CLINCHING, MASS RECONSIDERATION, AND SUPERCLINCHING—CAN THEY REALLY DO THAT?

Michael E. Malamut, JD, PRP, CP

Introduction

The motion to *reconsider* is a distinctly American motion[1] which arose "to permit correction of hasty, ill–advised, or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote" (**RONR** p. 309).[2] *Reconsideration* is a limited exception to the general principle of parliamentary procedure "that no motion shall be made or question proposed, which is substantially the same with one on which the judgment of the house has already been expressed during the session, or which is still pending in the house or before a committee" (**Cushing, Elements** § 1254, p. 503).[3] This basic principle was "introduced in order to avoid contradictory decisions, to prevent surprises, and to afford opportunity for determining questions as they arise" *Id.* Thus, the motion to *reconsider* has been a battleground between two parliamentary imperatives—finality versus flexibility. Traditionally concomitant with the motion to *reconsider* has been a right to delay action on the motion to be reconsidered until a fair and thorough reconsideration is possible, which in some circumstances can be until the end of the next meeting within a quarterly time interval (**Demeter** p. 155; **RONR** pp. 314–16).[4] Since its introduction, therefore, the rules concerning the motion to *reconsider* have gradually evolved, as strategies arose to use the powerful motion (with its right to delay action and reopen debate on questions) for unintended purposes and safeguards were then introduced against such abuses of the motion.[5]

Even in the nineteenth century, strategies arose to avoid the flexibility of *reconsideration* and reassert the principle of finality. One of the earliest was the motion to *lay on the table* the motion to *reconsider,* which in earlier practice carried only the *reconsideration* to the table. This practice thus allowed the underlying main motion to continue in effect while preventing further motions to *reconsider* it (**Cushing, Elements** § 1273, pp. 507–08 n.6, § 1449, p. 565; **RO** (3d ed.) § 19, p. 53).[6] In United States House of Representatives, where a two-thirds vote is required to take a question from the table (*id.; **RONR** p. 213* n.*), the motion to *reconsider* thus often came to be combined with a motion to *lay on the table,* in contradiction to the general rule against combining motions (**Cushing, Elements** § 1284, p. 511; **Hills** § 18.9, pp. 606–07; **Town Meeting Time** p. 116). Following Congressional practice, the first editions of **Robert** allowed the motion to *reconsider* and to *lay the motion to reconsider on the table* to be made at the same time, but by the third edition this procedure was prohibited "as an unnecessary violation of the principle that only one motion can be made at a time" (**RO** (3d ed.) Note, pp. 15–16). Therefore,

outside of Congress, the tactic of *laying on the table* a motion to *reconsider* would no longer be effective as a means of achieving finality for the underlying main motion.

Another common tactic to neutralize the motion to *reconsider* in order to achieve finality is *clinching,* which takes advantage of the rule against multiple reconsideration. A principal protection against dilatory use of the motion to *reconsider* by a disgruntled minority is the rule that the motion to *reconsider* "[c]annot be reconsidered. If it is voted on and lost, the motion to Reconsider cannot be renewed except by unanimous consent. By the same principle, no question can be reconsidered twice unless is was materially amended during its first reconsideration" (**RONR** p. 314). (*See* **RONR** pp. 312, 332.) This rule against multiple reconsideration is accepted as an inherent qualification of the motion to *reconsider* by almost all parliamentary authorities (**Cannon** p. 127; **Cushing, Elements** § 1273, pp. 507–08; **Cushing, Manual** § 257a, p. 161 (Bolles' note); **Ericson** p. 108; **Keesey** p. 58; **Mason** § 457, pp. 298–99; **Oleck** § 36, pp. 69–70 & n.2; **Parliamentary Law** pp. 94, 97, 100; **Riddick** p. 166).[7]

Definitions

A direct corollary of the rule against multiple reconsideration is that, once a main motion or resolution has been reconsidered, the result becomes final for the session. This has led to the use of the motion to *reconsider* for strategic reasons, contrary to its purpose, to give finality to the issue subject to *reconsideration* and to prevent a defeated minority from reviving the issue even if a good reason to sway votes in their direction has arisen on a timely basis. This strategic maneuver is mentioned in several authorities. (*See* **Cannon** pp. 75–76, 127; Demeter, *Some Significant Aspects on Reconsideration,* p. 233; **Demeter** pp. 158, 164–65;[8] **Ericson** p. 110; **Parliamentary Opinions** No. 140, p. 70; **Town Meeting Time** pp. 74–77.[9] The tactic is called "*reverse reconsideration*" by George Demeter in *Some Significant Aspects on Reconsideration* p. 233; the "*mousetrap*" or "*mousetrapping*" by **Town Meeting Time** pp. 74, 76; and the "*clincher motion*" or "*clinching*" by **Cannon** p. 127 and **Parliamentary Opinions** No. 140, p. 70.) In this article, the tactic is referred to as "*clinching*" because it is the most descriptive term and is used in at least two different sources.[10] The matter which the prevailing party wishes to make final through *clinching* can be a motion that passed (to allow it to be executed immediately or to prevent it from being questioned later) or one that failed (to prevent the matter from being raised again).

An extension of the *clinching* tactic is *mass reconsideration.* In *mass reconsideration,* more than one question is proposed to be *reconsidered* at the same time, for the purpose of finalizing the vote on all the questions proposed to be reconsidered and making them immediately effective (**Demeter** p.

