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The Holman Rule (House Rule XXI, Clause 2(b))

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Summary

Although congressional rules establish a general division of responsibility under which questions of policy are kept separate from questions of funding, House rules provide for exceptions in certain circumstances. One such circumstance allows for the inclusion of legislative language in general appropriations bills or amendments thereto for "germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill." This exception appears in clause 2(b) of House Rule XXI and is known as the Holman rule, after Representative William Holman of Indiana, who first proposed the exception in 1876.

Since the period immediately after its initial adoption, the House has interpreted the Holman rule through precedents that have tended to incrementally narrow its application. Under current precedents, for a legislative provision or amendment to be in order, the legislative language in question must be both germane to other provisions in the measure and must produce a clear reduction of appropriations in that bill.

In addition, the House has also adopted a separate order for the 115th Congress that provides that retrenchments of expenditures by a reduction of amounts of money covered by the bill shall be construed as applying to:

> any provision or amendment that retrenches expenditures by—
>
> (1) the reduction of amounts of money in the bill;
>
> (2) the reduction of the number and salary of the officers of the United States; or
>
> (3) the reduction of the compensation of any person paid out of the Treasury of the United States.

This report provides a history of this provision in House rules and an analysis of precedents that are illustrative of its possible application.

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Background

Congressional rules establish a general division of responsibility under which questions of policy are kept separate from questions of funding. Broadly, the term *authorization* is used to describe legislation that establishes, continues, or modifies the organization or activities of a federal entity or program. By itself, such legislation does not provide funding for such purposes. Instead, the authority to obligate payments from the Treasury is left to separate appropriations measures.

This distinction between appropriations and general legislation as two separate classes of measures, and their consideration in separate legislative vehicles, is a construct of congressional rules and practices. It has been developed and formalized by the House and Senate pursuant to the constitutional authority for each chamber to "determine the Rules of its Proceedings."[1] This power permits each chamber of Congress to enforce, modify, waive, repeal, or ignore its rules as it sees fit. Because the two chambers exercise this rulemaking authority independently, they have developed differing (albeit generally similar) rules and practices. This report addresses solely developments in the House.

According to *Hinds' Precedents*, the origin of a formal rule mandating the separation of general legislation from appropriations can be traced to 1835, when the House debated the increasing problem of delay in enacting appropriations due to the inclusion of "debatable matters of another character, new laws which created long debates in both Houses" and suggested that the Committee on Ways and Means[2] should "strip the appropriation bills of every thing but were legitimate matters of appropriation."[3] In the following Congress (25th Congress, 1837-1839), language was added to House rules that stated:

> No appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

This rule was applied broadly on occasion to exclude legislative provisions authorizing new expenditures as well, such as a case in 1838 when it was used to exclude an amendment that included a provision for refurnishing the White House.[4] Gradually, the rule "became construed through a long line of decisions to admit amendments increasing salaries but as excluding amendments providing for decreases."[5]

[1] Article I, Section 5.

[2] The Committee on Ways and Means exercised jurisdiction over all money matters, including general appropriations bills, until 1865. The expansion of the committee's workload during and after the Civil War caused the House to create two new committees in 1865 (Appropriations and Banking and Currency) and divide the workload accordingly.

[3] Remarks of Representative John Quincy Adams in *Congressional Globe*, v. 3, 24th Cong., 1st sess., December 10, 1835, p. 20.

[4] Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States including references to provisions of the Constitution, the laws, and decisions of the United States Senate* [hereinafter cited as *Hinds' Precedents*], (Washington: GPO, 1907), v. IV, chapter XCV, §3578, pp. 382-385.

[5] Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States including references to provisions of the Constitution, the laws, and Decisions of the United States Senate* [hereinafter cited as *Cannon's Precedents*], (Washington: GPO, 1935), v. VII, chapter CCXXIV, §1481, pp. 477-478.

Development of the Holman Rule

As a consequence of this, in 1876, the language was expanded (at the suggestion of Representative William Holman of Indiana) to further state:

> Nor shall any provision in any such bill or amendment thereto, changing existing law, be in order except such as, being germane to the subject matter of the bill, shall retrench expenditures.

