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authority is enacted, the remaining allocation of the committee with subject matter jurisdiction will be changed by the net amount of new budget authority contained in the measure, and the Chair is confident that the Committee on the Budget will keep the Chair currently informed as to the status of each committee.

The Chair would finally point out that the provisions of section 5 of the current budget resolution would cease to apply if Congress does adopt a second concurrent resolution on the budget for fiscal year 1984. In that event, the actual prohibition contained in section 311 of the Budget Act would take effect, unless modified by any special procedures contained in a second budget resolution.

### § 11. Section 302

As noted in Sections 4 and 5, the concurrent resolution on the budget serves as a guide or blueprint for Congress in making spending decisions throughout the appropriations process. An important part of that framework is the division of the recommended totals for new budget authority and outlays into separate portions assigned to the various committees of Congress. Pursuant to section 302(a) of the Congressional Budget Act,<sup>(1)</sup> the joint explanatory statement accompanying the conference report on the budget must include “allocations” of total new budget authority and total outlays to each House committee with jurisdiction over legislation providing or creating such amounts. As described below, points of order can be raised to keep spending within the limits of these section 302(a) allocations.

As originally written, the Congressional Budget Act mandated that each committee given a section 302(a) allocation of spending authority further subdivide that allocation among its various subcommittees (or programs). Pursuant to the Budget Enforcement Act of 1997,<sup>(2)</sup> however, this requirement was dropped for all committees except for the Committee on Appropriations, which is still required to subdivide its section 302(a) allocation among its subcommittees. The Committee on Appropriations files a report with the House to indicate how the committee has divided its section 302(a) allocation among its subcommittees,<sup>(3)</sup> and supplemental reports may revise such subcommittee allocations.<sup>(4)</sup> This requirement is found in section 302(b)

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1. 2 USC § 633(a).

2. Pub. L. No. 105–33.

3. For an example of the filing of such a report, see 136 CONG. REC. 14612, 101st Cong. 2d Sess., June 19, 1990.

4. 143 CONG. REC. 12009, 105th Cong. 1st Sess., June 24, 1997.

of the Congressional Budget Act, and these suballocations are sometimes referred to as section 302(b) allocations to distinguish them from allocations made under section 302(a).

### ***Former Section 602***

The Budget Enforcement Act of 1990<sup>(1)</sup> added a new title VI to the Congressional Budget Act. For the years in which such title was operative (1990–1998), the requirement to allocate budget authority and outlays to the legislative committees of the House was found in section 602, and allocations were made pursuant to this section rather than section 302. Section 603 authorized the chairman of the Committee on the Budget to publish a section 602(a) allocation for the Committee on Appropriations after April 15 if no concurrent resolution on the budget had been agreed to by that date. This would allow the Committee on Appropriations to begin work on appropriation bills even in the absence of a budget resolution. Section 606(e), added by the Contract with America Advancement Act<sup>(2)</sup> (and subsequently amended by the Personal Responsibility and Work Opportunity Reconciliation Act)<sup>(3)</sup>, gave additional authority to the chairman of the Committee on the Budget to make “adjustments” to the section 602(a) allocation made to the Committee on Appropriations to reflect an increase in the budget authority and outlays for continuing disability reviews under the Social Security Act. For more on the history of the Budget Enforcement Act of 1990, see Section 1.

### ***Section 314***

The Budget Enforcement Act of 1997 created a new section 314 of the Congressional Budget Act.<sup>(1)</sup> Section 314 mandated certain “adjustments” to applicable section 302(a) allocations in response to legislation providing new budget authority and outlays. Such legislation was limited to certain categories (such as emergency spending or continuing disability reviews), as defined in section 314(b).<sup>(2)</sup> The chairman of the Committee on the Budget was required to revise section 302(a) allocations to reflect these adjustments

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1. Pub. L. No. 101–508.

2. Pub. L. No. 104–121.

3. Pub. L. No. 104–193.

1. 2 USC § 645.

2. Those categories are: (1) amounts designated as emergencies; (2) amounts for continued disability review; (3) certain amounts relating to the International Monetary Fund; (4) certain amounts for international organizations and multilateral development banks; (5) amounts for an earned income tax credit compliance initiative; and (6) certain amounts for adoption incentive payments.

after the reporting of legislation meeting the requirements of section 314(b), and the adjustment took effect upon enactment of such legislation. Pursuant to section 314(d), the Committee on Appropriations was authorized to submit a revised section 302(b) report in order to subdivide any potential adjustment to its section 302(a) allocation among its subcommittees.<sup>(3)</sup> However, the Committee on Appropriations was not required to submit such a report, and in the absence of such a report, the underlying section 302(b) allocations remained as they were prior to the adjustment occasioned under section 314.

The Budget Control Act of 2011<sup>(4)</sup> extensively revised section 314 of the Congressional Budget Act. The former “automatic” adjustments were replaced with discretionary authority for the chairman of the Committee on the Budget to make allocation adjustments in response to qualifying legislation. Such qualifying legislation was defined by reference to section 251(b) of Gramm-Rudman-Hollings.<sup>(5)</sup> A new section 314(d) rendered “invisible” for certain Budget Act purposes spending designated as emergency spending. Section 314(d)(2)(B) also provided that a proposal to strike an emergency designation shall be “excluded from an evaluation of budgetary effects” for purposes of titles III and IV of the Congressional Budget Act. Without this provision, such a proposal could violate section 302(f) of the Budget Act if the spending at issue (whose budgetary effects are now to be included by the proposal) exceeded the committee’s section 302 allocation.

### ***302(f) Points of Order***

Section 302(a) and section 302(b) allocations define certain spending limits that may not be exceeded. The Gramm-Rudman-Hollings reforms to the Congressional Budget Act created a new section 302(f) point of order that could be raised against any bill, joint resolution, or amendment that contains spending authority in excess of a committee’s section 302(a) allocation or a subcommittee’s section 302(b) suballocation.<sup>(1)</sup> In evaluating a section 302(f) point of order, the Chair must determine: (1) if the measure contains provision(s) constituting new budget authority; and (2) whether such new budget authority, if enacted into law, would cause the relevant section

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3. For an example of a section 302(f) point of order being sustained in the context of such an “un-adjusted” section 302(b) suballocation, see § 11.14, *infra*.

4. Pub. L. No. 112–25.

5. Pub. L. No. 99–177.

1. As noted above, for the period 1990–1998, committee allocations were made pursuant to title VI of the Congressional Budget Act, as added by the Budget Enforcement Act of 1990. Thus, during this time period, section 302(f) points of order could be raised against measures exceeding the relevant section 602 allocations.

302(a) or section 302(b) allocation to the committee or subcommittee to be exceeded. The Chair is authoritatively guided by estimates from the Committee on the Budget in determining these budgetary levels.<sup>(2)</sup>

In 2007, Rule XXI clause 8<sup>(3)</sup> was added to the House rules to expand the reach of title III of the Congressional Budget Act to certain unreported measures. If a measure is considered pursuant to a special order of business, title III of the Congressional Budget Act will continue to apply to such measure regardless of whether it was reported from committee. Thus, since 2007, section 302(f) points of order have been applicable to unreported measures pursuant to this clause.<sup>(4)</sup> Section 302(f) points of order are applicable only after Congress has adopted a concurrent resolution on the budget and cannot be raised prior to said adoption.<sup>(5)</sup>

During the period of applicability of title VI of the Congressional Budget Act,<sup>(6)</sup> section 606(d)(2) provided an exception to the normal operation of section 302(f) points of order (as well as other points of order under title III of the Congressional Budget Act). Section 606(d)(2) provided that for consideration of certain categories of spending,<sup>(7)</sup> evaluations under section 302(f)

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2. The requirement for the Committee on the Budget to provide estimates to the Chair in evaluating section 302(f) points of order was originally found in former section 302(g), as added by Gramm-Rudman-Hollings. The Budget Enforcement Act of 1997 broadened this requirement to cover not only section 302(f) points of order, but any applicable point of order made under title III or title IV of the Congressional Budget Act. This new authority is currently found in section 312(a) of the Congressional Budget Act. 2 USC § 643(a). Pursuant to Rule XXIX clause 4, added in the 112th Congress, authoritative guidance on budgetary matters may be provided by the chairman of the Committee on the Budget. See *House Rules and Manual* § 1095d (2011).
  3. *House Rules and Manual* § 1068c (2011).
  4. For parliamentary inquiries on the application of section 302(f) points of order prior to the advent of Rule XXI clause 8, see Deschler-Brown Precedents Ch. 31 § 10.23, *supra*.
  5. 2 USC § 633(f)(1). For a discussion of House actions to “deem” committee allocations effective for Congressional Budget Act purposes in the absence of a final budget resolution, see § 18. Because section 302(f) points of order become available only after a concurrent resolution on the budget has been adopted, any such “deeming” resolution must include language to affirmatively trigger the application of section 302(f) in the absence of a final budget. For an example of a resolution “deeming” committee allocations in place for Budget Act enforcement but arguably failing to properly engage section 302(f) points of order, see 144 CONG. REC. 12991, 105th Cong. 2d Sess., June 19, 1998 (H. Res. 477).
  6. Title VI was effective from 1990 until 1998.
  7. The specific categories are defined by reference to section 251 of Gramm-Rudman-Hollings. The five categories are: (1) Internal Revenue Service compliance initiatives; (2) debt forgiveness for the Arab Republic of Egypt and the Government of Poland; (3) the United States quota for the International Monetary Fund; (4) certain emergency requirements (including the costs for Operation Desert Shield); and (5) amounts specifically designated by the President and Congress as emergencies.