153; **Town Meeting Time** pp. 76 & n.8). *Mass reconsideration* is often proposed at the end of a meeting to finalize all the votes that have been taken in that meeting and preventing a disgruntled minority from rallying its forces and raising *reconsideration* at the following meeting (**Town Meeting Time** p. 76).

A further enhancement of *mass reconsideration* is proposed in **Cannon** (pp. 75–76.):

> [T]he motion to suspend the rules and reconsider all the resolutions previously adopted . . . is called the "clincher" motion because its sponsor has the purpose of having the motion defeated. The motion to reconsider, once defeated, cannot be renewed. As a result, once this combined motion is defeated, all the resolutions previously adopted cannot be brought up again under any motion, and the sponsor, having "clinched" these votes, can be confident that those resolutions will not come before the assembly *again in that meeting and that those issues are settled* with finality. Under the normal rules, each vote on each resolution would have to be moved, debated, and then voted on individually; with all rules suspended, however, the reconsideration vote can be on all of the votes on all of the resolutions *en bloc*—all in this one combined motion. And since the motion to suspend the rules is not debatable, this combined motion is not debatable; all the earlier resolution votes, therefore, can be clinched in a matter of minutes.

Moreover, since a two-thirds vote is required to pass a motion to *suspend the rules* (**Cannon** p. 75; **RONR** p. 260; **Sturgis** p. 82), only one-third plus one of the voters need be sufficiently educated by their floor leaders to vote against the motion to *suspend the rules* in order for it to have its *clinching* effect according to **Cannon.** Although **Cannon** refers to the combined motion to *suspend the rules and reconsider all the resolutions previously adopted* as the "*clincher*" motion at page 75, at another point he discusses the more traditional strategic reconsideration of a single motion as "*clinching*" (**Cannon** p. 127). Therefore, **Cannon's** suggested enhancement of *mass reconsideration* by combining it with a motion to *suspend the rules* will be referred to in this article as "*superclinching.*" The remainder of this article will discuss the parliamentary acceptability of *clinching, mass reconsideration,* and *superclinching,* and counter-strategies for members to use if confronted with these tactics.

Clinching

Clinching is a well known parliamentary tactic and is permitted by all the authorities cited in the paragraph defining *clinching* above. **Robert** does not make any definite statement regarding *clinching,* but there is nothing to prevent *clinching* in **RONR. Ericson,** p. 110, interpreting **Robert,** seems to

indicate that *clinching* is an acceptable strategic use of *reconsideration.* **Parliamentary Opinions,** No. 140, p. 70, indicates that "[t]he technique [of clinching] is a device which prevents the proper use of the motion to *reconsider,* since this motion cannot be renewed," but nevertheless concludes that a motion to *reconsider* made to *clinch* a vote is in order. **Keesey,** the only authority who explicitly prohibits *clinching,* does so only in temporally limited circumstances: "An alert presiding officer should not permit abuse of the motion To Reconsider. A motion to reconsider a vote immediately after the vote is taken, intended to prevent a later motion To Reconsider (since a vote may not be reconsidered a second time), should not be tolerated . . . ." (**Keesey** p. 61). In other words, even **Keesey** would permit (although he would not condone) a motion to *reconsider* made to *clinch,* if it is raised any time after the consideration of a following main motion has commenced and certainly if made at the end of the meeting in order to prevent reconsideration on the following day.[11]

The use of the rule against multiple reconsideration to *clinch* is no more hypocritical, after all, than the well accepted strategy of voting with the prevailing side in order to move *reconsideration* in societies where the rules require the member moving *reconsideration* to have voted with the prevailing side. (*See, e.g.,* **Demeter,** pp. 156, 164; Demeter, *Some Significant Aspects on Reconsideration,* p. 233; **Mason** § 464, p. 304; **Parliamentary Law** pp. 88–89; **RONR** p. 328.) Nevertheless, the effect of the two strategic actions is entirely different. Voting with the prevailing side in order to move *reconsideration* may, at most, result in a brief delay in implementation of a motion if *reconsideration* is rejected and in a more thoughtful and representative treatment of the underlying motion if *reconsideration* is adopted. *Clinching,* on the other hand, completely frustrates the appropriate use by a society of *reconsideration* to ensure reasonable flexibility.

Parliamentary Opinions, No. 140, p. 70, counsels that the motion *to reconsider and enter* is the appropriate counter-strategy to a motion to *reconsider* made to *clinch.* This use of the motion to *reconsider and enter* is consistent with its purpose: "to prevent a temporary majority from taking advantage of an unrepresentative attendance at a meeting to vote an action that is opposed by a majority of a society's . . . membership" (**RONR** p. 326). (*See also* **Demeter** p. 160.) At the next meeting, both factions will be aware that the contentious issue will be up for *reconsideration* and will be able to encourage members supporting their positions to attend, ensuring a more representative meeting. *Reconsider and enter* takes precedence over the simple motion to *reconsider,* (**Demeter** p. 160; **RONR** p. 327), and therefore could be raised after a motion to *reconsider* to *clinch* and would be able to frustrate the attempt to *clinch* at least temporarily.

