGRESS - 96TH CONGRESS

| | 90th | | 91st | | 92d | | 93d | | 94th | | 95th | | 96th | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | # | % | # | % | # | % | # | % | # | % | # | % | # | % |
| Control by one committee | 183 | 100 | 198 | 98 | 177 | 98 | 220 | 99 | 228 | 92 | 177 | 87 | 170 | 87 |
| Control by two committees | 0 | — | 4 | 2 | 2 | 1 | 2 | 1 | 12 | 5 | 19 | 9 | 17 | 9 |
| Control by three committees | 0 | — | 0 | — | 0 | — | 0 | — | 1 | — | 4 | 2 | 3 | 2 |
| Control by four committees | 0 | — | 0 | — | 0 | — | 0 | — | 1 | — | 3 | 1 | 3 | 2 |
| Control in part by designated Members | 0 | — | 0 | — | 1 | 1 | 1 | — | 5 | 2 | 1 | — | 2 | 1 |
| Control by other than one committee | 0 | — | 4 | 2 | 3 | 2 | 3 | 1 | 19 | 8 | 27 | 13 | 25 | 13 |
| Total number of special rules | 183 | 100 | 202 | 100 | 180 | 100 | 223 | 100 | 247 | 100 | 204 | 100 | 195 | 100 |

*Sources: See* note 2 *supra.*

*Note:* This table includes data only on special rules for initial consideration in Committee of the Whole of measures other than general appropriation measures. The Legislative Calendars of the Rules Committee for the 93d-95th Congresses only identify the Members controlling time for general debate in cases in which such control is by other than one committee. This table reflects the assumption that, when not otherwise stated, general debate was controlled solely by the chairman and ranking minority member of a single committee.

amendments to the same bill, their prospects for success on the floor may be influenced by the time at which and the order in which they can be offered. To some extent, these matters are controlled by well-established precedent, but they also may be affected by the manner in which the special rules are framed.

It is probable also that changes in special rules have been inspired by institutional changes other than the increasing use of multiple referrals — changes that are considerably more difficult to measure. One set of changes has had a significant effect on the Ways and Means Committee. Since 1974, the number of its members has increased substantially, much of its work has been delegated to subcommittees with fixed jurisdictions, and the effective power of its chairman has been reduced. The result has been a Ways and Means Committee that is somewhat more decentralized and less prone to consensual decisions than in the past.[20] In addition, Democratic Caucus rules regarding requests for closed rules have made it at least possible for Ways and Means members to appeal their defeats in committee markup to the Caucus or directly to the Rules Committee and then to the House floor.[21] The Ways and Means Committee has become less likely to request closed rules and the Rules Committee has become less inclined to grant them. But neither the Ways and Means Committee nor the House has been prepared to consider major revenue bills without some restrictions on amendments. Therefore, it has fallen to the Rules Committee, with the advice of Ways and Means, to frame those restrictions. And the use of complex rules for revenue bills may have encouraged other committees to seek similar rules for measures that otherwise would have been considered under fully open or fully closed rules.

More generally, a number of trends lend support to the generalization that coalition-building within committees and in the House has become a more difficult task. The remarkable influx

20 On recent changes in the Ways and Means Committee, *see* M. K. Bowler, The New Committee on Ways and Means (1976) (a paper prepared for delivery at the 1976 Annual Meeting of the American Political Science Association, Chicago, Illinois); C. E. Rudder, *Committee Reform and the Revenue Process*, in CONGRESS RECONSIDERED 117-39 (L. C. Dodd & B. I. Oppenheimer eds. 1977).

21 MANUAL OF THE HOUSE DEMOCRATIC CAUCUS § M IX (1979), providing that 50 Democratic members may request a meeting of the Caucus at which the Caucus may direct the Democratic members of the Rules Committee to make one or more specific amendments in order as part of a special rule that the Committee is to consider.

of new Members may have weakened or upset shared policy goals and decision-making norms on some committees.[22] The increased autonomy of subcommittees, the impact of the Legislative Reorganization Act of 1970 on committee rules and procedures, the trend toward open meetings, the Democratic Caucus rules governing subcommittee assignments and chairmanships for its members, and the prospect of contested Caucus votes on committee chairmanships — all of these developments may have combined to limit the capacity of committees and committee chairmen to take to the House floor well-drafted bills with broad-based support.[23] In addition, the changing shapes of some issues and the shifting focus of some committees' responsibilities probably have made it more difficult to resolve issues within committee. The impact on food prices of farm policies considered by the Committee on Agriculture and the energy and environmental implications of public lands legislation within the jurisdiction of the Committee on Interior and Insular Affairs are cases in point.

One result of all these developments collectively may have been to increase the number of conflicts decided on the floor rather than in committee, even without regard to the conflicts implicit in multiple referrals. An impressionistic view of the House also suggests that some Republican Members have been making more active use of the floor to press their own alternatives in amendment form, and that some junior Members of both parties are less inclined than their predecessors to defer to the judgment of the standing committees of jurisdiction. One set of figures that is at least consistent with these speculations is the number of record votes that have occurred during the past several Congresses. Even after the initial increase attributable to the provision for recorded teller votes in the Legislative Reorganization Act of 1970, the total number of record votes increased almost 50 percent from the Ninety-third Congress to the Ninety-fifth — from 1,078 during 1973-74 to 1,540 during 1977-78.[24]

22 With the convening of the 97th Congress, 48 percent of all Representatives are in their first, second, or third term of continuous service. On shared committee goals and norms, *see* R. F. FENNO, JR., CONGRESSMEN IN COMMITTEES (1973).

23 These developments are discussed in CONGRESS IN CHANGE: EVOLUTION AND REFORM (N. J. Ornstein ed. 1975); L. N. RIESELBACH, LEGISLATIVE REFORM (1978).

24 A. G. STEVENS, INDICATORS OF CONGRESSIONAL WORKLOAD AND ACTIVITY (Library of Congress, Congressional Research Service Rep. No. 79-159 GOV, 1979).

The import of these observations is to suggest, though not to demonstrate, that a series of interrelated institutional changes have taken place within the House, in addition to multiple-referral practices, that have encouraged the Rules Committee to propose complex special rules — sometimes expanding the range of possible floor amendments, at other times restricting it. But there is a more explicitly partisan dimension to this development as well, which derives from changes in the relationship between the Democratic members of the Rules Committee and the Democratic majority of the House.

The Rules Committee that was condemned during the 1950's for thwarting the will of the House majority came to be characterized during the 1970's as an agent of the House Democratic leadership.[25] Both generalizations are somewhat overstated but they do point to a change of great importance to the House. Although the votes in 1961 and 1963 to increase the size of the Committee did not transform it into a compliant instrument of the leadership, subsequent changes in its membership have created a Committee majority that is prepared to give serious weight to the preferences of Democratic party leaders, when such preferences are expressed.[26] That this goal was a deliberate result of party policy is indicated by the change made in Caucus rules at the beginning of the Ninety-fourth Congress to allow the Speaker to nominate the Democratic members of the Committee, subject to Caucus ratification.[27]

By no means, however, has the Rules Committee merely ratified recommendations for special rules that have been made regularly by party leaders to promote enactment of party policy. First, no assemblage of House Members would be content with such a subservient role. Second, there frequently is no clear party policy to be promoted. Third, congressional leaders hoard their influence and expend it selectively, not routinely. At least since 1910, the members of the Rules Committee have had to strike a balance among their responsibilities to their party, to

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25 For example, compare the discussions of the Committee in W. R. MacKaye, A New Coalition Takes Control: The House Rules Committee Fight of 1961 (Eagleton Institute, Rutgers Univ.: Cases on Practical Politics, Case No. 29, 1963) with B. I. Oppenheimer, *The Rules Committee: New Arm of Leadership in a Decentralized House*, in Congress Reconsidered 96-116 (L. C. Dodd & B. I. Oppenheimer eds. 1977).

26 Oppenheimer, *The Rules Committee*, note 25 *supra*.

27 *Id.* at 99-102.

the House as an institution, to the interests of their constituents, and to their own views of desirable public policy.[28] The manner in which the Democratic members of the Committee now are selected tends to promote a natural congruence among these potentially conflicting responsibilities. The Democratic members generally (but not invariably) cooperate with the Speaker and other party leaders because they share the same goals, not because they feel compelled to do so.

Thus, the construction of particular special rules may reflect partisan motives in addition to the institutional incentives discussed above. The party divisions on some complex rules indicate that, at least in the eyes of Republicans, this possibility has been more than hypothetical.[29]

The content of complex rules has been limited only by the imagination of the Rules Committee members, and the reasons for proposing particular rules have been mixed. The range of their provisions and effects can best be appreciated by examining how such rules actually have been used.

## II. Restrictive Uses of Complex Rules

Prior to the recent development of complex rules, it was fairly easy to predict what sort of rule the Rules Committee would report for any particular bill. The prevailing expectation was that most revenue measures reported by the Ways and Means Committee would be considered under closed rules and that most other measures would be considered under open rules. Exceptions were exceptional.

The availability of restrictive complex rules — rules that place some limitations on the amending process, without closing a bill to amendment altogether — has begun to undermine this expectation. Although the number of primarily restrictive complex rules (hereinafter referred to simply as "restrictive rules") has remained rather small, both relatively and absolutely, the Rules Committee has reported such rules often enough to have created different expectations, opportunities, and frustrations.

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28 On these various influences, *see* S. M. Matsunaga & P. Chen, Rulemakers of the House (1976).

29 *See* text accompanying note 8 *supra*.

The traditional case for closed rules on revenue bills usually had two components: first, that these measures were too complicated and too carefully balanced to be rewritten under the time pressures of the five-minute rule and the confusion that can prevail on the floor; and second, that a major tax bill considered under an open rule might, under the precedents governing germaneness, be subject to amendments dealing with all aspects of the tax code, whether or not covered by the bill itself. Restrictive rules have provided ways for assuaging these concerns while permitting the House something more than an "all or nothing" vote on the Ways and Means Committee's recommendations. It seems likely, therefore, that a heavier burden of proof has come to rest on the members of Ways and Means when they request a closed rule that permits only their own committee amendments to be offered.