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shall not take into account any “new budget authority, new entitlement authority, outlays, receipts, or deficit effects.” The practical effect of this provision was to render “invisible” for certain Congressional Budget Act enforcement purposes spending that fell within the defined categories.<sup>(8)</sup>

Prior to the enactment of the Budget Control Act of 2011, section 314 of the Congressional Budget Act (as added by the Budget Enforcement Act of 1997) provided for automatic “adjustments” to be made to committee allocations if the spending at issue fell within certain pre-defined categories.<sup>(9)</sup> By increasing committee allocations in this way, measures containing such spending could be protected from points of order under 302(f). However, the Budget Control Act eliminated the automatic adjustment mechanism and replaced it with discretionary authority to make such adjustments.<sup>(10)</sup>

***The “Fazio Exception”***

As discussed in Section 10, section 302(a) allocations are used in evaluating a particular exception to the regular operation of section 311 points of order. Section 311(a) of the Congressional Budget Act prevents the consideration of measures, the enactment of which would cause the total budget authority in the most recent concurrent resolution on the budget to be exceeded. Section 311(c) provides the following exception: if a measure that would cause a breach of the total budget authority contained in the concurrent resolution on the budget nevertheless remains within the section 302(a) allocation to the committee of jurisdiction for that measure, then the section 311 point of order will not lie. The rationale for this exception is that a committee should not be punished for advancing measures that do not exceed such committee’s own section 302(a) allocation but which, due to overspending by other committees, would cause the total budget authority level to be breached.

This exception was first made part of the Congressional Budget Act by the Gramm-Rudman-Hollings reforms of 1985.<sup>(1)</sup> Prior to these changes to

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8. For an example of a special order “self-executing” an amendment designating certain amounts as emergency spending under former section 606(d) of the Congressional Budget Act, see 137 CONG. REC. 6114, 102d Cong. 1st Sess., Mar. 13, 1991 (H. Res. 111).

9. The Budget Control Act of 2011 revised these adjustments to accommodate: (1) changes in concepts and definitions; (2) appropriations designated as emergency requirements; (3) appropriations for Overseas Contingency Operations and Global War on Terrorism; (4) appropriations for continuing disability reviews and redeterminations; (5) appropriations for controlling health care reform; and (6) appropriations for disaster relief. See 2 USC §§ 645, 901.

10. For more on the Budget Control Act of 2011, see § 1, *supra*, and § 26, *infra*.

1. This provision was originally found in section 311(b) but was moved to section 311(c) by the Budget Enforcement Act of 1997.

the Congressional Budget Act, concurrent resolutions on the budget would occasionally provide for a similar exception to section 311(a) points of order.<sup>(2)</sup>

When the Budget Enforcement Act of 1990 created the new title VI of the Congressional Budget Act, the committee allocation provisions were temporarily<sup>(3)</sup> located in section 602 rather than section 302. However, the exception to section 311 maintained its reference to allocations made “pursuant to section 302(a).” This broken cross-reference was temporarily repaired in the concurrent resolution on the budget for fiscal year 1993, which included a separate section “clarifying” the relationship between the exception in section 311 and the new title VI.<sup>(4)</sup>

### **Section 302(c)**

The Gramm-Rudman-Hollings reforms of 1985 amended section 302 of the Congressional Budget Act to create a new point of order related to section 302(b) suballocations. This point of order, found in section 302(c), prohibited the consideration of any bill, joint resolution, amendment, motion or conference report providing new budget authority or new spending authority unless and until the committee of jurisdiction filed a report dividing its overall section 302(a) allocation into section 302(b) suballocations among its subcommittees.<sup>(1)</sup> If the committee had not received a section 302(a) allocation at the time the measure was considered, the point of order did not apply.

Prior to this change, concurrent resolutions on the budget would occasionally contain a separate requirement that no measure providing new budget or spending authority would be considered until the committee of jurisdiction filed its section 302(b) report.<sup>(2)</sup>

When the Budget Enforcement Act of 1997 eliminated the requirement that all legislative committees file reports subdividing their section 302(a) allocations among their subcommittees, and instead maintained this requirement only for the Committee on Appropriations, it likewise changed the operation of section 302(c) to apply only to that committee. Section 302(c)

2. See 131 CONG. REC. 22637, 99th Cong. 1st Sess., Aug. 1, 1985; 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984; and 129 CONG. REC. 16585, 98th Cong. 1st Sess., June 21, 1983. See § 4, *supra*.
3. Title VI of the Congressional Budget Act expired in 1998 and ceased to be effective after this date.
4. 138 CONG. REC. 12156, 102d Cong. 2d Sess., May 20, 1992. See also § 4, *supra*.
1. For an example of such a report being filed, see 136 CONG. REC. 14612, 101st Cong. 2d Sess., June 19, 1990.
2. See 130 CONG. REC. 28049, 98th Cong. 2d Sess., Oct. 1, 1984; and 128 CONG. REC. 14546, 97th Cong. 2d Sess., June 22, 1982. See § 4, *supra*.

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states that after the Committee on Appropriations has received its section 302(a) allocation, no bill, joint resolution, amendment, motion or conference report within the jurisdiction of such committee that provides new budget authority may be considered until the committee has filed the report dividing its section 302(a) allocation into section 302(b) suballocations for each of its subcommittees.

The section 302(c) point of order is fundamentally about timing. Whether the point of order will be sustained rests solely on: (1) the threshold question of whether the committee of jurisdiction (now applicable only to the Committee on Appropriations) has received a section 302(a) allocation; and (2) whether the committee has filed the requisite section 302(b) report subdividing the section 302(a) allocation. The point of order will not lie *before* the Committee on Appropriations has received its section 302(a) allocation, and neither will it lie *after* the committee has filed the necessary report.

***Section 401(b)(2) Referrals***

Section 401(b)(2)<sup>(1)</sup> of the Congressional Budget Act provides authority for the Speaker to sequentially refer<sup>(2)</sup> any bill or resolution providing new entitlement authority that exceeds the relevant committee's section 302 allocation to the Committee on Appropriations for a 15-day period. The purpose of the referral is to allow the Committee on Appropriations to recommend an amendment to the House that would reduce the level of new entitlement authority and thus bring such amounts under the relevant section 302 allocation. Indeed, section 401(b)(3) defines the role of the Committee on Appropriations as reporting the bill or resolution at issue "with an amendment which limits the total amount of new spending authority provided in such bill or resolution."<sup>(3)</sup>

A bill or resolution may be referred pursuant to this authority any time that the breach of the section 302 allocation is discovered. This includes measures that were already placed on the appropriate calendar of the House,<sup>(4)</sup> or measures reported prior to the establishment of section 302(a)

1. This provision of the Congressional Budget Act was codified in the standing rules of the House at Rule X clause 4(a)(2), *House Rules and Manual* § 747 (2011).
2. See Deschler's Precedents Ch. 17 § 26, *supra*. This provision of the Congressional Budget Act does not otherwise affect the sequential referral process. For an example of a bill sequentially referred both to the Committee on Appropriations pursuant to section 401(b)(2) and to another committee pursuant to the Speaker's general referral authority, see 129 CONG. REC. 14699, 98th Cong. 1st Sess., June 7, 1983. For an example of a bill sequentially referred to additional committees after a sequential referral to the Committee on Appropriations (but before such committee reported), see 127 CONG. REC. 11746, 97th Cong. 1st Sess., June 8, 1981.
3. 2 USC § 651(b)(3).
4. See § 11.31, *infra*.

allocations (contained in the joint statement of managers accompanying a concurrent resolution on the budget or established pursuant to another authority).<sup>(5)</sup>

Although the Committee on Appropriations has authority to report the bill or resolution within the 15-day period, it is not required to do so, and failure to report the bill or resolution within the requisite time period results in an automatic discharge from the committee.<sup>(6)</sup> The bill or resolution is then placed on the appropriate calendar of the House.