There is a limitation on *reconsider and enter* that might in rare circumstances prevent its use as a counter-tactic to *clinching: reconsider and enter* must be made on the same day as the vote proposed to be reconsidered

(**Ericson** p. 112; **Parliamentary Law** p. 104; **RONR** p. 327). (**Demeter,** pp. 160–63, contains no explicit discussion of this limitation.) This limitation, however, should not significantly interfere with the use of *reconsider and enter* as a counter-tactic to *reconsideration* to *clinch,* since *clinching* is most likely to be raised on the same day as the vote proposed to be *reconsidered,* when the proponents of *clinching* are sure that their side retains its strength.

This counter-strategy to *clinching,* however, is fraught with problems. First, those more traditional authorities that accept the motion to *reconsider and enter* require, as with the simple motion to *reconsider,* that the motion be made by one on the prevailing side. **Robert** suggests voting strategically with the prevailing side in order to be able to move to *reconsider and enter* if a member is sure his or her position will be defeated (**Parliamentary Law** p. 102; **RONR** p. 328). The member may, however, feel that the vote is close and every vote is necessary for his or her position or may object in principle to hypocritical strategic voting. In such circumstances, after a contentious vote, it may not be possible to find a friend on the prevailing side willing to move to *reconsider and enter* as a favor or out of a sense of fairness. This difficulty could be overcome by adopting a special rule allowing *any* member to move to *reconsider and enter* after simple *reconsideration* has been moved, but that would add additional strictures to the already complicated motion to *reconsider.*

Perhaps a greater difficulty with using *reconsider and enter* as a counter-strategy to *clinching* is that most modern authorities do not recognize the motion to *reconsider and enter.* **Keesey,** p. 73; **Mason,** § 474, pp. 311–12; **Sturgis,** pp. 225–26; and **Town Meeting Time,** pp. 115–16, explicitly disapprove of the motion, while **Cannon,** pp. 126–29, and **Riddick,** pp. 165–67, simply ignore the motion to *reconsider and enter* in their discussion of *reconsideration.* (*See* **Ericson** p. 113.) Therefore, a member trying to defeat a motion to *clinch* must resort to other tactics. **Town Meeting Time,** p. 76, suggests it would be preferable simply to allow multiple reconsideration. Given that the rule against multiple reconsideration is pervasive (*see* endnote 7 *below),* however, as an alternative counter-tactic to *clinching,* a member might be able to raise the fairness issue in debate on the motion to *reconsider* to try to convince a sufficient number of opponents to agree to *postpone reconsideration* or *lay it on the table* until a time when the assembly is likely to be more representative or in hopes of persuading the maker of the *clinching* motion to have a change of heart and request to *withdraw* it. (*See* **Demeter** p. 155; **RONR** p. 313.)

Another tactic to defeat a motion to *clinch* would be to treat it by analogy to the improper use of the motion to *lay on the table.* Authorities have taken different positions on how to handle the abuse of the motion to *lay on the table* as a motion to suppress or kill the underlying main motion. **Keesey,** pp. 67–68, and **Cannon,** pp. 97, 99, 168, would abolish the motion to *lay on the table,* a resolution impossible with a motion as useful and irreplaceable as the motion

to *reconsider* (*lay on the table* can be effectively replaced by *postpone* or *recess*). (*See* **Ericson** pp. 62, 151 nn.34–35.) **Sturgis,** pp. 62–65, 255, renames the motion "*postpone temporarily*" (to "*table*" being an alternative *when the motion is used to kill) and prescribes a two-thirds vote when the* motion is used to kill, relying on a safeguard mentioned in older editions of **Robert** as applicable in societies where the motion to *lay on the table* is habitually used as a motion to kill (**Parliamentary Law** pp. 62–63; **ROR** (4th ed.) p. 109). Aside from relying on the Chair's intuition, however, **Sturgis** provides no guidance as to how to differentiate between the use of the motion for postponement and for suppression. (*See* **Ericson** p. 151 n.33.) Therefore, requiring a two-thirds vote for a motion to *reconsider* made to *clinch* on the analogy to **Sturgis's** treatment of the motion *to lay on the table* might well create more difficulties and complexities than the current rules which allow for *clinching.*

The method of dealing with abuse of the motion to *lay on the table* urged by **Ericson,** p. 62, and essentially adopted by the current edition of **Robert, RONR** p. 209, can, however, be usefully assimilated to counter the abuse of the motion to *reconsider* as a motion to *clinch.* In the eighth edition, **RONR** introduced the statement that "[i]t is out of order to move to lay a pending question on the table if there is evidently no other matter requiring immediate attention" (**RONR81** pp. 181–82; **RONR** p. 213). (*See* **Parliamentary Opinions** p. 35; **RONR** p. 208.) This rule, however, failed to propose a *method by which the Chair (or a member proposing a point of order) might* determine the reason prompting the maker of the motion. **Ericson,** p. 62, suggested that a "member m[ight] rise to a parliamentary inquiry and ask, 'Would the maker of the motion care to inform the body of the urgent business that needs to be considered at this time?' Such a tactic may expose the dastardly act . . . ." The latest edition of **Robert** expands on this suggestion by stating: "It is proper for, and the chair can ask, the maker of this motion to state his reason first . . . . (The urgency and the legitimate intent of the motion can thus be established . . . .)" (**RONR** p. 209). Thus, under current procedure, the Chair can ask the maker of a motion to *lay on the table* the purpose for which he or she makes the motion and, if the Chair fails to do so, a member may raise a *parliamentary inquiry* to the same effect.

