

McCain	Pryor	Snowe
McConnell	Reid	Stevens
Murkowski	Roth	Thomas
Nickles	Shelby	Thompson
Nunn	Simpson	Thurmond
Pressler	Smith	Warner

NAYS—31

Akaka	Kennedy	Pell
Biden	Kerrey	Robb
Bingaman	Kerry	Rockefeller
Boxer	Kohl	Santorum
Bradley	Lautenberg	Sarbanes
Byrd	Levin	Simon
Dodd	Lieberman	Specter
Exon	Mikulski	Wellstone
Feingold	Moseley-Braun	Wyden
Glenn	Moynihan	
Harkin	Murray	

NOT VOTING—3

Campbell	Coats	Leahy
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The PRESIDING OFFICER. On this vote, the yeas are 66, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader, Senator LOTT, is recognized.

POINT OF ORDER

Mr. LOTT. Mr. President, I understand that if a point of order were raised that the pending FAA conference report exceeds the scope of the conference committee, that the Chair would rule that the conferees did exceed the scope with respect to the so-called Federal Express provision. If the point of order is raised and sustained, the conference report would then fall.

This would mean, as we pointed out earlier, billions of dollars lost in construction funds, hundreds of thousands of lost jobs, and a significant reduction in air traffic safety. That would be jeopardized.

Needless to say, the Senate should not let this vital piece of legislation be killed on this point of order, and having just had a vote of 66 to 31 to cut off the filibuster. In order to facilitate the vote, I raise a point of order that the conference report exceeds the scope of the conference committee and ask unanimous consent that there now be 20 minutes for debate prior to the Chair's ruling, to be equally divided between Senators KENNEDY and STEVENS. Senator MCCAIN will participate in that. I have discussed this with Senator KENNEDY. He understands that I would make this point of order.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. KENNEDY. Reserving.

The PRESIDING OFFICER. Reserving.

Mr. KENNEDY. I do not intend to object. I want to point out that the rejection of the conference report does not mean the loss of money or jobs or safety. If the report is rejected, the Senate can quickly and unanimously pass the bill that is at the desk, enacting the

FAA bill without the Federal Express provision. The House is still in session to receive and pass that bill. Having made that point of order, I have no objection to the unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Parliamentary inquiry. I understand there would be the debate time which would be followed by a ruling from the Chair.

The PRESIDING OFFICER. That is correct.

Mr. LOTT. I yield the floor, Mr. President.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. As I understand it, I have 10 minutes. Is that correct?

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for a period not to exceed 10 minutes.

Mr. KENNEDY. Mr. President, we are moving toward the conclusion of this issue. But this is an extremely important issue, and I would invite our colleagues' attention.

Mr. President, in just a few moments the Chair will rule whether this particular provision is inside the scope or outside the scope of the conference. I have every expectation that the Chair will rule that it was outside the scope of the conference. Then we are going to be asked whether we are going to sustain the Chair or overrule the Chair. I would like to address that issue and what it means in terms of the future of this institution and the future of various conference reports.

Mr. President, I want to remind my colleagues of the long-term significance of a vote to overturn the ruling of the Chair on this important point. Last year the junior Senator from Texas, Senator HUTCHISON, offered an amendment regarding the Endangered Species Act to an appropriations bill. The Chair ruled that the amendment would constitute legislation on an appropriations bill, but the body overturned the ruling of the Chair.

That vote set a precedent. As a result of that vote, a point of order that an amendment constitutes legislation on an appropriations bill is no longer available to Senators. To pass that single amendment, the Senate gave up an important aspect of our rules, one that has served to protect the rights of all Members of this body. The point of order before us right now provides an even more important protection to all Members.

The rule that a conference committee cannot include extraneous matter is central to the way that the Senate conducts its business. When we send a bill to conference we do so knowing that the conference committee's work is likely to become law. Conference reports are privileged. Motions to proceed to them cannot be debated, and such reports cannot be amended.

So conference committees are already very powerful. But if conference

committees are permitted to add completely extraneous matters in conference, that is, if the point of order against such conduct becomes a dead letter, conferees will acquire unprecedented power. They will acquire the power to legislate in a privileged, unreviewable fashion on virtually any subject. They will be able to completely bypass the deliberative process of the Senate.