At the same time, the precedent of restrictive rules as an available middle ground between open and closed rules may have undermined the traditional presumption that measures other than revenue bills ought to be considered under open rules. It is now easier for committees other than Ways and Means to argue, on occasion, that individual bills they have reported also deserve the protection of restrictive rules. And, naturally enough, party leaders have not been slow to recognize the potential utility of restrictive rules for attempting to overcome a defeat in committee by amending a measure on the floor, and for assuring the majority party an advantage over the minority in offering and defining policy alternatives on the floor.

In some cases, restrictive rules have been half-open and half-closed accommodations to the referral of legislation to two or more committees, one of which has been Ways and Means. Under these circumstances, the Rules Committee has reported special rules that are closed with respect to the Ways and Means provisions of the bill, but open with respect to its other parts. For example, the Navigation Development Act of the Ninety-fifth Congress, H.R. 8309, was considered under the terms of H.R. Res. 776,[30] which provided for an amendment in the nature

30 H.R. RES. 776, 95th Cong., 1st Sess., 123 CONG. REC. 32593 (1977) (for consideration of H.R. 8309). The author wishes it understood that he bears no responsibility for the choice of this form of citation, which has been adopted by the editors in conformance with the UNIFORM SYSTEM OF CITATION (12th ed. 1976).

of a substitute reported by the Committee on Public Works and Transportation to be considered as an original bill for purposes of amendment. The rule also closed title II of the substitute to all amendments except those offered by direction of the Ways and Means Committee and prohibited amendments to those amendments. In effect, the special rule was closed only with respect to a title developed by Ways and Means, even though that title was incorporated in a substitute reported by another committee.

A more complex jurisdictional situation was addressed by H.R. Res. 505 of the Ninety-fourth Congress, providing for floor consideration of H.R. 6860, which the House took up on June 9, 1975.[31] The Committee on Ways and Means and the Committee on Interstate and Foreign Commerce both had been working on major energy bills — energy policy having become the source of some of the most difficult and persistent problems involving ambiguous jurisdictional boundaries among House committees. In some respects, the interests of the two committees overlapped — *e.g.*, in the selection of incentives for promoting automotive fuel efficiency. In other respects, the jurisdictions of the committees required each to act on different aspects of the same issue — *e.g.*, Commerce had jurisdiction over the policy question of whether or not to decontrol oil prices, while Ways and Means had jurisdiction over any windfall profits tax legislation which might be enacted to recoup the increased profits that could result from decontrol. The special rule, H.R. Res. 505, dealt with the Ways and Means Committee's Energy Conservation and Conversion Act and included both restrictive and expansive provisions. It was restrictive in that (1) it precluded amendments in the nature of substitutes and amendments to add new titles to the bill; (2) it required that amendments to be offered must have been printed in the *Congressional Record* no later than June 4th (five days before the rule even was considered); and (3) it foreclosed second-degree amendments to such amendments. But it also was expansive in that it made in order what was, in effect, a Commerce Committee substitute for the fuel efficiency provisions of the Ways and Means bill.

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31 H.R. RES. 505, 94th Cong., 1st Sess., 121 CONG. REC. 17871 (1975) (for consideration of H.R. 6860).

According to Representative Gillis Long of Louisiana, the majority floor manager of the resolution, these provisions were intended to achieve three purposes: (1) to assure time for adequate study of the amendments to be offered, (2) to permit the House to choose between the Ways and Means and Commerce Committees' approaches to the fuel efficiency question — the Commerce Committee having completed action on that issue, and (3) to avoid effectively discharging both committees from further consideration of other energy questions on which they had not yet reported, especially oil and gas decontrol and windfall profits. Representative Long explained:

> Fuel efficiency is the only area that has received consideration by both committees. This action by the Rules Committee, if approved by the House, will give the Members of the House an alternative to the approval [*sic*] recommended by the Committee on Ways and Means. To do as some have asked and fully open H.R. 6860 to amendment in all respects would be premature and therefore is not provided for in this rule. There are several reasons for this decision. First, the Ways and Means Committee has not yet considered such things as windfall profits and decontrol of oil and gas. Second, the Committee on Interstate and Foreign Commerce is still working on its energy bill and itself is considering a number of controversial issues. To make new titles in order on these issues would in effect discharge both the Committee on Interstate and Foreign Commerce and the Committee on Ways and Means of their rightful responsibilities. An additional danger is that if we start doing this sort of thing now, the jurisdiction of all committees will be up for grabs. Third, let me again remind the Members that the fuel efficiency section is the only area of direct overlap and the proposed rule allows the alternative course to the House of Representatives if we should so choose.[32]

The Republicans urged the House not to order the previous question so that Representative Conable of New York, a senior Republican member of the Ways and Means Committee, could offer an amendment in the nature of a substitute for the bill that would include provisions on decontrol, plowback, and windfall profits. The previous question was ordered by a vote of 237 to 148, with Democrats supporting the motion, 237 to 19, and Republicans opposing it, 0 to 129.[33]

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32 121 CONG. REC. 17871 (1975).

33 CONGRESSIONAL QUARTERLY, 31 CONGRESSIONAL QUARTERLY ALMANAC 64-H (1975).

This case illustrates a number of points. First, it can fall to the Rules Committee to cope with problems of jurisdictional overlap and uneven rates of committee activity. Second, special rules can be restrictive in a number of different ways. Third, not all complex special rules can be described as being exclusively, or even primarily, restrictive or expansive. Fourth, complex rules usually are justified in terms of equity, efficiency, and the clear presentation of alternatives, but not in terms of partisan program or advantage. The partisan division over ordering the previous question, however, suggests strongly that, other considerations aside, the Republicans were prepared to act on decontrol and windfall profits while the Democrats were not.

The special rule for considering H.R. 6860 required that, to be in order, amendments had to be printed in the *Congressional Record* by June 4th even though the rule was not considered until June 9th.[34] In explanation, Representative Long reminded members that they had been given warning in the *Record* of June 3d that this requirement was going to be proposed.[35] Representative Ottinger of New York, a member of Interstate and Foreign Commerce, approved of this procedure:

> This is a worthy compromise. For years many of us have complained about the Ways and Means Committee bringing out all its legislation under a closed rule, preventing participation by the membership in working its will fully on such legislation.
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> On the other hand, this legislation is so complicated and controversial, with such great economic implications, there are great dangers in having it written on the floor. Indeed, 160 amendments have been noticed under the rule, including several that are mischievous, handing huge advantages to various special economic interests. It will be difficult for the Members to act intelligently on so many amendments of such great intricacy.[36]

As this statement indicates, an alternative to a closed rule is a restrictive rule that permits germane amendments to be offered, but only if they have been "noticed" in the *Congressional Record* sometime in advance. This requirement gives committee members and others some advance warning and time for ex-

34 *See* note 31 *supra*.
35 *Id.*
36 121 CONG. REC. 17872 (1975).

amination of the amendments to be considered. The meaning of technical provisions and the full implications of superficially appealing or innocuous amendments then can be explored in debate. Especially if special rules also protect printed amendments against amendments in the second degree, legislating on the spur of the moment can be avoided. At the same time, however, the requirement that amendments must have been printed in the *Record* prior to the day of consideration may have the effect, anticipated or not, of minimizing the participation of Members who were not intimately involved in the development of the legislation at the committee stage, because they are less likely to become aware that such a rule has been requested, reported, or adopted.

The requirement for the prior printing of amendments also can hold attractions for committees that are unlikely to be granted closed rules but that occasionally may report bills of exceptional complexity. During the Ninety-third Congress, for example, the Judiciary Committee reported H.R. 5463, dealing with federal rules of evidence, and requested and received a special rule, H.R. Res. 787, that closed one part of the committee substitute to all amendments and left the remainder open only to committee amendments and amendments printed in the *Congressional Record* at least two calendar days prior to consideration.[37] The rationale for this rule was stated by Representative Hungate of Missouri on behalf of the Judiciary Committee:

> Mr. Speaker, the purpose of the rule is that we find here a rather complex and technical field and we sought not to close the matter but to open it up so there could be amendments but also so as to have an opportunity to respond responsibly to such amendments. . . .[38]

The rule was adopted by a vote of 386 to 18.[39]

In this instance, the Rules Committee and the House accepted the recommendation of the committee of jurisdiction, but the Rules Committee also has imposed printing requirements at its own initiative. During the same Congress, H.R. Res. 963 was

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37 H.R. RES. 787, 93d Cong., 2d Sess., 120 CONG. REC. 1408 (1974) (for consideration of H.R. 5463).

38 120 CONG. REC. 1408 (1974).

39 *Id.* at 1410.

reported for consideration of H.R. 69, the Elementary and Secondary Education Amendments of 1974.[40] This rule provided that one title of the committee substitute, to be considered as original text, be closed to all but committee amendments and amendments printed in the *Congressional Record* at least two days prior to being offered. In addition, the rule mandated that three legislative days would elapse between the conclusion of general debate and the beginning of the amending process. These arrangements were proposed, according to Representative Bolling of the Rules Committee, because of the complexity of the formulas in title I of the bill for allocating the funds it authorized:

> This is not exactly the rule that was requested by the Committee on Education and Labor. . . . The Committee on Rules agreed to the rule . . . because the House of Representatives in a whole series of different ways has found it extraordinarily difficulty to know what it was doing when it was voting on the formulas that applied to this particular piece of legislation. . . .
>
> The whole purpose of providing for this particular kind of rule is to see that whatever else happens the Members of the House of Representatives will have an opportunity — a reasonable opportunity — to know what the meaning of an amendment to the committee provisions might be.[41]

The rule was criticized for also prohibiting second degree amendments, but it was adopted, 234 to 163, with Republican Members dividing more or less evenly on the question.[42] Past experience with amending this Act apparently had convinced a majority of the House that some constraints on their freedom to offer amendments were advisable.

Restrictive rules that permit only certain amendments to be offered on the floor may be supported by Members of both parties as reasonable and desirable alternatives to closed rules. After reporting H.R. 10710, the Trade Reform Act of 1973, the Ways and Means Committee requested a special rule that made in order only committee amendments and three other nonamendable amendments. This request was granted by the Rules

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40 H.R. RES. 963, 93d Cong., 2d Sess., 120 CONG. REC. 6267 (1974) (for consideration of H.R. 69).

41 120 CONG. REC. 6268 (1974).