This procedure can be easily applied in the context of the motion to reconsider. As the use of the motion to *reconsider* as a motion to *clinch* is clearly contrary to the flexible intent and purpose of the motion to *reconsider,* the maker of a motion to *reconsider* could be asked the reason for which he or she makes the motion by the Chair or could be similarly interrogated through the Chair by another member rising to a *parliamentary inquiry.* A clear enunciation of a reason such as *clinching,* contrary to the basic purpose of *reconsideration,* could (by revision of an existing adopted authority, adoption of a special rule, resolution of the issue by the assembly on appeal, or regular practice) be ruled out of order.

This type of inquiry of the maker of the motion to *reconsider* could be even more effective than that directed to the maker of a motion to *lay on the table* in revealing and thus preventing abuse. Through regular use, members might come up with a *pro forma* justification for the motion to *lay on the table.* With *reconsideration,* however, the maker of the motion would have to enunciate a good reason in favor of *reconsideration,* which would be contrary to his or her actual intent to defeat the motion to *reconsider* in order to *clinch.* Unlike the hypocrisy of a single person voting against his or her intention in order to move *reconsideration,* this procedure would require a very public statement with legitimate grounds given for the member's change in position. Even if a member were to enunciate a *pro forma* reason contrary to his or her actual intent in an attempt to *clinch,* there is strong possibility that a significant number of members aligned with the maker of the motion might be misled into agreeing with the reasoning espoused by their erstwhile leader. This "considerable risk that the troops will become confused," **Town Meeting Time** p. 76, will reduce the incentive to misuse the motion to *reconsider* as a motion to *clinch.*

Moreover, the inquiry as to the reason of the maker of a motion to *reconsider* would not require significant revision of current practice. Those authorities that require the maker of a motion to *reconsider* to have voted on the prevailing side already require the Chair to make an inquiry if the maker of the motion does not identify the side on which he voted in making the motion (**Cushing, Elements** *§ 1268, pp. 506–07*; ***Demeter*** *p. 156*; ***RONR*** *p.* 324; **Town Meeting Time** p. 74). (*See* **Ericson** p. 106.)[12] Treating the motion to *reconsider* made to *clinch* as out of order by analogy to improper use of the motion to *lay on the table* in **RONR,** pp. 208–09, would expand on existing precedents to ensure the effectiveness of the compromise between finality and flexibility enshrined in the motion to *reconsider* as developed in America.

Mass Reconsideration

Those authorities that discuss *mass reconsideration* indicate that it is allowed only by unanimous consent (**Demeter** p. 153; **Town Meeting Time** p. 76–77 & n.8).[13] Any member can object to *mass reconsideration* and request that a specific motion or motions be *reconsidered* separately. Basically, *each* motion that is part of a *mass reconsideration* is a separate question and each member (whether or not he or she voted on the prevailing side) has a right to insist that it be given adequate separate review on *reconsideration.* This is because of the fundamental parliamentary principle of single subject consideration: "[I]nconsistent propositions cannot be blended together for any serious purpose, and a motion would be objectionable in point of form, which should attempt to do so . . . ." (**Cushing, Elements** § 1286, p. 511). (*See* **Cushing, Elements** § 1287, p. 512, § 1291, p. 513.)

Robert embodies the principle of single subject consideration in the following rule, differentiating it from *division of a question* containing several related parts:

> Sometimes a series of independent resolutions relating to completely different subjects is offered by a single main motion . . . . [W]here the subjects are independent—any resolution in the series must be taken up and voted on separately at the demand of a single member (**RONR** p. 108).

See **Demeter** pp. 295–97 (any member may object to collective consideration of resolutions recommended by resolutions committee); **Ericson** pp. 88–89; **Oleck** § 30, pp. 61–62; **Parliamentary Law** p. 160; **Riddick** p. 176 (single member may object to *en bloc* consideration); **ROR** (4th ed.) § 24, p. 91; **RONR** pp. 269–71. *See also* **Mason** §§ 310–11, pp. 216–17, § 313, p. 218, § 315, p. 219 (in legislative bodies the single subject principle is generally required by rule or recognized by practice; where no so requirement exists, a motion to divide the question must be passed to divide even independent questions). This principle of single subject consideration is the basis for the familiar rule that any member can insist on separate consideration of any issue that is initially introduced as part of a consent agenda. (*See* **Riddick** p. 56; **RONR** p. 356; **Sturgis** p. 109.)

Once the question has been separated for individual *reconsideration,* all of the tactics described above for combating *clinching* could be utilized. In addition, if numerous questions are part of an attempted *mass reconsideration* at the end of a meeting, a few astute members acting together could prevent *clinching* by requesting individual *reconsideration* of each question and making it clear that they will vigorously debate each motion for *reconsideration.* Although such forceful counter-tactics may result in frustration for a majority that is intent on finalizing its victories, few will be willing to debate each question again fully at the end of the meeting and most will therefore accede in handling the *reconsideration* at the next meeting when a more representative assembly, alerted to the controversies of the prior meeting, will be present.