Mr. President, this is a highly dangerous situation. It will make all of us less willing to send bills to conference and leave all of us vulnerable to passage of controversial, extraneous legislation any time a bill goes to conference.

I hope the Senate will not go down this road. Today the narrow issue is the status of one corporation under the labor laws. But tomorrow the issue might be civil rights, States' rights, health care, education, or anything else. It might be a matter much more sweeping than the labor law issue that is before us today.

So for this vital institutional reason, I strongly urge the Senate to uphold the ruling of the Chair on the point of order. This vote is not about the FAA, and it is not even about Federal Express; it is a vote about whether this body is going to be governed by a neutral set of rules that protect the rights of all Members, and by extension, the rights of all Americans. If the rules of the Senate can be twisted and broke and overridden to achieve a momentary legislative goal we will have diminished the institution itself.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, this is a rather difficult situation. We have just passed, recently, a Defense appropriations bill. I was the chairman of that conference. Before it was over, we had a whole series of other bills, a series of legislative items. It was not necessary to raise a point of order. Everybody knew we exceeded the scope of the conference.

I ask any chairman of a conference if he or she has ever really been totally restricted by this rule? This is an extraordinary time where we are in the last hours of this Congress. When the leader became aware that Senator KENNEDY was going to raise this point of order, the leader determined to raise it himself. I take it that having done that, there is no question this is a rather significant occasion. I hope it will be a rather narrow precedent.

I point out to the Senate that this provision is not the only matter that exceeds the scope of the conference. We had to include, at the administration's request, special authority for the executive branch to purchase and deploy explosive detection devices. We put in here the provisions that pertain to the rights of survivors of victims of air crashes. We put in provisions requiring passenger screening companies to be certified by the FAA. That is not required under any existing law. We put

in restrictions on underage pilots, following the one disaster that involved a young girl who was a pilot. We put in a provision requiring the FAA to deal with structures that interfere with air commerce.

My point is, as we get to the end of a session, we, of necessity, include in a bill extraneous matters totally beyond the scope. We know they are beyond the scope. As the chairman of the Defense Appropriations Committee, I knew all those items we brought to the floor earlier this week were beyond the scope of the conference, but we did not anticipate anyone would raise a point of order.

Anticipating that Senator KENNEDY would bring this point of order before the Senate, the leader made this point of order. I ask the Senate to keep in mind this will be a rather limited precedent, in my opinion. I do not know whether the Chair will agree with me, but clearly when you get to the end of a Congress some things have to be done. We did not have time to take up separate bills. We held a hearing on the bill in the Senate Commerce Committee dealing with the rights of victim-survivors of air disasters. They pleaded with us to include that bill in this legislation. We have done so.

In other words, this point of order is not only valid, in my judgment, against the amendment offered by Senator HOLLINGS, but against the other provisions where we have exceeded the scope in various matters on this bill. I ask the Senate, when the time comes to vote, to overrule the Chair. It will not be debatable, but I clearly expect a ruling from the Chair that this report does exceed the scope of the conference under the rules and, in these circumstances, I ask that the ruling of the Chair be overturned.

I yield to Senator MCCAIN.

Mr. MCCAIN. Mr. President, I yield such time as remains to the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, with respect to this particular point of order, it would not set any precedent relative to anything dealing with the merits of the matter. It is dealing, once again, basically with a fundamental mistake made in the drafting of a measure that was caught some 2 months later, never discussed, never voted on and, of course, there were no hearings, or what have you.

So what we have done is taken this opportunity on a very germane matter, Federal Express is the sixth largest airline in the country, and brought in this particular correction. It has nothing to do with the merits of anything and no precedent will be set when we overrule this Chair.

Mr. President, I can tell you categorically, if this kind of a point of order was made on Monday, we would have had to close down the Government. You can go down and list the various things—\$249.8 million emergency appropriations for counter-terrorism that was not in the bill or in

the conference. The measure under discussion here was at least in the conference. The FBI with \$60 million, the Prevention Council, various appropriations for the EDA, the SBA, I could go down the list.