42 *Id.* at 6275.

Committee, and the resulting special rule, H.R. Res. 657 of the Ninety-third Congress,[43] was supported by Representative Martin of Nebraska, the ranking Republican on Rules:

> The rule granted on this bill is a good rule. To consider this legislation, Mr. Speaker, under an open rule would lead to a Christmas tree piece of legislation. The last time, I believe, that we had an open rule on a trade bill was in 1930 when the Smoot-Hawley bill was considered on the floor of the House. Debate went on for days and the bill ended up a hodgepodge of irresponsible provisions. To open this bill on this complex subject to any amendment would result in a chaotic situation on the floor of the House.[44]

In this case, his Republican colleagues concurred, by a vote of 136 to 24, while 94 of 217 Democrats voted unsuccessfully against adoption of the rule.[45]

The possibility of bipartisan support for a restrictive rule is likely to be greatest when the Rules Committee accepts the recommendations of the reporting committee and permits amendments to be offered by Members of both parties. A case in point was H.R. Res. 456 of the Ninety-sixth Congress, for consideration of H.R. 2313, authorizing funds for the controversial Federal Trade Commission.[46] The rule permitted only three amendments, in addition to committee and pro forma amendments, to the committee substitute — and two of the three amendments were to be offered by Republicans. Representative Quillen of Tennessee, the minority floor manager of the rule, endorsed it:

> The reason the floor managers of this bill . . . requested this rule is that without it the bill offers an irresistable temptation to offer well-intentioned, though perhaps unwise, amendments aimed at specific FTC proceedings.[47]

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43 H.R. RES. 657, 93d Cong., 1st Sess., 119 CONG. REC. 40489 (1973) (for consideration of H.R. 10710).

44 119 CONG. REC. 40494 (1973).

45 *Id.* at 40499; *see also* CONGRESSIONAL QUARTERLY, 29 CONGRESSIONAL QUARTERLY ALMANAC 148-H (1973).

46 H.R. RES. 456, 96th Cong., 1st Sess., 125 CONG. REC. H9765 (daily ed. Oct. 26, 1979) (for consideration of H.R. 2313).

47 125 CONG. REC. H9766 (daily ed. Oct. 26, 1979). Representative Bauman, on the other hand, opposed it: "[W]e have been told by the Speaker, by the majority leadership repeatedly that they are opposed to legislative riders on appropriation bills, that the place to legislate on any question is on an authorization bill. So, now you bring us an authorization bill and we cannot offer amendments to deal with a very controversial agency. You cannot have it both ways. . . ." *Id.* at H9767.

The two Republicans whose amendments were made in order also spoke in favor of the rule, the adoption of which was supported by majorities of both parties.[48]

The availability of complex restrictive rules has created both problems and opportunities not presented by open or closed rules. One of the primary problems has become how to decide which amendments to permit and which to exclude. From the perspective of the Rules Committee, the simplest and least demanding response has been to defer to the request of the committee of jurisdiction. Such was the Committee's decision with respect to H.R. 13385 of the Ninety-fifth Congress, a bill reported by Ways and Means to increase the public debt ceiling.[49] During debate on the special rule, H.R. Res. 1277, which made amendments in order only on certain subjects covered by the bill, Representative Sisk of California, the majority floor manager, explained why other amendments were not permitted:

> Let me say that there was a request for some additional modification by the gentleman from Ohio (Mr. Vanik). In view of the opposition of the chairman [of Ways and Means, Mr. Ullman], the Committee on Rules simply saw fit to preclude that change and go along, basically, with the rule requested. And I suppose there is no other justification. We were simply complying with the request.[50]

The use of restrictive rules to consider some Ways and Means measures may have made it more difficult to secure acceptance by the House of fully closed rules when they are requested and reported. In 1975, the House rejected a closed rule for consideration of H.R. 10210, the Unemployment Compensation Amendments of that year.[51] Later in the year, when Representative Sisk called up another rule that permitted only a specified series of amendments to the three primary titles of the same bill, he told the House that, "[v]ery frankly, this is as far as the Ways and Means Committee was willing to go."[52] Responding to Representative Ashbrook of Ohio, Sisk expanded:

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48 CONGRESSIONAL QUARTERLY, 35 CONGRESSIONAL QUARTERLY ALMANAC 160-H (1979).

49 H.R. RES. 1277, 95th Cong., 2d Sess., 124 CONG. REC. H6988 (daily ed. July 19, 1978) (for consideration of H.R. 13385).

50 124 CONG. REC. H6988 (daily ed. July 19, 1978).

51 H.R. RES. 1183, 94th Cong., 2d Sess., 122 CONG. REC. 14072 (1976) (for consideration of H.R. 10210).

52 H.R. RES. 1259, 94th Cong., 2d Sess., 122 CONG. REC. 22510 (1976) (for consideration of H.R. 10210).

> In cases where committees come in and make specific requests, where we can the committee goes along and abides by the request coming from the legislative committee as to the length of time and as to the type of rule.
>
> There are times when the Committee on Rules, because of concerns by the leadership and because of other reasons, does not necessarily go exactly in line with what the committee has requested, but to the extent that we can, we do accede to its request. That is all this Member proposed to indicate here.[53]

The rule was adopted by a margin of almost two to one, but over the opposition of a majority of Republicans.[54]

However gently, Sisk's statement alludes to the partisan considerations that can affect construction of complex special rules. The remarkable unity demonstrated by House Republicans on a number of votes to order the previous question on complex rules certainly demonstrates their belief that those rules organized the amending process in a fashion that operated to their clear disadvantage.[55] It may not be reasonable to expect Democratic leaders to acknowledge in debate that parliamentary devices have been used to promote enactment of policies supported primarily by Democratic Members while handicapping the prospects, or even preventing the consideration, of those advanced by Republicans.[56] However, it would be equally unreasonable and naive to expect Members to forego opportunities to affect legislative outcomes through whatever legitimate means are available to them. Changes in the membership of the Rules Committee and the Speaker's enhanced role in selecting its members undoubtedly have made the majority on the Committee more responsive to the interests of Democratic party goals and programs in the House. But the use of special rules to promote party interests is limited by the frequent absence of clear party positions, by the lack of unity and the means for enforcing it among House Democrats, and by the necessity to attract majority support for special rules on the floor.

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53 122 CONG. REC. 22510-11 (1976).

54 *Id.* at 22512; *see also* CONGRESSIONAL QUARTERLY, 32 CONGRESSIONAL QUARTERLY ALMANAC 110-H (1976).

55 *See* note 33 *supra; see also* text accompanying note 8 *supra.*

56 In fact, the *Congressional Record* debates on special rules certainly do not always explore all of the considerations that entered into their formulation. As one might expect, opponents are more likely than proponents to discuss how Rules Committee proposals might promote certain outcomes at the expense of others.

In 1975, the House considered the first special rule that made specific amendments in order to a revenue bill at the direction of the Democratic Caucus.[57] The resolution, H.R. Res. 259, for consideration of the Tax Reduction Act of 1975, made several other amendments in order in addition to the two mandated by the Caucus. The Republican response was to criticize the effective power of the majority party organization to dictate House procedure. Although one Republican member of the Rules Committee, Representative Latta of Ohio, expressed some satisfaction that the rule was not completely closed, he joined all of the other 134 Republicans voting to oppose ordering the previous question; 119 of 134 Republicans then voted against adoption of the rule.[58] Republican Representative Anderson of Illinois, also a member of the Rules Committee, was one of the leaders of the opposition:

> Really, I think it does not do very much to launch a meaningful debate on tax policy or fiscal policy, because what we will really be doing for the next 4 hours is to have a kind of coronation service here on the floor of this Chamber, a coronation ceremony for King Caucus, because this rule, for the most part, with a couple of minor changes, was largely made up behind the closed doors of the Democratic Caucus, and not in the open Chamber of the Committee on Rules. . . .[59]

On only one other occasion has the Democratic Caucus issued instructions to its members on the Rules Committee to make particular amendments in order, and in that case, the rule was amended significantly even though it was defended on politically neutral grounds. On August 30, 1976, the House took up H.R. Res. 1496 which permitted only committee amendments and the two amendments supported by Caucus vote to be offered to H.R. 14844, the Estate and Gift Tax Reform Act.[60] On behalf of the Rules Committee, Representative Pepper of Florida defended the inclusion of these amendments on the ground that they had been rejected by very narrow margins in the Ways

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57 H.R. RES. 259, 94th Cong., 1st Sess., 121 CONG. REC. 4593 (1975) (for consideration of H.R. 2166).

58 121 CONG. REC. 4599 (1975); CONGRESSIONAL QUARTERLY, 31 CONGRESSIONAL QUARTERLY ALMANAC 10-H (1975).

59 121 CONG. REC. 4594–95 (1975).

60 H.R. RES. 1496, 94th Cong., 2d Sess., 122 CONG. REC. 28304-12 (1976) (for consideration of H.R. 14844).

and Means Committee.[61] Opponents countered by pointing to other amendments, not in order under the rule, that also had enjoyed significant support at the committee stage. Eighty-eight Democrats then joined with all but one of the Republicans voting to refuse to order the previous question.[62] Given this opportunity, Representative Anderson offered a substitute rule making in order all germane amendments printed in the *Congressional Record* before consideration of the bill began — giving all Members the opportunity to propose amendments, but also giving Ways and Means an opportunity to study them beforehand.[63] Ninety-two Democrats supported the successful substitute (no Republicans opposed it), even though Ways and Means Chairman Ullman urged defeat of the rule, promising that Ways and Means would reconvene to agree on a new request to the Rules Committee that would permit other selected amendments to be offered.[64]

The Caucus may be able to instruct Democrats on the Rules Committee, but its actions do not bind House Democrats when a special rule comes to a vote on the floor. It is also interesting to note that, unlike H.R. Res. 259 of the previous year, H.R. Res. 1496 included only the amendments the Caucus had voted to have made in order.[65] No effort was made to broaden the base of support for the special rule by including a number of amendments, at least one of which most Members wanted to support. In this case, the attempt to rigidly structure and limit the amending process failed. Still, if the voting patterns of Democrats and Republicans are any indication, these two cases of direct Caucus intervention were not the only instances in which efforts were made to use special rules "for confining within specified limits the consideration of bills involving important policies for which the majority party in the House may be responsible."[66]

One set of policies that the majority party can be particularly anxious to control are those affecting the organization, procedures, and rules of the House itself. The resolution by which

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61 122 CONG. REC. 28305 (1976).