If the members of a society persistently use *mass reconsideration* as a means of achieving finality for all questions dealt with in a meeting, the society should consider adopting a special rule for this situation. A rule requiring *reconsideration* to be moved and considered by the end of the meeting at which the underlying question was initially disposed of would be more transparent and straightforward than one actually permitting *mass reconsideration.*

Superclinching

Cannon, pp. 75–76, proposes the novel tactic of *superclinching.* This article argues that *superclinching* would not be permitted under any other

authority and contravenes basic parliamentary principles. Therefore, its use should be confined to organizations that have adopted **Cannon,** who explicitly authorizes the practice, as their parliamentary authority. **Cannon** takes the dubious practice *clinching* and elevates it to an art form. By combining *mass reconsideration* with *suspension of the rules,* **Cannon** tries to overcome the inconveniences built into conventional *clinching* and *mass reconsideration* because of their roots in the flexibility principle of *reconsideration* and the rule against *en bloc* consideration.[14]

For example, *clinching* allows members on the losing side to debate the *reconsideration,* which is an inconvenience for a member hoping to *clinch* as it can take time and may not succeed. Through debate on the motion for *reconsideration,* the losing side might sway a sufficient number on the prevailing side to vote with them for *reconsideration* or may at least be able to convince them of the procedural unfairness of the *clinching* technique and get them to agree to *postpone* or *lay on the table* the *reconsideration. Suspension of the rules,* however, is undebatable and none of the subsidiary rules (such as *postpone* and *lay on the table*) apply to it (**Mason** § 282, p. 202; **RONR** p. 260; **Sturgis** p. 82). *See* **Cannon** pp. 75–76 (*suspend the rules* not debatable, motions applicable to it not discussed); **Demeter** p. 132 (*suspend the rules* is undebatable and cannot be *postponed,* but it can be *laid on the table* apart from the question out of which it arises); **Keesey** p. 55 (similar to **Cannon**); **Oleck** § 35, p. 68 (similar to **Cannon**). *But see* **Riddick** p. 188 (*suspend the rules* is debatable). The only way an opponent could attempt to sway members to his position in an assembly that allows *superclinching* would be to raise a *parliamentary inquiry* which would at least apprise members of the affect of their vote.

Similarly, *superclinching* overrides the inconvenient safeguards provided in *mass reconsideration* because the motion to *suspend the rules* can be used to combine motions and cannot be divided.[15] **Cannon** uses the motion to *suspend the rules* to bootstrap two different ways of combining motions—a composite motion combining two types of motions (such as *suspend the rules* and *reconsider* a main motion) and a collective motion combining several different motions of the same type (several different *reconsiderations* at the same time). The combination of different types of motions in a composite motion to *suspend the rules* is a recognized exception to the general rule that "[e]very motion being an independent proposition, or a series of propositions related to the same subject, it is a rule, that a member cannot make two or more motions at the same time" (**Cushing, Elements** § 1284, p. 511).[16]

The combination of several different motions of the same type in a collective motion runs afoul of the principle of single subject consideration, discussed in regard to *mass reconsideration* above, and would be prohibited by other authorities. **Cushing, Elements** § 1489, p. 578, explicitly states that the motion *to suspend the rules* "will not authorize the introduction . . . of two

resolutions instead of one." Moreover, motions that are absurd should not be entertained, **Demeter** p. 58; **Parliamentary Law** p. 179; **RONR** p. 337, and the chaos that would ensue if a *superclinching* motion were to pass (effectively opening up the *reconsideration* of each resolution passed that day) would paralyze the assembly.

Cannon, however, does not recognize the fundamental principle of single subject consideration. For example, **Cannon** pp. 125–26, requires a motion to *divide the question* to be passed to allow for separate consideration of even the disparate resolutions contained in the report of a resolutions committee. Thus, under any other authority, **Cannon's** proposal for *superclinching* would conflict with the basic characteristic of the motion to suspend the rules that "no rule protecting a minority of a particular size can be suspended in the face of a negative vote as large as the minority protected by the rule" (**RONR** p. 260). (*See* **Parliamentary Law** p. 157.) In this particular case, "[r]ules . . . protecting a basic right of the individual member cannot be suspended, even by . . . an actual unanimous vote" (**Parliamentary Law** pp. 157–58. *See* **Ericson** pp. 81–83; **RONR** p. 262). *See also* **Sturgis** p. 80 (basic rules of parliamentary law cannot be suspended). Here the right of the individual member is to demand separate treatment of each motion to reconsider under the principle of single consideration. Therefore, under any authority other than **Cannon,** a single member could defeat an attempt to *superclinch* by raising a point of order or demanding that the reconsideration of each resolution be considered separately.

An additional ground on which **Cannon's** proposal for *superclinching* would be ineffective under other authorities is that the rejection of a composite motion to *suspend the rules* should not qualify as a rejection of the second component of the motion. While passage of a composite motion to *suspend the rules* counts as passage of all elements of the motion, rejection of the motion should be treated differently. Because the first element of the composite motion (to *suspend the rules*) did not pass, the second element (the *reconsideration*) was not reached or acted on in any way. Other areas of parliamentary procedure where there are different procedural consequences flowing from whether a motion has been adopted or defeated include the numerous conditions under which only an affirmative or a negative vote on a motion can be reconsidered. (*See* **RONR** p. 313.)