Section 401(c) provides exceptions to the operation of section 401(b)(2) by exempting certain categories of spending from the analysis of a measure's effect on the relevant section 302 allocation. These categories include budget authority whose outlays flow from certain trust funds or are made by certain mixed-ownership government corporations.<sup>(7)</sup>

The Budget Enforcement Act of 1997 made several major changes to the Congressional Budget Act that either directly amended section 401(b)(2) or had an indirect impact on its operation. First, it changed the Speaker's section 401(b)(2) referral authority from a mandatory requirement whenever a bill or resolution exceeded the relevant section 302 allocation to mere discretionary authority. Since 1997, the Speaker has not exercised this authority. Secondly, it eliminated the requirement that committees other than the Committee on Appropriations subdivide their section 302(a) allocations into section 302(b) suballocations. Thus, section 401(b)(2) is currently only triggered when legislative committees exceed their 302(a) allocations.<sup>(8)</sup> Finally, the Budget Enforcement Act of 1997 made several changes regarding the definition of "spending" and "entitlement" authority.

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### ***Breach of Allocation***

#### **§ 11.1 An amendment extending eligibility for foster care maintenance payments to a new class and thus providing an increase in**

5. See § 11.30, *infra*.
6. For an example of a special order having the effect of discharging the Committee on Appropriations from further consideration of a measure sequentially referred thereto under section 401(b)(2) of the Congressional Budget Act, see 137 CONG. REC. 6114, 102d Cong. 1st Sess., Mar. 13, 1991 (H. Res. 111).
7. 2 USC § 651(c).
8. This is consistent with the current wording of Rule X clause 4(a)(2), which mirrors the requirements of section 401(b)(2) and refers explicitly to section 302(a) allocations. *House Rules and Manual* § 747 (2011). Prior to the Budget Enforcement Act of 1997, section 401(b)(2) referrals could be made for breaches of legislative committee section 302(b) suballocations.



**mandatory budget authority was ruled out of order for violating section 302(f) of the Congressional Budget Act<sup>(1)</sup> by exceeding (as estimated by the Committee on the Budget) the section 302(a) allocation to the Committee on the Judiciary.**

On Sept. 14, 2005,<sup>(2)</sup> during consideration of a children's safety bill (H.R. 3132), the following took place in the Committee of the Whole:

AMENDMENT NO. 10 OFFERED BY MR. MC DERMOTT

Mr. [James] McDERMOTT [of Washington]. Mr. Chairman, I offer an amendment. The Acting CHAIRMAN.<sup>(3)</sup> The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment No. 10 offered by Mr. McDERMOTT:  
Page 69, after line 17, insert the following:

**TITLE VI—MISCELLANEOUS PROVISIONS**

**SEC. 601. FOSTER CHILDREN IN AREAS AFFECTED BY HURRICANE KATRINA DEEMED ELIGIBLE FOR FOSTER CARE MAINTENANCE PAYMENTS.**

(a) IN GENERAL.—As a condition of eligibility for payments under part E of title IV of the Social Security Act, each State with a plan approved under such part shall, during the 12-month period that begins with September 2005, make foster care maintenance payments (as defined in section 475(4) of such Act) in accordance with such part on behalf of each child who is in foster care under the responsibility of the State, and who resides or, just before August 28, 2005, had resided in an area for which a major disaster has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) as a result of Hurricane Katrina.

(b) PAYMENTS TO STATES.—In lieu of any entitlement to payment under section 474 of the Social Security Act with respect to any child described in subsection (a) of this section, each State with such a plan shall be entitled to a payment for each quarter in which there is month in which the State has made a foster care maintenance payment pursuant to such subsection (a), in an amount equal to the sum of—

(1) the total of the amounts expended by the State during the quarter pursuant to such subsection (a) for children described in such subsection (a) who are in foster family homes (as defined in section 472(c)(1) of such Act) or child-care institutions (as defined in section 472(c)(2) of such Act); and

(2) the total of the amounts expended by the State during the quarter as found necessary by the Secretary for the provision of child placement services for such children, for the proper and efficient administration of the plan with respect to such children, or for the provision of services which seek to improve the well-being of such children.

Mr. [Frank] SENSENBRENNER [of Wisconsin]. Mr. Chairman, I reserve a point of order on the amendment.

The Acting CHAIRMAN. The gentleman from Wisconsin reserves a point of order. . . .

POINT OF ORDER

The Acting CHAIRMAN (Mr. SWEENEY). Does the gentleman from Wisconsin (Mr. SENSENBRENNER) insist on his point of order?

Mr. SENSENBRENNER. I do, Mr. Chairman.

The Acting CHAIRMAN. The gentleman from Wisconsin is recognized.

1. 2 USC § 633(f).
2. 151 CONG. REC. 20218–20, 109th Cong. 1st Sess.
3. John Sweeney (NY).

Mr. SENSENBRENNER. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. This amendment would provide new budget authority in excess of the allocation made under section 302(a) of the Committee on the Judiciary and thus is not permitted under section 302(f) of the Act.

I ask for a ruling of the Chair.

The Acting CHAIRMAN. Is there anyone else who wishes to be heard on the point of order?

If not, the Chair is prepared to rule on the point of order.

The gentleman from Wisconsin raises a point of order that the amendment offered by the gentleman from Washington violates section 302(f) of the Budget Act.

Section 302(f) of the Budget Act provides a point of order against any amendment providing new budget authority that would cause a breach of the relevant allocation of budget authority under section 302(a) of the Budget Act.

The Chair is authoritatively guided under section 312 of the Budget Act by an estimate of the Committee on the Budget that the new mandatory budget authority provided by this amendment would cause a breach of the allocation of the Committee on the Judiciary.

The amendment offered by the gentleman from Washington would increase the level of new mandatory budget authority in the bill above the allocation made under section 302(a). As such, the amendment violates section 302(f) of the Budget Act. The point of order is sustained.

**§ 11.2 An amendment that delayed the imposition of a monetary penalty, resulting in a loss of offsetting receipts and thus increasing new discretionary budget authority, was ruled out of order for violating section 302(f) of the Congressional Budget Act<sup>(1)</sup> by exceeding the section 302(b) allocation of the Committee on Merchant Marine and Fisheries (as estimated by the Committee on the Budget).**

On July 18, 1991,<sup>(2)</sup> during consideration of a Coast Guard authorization bill (H.R. 1776), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. MCMILLEN OF MARYLAND

Mr. [Charles] McMILLEN of Maryland. Mr. Chairman, I offer an amendment.  
The Clerk read as follows:

Amendment offered by Mr. McMILLEN of Maryland: Add at the end of the bill the following new section:

**SEC. . DELAY OF PENALTIES FOR FAILURE TO COMPLY WITH RECREATIONAL VESSEL FEE REQUIREMENTS.**

Notwithstanding any other provision of law, a person shall not be subject to any penalty under section 2110(b) of title 46, United States Code (relating to fees and charges for recreational vessels), for any failure to comply with that section occurring before October 31, 1991.

1. 2 USC § 633(f).

2. 137 CONG. REC. 18860, 18861, 102d Cong. 1st Sess.

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POINT OF ORDER

Mr. [Willis] GRADISON [of Ohio]. I make a point of order that the amendment violates section 302(f) of the Budget Act, because it would exceed the allocation of the Committee on Merchant Marine and Fisheries of new discretionary budget authority.

This amendment delays penalties for failure to comply with recreational vehicle fees requirements until October 31, 1991.

According to CBO, this amendment would increase discretionary budget authority by \$120 million in fiscal year 1991, and we have a letter from them to that effect.

The amendment violates section 302(f) of the Budget Act because it would exceed the revised allocation of new discretionary budget authority in fiscal year 1991 of the Committee on Merchant Marine and Fisheries. According to the most recent scorekeeping report, the Committee on Merchant Marine and Fisheries has no new discretionary budget authority in fiscal year 1991.

The CHAIRMAN.<sup>(3)</sup> Does the gentleman from Maryland [Mr. McMILLEN] desire to be heard on the point of order?

Mr. McMILLEN of Maryland. Mr. Chairman, I take issue with this point of order in that the budget statistics are based upon a subjective interpretation of the effect of the amendment.

Let me point out that this amendment in no way alters the fee structure or obviates the obligation of the American boater from paying the fee. All we are doing is allowing an additional 2 months to phase in the user fee—to allow an adequate amount of time for boaters to comply with the law; albeit a bad law.

Furthermore, I am told that the Coast Guard has stated that it will not be actively enforcing this law until October 1. Thus, the effective difference between this amendment and the Coast Guard action is minimal. But what kind of policy is a reliance on non-enforcement?

The Budget Committee's point of order is based upon a hypothetical policy assumption. Whether or not this assumption is valid is not a procedural point, but a policy question. Hence, it should not be contested as a point of order, but should be debated and voted upon by the House.