62 CONGRESSIONAL QUARTERLY, 32 CONGRESSIONAL QUARTERLY ALMANAC 144-H (1976).

63 122 CONG. REC. 28310 (1976).

64 *Id.* at 28309-12; *see also* 32 CONGRESSIONAL QUARTERLY ALMANAC, *supra* note 62, at 144-H.

65 *See* notes 57 and 60 *supra*.

66 4 HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES § 3152, at 192.

the House rules are adopted at the beginning of each Congress is considered under the equivalent of a closed rule.[67] It is considered in the House, not in Committee of the Whole, so that all amendments can be precluded by a majority vote to order the previous question during the first hour of debate. The Committee Reform Amendments of 1974 were debated and amended under what was in fact an expansive rule, but the Democrats themselves were far from being united on a single proposal.[68] During 1977, though, the Rules Committee reported two complex rules for dealing with the proposals of the Commission on Administrative Review (Obey Commission) under restrictive conditions.[69]

The Obey Commission's first set of recommendations, in the form of H.R. Res. 287, was directed primarily toward questions of ethics and financial disclosure. H.R. Res. 338 for its consideration permitted only committee amendments, motions to strike full titles of the measure, and several other specific amendments.[70] The rule thus prevented Members from offering amendments to add new provisions or to strike out or amend sections of titles. Representative Bolling defended the Rules Committee's proposal on the ground that the resolution constituted a package that would fall apart if opened fully to amendments.[71] The concerns of those supporting the rule evidently were that a free amending process would destroy the balance of provisions contained in the resolution and put Members in the awkward position of having to vote on politically attractive proposals that they personally opposed.

A critic of the rule, Representative Anderson of Illinois, explained how the limitation on motions to strike put Members in what he considered to be an equally unacceptable position:

> The rule reported by the Rules Committee only permits amendments to strike by title. This in turn does not permit a separate vote on the controversial $5,000 increase in Mem-

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67 *See, e.g.*, H.R. RES. 5, 97th Cong., 1st Sess., 127 CONG. REC. H5-20 (daily ed. Jan. 5, 1981).

68 On the history of the Bolling Committee, Members' attitudes toward its recommendations, and the actions of the Democratic Caucus, *see* R.H. DAVIDSON & W. J. OLESZEK, note 9 *supra*.

69 H.R. RES. 338, 95th Cong., 1st Sess., 123 CONG. REC. 5885-94 (1977) (for consideration of H.R. RES. 287); H.R. RES. 819, 95th Cong., 1st Sess., 123 CONG. REC. 33435-44 (1977) (for consideration of H.R. RES. 766).

70 *See* note 69 *supra*.

71 123 CONG. REC. 5888 (1977).

> bers' expense allowances which is contained in section 302(b) of title III. An amendment to strike that entire title would throw the baby out with the bath water since the rest of the title contains three salutary reforms. . . . Thus, the House will not be permitted an opportunity to deny itself this allowance increase without throwing these important reforms out the window.[72]

Over the nearly unanimous opposition of the Republicans, the previous question was ordered, and the rule was then adopted by voice vote.[73]

Later in the year, the Rules Committee reported a similarly restrictive rule, H.R. Res. 819, for considering the Obey Commission's proposals for administrative change within the House (as modified by the Rules and House Administration Committees).[74] This rule made in order only a series of amendments which, in general, permitted the Committee of the Whole to make limited modifications in the proposals included in H.R. Res. 766, or to strike them altogether. However, it did not permit amendments in the form of proposals for certain additional changes that some Republican Members wished to offer. In this case, apparently, opposition was directed less to the special rule than to the merits of the resolution with which it dealt. The previous question was ordered routinely, but the rule

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72 123 CONG. REC. 5890 (1977). If the increase in office allowances was included as a "sweetener" to make the entire package more palatable to some Members, then Anderson's comments suggest that the rule was designed to protect it and the other provisions of title III by compelling Members to accept or reject the title as a whole. In addition, the provision of H.R. Res. 338 that prohibited amendments adding new provisions may have protected the entire resolution from being burdened with further rules changes and requirements that could have imperiled its passage. Representative Frenzel of Minnesota also opposed the rule:

> I once visited a foreign parliament where one of the members told me that his legislative body was allowed to pass bills, but was not allowed to change them at all. I mourned for the demise of democracy in that country at the time and reflected with pride on my own House of Representatives where free debate was the rule and germane amendments were always considered. In light of today's rule, it is very hard to reflect with pride on the operations of this House. If this gag rule is passed, I can only mourn for the freedoms we have lost.

*Id.* at 5888. On the other hand, Representative Waggonner of Louisiana predicted the consequences of adopting an open rule instead: "The press gallery will be sending down suggested amendments for this or that. And the House will, solely out of fear, vote for every restriction proposed." *Id.* at 5890.

73 123 CONG. REC. 5894 (1977); CONGRESSIONAL QUARTERLY, 33 CONGRESSIONAL QUARTERLY ALMANAC 12-H (1977).

74 H.R. RES. 819, 95th Cong., 1st Sess., 123 CONG. REC. H10819-28 (daily ed. Oct. 12, 1977) (for consideration of H.R. RES. 766).

was rejected, 160 to 252, with all the Republicans voting against it.[75]

The Republican alternative to a Rules Committee proposal for a restrictive rule has not always been an open rule. As already noted, there have been some measures—particularly revenue bills—that Members of both parties have agreed should be considered under restrictive conditions of some kind.[76] The issue then has become whether the amendments permitted by the proposed rule present a reasonable and balanced range of alternatives or whether the rule "stacks the deck" in favor of one policy preference. In 1979, Republicans voted almost unanimously against ordering the previous question on H.R. Res. 465, for consideration of the Welfare Reform Amendments of that year, which permitted only one amendment in addition to committee amendments.[77] They based their opposition on the ground that the rule should have permitted at least one other amendment that had been devised by one Democratic and two Republican members of the Ways and Means Committee.[78] In their view, evidently, the Rules Committee was presenting them with two unattractive alternatives — H.R. 4904 as reported or no welfare reform bill at all. Democrats, on the other hand, voted for the previous question and for adoption of the resolution by margins of roughly five to one.[79]

One way to defuse opposition to restrictive rules, therefore, has been to make in order one or more major amendments sponsored or supported by minority party Members. That was the approach taken by the Rules Committee in reporting H.R. Res. 839 of the Ninety-fifth Congress, providing for consideration of another Ways and Means bill, the Social Security Financing Amendments of 1977.[80] The rule permitted only a series of specific amendments to be offered by Democratic and Republican members of Ways and Means, including an amendment

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75 123 CONG. REC. H10828 (daily ed. Oct. 12, 1977).

76 *See* text accompanying notes 37 to 47 *supra*.

77 H.R. RES. 465, 96th Cong., 1st Sess., 125 CONG. REC. H10103-10 (daily ed. Nov. 1, 1979) (for consideration of H.R. 4904); *see also* CONGRESSIONAL QUARTERLY, 35 CONGRESSIONAL QUARTERLY ALMANAC 164-H (1979).

78 125 CONG. REC. H10103-10 (daily ed. Nov. 1, 1979).

79 *Id.*; *see also* CONGRESSIONAL QUARTERLY, 35 CONGRESSIONAL QUARTERLY ALMANAC 12-H (1977).

80 H.R. RES. 839, 95th Cong., 1st Sess., 123 CONG. REC. H11527-32 (daily ed. Oct. 26, 1977) (for consideration of H.R. 9346).

in the nature of a substitute to be proposed by Representative Conable of New York, the ranking minority member. Republican Rules Committee member Delbert Latta of Ohio criticized the proposed rule, not for excluding Republican amendments, but instead for allowing Ways and Means Committee members to monopolize the amending process. Conable, on the other hand, supported the resolution:

> Mr. Speaker, I rise in strong support of this rule. It is not a perfect rule. It is not the best of possible parliamentary situations when every Member in this body cannot propose anything he wants. But I tell the Member quite frankly that our propensity for doing whatever lovely thing we want to do whenever we want to do it, regardless of the consequences, is one of the reasons that we have got the social security system in some trouble. This rule is necessary.[81]

On the question of adoption, thirty-eight Republicans voted "aye," including seven of twelve Ways and Means Republicans.[82]

However many Members may dislike restrictive rules in principle, most seem to believe that they are necessary under some circumstances, to expedite floor action or to protect Members against their own excesses. There is evidence also that, from time to time, a majority on the Rules Committee has attempted to construct special rules for partisan advantage — or, more precisely, for the advantage of policy positions supported by most Democrats. Sometimes these efforts have been successful. But when the Republicans have felt totally excluded, so that their proposals could not receive a fair hearing, they have demonstrated the capacity for unanimous or nearly unanimous opposition. Such opposition presents a formidable challenge to Democratic leaders, whose ostensible followers can be difficult indeed to unite.

## III. Expansive Uses of Complex Rules

Complex rules that are primarily expansive in character (hereinafter referred to simply as "expansive rules") may make in order one or more amendments, other than committee amend-

81 123 Cong. Rec. H11530 (daily ed. Oct. 26, 1977).

82 Congressional Quarterly, 33 Congressional Quarterly Almanac 184-H, 185-H (1977).

ments, that otherwise could not be offered, or may establish complicated procedures for two or more committees to propose amendments to the same measure. In some instances, expansive rules have been designed to respond to the concerns of a single committee or to problems caused by multiple referrals in ways that are acceptable to all the committees concerned. Although the provisions of rules reported for this purpose may have had some effect on legislative decisions, that does not appear to have been their primary intent. In other cases, though, the provisions, debates, and votes on expansive rules suggest that the Rules Committee formulated them in a manner intended to promote particular policy outcomes.