The folly of treating the defeat of a composite motion to *suspend the rules* as a rejection of both elements of the motion becomes readily apparent by analogy to the more common issue of a motion to *suspend the rules and adopt* a main motion without debate. (*See, e.g.,* **RONR** p. 261.) If the defeat of this motion (which would take a vote of only one-third plus one) were the equivalent of the defeat of both elements of the motion separately, the main motion would thus have been defeated and could not be raised again. Thus a minority of one-third plus one could completely frustrate the majority and prevent any

motion from passing by the simple expedient of moving to *suspend the rules and adopt* the motion without debate and then voting to reject the motion to *suspend the rules.* In fact, however, after a motion to *suspend the rules and adopt* a main motion is defeated, it is entirely appropriate to raise the main motion subsequently as an independent debatable question (**Parliamentary Opinions** p. 47). This aspect of the motion to *suspend the rules* can be considered a corollary of the rule protecting minorities of a particular size (**Ericson** pp. 81–83; **Parliamentary Law** p. 157; **RONR** p. 260).

In this case, the protected "minority" would be the actual majority, whose right to debate and vote on the main motion would be superseded by a minority of one-third plus one. It takes a two-thirds vote to override the members' right of debate, but **Cannon's** interpretation of the effect of a defeat of a composite motion to *suspend the rules* would override the right to debate by a vote of one-third plus one. The standard two-thirds vote requirement of the motion to *suspend the rules*[17] might, therefore, mitigate the inconvenience of the confusion of the troops problem with standard *clinching* (as only one-third plus one of the supporters of the maker of the motion need to be educated beforehand to vote *against* their leader's motion, as opposed to a majority who need to be so educated in standard *clinching*). Nevertheless, a considerable potential for confusion would still remain.

Thus, under any authority other than **Cannon,** the defeat of a motion to *suspend the rules and reconsider* all the day's votes on resolutions would not count as a defeat of motions to *reconsider* each of the resolutions and therefore would not result in *clinching* those resolutions. Any member eligible to move *reconsideration* at the next day's meeting would be free to do so. The only reason that *superclinching* would be allowed in an assembly operating under **Cannon** is that **Cannon** explicitly authorizes this procedure. Even under **Cannon,** however, a member of the defeated minority would not be completely without techniques for combating the *superclinching* juggernaut. If the meeting has been a contentious one, with many resolutions in which the defeated minorities were changing constellations of members each time, it is possible that the defeated minorities on each of the day's motions—added together—could come to more than two-thirds of the members. If they could all be persuaded to vote together in favor of the motion to *suspend the rules and reconsider* all the day's votes, it would pass and wreak havoc with the attempt by the maker of the *superclinching* motion to achieve finality. Instead, the next day would be consumed with cleaning up the previous day's *reconsiderations.* Another possible counter-tactic might be that—although debate is not allowed on a motion to *suspend the rules*—a member might be able, through a *parliamentary inquiry,* to advise the assembly of the fairness argument against *clinching.* The fairness argument might persuade the maker to request to *withdraw* the motion or gain sufficient support from fair-process-minded members of the majority for passage of the *superclinching* motion.

Conclusion

The motion to *reconsider* contains within it an inherent tension between the parliamentary goals of finality and flexibility. Meeting participants through the years have learned to use the limitations on the motion to *reconsider* to achieve finality contrary to the primarily flexible intent of the motion. The most common method is *clinching,* which takes advantage of the rule against multiple reconsideration by allowing a member on the prevailing side to move for *reconsideration* strategically while still in the majority in order to prevent a later true *reconsideration.* This strategy has been used so successfully that it has been expanded over time through proposals for *mass reconsideration* (*clinching* all motions passed in a meeting at the end of the meeting) and *superclinching* (*mass reconsideration* combined with a motion to *suspend the rules*). Although *clinching* has been permitted by most authorities who address the issue, this article suggests that *clinching* violates the purpose behind *reconsideration* and should therefore be considered out of order by analogy with the abuse of the motion to *lay on the table.* Various strategies can be employed successfully to overcome *clinching* and *mass reconsideration,* such as asking the maker of the motion for his or her reasons and requesting separate consideration of each motion under a proposal for *mass reconsideration. Superclinching,* on the other hand, unless explicitly allowed by a society's rules, constitutes an abuse of basic principles of parliamentary procedure (single subject consideration and the minority's right to debate) and should be considered out of order.

Michael E. Malamut is an attorney and parliamentarian practicing in Boston, Massachusetts.

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ENDNOTES

1 *See* **Cushing, Elements,** § 1264, pp. 505–06 & n.6; **Demeter** p. 154 ("[T]he American love for celerity invented the motion to reconsider . . . ."); **Jefferson** § XLIII, pp. 408–10; **Parliamentary Law** p. 82; **Patnode** p. 40; **Riddick** p. 166; **RONR** p. 309.

2 *See* **Cushing, Manual** § 254, p. 159; Demeter, *Some Significant Aspects on Reconsideration,* pp. 232–33; **Demeter** pp. 152–53, 160; **Hills** § 9.20, pp. 286–87; **Keesey** p. 61; **Parliamentary Law** pp. 82, 87 (intent of *reconsideration* to "provide against the results of hasty action without mature deliberation . . . ."); **Riddick** p. 165; **Sturgis** pp. 34, 36 ("Main motions are occasionally approved or disapproved under a misapprehension or without adequate information, and sometimes later events cause an assembly to change its mind"; *reconsideration* warranted "when new facts have come to light, or when an error needs to be corrected, or when a hasty decision appears to have been made"). *See also* **RONR** pp. 317 (Appropriate grounds for the motion to *reconsider and enter* are that "the mover may wish time to assemble new information, or—if the reconsideration is moved on the same day the original vote was taken—he may want the unrestricted debate that will be allowable if the motion is taken up another day. So long as business is not unreasonably delayed and the mover of the reconsideration acts in good faith, he is entitled to have it take place at a time he feels will make for the fullest and fairest re-examination of the question."), 326.