I, too, am concerned with the fiscal restraints which bind this body. However, we cannot expect the American people to abide by unrealistic restrictions as a result of the administration's delay in implementing the user fee. There are over 4 million boaters, and the current timeframe for implementation is wholly insufficient. As of yesterday, according to the U.S. Coast Guard, just over 32,000 boaters had received their decal, and only about twice that number had requested forms. That leaves 98 percent of America's boaters—over 4 million of them—without the decal.

Mr. Chairman, most boaters do not even know about the new fee. It is my understanding that the only public notice of its implementation has been a notice in the Federal Register and a press release. Boaters deserve a chance to comply with the law, and this amendment will give them that chance.

Mr. Chairman, this is a policy question, and should be decided as such.

Mr. [Robert] DAVIS [of Michigan]. Mr. Chairman, I would like to be heard on the point of order.

Mr. Chairman, you know, I can recognize when the Committee on the Budget has a legitimate argument against something that we might be doing which is going to take

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3. George Darden (GA).

away funds that we had planned on receiving, but let me tell the Members that when CBO estimated how much money would be coming in from this tax, not fee, in this next fiscal year, they do not calculate the fines. They calculate how many boats there are. They calculate and they multiply that by how many boats, how much they are going to pay, and that is the way they calculate how much money.

In no way did CBO whatsoever calculate how many fines were going to be levied upon the people that did not actually pay for their registration fee. So it is totally unfair for the Committee on the Budget to come up here and say, well, this is not in concert with what we had agreed to as the Committee on the Budget.

First of all, the Committee on the Budget is going to find that they are going to be way off, but it is not fair to say that you challenge this on the point of order of something that nobody had any idea, nor still does have any idea, on what the fines are going to be.

I agree with the Committee on the Budget when they have a legitimate argument. This is not a legitimate point of order, and I would recommend and hope that the Chair will rule against the point of order.

The CHAIRMAN. Does any Member wish to be heard further on the point of order?

Mr. GRADISON. Mr. Chairman, I wish to be heard.

The issue here is not the amount of penalties. It is the amount of the fees.

Mr. Chairman, without a penalty, less fees will be collected, because it will be clear that if there is no penalty that the failure to purchase the decal will not carry with it a charge.

I refer now to a letter to the chairman of the Committee on the Budget, the gentleman from California [Mr. PANETTA], dated yesterday, written by the Director of the Congressional Budget Office. This letter was prepared at the request of the Committee on the Budget, and it says in part:

We believe that, if this amendment is enacted, the Coast Guard would not be able to collect most of the recreational boat fees that are due under current law in fiscal year 1991. For scoring purposes, the baseline estimate for this year's fee collections is \$127 million, classified as offsetting receipts. Assuming enactment around the beginning of September, we would expect this amendment to reduce these receipts, and thus increase budget authority and outlays, by around \$120 million in fiscal year 1991, under baseline assumptions.

The Chairman, it is on that basis that I have raised the point of order.

The CHAIRMAN. Before the Chair rules, does the gentleman from Louisiana [Mr. TAUZIN] desire to be heard on the point of order?

Mr. [Billy] TAUZIN [of Louisiana]. Mr. Chairman, yes, I do.

Mr. Chairman, if I may, I want to point out that the Coast Guard has already put out a directive indicating that boaters cited before October 1, 1991, will be able to avoid payment of civil penalties by showing evidence of fee payment to the district office within 30 days of the citation.

That means you could be cited on October 1, but you would not have to pay a penalty until October 31. Anyway, that is the current directive of the Coast Guard, and if that is the current directive of the Coast Guard, the amendment offered by the gentleman only embodies that current directive into the authorization bill.

The penalties would not be assessed before the Coast Guard says that they will not assess penalties.

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It seems to me that can have no fiscal effect whatsoever upon the authority of the committee or upon the numbers of the Committee on the Budget.

I would argue that the point of order is not in order and that it should be denied for that very reason.

Mr. McMILLEN of Maryland. Mr. Chairman, what we are talking about is confusion and chaos to the boat owners of this country. They are getting this from the Coast Guard that says you have got a grace period to October 31, and here we are debating this on the floor of the Congress, and we are saying that, no, a point of order, and that this will cost the Government money. The bottom line is, I think, our constituents who are boat owners are confused enough by what occurred in the budget agreement last year with regard to boats to further compound that today.

Mr. TAUZIN. Mr. Chairman, the question is, if I can wrap it up, how can a point of order lie to an amendment that simply incorporates the very directive of the Coast Guard that penalties will not be assessed until October 31? If that is the case, the Coast Guard so directed it, and the amendment simply incorporates that same delay, and there can be no effect upon the budget, and I would urge that the point of order be denied.

The CHAIRMAN. Is there further discussion on the point of order?

Mr. GRADISON. Mr. Chairman, on this point of order it is based on the statute. A regulation, once issued, can be changed and therefore, we have to, if we are going to be consistent with regard to these budgetary issues, look to the basic statute which is the basis on which I have raised the point of order.

Frankly, this is not something I made up or the Committee on the Budget has made up. It is the rules of the House, and it is a letter written, not by the Committee on the Budget, not by the gentleman from California [Mr. PANETTA] or the gentleman from Ohio [Mr. GRADISON], but by the Congressional Budget Office.

□ 1410

The CHAIRMAN (Mr. DARDEN). The Chair is prepared to rule.

Mr. McMILLEN of Maryland. Mr. Chairman, one further thought.

Some of the penalties can go as high as \$5,000. We have less than 2 percent of the boaters in this country who have complied with this. The Coast Guard issued this as a regulation.

Is there not a practical point to say we ought to be consistent with what the Coast Guard is issued with regard to their regulation?

The CHAIRMAN. The Chair is prepared to rule.

The Chair appreciates the very competent, compelling, and creative arguments of the gentlemen from Maryland, Louisiana, and Michigan.

However, under section 302(g)<sup>(4)</sup> of the Budget Act, the Chair must base his ruling on estimates from the Committee on the Budget. The Chair has examined an estimate from the CBO in this regard, upon which it is asserted the Budget Committee has relied.

Accordingly, the Chair must rule that the amendment would cause the allocation under section 302(b) of discretionary new budget authority to the Committee on Merchant Marine and Fisheries to be exceeded. Accordingly, then the point of order is sustained.

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4. The Budget Enforcement Act of 1997 moved this requirement from section 302(g) of the Congressional Budget Act to section 312(a) of the Congressional Budget Act.

**§ 11.3 An amendment that provided an increase in discretionary budget authority in the bill was ruled out of order for violating section 302(f) of the Congressional Budget Act<sup>(1)</sup> by exceeding the section 302(b) allocation of the relevant subcommittee of the Committee on Appropriations (as estimated by the Committee on the Budget).**

On June 8, 2000,<sup>(2)</sup> during consideration of a Labor–HHS appropriation bill (H.R. 4577), the following occurred in the Committee of the Whole:

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of three sedans, and including up to \$7,241,000 for the President's Committee on Employment of People With Disabilities, and including the management or operation of Departmental bilateral and multilateral foreign technical assistance, \$244,579,000; together with not to exceed \$310,000, which may be expended from the Employment Security Administration account in the Unemployment Trust Fund: *Provided*, That no funds made available by this Act may be used by the Solicitor of Labor to participate in a review in any United States Court of appeals of any decision made by the Benefits Review Board under section 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 921) where such participation is precluded by the decision of the United States Supreme Court in *Director, Office of Workers' Compensation Programs v. Newport News Shipbuilding*, 115 S. Ct. 1278 (1995), notwithstanding any provisions to the contrary contained in rule 15 of the Federal Rules of Appellate Procedure: *Provided further*, That no funds made available by this Act may be used by the Secretary of Labor to review a decision under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) that has been appealed and that has been pending before the Benefits Review Board for more than 12 months: *Provided further*, That any such decision pending a review by the Benefits Review Board for more than 1 year shall be considered affirmed by the Benefits Review Board on the 1-year anniversary of the filing of the appeal, and shall be considered the final order of the Board for purposes of obtaining a review in the United States courts of appeals: *Provided further*, That these provisions shall not be applicable to the review or appeal of any decision issued under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).

AMENDMENT NO. 9 OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Chairman, I offer an amendment. The CHAIRMAN.<sup>(3)</sup> The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment No. 9 offered by Mr. OBEY:

Page 16, line 24, after the dollar amount, insert the following: "(increased by \$97,000,000)".

Mr. [John] PORTER [of Illinois]. Mr. Chairman, I reserve a point of order on the amendment offered by the gentleman from Wisconsin (Mr. OBEY). . . .

1. 2 USC § 633(f).
2. 146 CONG. REC. 9940, 9942, 9943, 106th Cong. 2d Sess.
3. Douglas Bereuter (NE).