One relatively common use of expansive rules has been to make in order what is, in effect, a committee amendment not printed in the measure at the time of its consideration. For example, H.R. 13367 of the Ninety-fourth Congress, the Fiscal Assistance Amendments of 1976, was reported with fifty-nine separate committee amendments.[83] Merely to simplify and expedite the process of consideration, H.R. Res. 1269 provided for a number of these amendments to be offered en bloc, by making in order a series of amendments printed in the *Congressional Record* and foreclosing demands for their division. The special rule was adopted, 358 to 1.[84] In this instance, the Rules Committee evidently was not attempting to confer strategic advantage; the only effect of the special rule was to consolidate action on committee amendments and promote prompt action by the House.

Other expansive rules have carried with them a very obvious intent to promote a legislative outcome by permitting a Member to offer a non-germane amendment that responded to a situation, related to the subject of the measure, which had not developed when the measure was reported and on which the Rules Committee and the House believed prompt action to be necessary. H.R. 10898 of the Ninety-fifth Congress authorized funds for the United States Railway Association (USRA). The special rule for its consideration, H.R. Res. 1321, made in order a non-germane amendment the text of which was quoted in full in the

83 H.R. Res. 1269, 94th Cong., 2d Sess., 122 Cong. Rec. 17064-66 (1976) (for consideration of H.R. 13367).

84 122 Cong. Rec. 17064-66 (1976).

rule.[85] The amendment was to be offered by the chairman of the Commerce Committee subcommittee that had reported the bill and was supported by the ranking minority member of the subcommittee. Representatives Moakley and Anderson, the floor managers of the resolution, both indicated that the House needed to act promptly on the amendment so that the USRA could make a loan to a railroad that otherwise might face bankruptcy.[86]

In each of these cases, the legislative committee could have reported a clean bill on the same subject — a bill that incorporated the amendment made in order by the Rules Committee. This approach would have avoided any germaneness problems, but it would have required additional time and effort, including the preparation of a committee report. To expedite matters, apparently, the Rules Committee chose to report expansive rules instead.

The Committee also has acted to expedite the legislative process by making in order an amendment in the nature of a substitute, sometimes in the form of the text of another bill, proposed by members of the reporting committee to increase support on the floor. During the Ninety-fourth Congress, H.R. 7743, to amend the Pennsylvania Avenue Development Corporation Act of 1972, failed to pass under suspension of the rules.[87] Subsequently, the Committee on Interior and Insular Affairs developed a substitute version to improve the bill's prospects for passage. The Rules Committee then proposed that this amendment, printed in a supplemental report of the Interior Committee, be considered as an original bill for purposes of amendment.[88]

In the same fashion, H.R. Res. 872 of the Ninety-fifth Congress provided for the text of another bill to be in order as an amendment in the nature of a substitute, considered as original text, during action on H.R. 6805, to establish an Agency for Consumer Protection.[89] Critics of the rule argued that normal

85 H.R. Res. 1321, 95th Cong., 2d Sess., 124 Cong. Rec. H8887-89 (daily ed. Aug. 17, 1978) (for consideration of H.R. 10898).

86 124 Cong. Rec. H8887-89 (daily ed. Aug. 17, 1978).

87 H.R. 7743, 94th Cong., 2d Sess. (1976), considered in the House under a motion to suspend the rules, 122 Cong. Rec. 6414-19 (1976).

88 H.R. Res. 1341, 94th Cong., 2d Sess., 122 Cong. Rec. 23709 (1976) (for consideration of H.R. 7743).

89 H.R. Res. 872, 95th Cong., 2d Sess., 124 Cong. Rec. H733 (daily ed. Feb. 7, 1978) (for consideration of H.R. 6805).

legislative procedures were being abandoned by making in order as an original bill a substitute that had not been debated, amended, and reported by the Committee on Government Operations. After adoption of the rule, Representative Jack Brooks, Chairman of Government Operations, offered the following explanation at the beginning of general debate:

> At the time the committee approved H.R. 6805, its chances on the House floor were not very bright. So, we held it up and did what I think responsible legislators should do. We have attempted to identify those provisions in the bill which numerous members found objectionable that could be adjusted without damaging the principal concept embodied in the legislation.[90]

In these instances also, expansive rules made further action by the reporting committees unnecessary. They may have offered a tactical advantage as well. By avoiding formal action by the committee of jurisdiction, the proponents of each purported compromise may have sought to avoid exposure of their new proposal to potentially damaging scrutiny and opposition. Whether intended or not, this can be the effect of expansive rules, as suggested by the observation of Representative Blackburn of Georgia in a similar situation:

> If we are going to have orderly processes, we should insist that the House Rules Committee, which is our policeman, which is our watchdog, so to speak, to insure that proper legislative processes have been followed, should itself follow those rules. Yet we are seeing ourselves debating here a bill which is admittedly going to be offered as a substitute for the so-called Patman bill because the Patman bill could not get a rule. Yet none of us on the House Banking and Currency Committee has discussed or deliberated one moment the so-called Stephens substitute. How can we expect the other Members of the House who have not been involved in this for the last 6 months to exercise orderly judgment on a bill of this importance?[91]

Like restrictive rules, expansive rules may be designed to organize the amending process and cope with parliamentary problems that can arise during consideration of measures reported by more than one committee. When the two (or more) committees have been able to reach agreement among them-

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90 124 CONG. REC. H739 (daily ed. Feb. 7, 1978).
91 119 CONG. REC. 12506 (1973).

selves, the Rules Committee may attempt to focus attention in Committee of the Whole on the consensus approach, rather than on either version of the measure as originally reported. Representative Beilenson of California explained that this was the approach adopted by the Rules Committee for dealing with an authorization bill for the Nuclear Regulatory Commission:[92]

> As you may know, differing versions of the bill were reported by the two committees [Interior and Insular Affairs and Interstate and Foreign Commerce]. In an effort to seek an orderly procedure to allow the House to work its will on this measure, a substitute bill, H.R. 5297 was subsequently introduced by the chairmen and ranking minority members of the subcommittees that reported H.R. 2608. Both committees have indicated that this substitute bill is a mutually acceptable vehicle for floor consideration of the NRC authorization. Therefore, in lieu of the amendments recommended by the committees and now printed in the bill, H.R. 2608, this rule allows consideration of the substitute bill as an original bill for the purpose of amendment under the 5-minute rule.[93]

Somewhat more complicated procedures may be proposed when the several committees of jurisdiction have been able to reach only partial agreement among themselves. The Alaska lands bill of the Ninety-fifth Congress, H.R. 39, had been referred to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries. Leaders of the two committees developed another version of the bill in the form of H.R. 12625, which the Rules Committee made in order as original text for purposes of amendment.[94] In addition, in this case, the special rule (H.R. Res. 1186) also made in order, as amendments to the text of H.R. 12625, provisions of H.R. 39 as introduced, provisions of the Interior substitute for H.R. 39, and the Merchant Marine amendments to H.R. 39.[95] The Rules Committee evidently selected as the base bill, to which amendments would

92 H.R. RES. 472, 96th Cong., 1st Sess., 125 CONG. REC. H11206 (daily ed. Nov. 27, 1979) (for consideration of H.R. 2608).

93 125 CONG. REC. H11206 (daily ed. Nov. 27, 1979). In the case of H.R. 12163, authorizing funds for the Department of Energy for Fiscal Year 1979, H.R. Res. 1261 made in order as an original bill an amendment in the nature of a substitute, printed in the *Congressional Record*, developed by members of the three committees to which the bill had been referred. 124 CONG. REC. H6713-15 (daily ed. July 14, 1978).

94 H.R. RES. 1186, 95th Cong., 2d Sess., 124 CONG. REC. H4080-87 (daily ed. May 17, 1978) (for consideration of H.R. 39).

95 *Id.*

be offered, the version that enjoyed support among the majority party leaders of the subcommittees and committees involved. But the Rules Committee also arranged for all or parts of other versions to be offered as amendments.[96] The vote on this rule indicates that most Members considered it an equitable arrangement; it was adopted by a vote of 354 to 42, with the support of the chairmen and ranking minority members of both committees.[97]

The range of possible procedures for coping with multiple committee amendments is further illustrated by two other special rules. During the Ninety-fifth Congress, H.R. Res. 1348, for consideration of the Clinical Laboratory Improvement Act, provided that the amendments of the Committee on Interstate and Foreign Commerce would have priority during consideration of title I of the bill, but that Ways and Means Committee amendments would enjoy priority during consideration of title II.[98] By contrast, H.R. Res. 393, dealing with the International Sugar Stabilization Act of 1979, made one committee's amendment in the nature of a substitute in order as an original bill and any of the provisions of the other committee's version in order as amendments thereto.[99] By these means, the Rules Committee made it possible for the Committee of the Whole to choose between the two committees' positions, provision by provision. These two rules were adopted by unanimous or overwhelming votes,[100] indicating that they both allowed equitable opportunities for the committees involved to present their proposals. The differences between the two rules reflected, in part at least, the ways in which the committees had reported and wished to offer their amendments.

When two or more committees have considered the same measure but have been unable to reach even partial agreement, the Rules Committee must attempt to arrange for the orderly consideration of their amendments. In that event, expansive rules may give one committee or the other a strategic advantage

96 124 CONG. REC. H4080 (daily ed. May 17, 1978).

97 *Id.* at 4086-87.

98 H.R. RES. 1348, 95th Cong., 2d Sess., 124 CONG. REC. H11186 (daily ed. Sept. 29, 1978) (for consideration of H.R. 10909).

99 H.R. RES. 393, 96th Cong., 1st Sess., 125 CONG. REC. H8747 (daily ed. Sept. 28, 1979) (for consideration of H.R. 2172).

100 124 CONG. REC. H11187-88 (daily ed. Sept. 29, 1978); 125 CONG. REC. H8753 (daily ed., Sept. 28, 1979).

— *e.g.*, when one version is made in order as a substitute for the other.