As described by one scholar, this provision effectively granted the Appropriations Committee authority to include virtually any legislative provision in an appropriations measure so long as it reduced the number and salary of federal officials, the compensation of any person paid out of the Treasury, or the amounts of money covered in an appropriation bill.[6] According to one contemporary account, a broad initial construction of the rule by the House resulted in "putting a great mass of general legislation upon the appropriation bills."[7]

The rule was retained in this form until 1880 (46th Congress), when it was modified to define retrenchments as the reduction of "the number and salary of officers of the United States, the reduction of compensation of any person paid out of the Treasury of the United States, or the reduction of the amounts of money covered by the bill." That form of the rule remained a part of House rules until the 49th Congress eliminated it in 1885. It was reinserted in the rules for the 52nd and 53rd Congresses (1891-1895) but was again dropped for the 54th through 61st Congresses (1895-1911) before being readopted in the 62nd Congress.[8]

Although the Holman rule has remained a part of House rules since that time, its language was amended at the start of the 98th Congress (1983-1984).[9] At that time, it was restructured to narrow the exception to the general prohibition against legislation to allow only retrenchments reducing amounts of money covered by the bill. In addition, the House rules for the 98th Congress changed when retrenchment amendments could be offered. Amendments that only alter the items or amounts in an appropriation bill are generally in order when the measure is read for amendment and must be offered as the relevant paragraph or section of the bill is read. The new version of the rule provided, however, that germane amendments to retrench expenditures (as well as limitation amendments) would be in order only after the reading of a general appropriation bill and if a preferential motion that the Committee of the Whole rise and report (essentially ending consideration of the bill) were rejected.

Further stylistic changes were made when the House recodified its rules in the 106th Congress (1999-2000) to make explicit that retrenchment amendments are in order if the motion to rise and report is not offered—as well as if the motion is rejected. It also clarified that the effect of a point of order against legislation in an appropriations bill (and, by extension, the application of the Holman rule exception) is surgical so that it lies against an offending provision in the text and not against consideration of the entire bill.

The Holman rule currently states the following:

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[6] (name redacted), "The Authorization-Appropriation Process in Congress: Formal Rules and Informal Practices," *Catholic University Law Review*, vol. 29 (Fall 1979), p. 57.

[7] James A. Garfield, "National Appropriations and Misappropriations" *North American Review*, vol. 128, no. 271 (June 1879), p. 586.

[8] Precedents related to the periods in which the rule was in effect prior to the 54th Congress appear in *Hinds' Precedents*, vol. IV, chapter XCVII, §§3885-3896, pp. 592-603.

[9] For debate on adopting the rules of the House for the 98th Congress, see *Congressional Record*, vol. 129 (January 3, 1983), pp. 34-51.

> A provision changing existing law may not be reported in a general appropriation bill, including a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation, *except germane provisions that retrench expenditures by the reduction of amounts of money covered by the bill* [emphasis added].

The Holman rule, thus, does not circumscribe Congress's lawmaking authority but rather provides a limited exception to the general prohibition in House rules against legislation in appropriation measures.

For the 115th Congress, the House included a separate order as Section 3(a) of H.Res. 5, adopting the rules of the House, that provides the following:

> During the first session of the One Hundred Fifteenth Congress, any reference in clause 2 of rule XXI to a provision or amendment that retrenches expenditures by a reduction of amounts of money covered by the bill shall be construed as applying to any provision or amendment (offered after the bill has been read for amendment) that retrenches expenditures by—
>
> (1) the reduction of amounts of money in the bill;
>
> (2) the reduction of the number and salary of the officers of the United States; or
>
> (3) the reduction of the compensation of any person paid out of the Treasury of the United States.