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### POINT OF ORDER

Mr. PORTER. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a sub-allocation of budget totals for fiscal year 2001 on June 7, 2000, House report 106–656. This amendment would provide new budget authority in excess of the subcommittee’s sub-allocation made under section 302(b) and is not permitted under section 302(f) of the act. I ask for a ruling of the Chair.

The CHAIRMAN. Does the gentleman from Wisconsin (Mr. OBEY) wish to be heard on the point of order against his amendment?

Mr. OBEY. Yes, I do, Mr. Chairman. I would simply say that given the fact that the rule under which this bill is being considered guarantees that at all costs that tax breaks for the wealthiest 1 percent of people in this society will come before the needs of everybody else, I reluctantly agree that because of that rule, the gentleman is technically correct, and the amendment, while correct and just, is not in order under the Rules of the House.

The CHAIRMAN. The Chair is authoritatively guided by the estimate of the Committee on the Budget, pursuant to section 312(a) of the Budget Act, that an amendment providing a net increase in new discretionary budget authority greater than \$1 million would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentleman from Wisconsin (Mr. OBEY), on its face, proposes to increase the level of new discretionary budget authority in the bill by greater than \$1 million. As such, the amendment would violate section 302(f) of the Budget Act.

The point of order is sustained, and the amendment is not in order.<sup>(4)</sup>

### *Breach of a Special Allocation*

**§ 11.4 To an appropriation bill originating in a subcommittee of the Committee on Appropriations that had received two separate allocations of budget authority by the most recent concurrent resolution on the budget,<sup>(1)</sup> an amendment attempting to transfer funds from accounts under one allocation to accounts under the other was ruled out of order as violating section 302(f) of the Congressional Budget Act<sup>(2)</sup> for exceeding the level of the latter allocation (as estimated by the Committee on the Budget).**

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4. For another section 302(f) point of order raised against an amendment to the same bill, see 146 CONG. REC. 10377, 10378, 106th Cong. 2d Sess., June 12, 2000.

1. *Parliamentarian’s Note*: The concurrent resolution on the budget for fiscal year 2013 provided the Committee on Appropriations with a separate section 302(a) allocation for overseas contingency operations and the global war on terrorism. Pursuant to the committee’s section 302(b) report, most of this budget authority was allocated to the Subcommittee on Defense, which thereafter proceeded with both a “general purpose” and an “overseas contingencies” 302(b) suballocation. At the time of the offering of the amendment at issue here, both of these suballocations were at their limit of new budget authority, such that any increase in either allocation would cause a breach of that allocation. As each allocation was evaluated independently, the budgetary savings occasioned by a decrease in one allocation could not be used to offset an increase in the other—hence the violation of section 302(f).

2. 2 USC § 633(f).

On July 18, 2012,<sup>(3)</sup> the following took place in the Committee of the Whole:

Mr. [Mick] MULVANEY [of South Carolina]. Madam Chair, I have an amendment at the desk.

The Acting CHAIR.<sup>(4)</sup> The Clerk will report the amendment.

The Clerk read as follows:

Page 2, line 22, after the dollar amount, insert “(increased by \$4,359,624,000)”.

Page 3, line 20, after the dollar amount, insert “(increased by \$1,197,682,000)”.

Page 121, line 12, after the dollar amount, insert “(reduced by \$4,359,624,000)”.

Page 122, line 3, after the dollar amount, insert “(reduced by \$1,197,682,000)”.

Mr. [Bill] YOUNG of Florida. Madam Chairman, the amendment is subject to a point of order, but I am going to reserve the point of order to allow the gentleman to have his 5 minutes to explain what it is he wants to do.

The Acting CHAIR. The gentleman reserves a point of order.

Mr. MULVANEY. Madam Chair, I thank the chairman and also the ranking member for the opportunity to present this amendment. . . .

#### POINT OF ORDER

Mr. YOUNG of Florida. Madam Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation of budget totals for fiscal year 2013 on May 22, 2012, House Report 112–489.

The adoption of this amendment would cause the subcommittee general purpose sub-allocation for budget authority made under section 302(b) to be exceeded, and is not permitted under section 302(f) of the act, and I ask for a ruling from the Chair.

The Acting CHAIR. Does any Member wish to be heard on the point of order?

Mr. MULVANEY. I ask to be heard on the point of order.

The Acting CHAIR. The gentleman from South Carolina is recognized.

Mr. MULVANEY. Madam Chair, it is true that a new point of order was created under the Budget Control Act preventing any legislation from being considered in the House that would cause discretionary spending to exceed the caps established in the Budget Control Act. Under that part of the act, Madam Chair, the entire bill is technically out of order because the entire bill exceeds the BCA caps by \$7.5 billion. Ironically then, if this point of order is sustained, then we will effectively keep within the shadows a non-partisan policy, something that everyone has supported in the past, a good governance issue, while allowing the entire bill, which also violates the same point of order, to proceed.

My amendment is outlay neutral. It does not increase spending, it does not decrease spending. It simply moves spending from the war budget to the base budget, and vice versa. If the amendment were agreed to, the budget authority in the bill will be exactly the same as it is if the amendment fails, \$608,213,000,000.

Accordingly, the amendment does not violate section 302(f)(1) of the Congressional Budget Act, and overruling the point of order gives us the chance to abide by the precedent established long ago and embraced by both parties.

3. 158 CONG. REC. H4942, 4943 [Daily Ed.], 112th Cong. 2d Sess.

4. Candice Miller (MI).



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I respectfully ask that the Chair overrule the point of order.

The Acting CHAIR. Does any other Member wish to be heard on the point of order? If not, the Chair is prepared to rule.

Under House Concurrent Resolution 112, as made applicable by House Resolutions 614 and 643, the Subcommittee on Defense has both a General Purposes allocation and an Overseas Contingency Operations allocation. The accounts in the bill on pages 2 and 3 are under the General Purposes Allocation. The accounts on pages 121 and 122 are under the Overseas Contingency Operations allocation. The amendment transfers funds from the latter to the former.

The Chair is authoritatively guided under section 312 of the Budget Act and clause 4 of Rule XXIX by an estimate of the chair of the Committee on the Budget that an amendment providing any net increase in new discretionary budget authority in either allocation would cause a breach of that allocation.

The amendment offered by the gentleman from South Carolina would increase the level of new discretionary budget authority in the bill under the General Purposes allocation. As such, the amendment violates section 302(f) of the Budget Act.

The point of order is sustained, and the amendment is not in order.

***Section 302(f) Point of Order Application to Outlays***

**§ 11.5 An amendment to an appropriation bill that provided an increase offset by an identical decrease in amounts of new budget authority contained in separate paragraphs (but no net new budget authority) was held not to violate section 302(f) of the Congressional Budget Act,<sup>(1)</sup> which only proscribes new budget authority in excess of a pertinent allocation and does not enforce outlay levels.**

On June 7, 2000,<sup>(2)</sup> during consideration of a defense appropriation bill (H.R. 4576), the following transpired in the Committee of the Whole:

AMENDMENT NO. 8 OFFERED BY MR. KUCINICH

Mr. [Dennis] KUCINICH [of Ohio]. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. KUCINICH:

Page 33, line 5, insert “(reduced by \$174,024,000)” after the dollar amount.

Page 35, lines 10 and 11, insert “(increased by \$174,024,000)” after the dollar amount.

Mr. [Jerry] LEWIS of California. Mr. Chairman, I reserve a point of order on the gentleman’s amendment.

The CHAIRMAN.<sup>(3)</sup> The gentleman from California (Mr. LEWIS) reserves a point of order.

1. 2 USC § 633(f).
2. 146 CONG. REC. 9836, 9837, 106th Cong. 2d Sess.
3. David Camp (MI).

Mr. KUCINICH. Mr. Chairman, my amendment would reduce spending for research, development and testing for the National Missile Defense System by 10 percent, about the same amount of the increase made by the committee for the Ballistic Missile Defense Organization over the budget request. It would increase the budget for the Defense Health Program by the same amount. . . .

## POINT OF ORDER

The CHAIRMAN. Does the gentleman from California (Mr. LEWIS) insist on his point of order?

Mr. LEWIS of California. I do, Mr. Chairman. I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act, as amended.

The CHAIRMAN. Does the gentleman from Ohio (Mr. KUCINICH) wish to be heard on the point of order?

Mr. KUCINICH. Mr. Chairman, I do.

The CHAIRMAN. The gentleman may proceed.

Mr. KUCINICH. Mr. Chairman, I would like to respond. This amendment is merely perfecting the number on an unauthorized account by increasing it. This is within the rule, because it merely perfects a number. The rule waives points of order against provisions in the bill for failure to comply with clause 2 of rule XXI prohibiting unauthorized or legislative provisions in a general appropriations bill and prohibiting reappropriations in a general appropriations bill. Therefore, an appropriations bill put in breach by the rule is allowed to remain.