3 *See* **Cushing, Manual** § 250, p. 157; **Jefferson** § XLII, p. 409; **RONR** p. 75: "During the meeting or series of connected meetings (called a

'session') in which the assembly has decided a question, the same or substantially the same question cannot be brought up again, except through special procedures which imply an unusual circumstance."

4 By requiring the motion to *reconsider* to be taken up as soon as possible (and not recognizing the motion to reconsider and enter), **Sturgis,** pp. 36, 225–26, sacrifices the flexibility of allowing the faction supporting reconsideration time to collect their forces and hone their arguments in order to prevent the misuse of the motion to reconsider simply as a tactic for disrupting the meeting or delaying implementation of a motion the mover of *reconsideration* disagrees with. *See also* **Cannon** p. 127 (*reconsideration* must be voted on no later than the end of the day on which it is raised); **Keesey** pp. 58–59 (*reconsideration* to be taken up as soon after its making as there is no other main motion pending); **Riddick** p. 166 (*reconsideration* must be called up no later than end of the next business day). **Sturgis,** p. 35, is therefore able to dispense with the most controversial traditional rules intended to prevent dilatory use of the motion to *reconsider* by a defeated minority—the requirement of voting on the prevailing side. *See* **Demeter** pp. 155–56; **RONR** p. 309.

5 **Jefferson,** the oldest American parliamentary authority, indicated that as of his time the parameters of the motion to *reconsider* had not yet been established:

> *The rule permitting a reconsideration of a question affixing to it no limitation of time or circumstance, it may be asked whether there is no limitation? . . . This remains to be settled; unless a sense that the right of reconsideration is a right to waste the time of the House in repeated agitations of the same question, so that it shall never know when a question is done with, should induce them to reform this anomalous proceeding.*

6 This is contrary to modern parliamentary practice in non-legislative assemblies, where the motion to *lay on the table* the motion to *reconsider* carries with it the motion subject to *reconsideration.* **Demeter** p. 101; **Mason** § 338, p. 228; **ROR** (4th ed.) § 28, p. 105; **RONR** pp. 208–09.

7 Certain parliamentary authorities indicate that this rule—prohibiting multiple reconsideration—is not an inherent aspect of the motion to *reconsider,* but is instead a supplementary rule adopted by most societies, often through adoption of a parliamentary authority prescribing the rule. *Compare* **Demeter** p. 153 ("The rule that . . . 'the same question cannot be reconsidered more than once' [is] binding only in organizations whose bylaws so prescribe, or whose parliamentary authority so specifies (as do Robert, Demeter, and some others)."); **Hills,** § 9.19, p. 283 ("'All deliberative assemblies, during their session, have a

right to do and undo, consider and reconsider, as often as they think proper, and it is the result only which is done.'") *with* **Demeter** p. 153 ("[Reconsideration] may not itself be reconsidered, and reconsideration may not be moved more than once on the same motion."); **Hills,** § 9.24 , p. 294–95 n.36 ("At common parliamentary law a resolution cannot be twice reconsidered unless it was materially amended after its first reconsideration."). *See also* **Demeter** pp. 158, 164–65; **Hills,** § 18.8, pp. 604–05. A commonly used New England parliamentary guide for town meeting participants, **Town Meeting Time** pp. 75–76, takes a more neutral stand on multiple reconsideration:

> [M]anuals say that if a motion to reconsider is defeated, it may not be made again. In many towns a bylaw so provides . . . . Barring a bylaw which establishes the rule of the manuals, however, this tactic will not work in town meetings. There a vote not to reconsider will not bind the town and bar it from reconsideration at a later time.

Alone among frequently cited authorities, **Sturgis** in her discussion of *reconsideration,* pp. 33–37, fails to mention any rule against multiple reconsideration. **Sturgis,** p. 255, seems to indicate—by her quotation of the language first quoted above from **Demeter** p. 153—that multiple reconsideration is permissible unless prohibited by the society's adopted rules and that she does not prescribe such a rule. On the other hand, a substantial majority of parliamentary authorities include the rule against multiple reconsideration as an inherent characteristic of *reconsideration* and those such as **Demeter, Hills,** and **Town Meeting Time**—which hold that the rule against multiple reconsideration must be specially adopted—indicate that the rule is either preferable or extremely common. These latter authorities may be considered to reflect an earlier stage in the evolution of the motion to *reconsider* before the rule against multiple reconsideration came to be considered an integral characteristic of the motion to *reconsider.*

8 [T]o prevent the minority from proposing reconsideration . . . or in order to make that question executable immediately and not have to wait even until the meeting adjourns, one of the majority side can purposely move reconsideration of the question, and then have it intentionally voted down by the majority. After the majority side has thus defeated the reconsideration of the question, the minority side may not propose reconsideration of the same question thereafter . . . . **Demeter** pp. 164–65.