I am confident I can get support now when I remind the distinguished Senator from Massachusetts—the Massachusetts Biotechnology Research Institute, I am constantly getting a little card from my distinguished friend, and I love to do it. He said, you have to take care of me up there in Boston, and I said, I am glad to do it. It was not in either the House or the Senate, but I think we can get it in. We do that. I hope he can vote with me on this particular overriding of the Chair's ruling.

Mr. STEVENS. Mr. President, on another matter, I announce we will have a Governmental Affairs Committee meeting as soon as this vote starts in S-128 to consider reporting a nomination at the request of the administration, for the Administrator of the General Service Administration, and other nominations. I ask unanimous consent that be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I will not delay the resolution of this issue, but the issue is not germaneness. That is not the issue, whether this is germane. The issue is whether this material is outside the scope of what was sent to the Congress in the House and the Senate. That is the issue.

Today, it is a labor provision. Tomorrow, it may be water in the West, it may be land in the West, it may be civil rights, it may be health care, it may be any other issues which Members have some interest in. There is no such thing as a narrow precedent. We have had the precedent that was established about legislation on an appropriation by KAY BAILEY HUTCHISON. That has changed.

Certainly, the rules that govern this institution for the better part of my service in the U.S. Senate—now we are talking about a very significant and important difference—whether these matters are outside the scope. That is the issue, not whether it is germane or not germane, but whether it is outside the scope. The House Parliamentarian ruled it was outside the scope, and that is why the House of Representatives had to have a separate vote.

Now we are going to have a judgment about whether it is inside the scope or outside the scope. If the judgment is made that it is inside, I hope that would support the Chair. If it was made that it was outside, that we would support the Chair as well. It reflects, and will reflect for years to come, the whole basic institutional integrity of this body and how it will consider conference reports into the future. It is very important, significant, and powerful.

How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 4 minutes remaining.

Mr. KENNEDY. I yield such time as the Senator may consume.

Mr. FEINGOLD. I want a moment to say a word about the point-of-order issue. A point was made by the Senator from South Carolina, I believe, that the same type of point of order could have been raised with regard to the continuing resolution earlier this week. I have not examined the issue closely, but I imagine that is true. But we should reflect a moment on the concept of what that was about versus the willingness of this body, perhaps, to overturn its own rules on something that is so specific to one corporation that it seems almost astonishing.

To what extent are we going to go as a body in the future in changing our rules, undoing our rules, overruling a point of order, to accommodate one provision that only has to do with one matter? I think there is a huge difference. I am not even sure it was appropriate with regard to the continuing resolution. I happen to have voted against it in part for that reason.

Surely, for us to start engaging in overruling points of order to benefit the needs of one corporation to try to overturn what is a continuing litigation or to affect the results of continuing litigation is a very troubling precedent for this body, as the Senator from Massachusetts has indicated.

I thank the Chair.

RULE 28 CHALLENGE TO THE FAA CONFERENCE REPORT

Mr. PRESSLER. Mr. President, the Senate soon will be voting on the motion to overrule the decision of the Chair with respect to the ruling that section 1223 of the conference report pending before the Senate violates rule 28 of the Senate by exceeding the scope of the authority of the conference committee. As chairman not only of the Committee on Commerce, Science, and Transportation which is the committee of jurisdiction in the Senate, but also as chairman of the conference committee that produced this report, I rise to ask my colleagues to overturn the ruling of the Chair in this matter.

Do I do so because I believe the provision was, in fact, within the scope of the conference? No, Mr. President, I admit this section, added by an amendment offered by the distinguished Senator from South Carolina, and the ranking member of the Commerce Committee, Senator HOLLINGS, was not contained in the legislation as initially passed by either the House or the Senate. I am also fully aware that Rule 28.2 of the Standing Rules of the Senate clearly states a conference committee "shall not insert in their report matter not committed to them by either House."

However, Mr. President, those on the opposite side of the issue know full well that this is done with some frequency when a particular situation necessitates such action. Those Members also know that as a result, sections in