Mr. Chairman, I will read that again. An appropriations bill put in breach by the rule is allowed to remain, so amendments that increase are permitted.

Clause 2(f) of rule XXI states that when we are reaching ahead to increase a program, the CBO must determine budget authority and outlay neutrality. This amendment has been scored by the CBO and has the CBO-determined budget authority and outlay neutrality. This amendment is within the rules of this House. I have the CBO table for the record.

On the note of that according to CBO, if one looks at the entire effect of this amendment, it is outlay neutral. In the end, there is no outlay effect. But for each individual year, there may be an outlay effect.

I would ask a question of the Parliamentarian, and that is if an amendment has an effect on outlays per year but does not change the overall end effect of the bill, is it outlay neutral?

The CHAIRMAN. The Chair will not entertain the question to the Parliamentarian. The gentleman may continue discussing the point of order.

Mr. KUCINICH. Mr. Chairman, I would state then my insistence that this amendment is in order. That if the Parliamentarian had reviewed it, or did review it, he would see that the amendment has an effect on outlays per year, but does not change the overall end effect of the bill. It is outlay neutral.

The CHAIRMAN. The Chair is prepared to rule on the point of order. The gentleman from California makes a point of order under section 302(f) of the Budget Act which constrains budget authority.

The amendment provides no net new budget authority. That it may not be neutral on outlays is of no moment under section 302(f) of the Budget Act.<sup>(4)</sup> The point of order is overruled.

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4. *Parliamentarian's Note:* At times, the House had made outlays the subject of budgetary enforcement mechanisms. The House had adopted a concurrent resolution on the budget (later "deemed" effective for purposes of Congressional Budget Act enforcement) containing a special reserve fund for highway programs. That provision created a special

***Offsetting Breach***

**§ 11.6 An amendment that provides negative budget authority by precluding the collection of certain fees, but that offsets such negative budget authority by simultaneously authorizing a reduction of expenditures in an amount equal to the uncollected fees, does not violate section 302(f) of the Congressional Budget Act.<sup>(1)</sup>**

On May 9, 1995,<sup>(2)</sup> during consideration of a Coast Guard authorization bill (H.R. 1361), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. ROTH

Mr. [Toby] ROTH [of Wisconsin]. Mr. Chairman, I offer an amendment. . . .

Mr. [Howard] COBLE [of North Carolina]. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN.<sup>(3)</sup> The gentleman from North Carolina reserves a point of order on the amendment.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. ROTH: At the end of title IV (page 43, after line 13), add the following new section (and amend the table of contents accordingly):

**SEC. . LIMITATION ON FEES AND CHARGES WITH RESPECT WITH RESPECT TO FERRIES.**

The Secretary of the department in which the Coast Guard is operating may not assess or collect any fee or charge with respect to a ferry. Notwithstanding any other provision of this Act, the Secretary is authorized to reduce expenditures in an amount equal to the fees or charges which are not collected or assessed as a result of this section. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from North Carolina [Mr. COBLE] insist on his point of order?

Mr. COBLE. Mr. Chairman, I do.

The CHAIRMAN. The gentleman will state his point of order.

Mr. COBLE. First of all, Mr. Chairman, I want to say to the distinguished gentleman from Wisconsin, that much of what he said I am not in disagreement with, but I do not think this is the proper forum, for this reason: I think the amendment offered by the gentleman from Wisconsin [Mr. ROTH] violates section 302(f) of the Budget Act by providing negative budget authority for the fiscal year 1995.

Mr. ROTH. Mr. Chairman, may I be heard on that?

The CHAIRMAN. The Chair recognizes the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I realize the gentleman from North Carolina [Mr. COBLE] is probably one of the most gifted lawyers in the House.

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application of section 302(f) to require neutrality of both budget authority *and outlays* for such programs (contrary to the general principle exemplified by this precedent). See 148 CONG. REC. 3691, 107th Cong. 2d Sess., Mar. 20, 2002. See § 4, *supra*.

1. 2 USC § 633(f).
2. 141 CONG. REC. 12174, 12175, 104th Cong. 1st Sess.
3. Jay Dickey (AR).

I wanted to point out that whenever we cut taxes, it is never in order.

Let me say something: When you read this amendment, and the appropriate statute, you find that the ferry is defined as a public service. Then the tax does not apply.

Also, I want to point out that the second argument is that the amendment gives the Secretary the authority to reduce expenditures in the amount equal to the tax not collected.

Therefore, this amendment is in order.

The CHAIRMAN (Mr. DICKEY). The Chair is prepared to rule. Based on the last argument from the gentleman from Wisconsin, that the record new budget authority would be offset, the Chair holds that the amendment is in order.

Mr. ROTH. Well, I thank the Chair very much, and I ask for an affirmative vote.

The CHAIRMAN. That ruling is based on the last sentence of the amendment.

**§ 11.7 An amendment to a supplemental appropriation bill providing new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) cannot be offset by redirecting funds designated as emergency funds (such funds having no budgetary impact pursuant to a provision in the most recent budget resolution)<sup>(1)</sup> and thus violates section 302(f) of the Congressional Budget Act.**

On Mar. 15, 2005,<sup>(2)</sup> the following point of order was raised in the Committee of the Whole:

AMENDMENT NO. 3 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. [Sheila] JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN.<sup>(3)</sup> The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. JACKSON-LEE of Texas:

Page 46, after line 20, insert the following:

IMMIGRATION AND CUSTOMS ENFORCEMENT

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses”, hereby derived from the amount provided in this Act for “UNITED STATES COAST GUARD—OPERATING EXPENSES”, \$40,000,000.

Mr. [Jerry] LEWIS of California. Mr. Chairman, I reserve a point of order on the gentleman’s amendment. . . .

1. 150 CONG. REC. 10040, 108th Cong. 2d Sess., May 18, 2004 (S. Con. Res. 95, sec. 402). See § 4, *supra*.
2. 151 CONG. REC. 4695, 4696, 109th Cong. 1st Sess.
3. John Shimkus (IL).

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POINT OF ORDER

Mr. LEWIS of California. Mr. Chairman, reluctantly I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation on budget totals for fiscal year 2005 on July 22, 2004. The amendment would provide new budget authority in excess of the committee allocations and is not permitted under section 302(f) of the act. I ask for the ruling of the Chair.

Ms. JACKSON-LEE of Texas. Will the gentleman yield for just a moment?

Mr. LEWIS of California. I have asked for a ruling of the Chair.

The Acting CHAIRMAN (Mr. SHIMKUS). The Chair will hear each member on his or her own time. The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE) to speak on the point of order.

Ms. JACKSON-LEE of Texas. Mr. Chairman, my understanding of an emergency supplemental is to deal with emergency funding situations in the government. I realize that the present language speaks directly to Coast Guard, which is part of now the Department of Homeland Security. This amendment amends that section and asks and has a viable offset and asks simply to allow \$40 million of that amount to be able to be utilized for the underfunded ICE agents that do not have uniforms, that do not have badges, that do not have IDs.

Frankly, I believe if we are to do our work in Iraq, whether we agree or disagree with the war in Iraq, we do know that it is represented to us by the administration to be a war on terror. How can we fight the war on terror in Afghanistan and Iraq and not fight the war on terror in this country within our boundaries?

The Immigration Customs and Enforcement helps us do that. It separates out those who intend to do us harm from those who are here who may be undocumented but are here simply for economic reasons.

We need to be able to thwart those who may come across the border to do us harm and are not caught at the border. We need to be able to have the agency well equipped to protect us by securing those individuals and detaining them. Without those resources they cannot even continue.

Do not take my word. Take the word of Admiral Loy, who indicated that they needed more dollars to finish out the fiscal year in question.

I would ask my colleague, and I would also ask at this moment, that if he pursues his point of order, whether or not we will have the opportunity, whether in conference or as we continue the appropriations process, to focus on the lack of funding for the Immigration and Enforcement Officers, Immigration, Customs and Enforcement Officers, the Border Patrol, which I think you are aware of, and the detention beds.

I would like very much to yield to the chairman, and on this issue I think we are all in common agreement about the need to secure our homeland.

The Acting CHAIRMAN. Does the gentleman from California wish to be head [sic] further on the point of order?

Mr. LEWIS of California. Mr. Chairman, I would simply say it is our intention to pursue the questions the gentlewoman is asking. It may very well be in conference on the supplemental that it is appropriate, but frankly in some ways we take from Peter to pay Paul. We can pursue this in regular order, and I prefer to use the supplemental process for those emergencies that we cannot deal with in regular order. Because of that, I am not pursuing the recommendations at this time. We will follow through, however, on the questions that the gentlewoman is asking.

Mr. Chairman, I insist on my point of order.