For consideration of a lobby-law reform bill, H.R. Res. 1551 of the Ninety-fourth Congress provided for the Judiciary Committee substitute for the bill as introduced to be considered as original text, and for the version of the Committee on Standards of Official Conduct to be offered as a first degree substitute for the Judiciary Committee proposal.[101] This procedure was acceptable to both committees, according to the majority floor manager of the rule, even though it permitted the Standards Committee version to be amended and voted on before the Judiciary Committee version could be perfected by amendments. (The Judiciary Committee substitute was to be read for amendment by parts, instead of being open to amendment at any point which would have allowed Members to perfect both versions before voting on either.) By focusing attention in Committee of the Whole first on the Standards Committee version, the Rules Committee could have been criticized for putting the Judiciary Committee at a parliamentary disadvantage. But H.R. Res. 1551 was supported by the Judiciary chairman and ranking minority member, perhaps because they anticipated that the amended Standards Committee proposal would be rejected, as it was by a vote of 74 to 291; the Committee of the Whole then proceeded to consider amendments to the Judiciary version.[102]

A similar amending situation, though with a different result, was created by H.R. Res. 1584 of the Ninety-fourth Congress, for consideration of the Alaska Natural Gas Transportation Act.[103] A substitute version proposed by the Committee on Interstate and Foreign Commerce was made in order as original text, to be read for amendment; the recommendations of the Interior and Insular Affairs Committee were to be offered as a substitute for the Commerce Committee version. After adoption of the rule and general debate, Representative Melcher of Montana offered the Interior version after the first section of the Commerce substitute had been read.[104] This meant that

101 H.R. RES. 1551, 94th Cong., 2d Sess., 122 CONG. REC. 32095 (1976) (for consideration of H.R. 15).

102 122 CONG. REC. 32095-98 (1976).

103 H.R. RES. 1584, 94th Cong., 2d Sess., 122 CONG. REC. 34121 (1976) (for consideration of S. 3521).

104 122 CONG. REC. 34132-36 (1976).

amendments could not be offered to any other part of the Commerce version until after disposition of the Melcher substitute, and then only if the Melcher substitute were to be rejected. Members could have felt that these procedures put the Commerce Committee at a strategic disadvantage — in that amendments would be directed first to perfecting the Interior Committee version — and that it would be unlikely for the Committee of the Whole to devote considerable time and attention to amending the Interior version, only to reject it and then engage in a second amending process on the Commerce Committee substitute. Perhaps in reaction, Representative Dingell of Michigan, Chairman of the Commerce Subcommittee on Energy and Power, offered a second degree perfecting amendment, with the support of the ranking minority member of the subcommittee, that was in effect a third version of the bill.[105] Because the Dingell amendment to the Melcher substitute was drafted in the form of a perfecting amendment, it could not be amended. The first vote occurred, therefore, on the Dingell proposal. Although Dingell's amendment was rejected, he had retrieved the advantage that can accompany having the first vote, notwithstanding the provisions of the special rule.[106]

The strategic potential of expansive rules was illustrated by the procedures followed in Committee of the Whole for acting on H.R. Res. 988, the Committee Reform Amendments of 1974, proposed by the Bolling Committee.[107] After the Democratic Caucus's Committee on Organization, Study and Review (the Hansen Committee) had reviewed the recommendations of the Bolling Committee, it proposed H.R. Res. 1248 as an alterna-

105 *Id.* at 34139-44.

106 *Id.* at 34151-52. An alternative procedure is available to the Rules Committee, but it also has advantages and disadvantages. If two committees report versions of the same bill, a special rule may provide for one committee to offer its version immediately after the enacting clause of the bill has been read, and then for the second committee's version to be offered as a second-degree substitute. In this situation, neither committee version is considered as an original bill for purposes of amendment. Since both versions are open to amendment at any point, the advantage of this procedure is that it permits both to be perfected before final action is taken on either. Its disadvantage lies in the fact that each may be perfected in one degree only, whereas an amendment in the nature of a substitute considered as an original bill may be perfected in two degrees. Thus, this alternative procedure may permit more even-handed treatment of two committee substitutes, but only by limiting the opportunities of individual Members to offer amendments from the floor.

107 H.R. RES. 1395, 93d Cong., 2d Sess. (1974) (for consideration of H.R. RES. 988). *See* note 9 and accompanying text *supra*.

tive. The Caucus then agreed to a resolution introduced by Representative O'Hara of Michigan, a member of the Hansen Committee. This resolution directed the Democratic members of the Rules Committee to report a rule allowing the Hansen substitute to be offered immediately following the reading of the first section of the Bolling proposal.[108] The Rules Committee complied with this directive and reported H.R. Res. 1395, which was adopted, 326 to 25.[109]

After general debate on H.R. Res. 988, the Clerk read the first section of the resolution at which point, pursuant to the special rule, Representative Hansen offered her amendment in the nature of a substitute. Shortly thereafter, Representative Martin of Nebraska, the ranking minority member of the Bolling Committee, offered a substitute for the Hansen substitute. Members then proceeded to offer perfecting amendments to the Martin and Hansen proposals, but not to the original text of the resolution. The special rule had provided for the Bolling resolution to be read for amendment under the five-minute rule, meaning that amendments could be offered only to parts of the resolution as they were read. But the Hansen substitute had been offered, as the rule provided, immediately after the reading of the first paragraph of H.R. Res. 988, which stated only that "this resolution may be cited as the 'Committee Reform Amendments of 1974'." As a result, unless and until the Committee of the Whole rejected both the Hansen and Martin substitutes, as they may have been amended, the only amendments in order to the original text of the Bolling resolution were amendments in the first and second degree to its title. The Committee of the Whole eventually accepted an amended version of the Hansen substitute, so there never was an opportunity to perfect and vote on the Bolling Committee proposal itself.[110]

A somewhat comparable situation had arisen earlier during the Ninety-third Congress. The Committees on Public Works and Merchant Marine and Fisheries both had reported bills on deepwater ports; the Public Works bill subsequently was revised in the form of an amendment in the nature of a substitute printed in the *Congressional Record* by Representative Bob Jones, sec-

108 R.H. DAVIDSON & W. J. OLESZEK, *supra* note 9, at 217.
109 *See* note 107 *supra*.
110 R. H. DAVIDSON & W. J. OLESZEK, *supra* note 9, at 231-50.

ond ranking Democrat on the Committee.[111] The special rule reported by the Rules Committee provided for the Jones substitute to be offered immediately after the enacting clause of the original bill was read (thereby precluding amendments to the bill itself unless and until the Jones substitute was rejected), and provided further that the Merchant Marine bill could be offered as a first degree substitute for the bill if the Jones substitute were rejected.[112] This procedure clearly gave the advantage to the Public Works version. However, Representative Sullivan of Missouri, who chaired the Merchant Marine Committee, did not oppose the rule because of her announced intention to offer the Merchant Marine version as a second degree substitute for the Jones version, instead of waiting until after disposition of that amendment.[113]

The possible strategic and policy consequences of the order in which competitive versions of measures are made in order by the Rules Committee also arose when the House returned to the issue of Alaska lands during the Ninety-sixth Congress. The bill, again H.R. 39, had once more been reported by the Interior and Merchant Marine Committees.[114] This time, the Rules Committee proposed that the Interior Committee substitute be considered as original text for purposes of amendment, that the Merchant Marine version be in order as a substitute for the Interior proposal, and that a third version, advanced by Representatives Udall and Anderson, be offered as a substitute for the Merchant Marine position.[115] In short, three versions of the bill (excluding its original text) would be before the Committee of the Whole, and both the Merchant Marine approach (known as the Breaux-Dingell amendment) and the Udall-Anderson amendment would be amendable in one degree. The Interior (or Huckaby) version would not be open to amendment

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111 H.R. 10701, 93d Cong., 1st Sess. (1973) (reported by the Committee on Public Works, Nov. 28, 1973); H.R. 11951, 93d Cong., 2d Sess. (1974) (reported by the Committee on Merchant Marine and Fisheries, May 15, 1974).

112 H.R. RES. 1139, 93d Cong., 2d Sess., 120 CONG. REC. 18116 (1974) (for consideration of H.R. 10701).

113 120 CONG. REC. 18117-18 (1974).

114 H.R. 39, 96th Cong., 1st Sess. (1979) (reported by the Committee on Interior and Insular Affairs on April 18, 1979, and by the Committee on Merchant Marine and Fisheries on April 23, 1979).

115 H.R. RES. 243, 96th Cong., 1st Sess., 125 CONG. REC. H2685 (daily ed. May 4, 1979) (for consideration of H.R. 39).

unless and until both of the other substitutes were rejected, but Representative Huckaby stated that perfecting amendments would be offered to Breaux-Dingell that would consolidate provisions of the two committee versions.[116]

Consequently, controversy centered around the order in which two of the substitutes, Breaux-Dingell and Udall-Anderson, would be offered. Under the Rules Committee proposal, the substitute to be voted on first would be Udall-Anderson, perhaps as amended, as a substitute for Breaux-Dingell. Opponents of the rule contended that this arrangement gave Udall-Anderson an advantage that should belong instead to the consolidated committee version.[117] In defense of the rule, however, Representative Anderson argued that it was consistent with normal procedures for committee amendments to be offered before amendments proposed by individual Members. (The Udall amendment was not to be offered at the recommendation of the Interior Committee which he chaired.) After describing the order in which the substitutes were to be offered under the rule, Anderson noted:

> As I indicated, this would be the normal sequence of events under our rules and procedures with priority recognition going to the committees involved for the offering of their amendments, and then to other members of the committee and the House for offering further amendments. . . .
>
> . . . The alternative rule offered in the Rules Committee would have departed from normal legislative procedure by making the Udall-Anderson substitute in order as a substitute to the Interior Committee's bill, thus forcing the Merchant Marine and Fisheries Committee to offer their version as a substitute to Udall-Anderson. I have never before heard a committee argue that their product should be reglated [*sic*] to a subordinate position to a noncommittee substitute.
>
> Those who opposed this rule and argued for that unusual alternative seem most upset by the fact that the first major vote would come on the Udall-Anderson substitute. But that is a fact of life which confronts every committee every time it brings a bill to the floor under an open rule. It always has been and always will be. That objection also glosses over the fact that the House can simultaneously consider perfecting amendments to both the Merchant Marine Commit-

116 125 CONG. REC. H2689 (daily ed. May 4, 1979).
117 *Id.*

> tee's substitute and the Udall-Anderson substitute. So it is not accurate to claim that the House will somehow be forced to accept or reject Udall-Anderson as it now stands. It is subject to amendment just as the so-called Breaux-Dingell substitute from Merchant Marine and Fisheries is subject to amendment.[118]

After this debate, the special rule was adopted as reported, 236 to 18.[119]

In summary, then, expansive rules have become a useful, and sometimes necessary, device for organizing the amending process on bills in which more than one committee has a legitimate jurisdictional interest. When the committees themselves have not been able to resolve their differences, the Rules Committee has proposed an order in which their amendments are to be offered. Major amendments to be offered by individual Members, such as the Udall-Anderson substitute, also may have to be taken into account. When confronted with several versions of a bill, some Members tend to feel that the advantage belongs to the version on which the first vote occurs. If so, then the order in which expansive rules provide for amendments in the nature of substitutes to be offered may have strategic and policy consequences. However, it bears emphasizing that special rules must be adopted by majority vote, and that procedural ground-rules may influence but do not determine outcomes. The Committee of the Whole is not compelled to accept the first substitute on which it votes, and, as Representatives Dingell and Sullivan demonstrated, there sometimes are ways to regain advantages apparently lost.