As stated in a section-by section summary included in the *Congressional Record* by Representative Pete Sessions, the chairman of the House Rules Committee, the purpose of this provision is "to see if the reinstatement of the Holman rule will provide Members with additional tools to reduce spending during consideration of the regular general appropriation bill."[10]

The applicability of this separate order was extended under Section 5 of H.Res. 787 (115th Congress) which provided that "Section 3(a) of House Resolution 5 is amended by striking 'the first session of.'"[11]

Application

Since the period immediately after the initial adoption of the rule in the 19th century, the House has interpreted it through precedents that have tended to incrementally narrow its application.[12] For example, early precedents established that while it was not always necessary that a retrenchment specify the amount of a reduction of expenditures, it must appear as a necessary result of the legislation to be in order[13] and that it is not sufficient that such reduction would probably (or would in the opinion of the chair) result therefrom.[14] For example, legislation that

[10] Representative Pete Sessions, "H.Res. 5 Adopting the Rules for the 115th Congress," *Congressional Record*, vol. 163 (January 3, 2017), p. H12.

[11] Adopted by the House, 225-183, "Roll No. 118," *Congressional Record* (daily edition), vol. 164 (March 20, 2018), pp. H1711-H1712.

[12] For more on recent application of the rule see Charles W. Johnson, John V. Sullivan, and Thomas J. Wickham, Jr., *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, 115th Cong., 1st sess., (Washington: GPO, 2017), chapter 4, §§46-49; and *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress*, H.Doc. 113-181, 113th Cong., 2nd sess., [compiled by] Thomas J. Wickham, Parliamentarian (Washington: GPO, 2015) [hereinafter cited as *House Manual*], §1062.

[13] *Cannon's Precedents* v. VII, chapter CCXXIV, §1491, p. 485.

[14] This principle is cited in multiple precedents stretching back to 1876, including *Hinds' Precedents*, vol. IV, chapter

would simply confer discretionary authority to terminate employment of federal employees is not in order under the Holman exception because any resulting savings would be speculative.[15] The reduction also may not be contingent on an event.[16] Furthermore, the rule is not applicable to funds other than those appropriated in the pending general appropriations bill.[17]

The Holman rule then is intended to apply only when an obvious reduction of funds in a general appropriations bill is achieved by the provision in question, such as the cessation of specific government activities,[18] or through a specific reduction of total appropriations in the bill.[19] In addition, the exception does not apply to limitations (on the grounds that such language is not legislative)[20] or legislative language unaccompanied by a reduction of funds in the bill.[21] Legislation that is too broad has also typically not been allowed under the Holman rule exception. The House has held, for example, that a provision that stated no part of an appropriation could be expended for a specific, designated purpose qualified as a retrenchment. However, a proposal that effectively repealed the law under which appropriations for that purpose were authorized was held not to come within the exception.[22] In another case, the House held that even when a provision does reduce expenditures, it may not be accompanied by additional legislative provisions not directly contributing to the reduction.[23]

Separate Order for the 115th Congress

The new separate order effectively reinstates language that had been stricken from the rule in 1983 during the 115th Congress. While it is not clear precisely what impact this change might have on amendments offered during floor consideration of appropriations bills, the additional language potentially opens the door to the consideration of retrenchments resulting from a reduction of the number and salary of the officers of the United States or the reduction of the compensation of any person paid out of the Treasury of the United States. There are precedents regarding provisions allowed under the older, pre-1983 form of the rule that may be illustrative for understanding what may be in order.[24] For example, a proposal that pay for a class of

XCVII, §3885, p. 592-593, as well as *Cannon's Precedents*, vol. VII, chapter CCXXIV, §§1527-1545, pp. 524-549; and Lewis Deschler, *Deschler's Precedents of the U.S. House of Representatives*, 94th Cong., 1st sess., H.Doc. 94-661 (Washington: GPO, 1977-1991) [hereinafter cited as *Deschler's Precedents*], vol. 8, chapter 26, §§5.1,5.2, 5.4-5.8. This is further reinforced by the language in the standing order that uses reductions of "amounts of money in the bill" rather than "amounts of money covered by the bill" as the standard for judging whether a provision qualifies under the Holman Rule exception.

[15] *Deschler's Precedents*, vol. 8, chapter 26, §5.12.

[16] *Deschler's Precedents*, vol. 8, chapter 26, §5.3.

[17] Two examples cited in the *House Manual*, §1062, include "Amendment Offered by Mr. Bow," *Congressional Record*, vol. 112 (October 18, 1966), p. 27425; and "Amendment Offered by Mr. Smith of Michigan," *Congressional Record*, vol. 140 (June 17, 1994), p. 13422.