The Acting CHAIRMAN. The Chair is prepared to rule on the point of order.

The Chair is authoritatively guided under section 312 of the Budget Act by an estimate of the Committee on the Budget that an amendment providing any net increase in new discretionary budget authority would cause a breach of pertinent allocation of such authority.

The amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will increase the level of new discretionary budget authority in the bill. As such, the amendment violates section 302(f) of the Budget Act.

The point of order is sustained. The amendment is not in order.

**§ 11.8 An amendment to a general appropriation bill providing new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) cannot be offset by the elimination of unauthorized contract authority contained in an earmark (which provides no budgetary savings) and was conceded to violate section 302(f) of the Congressional Budget Act.<sup>(1)</sup>**

On June 26, 2001,<sup>(2)</sup> during consideration of a transportation appropriation bill (H.R. 2299), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. YOUNG OF ALASKA

Mr. [Donald] YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. YOUNG of Alaska:

Page 14, after line 25, insert the following:

SMALL COMMUNITY AIR SERVICE DEVELOPMENT PILOT PROGRAM

For necessary expenses to carry our section 41743 of title 49, United States Code, \$10,000,000, to remain available until expended.

Mr. YOUNG of Alaska (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN.<sup>(3)</sup> Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. [Hal] ROGERS of Kentucky. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The point of order is reserved. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Kentucky have a point of order?

1. 2 USC § 633(f). This unauthorized contract authority was struck from the bill earlier on a point of order. 147 CONG. REC. 11936, 107th Cong. 1st Sess., June 26, 2001.
2. 147 CONG. REC. 11937, 107th Cong. 1st Sess.
3. David Camp (MI).

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Mr. ROGERS of Kentucky. Yes.

The CHAIRMAN. The gentleman from Kentucky (Mr. ROGERS) is recognized on his point of order.

Mr. ROGERS of Kentucky. Mr. Chairman, we are in an unfortunate situation here. We had monies in the bill, as has been noted, for the small airports, which was stricken on a point of order. Now the amendment would seek to add monies back in, but we have no monies to add back in. The budget authority that we were given does not permit it.

No one is a bigger advocate for smaller airports than I am because that is all I have in my district.

□ 1600

But I am forced to make a point of order against the amendment because it is in violation of 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations fields a suballocation of budget totals for fiscal year 2002 on June 13, 2001. This amendment would provide new budget authority in excess of the subcommittee's suballocation made under section 302(b) and is not permitted under section 302(f) of the Act. I ask for a ruling from the Chair.

The CHAIRMAN. Does the gentleman from Alaska (Mr. YOUNG) wish to be heard on the point of order?

Mr. YOUNG of Alaska. I do. Mr. Chairman, I agree with the gentleman that one of the most unfortunate things that occurred to the Subcommittee on Transportation is the fact they do not have the money. I do think the budgeteers did a bad thing. Four percent is not enough. I said this all along. So I will continue to try to seek funding of this program as we progress with this bill and other bills to see if we cannot accomplish what we are all seeking.

I have more small airports than any place in the United States and most of my people do not have highways, so I am very supportive of this program, but we also have to make sure it is funded adequately and appropriately and I concede the point of order at this time.

The CHAIRMAN. The gentleman from Alaska concedes the point of order. The point of order is conceded and sustained. The provision is stricken from the bill.

**§ 11.9 Amendments to an appropriation bill making a series of numerical changes intended to offset one another considered *en bloc* are subject to points of order under section 302(f) of the Congressional Budget Act<sup>(1)</sup> where the intended reductions in contract authority (not considered budget authority) fail to offset new increases in new discretionary budget authority (as estimated by the Committee on the Budget), so that the net effect of the amendments is to cause the bill to exceed the appropriate allocation of new discretionary budget authority made pursuant to section 302(b) for that fiscal year.**

On July 30, 1986,<sup>(2)</sup> during consideration of a transportation appropriation bill (H.R. 5205), the following occurred in the Committee of the Whole:

1. 2 USC § 633(f).
2. 132 CONG. REC. 18153, 18154, 99th Cong. 2d Sess.

Mr. [William] LEHMAN of Florida. Mr. Chairman, I reserve a point of order against the amendments.

The CHAIRMAN.<sup>(3)</sup> The gentleman from Florida [Mr. LEHMAN] reserves a point of order on the amendments.

The Clerk will report the amendments.

The Clerk read as follows:

Amendments offered by Mr. WALKER: In title I, on page 4, line 9, strike "\$1,849,800,000" and insert in lieu thereof "\$1,850,115,000".

And on line 11, strike "\$372,983,000" and insert in lieu thereof "\$373,298,000".

The CHAIRMAN. Prior to proceeding with the amendments, is the gentleman's request to be amended?

Mr. [Robert] WALKER [of Pennsylvania]. Yes, Mr. Chairman, it would be 1, 3, and 5.

The CHAIRMAN. The Chair understands that the gentleman is amending the request for consideration en bloc.

Mr. WALKER. Mr. Chairman, because of the fact that the two amendments that were meant to coordinate these would amend the same place twice, there is an amendment at the desk that would go to numbers 1, 3, and 5, which would in fact then overcome that problem.

The CHAIRMAN. The Clerk will report amendments 1, 3, and 5.

The Clerk read as follows:

Amendments offered by Mr. WALKER: In title I, on page 2, line 11, strike "\$7,465,000" and insert in lieu thereof "\$7,150,000".

In title I, on page 24, line 8, strike "\$122,000,000" and insert in lieu thereof "\$102,000,000".

And on page 24, line 11, strike "\$121,060,000" and insert in lieu thereof "\$101,060,000".

In title I, on page 4, line 9, strike "1,849,800,000" and insert in lieu thereof "\$1,870,115,000".

And on line 11, strike "\$372,983,000" and insert in lieu thereof "\$393,298,000".

The CHAIRMAN. The Chair will now put the question on the unanimous-consent request, as modified.

The request is to consider these amendments en bloc. Is there objection to that request?

There was no objection.

#### POINT OF ORDER

Mr. LEHMAN of Florida. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. LEHMAN of Florida. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act, as amended by Public Law 99-177. The Committee on Appropriations filed its subcommittee allocation for fiscal year 1987 pursuant to section 302 of the Congressional Budget Act on July 15, 1986. This is House Report 99-673.

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3. Leon Panetta (CA).



**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

These amendments would provide new budget authority in excess of the subcommittee allocation and is not permitted under section 302(f) of this act.

I ask that the amendments be ruled out of order, and Mr. Chairman, under the gentleman's amendment, \$20 million in new budget authority is being added to the Coast Guard; however, all but \$350,000 of the amounts intended to offset come from contract authority obligation limitations. These do not count as the budget authority and cannot be used to keep this bill within our budget allocation. Contract authority is separate from the rest of these kinds of moneys.

The CHAIRMAN. Does the gentleman from Pennsylvania wish to respond?

Mr. WALKER. Mr. Chairman, the 302 authority being brought to the Congress under its own report specifies the amounts that are included in the committee's report as a total sum.

I have reduced figures in one portion of the bill in order to add figures in the other portion of the bill; and so therefore bring it in with the same 302 numbers that the committee has brought to us.

So I am, in fact, under the legislation, bringing the cuts that are necessary in order to keep the committee from exceeding its 302 allocations.

The CHAIRMAN. The Chair would ask the gentleman from Pennsylvania [Mr. WALKER] if he counts as toward his reduction the elimination of the contract authorization on page 24 of the Highway Safety Act?

Mr. WALKER. Under the amendment that is before the House, included in the cuts, on page 24, line 8, is the cut specified.

Let me say to the Chair, however, that that is money which is given in grant authority to the States. That is, both the Congressional Research Service and the Department of Transportation, have told this gentleman that that is money which goes to the States in grants and so therefore is money that should be allocated under 302.

□ 1120

The CHAIRMAN. Does the gentleman from Florida wish to speak to the point?

Mr. LEHMAN of Florida. Mr. Chairman, just for a point of clarification, the sums that the gentleman from Pennsylvania is talking about are not considered budget authority. I think that is the problem that we are dealing with now.

The CHAIRMAN. Does the gentleman from Pennsylvania [Mr. WALKER] have any further arguments to make?

Mr. WALKER. No, Mr. Chairman.

The CHAIRMAN (Mr. PANETTA). The Chair is prepared to rule.

The Chair is to be guided by the requirements of 302(f) in that any amendment to H.R. 5205 which would increase new discretionary authority in the bill or would increase direct loan new credit authority in the bill by more than \$24 million would violate section 302(f) of the Congressional Budget and Impoundment Control Act of 1974.

Section 302(f) provides that it shall not be in order to consider any bill, resolution or amendment which, if enacted, would exceed the appropriate allocation made pursuant to section 302(b) for the fiscal year of new discretionary budget authority or new credit authority.