The possibilities for strategic uses of expansive rules are not limited to multiple-referral situations. Expansive rules may make specific amendments in order, and waive points of order against them. Thus, they can be used to offer the House a broader range of alternatives and, probably not incidentally, to broaden the base of support for adopting the rule and, consequently, for considering the measure itself.

The rule for considering a bill, in the Ninety-third Congress, to establish a Consumer Protection Agency made in order as an amendment the text of a bill introduced by Representative

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118 *Id.* at H2687.
119 *Id.* at H2691-92.

Brown of Ohio, a senior Republican member of the Government Operations Committee, which met many of the objections of the Nixon Administration to the bill.[120] The rule was adopted with only twenty dissenting votes, but the Brown substitute later was rejected in Committee of the Whole, with Democrats dividing 41 to 184 in opposition. All ten Democratic members of the Rules Committee voted against the Brown substitute.[121] In deciding to make the Brown substitute in order, the Committee may have been motivated only by a desire to allow a choice between serious alternatives. A second purpose, however, may have been to minimize opposition to the rule so that a highly controversial bill could be considered.[122]

The provisions of expansive rules that identify certain amendments as being in order may not always be absolutely necessary. As Representative Anderson's defense of the Alaska lands rule suggested, both the Breaux-Dingell and Udall-Anderson substitutes probably could have been offered, and in the order specified by the rule, even if the Rules Committee had not made explicit provision for them.[123] The rule waived points of order against the Huckaby substitute to be considered as original text, but no waivers were necessary to protect either of the other versions. By providing for them, however, the Committee resolved any doubts that the principal proponents of each position might have had about the sequence of events that would occur so that they could plan accordingly. It also alerted other Members to the major choices they would be facing and to the order in which the alternatives would be presented. Expansive rules, then, simply may highlight amendments that are expected to

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120 H.R. RES. 1025, 93d Cong., 2d Sess., 120 CONG. REC. 9561-64 (1974) (for consideration of H.R. 13163).

121 120 CONG. REC. 9565-99 (1974).

122 On another occasion during the 93d Congress, the House rejected an expansive rule that made a Republican substitute in order as an amendment. The amendment was to be offered to a land-use planning bill by the Minority Leader, John Rhodes, and Representative Steiger of Arizona, the third-ranking Republican on the Interior and Insular Affairs Committee. *See* H.R. RES. 1110, 93d Cong., 2d Sess., 120 CONG. REC. 18800-24 (1974) (for consideration of H.R. 10294). After a debate that focused almost exclusively on the merits of the bill, the rule was defeated, 204 to 211. If one reason for including the Rhodes-Steiger substitute in the rule was to ensure that the bill would reach a vote on final passage, the effort failed. As a fellow Republican, Representative Symms of Idaho, expressed himself during the debate: "I think that the best time to kill a rattlesnake is when you have a hoe in your hand, and that is right now, I will say to the Members of the House." 120 CONG. REC. 18810 (1974).

123 *See* note 115 and accompanying text *supra*.

be offered but that do not require protection from points of order that might lie against them.

The most controversial waivers of House rules in expansive rules tend to be those that set aside the germaneness requirement of Rule XVI, clause 7.[124] This requirement serves to concentrate the attention of the House and expedite consideration of bills by preventing the introduction of extraneous issues. From time to time, however, the Rules Committee has found these benefits of the germaneness rule to be outweighed by the desirability — or necessity — of bringing issues to the floor in the form of protected non-germane amendments. There usually has been some reasonably close relationship between the amendment made in order and the measure to which it is to be offered. In one exceptional instance, however, the Rules Committee proposed a procedure more characteristic of the Senate — to minimize the likelihood of a Presidential veto by adding an unrelated controversial provision to essential legislation.

During the Ninety-third Congress, a bill to require confirmation of incumbent and future directors and deputy directors of the Office of Management and Budget had been passed and vetoed.[125] To avoid a second veto, the Rules Committee proposed that the text of the vetoed bill be made in order as an amendment to a Ways and Means bill to increase the public debt ceiling.[126] The supporters of this unlikely combination presumably hoped that President Nixon could not veto the debt ceiling bill, and therefore, would be compelled to accept the admittedly non-germane confirmation requirements as well. However, the previous question was rejected by an overwhelming vote, and the House adopted an open rule instead.[127] The fact that six of the ten Rules Democrats voted against ordering the previous question suggests that the Committee had reported the rule with some reluctance, possibly in order to accommodate the wishes of members of the Government Operations Committee.[128]

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124 For the most recent published version of the House Rules, *see* H.R. Doc. No. 96-398, 96th Cong., 2d Sess. (1981).

125 S. 518, 93d Cong., 1st Sess., 119 Cong. Rec. 16194 (1973) (bill vetoed), 119 Cong. Rec. 16764-73 (1973) (veto sustained).

126 H.R. Res. 437, 93d Cong., 1st Sess., 119 Cong. Rec. 19337-45 (1973) (for consideration of H.R. 8410).

127 119 Cong. Rec. 19342-43 (1973).

128 *Id.*

The Rules Committee also possesses the power of "extraction," in that special rules may make a bill in order for consideration even if it has not been reported by the committee of jurisdiction. This authority rarely is used, but the same result can be achieved by permitting a non-germane amendment to be offered to a measure that has been reported. In May 1979, the Committee on House Administration voted, 8 to 17, against a motion to report H.R. 1, dealing with public financing of elections.[129] A second bill affecting campaign financing that attracted great attention was H.R. 4970, the Obey-Railsback proposal to limit campaign contributions by political action committees.[130] Perhaps anticipating that H.R. 4970 would be no more successful in the House Administration Committee than H.R. 1 had been, its supporters bypassed the Committee and brought the proposal directly to the floor through H.R. Res. 414, which made the text of the Obey-Railsback bill in order as a non-germane amendment to S. 832, amending and extending the authorizations in the Federal Election Campaign Act.[131] The rule also prohibited all amendments to Obey-Railsback except a few that were specifically designated by the Rules Committee. Potential opposition within the committee of jurisdiction was bypassed and opportunities to amend the proposal were restricted. The rule was adopted, 228 to 182, with a substantial majority of Democrats voting against a substantial majority of Republicans.[132]

During this debate, the Rules Committee was criticized for having forsaken enforcement of the germaneness requirement (and for avoiding committee action) in order to bring the Obey-Railsback proposal to the floor.[133] But with the precedent for germaneness waivers having been established, Members have reacted to proposed waivers in light of their support for or opposition to the amendments thereby made in order. In some cases, special rules also have been criticized for not being ex-

129 H.R. 1, 96th Cong., 1st Sess. (1979) (on May 24, 1979, the Committee on House Administration voted not to report the bill).

130 H.R. 4970, 96th Cong., 1st Sess., 125 CONG. REC. H6762 (daily ed. July 26, 1979) (introduced and referred to the Committee on House Administration).

131 H.R. RES. 414, 96th Cong., 1st Sess., 125 CONG. REC. H9261-73 (daily ed. Oct. 17, 1979) (for consideration of S. 832).

132 125 CONG. REC. H9272-73 (daily ed. Oct. 17, 1979).

133 *Id.* at H9262, H9265, H9270-71.

pansive enough. Representative Frenzel, for example, a leading Republican member of the House Administration Committee, opposed the 1976 special rule for considering a postcard voter-registration bill on the ground that it did not make the text of his bill in order as a substitute, which presumably would have required a germaneness waiver. His argument that there were alternatives to postcard registration that the House should have an opportunity to consider was rejected by a predominantly party-line vote.[134]

In the following year, Republican Members criticized the proposed rule on the Labor Law Reform Act of 1977 for not permitting certain non-germane amendments to be offered to a bill which, they contended, had been narrowly drawn so these amendments would not be in order.[135] The Minority Leader charged that the Rules Committee had acted unfairly in not waiving Rule XVI:

> Contrary to what my Democrat colleagues infer, there is nothing immoral or even very strange about having a rule that makes a matter germane which might not otherwise be germane. Germaneness has been waived many times. . . . The majority saw fit to write a bill that would preclude the germaneness of the substitute which the gentleman from Illinois (Mr. Erlenborn) and the gentleman from Ohio (Mr. Ashbrook) will offer later. I think the majority knew full well what they did. I think they undoubtedly constructed the bill in such a way that these very well known amendments would not be germane.[136]

Like restrictive rules, expansive rules have become established as a recognized and sometimes desirable alternative to open rules. As with restrictive rules also, the use of expansive rules has enabled the Rules Committee to have a more selective and discriminating impact on the amending process. In evaluating them, Members must ask themselves the same questions that guide the Rules Committee's deliberations: which amendments are to be made in order, for what purposes, and to whose advantage?

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134 H.R. RES. 1444, 94th Cong., 2d Sess., 122 CONG. REC. 25778-83 (1976) (for consideration of H.R. 11552).

135 H.R. RES. 799, 95th Cong., 1st Sess., 123 CONG. REC. 32107-18 (1977) (for consideration of H.R. 8410).

136 123 CONG. REC. 32116 (1977).

