

BASIC TRAINING

PARLIAMENTARY PROCESS, FACTS, AND STRATEGIES

PARLIAMENTARY BOOT CAMP

SPOTLIGHT INFO

GERMANENESS RULE

“

No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment.

— Clause 7 of rule XVI

FORM OF THE POINT OF ORDER.

A member making a point of order against an amendment for a violation of the germaneness rule would say: “M. [Speaker/Chair], I make a point of order that the [amendment/motion] violates clause 7 of rule 16 of the Rules of the House because it seeks to amend the [bill/amendment] with matter not germane thereto. The text is not germane because...”

The Germaneness Rule

The basic element of the germaneness rule is the requirement that **an amendment address the same subject** as the underlying bill. The text of the rule has remained the same since it was last amended in 1822. The purpose of the rule is to provide for the orderly consideration of amendments to bills and resolutions by requiring a relationship between the amendment and the matter being amended. The germaneness rule applies both to amendments and other motions that have the same effect (i.e. a motion to recommit). If the amendment and the underlying provision are not related, the amendment is subject to a point of order and cannot be offered.

MAKING THE POINT OF ORDER

A point of order that an amendment violates the germaneness rule must be made in a timely fashion, meaning that it must be made prior to the beginning of debate on the amendment. A common practice is to **reserve a point of order** at the outset if further review of the amendment is necessary to determine if it violates the germaneness rule. If a Member wants to make the point of order, they simply explain why the provision violates the germaneness rule, and the Chair may entertain further argument for and against the point of order. At the conclusion of argument, the Chair will rule on the point of order. If the point of order is upheld, further consideration of the amendment ends; if the point of order is overruled then debate on the amendment continues. The ruling of the Chair is subject to appeal.

EVALUATING THE POINT OF ORDER

In determining the applicability of the point of order, the Chair evaluates a large number of factors, many of which are discussed in more detail below. However there are a number of basic points which are important to remember:

1. Germaneness is a technical body of precedent, and is different than the idea of “relevancy”; An amendment may be politically related to a provision in a bill, but may not be germane.
2. Amendments must be **germane not only to the underlying bill as a whole, but to the section or paragraph** being amended.
3. Germaneness is based on the **portion of the bill which has been read for amendment** to that point. An amendment might be germane at the end of the bill where it might not earlier in the reading.

AVOIDING THE POINT OF ORDER — THE TESTS OF GERMANENESS

Over the last 180 years, literally hundreds of pages of precedents on the question of germaneness have been cataloged by the Parliamentarians. In drafting amendments, it is important to be aware of the 6 basic tests of germaneness used by the Chair to evaluate the germaneness of an amendment to the underlying proposition.

- **Subject matter** — An amendment must address the same subject matter as the underlying bill. For instance, in a bill dealing with religious refugees, it is not germane to offer an amendment to address political refugees.
- **Fundamental purpose** — The amendment and the underlying bill must share the same fundamental purpose. Thus, a bill proposing to build a road between city A and city B cannot be amended by changing city B to city C, because the bill and amendment had different purposes.
- **Committee jurisdiction** — The amendment must be within the jurisdiction of the committees to whom the bill was referred. During committee consideration, the amendment cannot fall within

the jurisdiction of a different committee and floor amendments cannot bring in jurisdiction of committees to which the bill was not referred.

- **Individual proposition** — An individual proposition may not be amended by another individual proposition, even if they are within the same class. So a bill dealing with fighter planes cannot be amended to encompass tanks, even though both are weapons systems.
- **Specific subjects to general propositions** — You cannot amend a specific provision (i.e. apples) with a general proposition (i.e. fruit). However, it is possible to amend a general provision (fruit) with a more specific proposition (apples).
- **Permanent amendment to a temporary provision** — It is not germane to amend a provision which is temporary, such as an appropriations provision, with something permanent, such as a permanent change in law.

None of these tests is more important than any other, but a general rule of thumb is that if the amendment fails on any single test, it is not germane.

GERMANENESS AND THE NEW “PAY-AS-YOU-GO” RULES

With the adoption of “Pay-as-you-go” rules at the beginning of the 110th Congress, the majority faced the need to include non-germane legislative items as offsets for new spending. For instance, in the 110th Congress, a bill to grant a new, voting representative for both the District of Columbia and the State of Utah included an unrelated tax provision as an offset to the increased mandatory spending in the bill stemming from the salaries of the two new representatives. The inclusion of the revenue provision made an amendatory motion to recommit dealing with the District’s gun laws germane to the bill.

In order to address this problem, the rules were amended in the 111th Congress to provide a new mechanism for consideration of offsetting “pay-fors” separately from the underlying provision. This new provision (clause 10(b) of rule XXI) provides that when a rule from the Rules Committee directs that 2 or more separate measures be engrossed together after passage, all of the bills should be considered together for purposes of evaluating PAYGO compliance.

This is an important implication for the germaneness rule in that it provides the Majority with an easy way to avoid a motion to recommit or other amendment which would otherwise be germane if the provisions were considered together. By breaking the provision into separate bills during House floor consideration, the Majority enjoys the benefit of having the provisions considered together for PAYGO purposes without the risk of making the bill susceptible to amendments that would not be germane but for the offsetting amendment.

KEY POINTS TO REMEMBER

Whether trying to draft an amendment which meets the tests of germaneness, or trying to head off an unfriendly amendment, it is important to keep the following points in mind:

- The House Parliamentarians will be the ones who will advise the Speaker or Chairman on questions of germaneness, and are often the best authorities on what is and is not germane.
- All of the provisions of the amendment must be germane to the underlying bill in order for the amendment to be germane. If any portion of the amendment fails any of the germaneness tests, the entire amendment is considered non-germane
- If a non-germane amendment is incorporated in a bill, then the test of germaneness is expanded, meaning that an amendment may be germane after adoption of the amendment, even if it was not before.

SPOTLIGHT INFO

TO READ MORE...

Chapter 26, “House Practice: A Guide to the Rules, Precedents, and Procedures of the House,” Wm. Holmes Brown & Charles W. Johnson, 2003.

§§ 928-940, “House Rules and Manual, 110th Congress,” John V. Sullivan, 2007.