[18] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1493, p. 489.

[19] *Deschler's Precedents*, vol. 8, chapter 26, §4.5. This would include not only amendments that provide for the reduction of a specific dollar amount but also those that provide for the reduction of each amount made available in an appropriation act by a uniform percentage.

[20] For a discussion of limitations and how they may be distinguished from legislation, see CRS Report R41634, *Limitations in Appropriations Measures: An Overview of Procedural Issues*, by (name redacted) .

[21] *House Manual*, §1062, citing the *Congressional Record*, v. 125, (July 16, 1979), pp. 18808–10.

[22] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1486, p. 480.

[23] That is, the legislative provision must be necessary to accomplish the retrenchment. *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1546, p. 549.

[24] For a discussion of historical precedents of the earlier form of the rule, see *Cannon's Precedents*, vol. VII, chapter

employees be limited to a smaller number of employees than authorized by law has been allowed, as have proposals that would reduce the number of officers.[25] The Holman rule has also allowed proposals that would consolidate or eliminate offices.[26] On at least one occasion, the Holman rule was the basis for allowing a proposal to replace civilian employees with lower paid U.S. Army enlisted personnel.[27] In another case, the rule allowed for an amendment that capped the salaries of certain employees.[28]

As cited above, however, the rule does not allow for retrenchments that would be applicable to funds other than those appropriated in the pending general appropriations bill. In addition, the application of the broader exceptions in the separate order may be limited because of the requirement for germaneness.[29] The Holman rule is not intended to open the door for legislative provisions that would expand the scope of the bill. For example, the new separate order would likely not make in order broad legislative provisions in, or amendments to, a specific appropriation bill that would apply to the salary or number of federal employees funded through appropriations in other measures. Furthermore, House precedent establishes that simply providing for a reduction of the number and salaries of officers in a paragraph that is complicated by other elements does not necessarily bring a proposition within the exception.[30]

The Holman rule was cited as allowing the consideration of only one amendment during the first session of the 115th Congress. The amendment would have abolished the Budget Analysis Division of the Congressional Budget Office, comprising 89 employees with annual salaries aggregating $15 million, transferring responsibility for any duties imposed by law and regulation to the Office of the Director of the Congressional Budget Office.[31]

When discussing the application of rules and precedents, it is important to note that the House Parliamentarian is the sole definitive authority on questions relating to the chamber's precedents and procedures and should be consulted if a formal opinion on any specific parliamentary question is desired.

CCXXIV, pp. 477-570, and *Deschler's Precedents*, vol. 8, chapter 26, §§4-5.

[25] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1506, p. 505; *Deschler's Precedents*, vol. 8, chapter 26, §4.3.

[26] In a number of instances, amendments have been allowed that abolished one or more offices or positions and reassigned duties to other offices or positions. *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1507, pp. 505-507 and §1504, p. 501-502; *Deschler's Precedents*, vol. 8, chapter 26, §4.2.

[27] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1492, p. 488.

[28] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1498, p. 493. The amendment in question established a limit on the pay of any employee of the United States Shipping Board. Because this maximum was less than the current salary of several employees, the amendment was ruled in order because it had the effect of reducing the compensation of persons paid out of the Treasury.

[29] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §§1548, 1549, pp. 552-554.

[30] *Cannon's Precedents*, vol. VII, chapter CCXXIV, §1500, p. 495. The amendment in question required the Secretary of the Treasury to discharge not less than 218 employees and substitute 58 power plate-printing presses in place of 196 hand plate-printing presses. Although the discharge of 218 employees by itself may have qualified for the exception under the Holman rule, the chair ruled that because the discharge was to be made possible as a consequence of the switch from hand presses to power presses, when the amendment was taken as a whole it was not possible to determine whether there would be a retrenchment of expenditures.

[31] "Amendment Number 5 Offered by Mr. Griffith," *Congressional Record* (daily edition), vol. 163 (July 26, 2017), pp. H6412-H6415. The amendment subsequently failed of passage, 116-309. See p. H6449.

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