## *Conclusion*

The range of alternatives available to the Rules Committee has expanded considerably during the past decade. The decision to grant or not grant a special rule that has been requested remains an important threshold determination, as does the timing of this decision. In this respect, the role of the Committee as "traffic cop" remains undiminished. What has changed is the frequency with which the Committee has departed from the models of simple open and closed rules, through the use of committee substitutes as original bills, through the inclusion of waivers for various purposes, and, most importantly, through the development of complex rules, in restrictive or expansive forms or in hybrids that combine elements of both.[137]

The development of complex rules represents in part a necessary response by the Committee to institutional changes within the House that have complicated the process of floor consideration. The most obvious of these changes has been the growth of multiple referrals. It seems likely that the Committee's decisions have been influenced as well by the gradual and cumulative impact of a series of other changes — changes in the distribution of influence within committees, in the relationships among Members in committee and on the floor, and possibly even by a shift in the locus of decision-making from committees to the floor. But in part also, the growth of complex rules has reflected changes in Rules Committee membership and the procedures for selecting its members — changes that have en-

137 Special rules reported by the Rules Committee for other purposes, *cf.* note 1 *supra*, also have included restrictive or expansive provisions. For example, H.R. Res. 1220, 95th Cong., 2d Sess. (1978), waived points of order against a section of the Labor-HEW appropriation bill for fiscal year 1979 — the section being a legislative provision affecting the use of funds for abortions. In addition, the rule provided that only two amendments could be offered to that section: a motion to strike, and a substitute which was the text of a laboriously achieved House-Senate compromise on an earlier continuing resolution. According to Representative Bolling, this arrangement had been requested by the Majority Leader in the hope of avoiding another prolonged conference negotiation over the issue. The rule was adopted by voice vote. 124 CONG. REC. H5098-99 (daily ed. June 7, 1978). Later in the year, the House adopted H.R. Res. 1434, 95th Cong., 2d Sess. (1978), which provided for consideration en bloc of five energy conference reports, an unusual procedure designed so that the House could continue its package approach to President Carter's energy proposals. 124 CONG. REC. H12810-19 (daily ed. Oct. 13, 1978). On the latter case, *see* S. BACH, COMPLEXITIES OF THE LEGISLATIVE PROCESS: A CASE STUDY OF CONGRESSIONAL CONSIDERATION OF NATIONAL ENERGY LEGISLATION DURING THE 95TH CONGRESS (Library of Congress, Congressional Research Service Rep. No. 79-68 GOV, 1979).

couraged the developmemt of a coherent Committee majority acting to promote party positions.

It is reasonably certain that, in reporting many complex rules, the Rules Committee has been motivated primarily by the need to organize the process of general debate and amendment and to permit equitable participation by all interested Members and committees. In other instances, complex rules have expanded or restricted the amending process in generally acceptable ways that expedited decisions, promoted consideration of alternatives, or permitted action on amendments that enjoyed significant support within the House. In still other cases though, it seems clear that complex rules have been constructed deliberately to promote certain outcomes and impede others. Nothing more nor less should be expected from Representatives with both institutional and political responsibilities.[138]

It should not be concluded, however, that the Rules Committee has become dominated by a monolithic majority that can be mobilized at will. Some rules have been delayed or denied altogether because the necessary majority could not be constructed. And in other instances, the Democrats on the Rules

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138 Some Members have come to view restrictive rules as a device for improving institutional efficiency. On August 2, 1979, Representative LaFalce of New York circulated to his colleagues the draft of a letter to Speaker O'Neill and Chairman Bolling which contended that "there are times when saving the institution may require that some individual desires be limited." To this end, the letter urged

> ...a judicious expansion [of the use of the restrictive or] modified open rule, an approach permitting reasonable proposed amendments to bills on the Floor, but limiting the number of such amendments, and the time permitted for debate on the amendments. This technique has proven effective in dealing with tax bills; there is no reason why it shouldn't be used in other areas as well. To be sure, use of this approach would have to be judicious and sensitive to the rights of the minority, but we are confident that the Rules Committee and the Leadership could and would work with the leading proponents and opponents of bills and amendments and exercise prudent judgment in formulating modified open rules. If a particular modified open rule did not adequately protect minority rights, we could always defeat the rule.

According to Representative Bauman, 43 Members co-signed this letter. Bauman criticized the type of rule LaFalce recommended in the following terms:

> [t]his new restrictive procedure on offering amendments on the House floor is the most serious and scandalous blow struck against democratic procedures in the House to date, for it effectively disenfranchises all 435 members by denying them the opportunity to offer, consider, and vote on amendments to legislation when it comes to the House floor. In addition to being undemocratic, this restrictive approach is based on the assumption that the judgments of our committees are somehow infallible and therefore beyond question or alteration.

R. E. Bauman, *Majority Tyranny in the House*, in VIEW FROM THE CAPITOL DOME (LOOKING RIGHT) 11-12 (J. H. Rousselot & R. T. Schulze eds. 1980).

Committee have been divided among themselves. For example, all the Republicans on the Committee supported, and five of ten Democrats opposed, the restrictive rule for considering the Revenue Act of 1978. The rule was supported by Representatives Bauman and Rousselot, two Republicans who had been vocal in their opposition to other restrictive rules, but was opposed by Representative Bolling because the Committee had voted, 7 to 8, against including an amendment he thought should be considered.[139]

On an earlier occasion during the Ninety-fourth Congress, the Rules Committee took up a bill dealing with natural gas supplies, but not with deregulation, that had been reported by the Interstate and Foreign Commerce Committee, even though a hearing had not yet been requested.[140] Not only did the special rule that was reported make in order a non-germane substitute on deregulation, to be offered by Representative Krueger of Texas, it also authorized the Speaker to recognize any member of the Commerce Committee to move for the bill's consideration, and allocated part of the time for general debate to Krueger's control. The rule was adopted with the support of the Majority and Minority Leaders and the two party Whips, but over the opposition of Representatives Staggers and Dingell of the Commerce Committee and five of the ten Democrats on the Rules Committee who voted, including Representative Bolling and Chairman Ray Madden. Democrats opposed the rule, 102 to 175; Republicans favored it, 128 to 9.[141]

Although these last two instances were exceptional, they do demonstrate that the Democratic majority on the Rules Committee has not been monolithic. Moreover, ultimate control over the Rules Committee rests with the House, and the Committee's ability to structure the choices that Members may make depends finally on the acquiescence of the majority.

A recent development, however, may make it more difficult for future voting majorities in the House to reject proposed

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139 H.R. RES. 1306, 95th Cong., 2d Sess., 124 CONG. REC. H8269-76 (daily ed. Aug. 10, 1978) (for consideration of H.R. 13511).

140 H.R. 9464, 94th Cong., 1st Sess., 121 CONG. REC. 28053 (1975) (introduced), 121 CONG. REC. 40783 (1975) (ordered reported, as amended, by the Committee on Interstate and Foreign Commerce).

141 H.R. RES. 937, 94th Cong., 2d Sess., 122 CONG. REC. 1956-72 (1976) (for consideration of H.R. 9464).

special rules in favor of different sets of parliamentary ground-rules for the amending process in Committee of the Whole. Members who oppose the provisions of a special rule, but who favor action on the measure in question, can vote to refuse to order the previous question so that an amendment to the special rule itself, usually in the form of an amendment in the nature of a substitute, can be offered and accepted. Such attempts may be more difficult in the future because of the precedent established by a 1980 ruling that proposed amendments to special rules must satisfy the same germaneness requirement that applies to amendments to other measures.[142]

On May 29, 1980, the House took up a proposed closed rule for consideration of H.R. 7428, a bill to extend the public debt limit.[143] After the House voted, 74 to 312, not to order the previous question, Representative Bauman of Maryland offered an amendment in the nature of a substitute that made in order, any rule of the House to the contrary notwithstanding, a single amendment in the form of the text of H.R.J. Res. 531 as reported by the Committee on Ways and Means.[144] This joint resolution was a resolution of disapproval directed toward former President Carter's proposal to impose an oil import fee. Representative Bolling then made, and Speaker O'Neill sustained, a point of order against the amendment to the special rule on the ground that it did not satisfy the germaneness requirement of clause 7 of Rule XVI. In the course of his ruling, the Speaker quoted former Speaker Rayburn as having stated that it was

> a rule long established that a resolution from the Committee on Rules providing for the consideration of a bill relating to a certain subject may not be amended by a proposition providing for the consideration of another and not germane subject matter.[145]

Immediately thereafter, Representative Bauman offered a privileged motion to refer the proposed rule to the Rules Committee, a motion to which the House agreed by a vote of 211 to 175.

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142 126 CONG. REC. H4285 (daily ed. May 29, 1980).

143 H.R. RES. 682, 96th Cong., 2d Sess., 126 CONG. REC. H4279-90 (daily ed. May 29, 1980) (for consideration of H.R. 7428).

144 H.R.J. RES. 531, 96th Cong., 2d Sess., 126 CONG. REC. H2545 (daily ed. April 15, 1980) (introduced), 126 CONG. REC. H3992 (daily ed. May 22, 1980) (ordered reported by the Committee on Ways and Means), enacted as P.L. 96-264, 126 CONG. REC. S6376-87 (daily ed. June 6, 1980).

145 *See* note 142 *supra*.

This was the first instance in the recent history of the House in which the germaneness requirement was imposed, through a point of order made and sustained, on a proposed amendment to a special rule; the full consequences of this decision remain to be developed through further rulings.[146] The germaneness requirement is both an integral dimension of House procedure and an interpretive quagmire. The precedents on the subject are voluminous and immensely difficult to reduce to a series of clear, comprehensive, and readily applicable standards. The most that can be said with confidence at this time is that this 1980 ruling may stimulate a series of future rulings which, collectively, could limit the ability of Members to modify proposed special rules on the floor. To the extent that the Rules Committee can present the House with "take it or leave it" propositions — propositions that are even more difficult to amend than in the past — the Committee's ability to influence decisions by defining choices will be enhanced significantly.[147]

146 The possibility of such a ruling had been raised but not resolved in 1979. During the discussion of H.R. Res. 157, 96th Cong., 1st Sess. (1979), for consideration of an earlier debt ceiling bill, H.R. 2534, Members spoke of the possibility that a point of order, on grounds of germaneness, might lie against an amendment offered to the rule if the previous question were not ordered. However, the House voted, 201 to 199, to order the previous question. 125 CONG. REC. H1364-73 (daily ed. Mar. 15, 1979).

147 Members retain the option of defeating a proposed special rule and then discharging the Rules Committee from further consideration of an alternate rule for considering the same measure. Both procedurally and politically, however, this is a difficult recourse.