9 This [rule against multiple reconsideration] can lead to dandy games. . . . [A] member of the prevailing side, to foreclose reconsideration later when his side may no longer be in the majority, may move for reconsideration

immediately following the initial vote, while its troops are still on (or in) hand, and vote it down. This slams the door on reconsideration, and the mousetrap on that astute voter . . . who voted contrary to his convictions. **Town Meeting Time** pp. 75–76.

10 Although under **Robert** the motion to *reconsider* can be applied to numerous procedural motions, **RONR** pp. 312–13, the use of the motion in order to *clinch* is confined to action taken on main motions. Therefore in this article all references to the underlying motion subject to *reconsideration* concern *main motions* (including resolutions) or other motions finally disposing of a main motion, such as to *postpone indefinitely* or *object to consideration* of a question.

11 This position of **Keesey** preventing immediate *reconsideration,* is consistent with his position against raising the *previous question* immediately after making a motion. **Keesey** p. 41. Mainstream parliamentary authorities allow this use of the *previous question,* although acknowledging that it is subject to abuse. **Parliamentary Opinions II** pp. 28–29. Ironically, although **Ericson** agrees with **Keesey** in prohibiting this abuse of the *previous question,* calling it "'laughingly inconsistent' with the principles of parliamentary law," **Ericson** pp. 53–54, **Ericson** considers *clinching* an appropriate strategic use of the motion to *reconsider.* **Ericson** pp. 110, 154 n.52.

12 The only contrary authority is **Demeter,** p. 156, which states: "No one is obliged to give reasons for reconsideration (or for any other debatable question); but unless he has done so it is unlikely that his motion will prevail." This position, however, loses its authority in regard to *reconsideration* once it is accepted that the maker of a motion to *lay on the table* may be asked the reason for that motion.

13 *Mass reconsideration* "would enable two people, the mover and the seconder, to put the whole meeting in the ridiculous position of having to vote for reconsideration of the whole evening's work in order to save its right to reconsider any part of it." **Town Meeting Time** p. 77.

14 This is consistent with **Cannon's** basic focuses on simplification, efficiency, and expedition in meetings. These focuses lead **Cannon** to an emphasis on the powers of the chair in guiding the assembly (*see, e.g.,* pp. 21–22, 29, 44–44, 109 (speech limitation should be less than ten minutes, role of chair in closing debate), 124–25), a de-emphasis on the rights of the minority (*see, e.g.,* p. 97, reduction in number of motions requiring a two-thirds vote to aid the chair's memory), and support for resolving many matters outside of the assembly in committees (*see, e.g.,* pp. 60, 126 (majority vote required for division of independent resolutions in resolutions committee report)). These are matters of emphasis only.

Cannon clearly falls within the mainstream of Anglo-American parliamentary writers.

15 *Division of a question* can be applied only to main motions and amendments. **RONR** p. 269. *See* **Demeter** p. 137 (committee instructions also divisible); **Sturgis** p. 94 (main motions only divisible). **Cushing, Elements** § 1488, pp. 577–78, on the other hand, explicitly allows the motion to *suspend the rules* to be divided and **Riddick,** p. 88, would permit any pending motion to be divided. According to most authorities *division of a question* relating to a single subject requires a motion and a majority vote. **Cannon** p. 125; **Cushing, Elements** § 1345, p. 529, § 1347, p. 529; **Cushing, Manual** § 79, pp. 69–70, § 81, p. 71; **Demeter** p. 137; **Ericson** pp. 88–89; **Jefferson** § XXXVI, pp. 399–400; **Mason** § 313, p. 218; **Oleck** § 30, pp. 61–62; **Parliamentary Law** p. 161; **RONR** p. 269; **Sturgis** p. 93. *But see* **Riddick** p. 88 (single member may demand *division of the question*).

16 For the general rule against combined motions, *see* **Parliamentary Opinions** p. 78; **RONR** pp. 58–59, 261. For the motion to *suspend the rules* as an exception to the general rule, *see* **Cannon** p. 75; **Cushing, Elements** § 1478, p. 575, § 1481, p. 575 (recognizing virtual *suspension of the rules*); **Parliamentary Opinions** p. 78; **RONR** p. 261.

17 For the two-thirds voting requirement to suspend the rules, *see* **Cannon** p. 75; **Demeter** p. 132; **Ericson** pp. 81–83; **Keesey** p. 55; **Oleck** § 35, p. 68 n.26; **Riddick** p. 188; **RONR** p. 260; **Sturgis** p. 82; **Town Meeting Time** p. 114. For authorities holding that only a majority vote is required to *suspend the rules* unless the rules specify a larger percentage, *see* **Cushing, Elements** § 794, pp. 312–13, § 1480, p. 575, § 1491, pp. 578–79; **Mason** § 285, p. 204. For authorities holding that unanimous consent is required to *suspend the rules* unless the rules specify a smaller percentage, *see* **Cushing, Manual** § 164, p. 109; **Hills** § 9.12, pp. 273–74. *See also* **Cushing, Elements** § 1491, pp. 578–79 (*suspension of the rules* extremely rare in parliament; "In our legislative assemblies, on the contrary, it is of frequent occurrence."); Evans, *Suspend the Rules* (American origin of two-thirds vote for and frequency of use of *suspend the rules*).