The question then comes down to whether the provision on page 24 relates to discretionary budget authority or not. It is the Chair's view that this deals not with such budget authority but with grant money and therefore the amendment would indeed violate

section 302(f) by causing a net increase in discretionary budget authority and therefore sustains the point of order.

### *Contingent Breach*

**§ 11.10 An amendment proposing to strike from a general appropriation bill a proviso stating that a specified increment of new discretionary budget authority ostensibly provided by the bill would “become available for obligation only upon the enactment of future appropriations legislation” was held to cause the bill to provide additional new discretionary budget authority in that incremental amount, in breach of the pertinent allocation under former section 602,<sup>(1)</sup> (as estimated by the Committee on the Budget) and therefore in violation of section 302(f) of the Congressional Budget Act.<sup>(2)</sup>**

On June 26, 1996,<sup>(3)</sup> during consideration of an agriculture appropriation bill (H.R. 2698), the following transpired in the Committee of the Whole:

#### AMENDMENT OFFERED BY MR. PALLONE

Mr. [Frank] PALLONE [of New Jersey]. Mr. Chairman, I ask unanimous consent to offer an amendment to a portion of the bill not yet read.

The CHAIRMAN.<sup>(4)</sup> Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PALLONE: Strike the last proviso under the heading HAZARDOUS SUBSTANCE SUPERFUND.

Mr. [Michael] OXLEY [of Ohio]. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIRMAN. The gentleman from Ohio reserves a point of order. . . .

#### POINT OF ORDER

Mr. OXLEY. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. OXLEY. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act as amended. The Committee on Appropriations filed a subcommittee allocation for fiscal year 1997 on June 17,

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1. For more information on title VI of the Congressional Budget Act, see the introduction to this section.
  2. 2 USC § 633(f).
  3. 142 CONG. REC. 15561–63, 104th Cong. 2d Sess.
  4. Larry Combest (TX).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

1996 (H. Rept. 104-624). This amendment would provide a new budget authority in excess of the subcommittee allocation and is not permitted under section 302(f) of the act.

Mr. Chairman, I ask that the amendment be ruled out of order.

The CHAIRMAN. Does any other Member wish to be heard on the point of order?

The Chair recognizes the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Chairman, again, as I said before, if the money is really in this bill, then why should it be subject to a point of order. All we are saying is that if it is really there, if the money is really there, it should be used now for cleanups and not later for some polluter slush fund which basically gives money back in rebates to polluters. As I said on page 60 of the committee report, it says that the committee is appropriating \$2.2 billion for Superfund in fiscal year 1997.

In addition, it claims that they are appropriating almost 861 million more than the President included in his budget. Our amendment simply strikes that contingency and would truly fund the Superfund Program at the 2.2 billion and have the money spent this year.

If the amendment is subject to a point of order, then the money really is not there after all and the Republicans are appropriating about 55 million less than the President requested. So I just wanted to make it clear that by bringing this point of order and having it sustained, they are admitting that the \$2.2 billion figure is basically a sham. They are admitting that they funded the program at \$55 million less than the President requested and that they have turned this appropriation process into something that we may never see. . . .

The CHAIRMAN. Does the gentleman from New York, [Mr. BOEHLERT] wish to be heard on the point of order?

Mr. [Sherwood] BOEHLERT [of New York]. Yes, Mr. Chairman, I wish to speak in support of the point of order. . . .

The budget resolution creates a Superfund reserve fund. This reserve fund allows the chairman of the Committee on the Budget to increase the committee allocations when the Superfund taxes are extended and the program is reformed. That is what we are all about. We want to reform a program that everyone agrees is broken.

It is deficit neutral, this fund, because it will come from the reauthorized Superfund business taxes. This bill sets the marker for the funding level that will be provided when these conditions are met. We are saying that we are committed, let me repeat that, we are saying that we are committed to fund a reformed Superfund at \$2.2 billion and will use the extension of the Superfund taxes for that purpose.

□ 1415

What we have said repeatedly from the beginning of this historic 104th Congress is that we want to reform Superfund. We have a plan; it is falling on deaf ears.

Mr. Chairman, I support the point of order.

The CHAIRMAN. Does the gentleman from Pennsylvania [Mr. BORSKI] seek to be heard on the point of order?

Mr. [Robert] BORSKI [of Pennsylvania]. I do, Mr. Chairman.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania.

Mr. BORSKI. Mr. Chairman, I urge that the point of order raised against this amendment be overruled. The Pallone-Borski-Markey amendment does not change any of the monetary figures in the bill. It simply strikes the very unusual language limiting the

use of \$861 million, language that makes the \$861 million totally meaningless. If the \$861 million is real and will impact the budget, then our amendment will have no impact whatsoever on the budget. If this point of order is sustained, the ruling will support the contention that the \$861 million is meaningless. The \$861 million figure in this bill is the most meaningless thing I have seen on this House floor in 14 years. . . .

The CHAIRMAN. The Chair is prepared to rule.

The amendment offered by the gentleman from New Jersey proposes to strike from the bill the last proviso under the heading “Hazardous Substance Superfund.” That proviso states that a specified increment of the amount ostensibly provided in that paragraph of the bill “shall become available for obligation only upon the enactment of future appropriations legislation that specifically makes these funds available for obligation.”

The Chair is advised that the Committee on the Budget has analyzed this proviso under scorekeeping rule 9 from the joint explanatory statement of managers on the Budget Enforcement Act of 1990, entitled “Delay of obligations.” That rule reads in part as follows:

If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation.

Thus, pursuant to section 302(g)<sup>(5)</sup> of the Budget Act, the Committee on the Budget estimates that the incremental amount of funding affected by this proviso is presently attributable to the “future appropriations legislation” and not to the pending appropriation bill. Consequently, to strike the proviso would cause the incremental amount of budget authority affected by the proviso to be attributed to the pending bill.

The Chair is further advised that the Committee on the Budget estimates that the bill, as perfected to this point, provides new discretionary budget authority in the approximate amount of \$64,327,000,000, and that the pertinent allocation of such budget authority for this bill under sections 302 and 602 of the Budget Act is \$64,354,000,000. Thus, an amendment providing new discretionary budget authority in an amount greater than \$27 million would breach the pertinent allocation, in violation of section 302(f) of the Budget Act.

Because the amendment offered by the gentleman from New Jersey would cause the pending bill to provide an additional \$861 million in new discretionary budget authority, it violates section 302(f) of the Budget Act.

The point of order is sustained.

### ***Striking Rescission***

**§ 11.11 An amendment proposing to strike from a general appropriation bill a rescission scored as negative budget authority was held to provide new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) and thus in violation of section 302(f) of the Congressional Budget Act.<sup>(1)</sup>**

5. The Budget Enforcement Act of 1997 moved this requirement from section 302(g) of the Congressional Budget Act to section 312(a).

1. 2 USC § 633(f).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

On June 20, 2001,<sup>(2)</sup> during consideration of a supplemental appropriation bill (H.R. 2216), the following occurred in the Committee of the Whole:

AMENDMENT OFFERED BY MR. BENTSEN

Mr. [Kenneth] BENTSEN [of Texas]. Mr. Chairman, I offer an amendment.

The CHAIRMAN.<sup>(3)</sup> The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BENTSEN:

In chapter 9 of title II, strike the item relating to “FEDERAL EMERGENCY MANAGEMENT AGENCY—DISASTER RELIEF”.

The CHAIRMAN. Pursuant to the order of the Committee of today, the gentleman from Texas, (Mr. BENTSEN) and a Member opposed each will control 10 minutes.

Mr. [Bill] YOUNG of Florida. Mr. Chairman, I reserve a point of order on the amendment. . . .

POINT OF ORDER

Mr. YOUNG of Florida. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation of budget totals for fiscal year 2001 on June 19, 2001. That was House Report 107–104. This amendment would strike a rescission and, therefore, provide in effect a new budget authority in excess of the subcommittee suballocation made under section 302(b) and is not permitted under section 302(f) of the act.

And so, Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman advances his point of order. Does the gentleman from Texas (Mr. BENTSEN) wish to be heard on the point of order?

Mr. BENTSEN. Briefly, Mr. Chairman, because of the time agreement that we honored.

As the chairman read the point of order, I think it underscores the point, because he says were this to be allowed, the rescission would result in new budget authority. But, in fact, what the rescission does is it strikes budget authority that was created by the 106th Congress. It really is not new budget authority, but it underscores the nuance of the Budget Act and the fact that additional spending in this supplemental had to be off-set both through emergency declaration and then through the rescission of FEMA, which I believe, I truly believe, will hamstring FEMA.

But I appreciate the chairman’s sincerity and I will abide by the point of order.

The CHAIRMAN. The Chair is prepared to rule. The Chair is authoritatively guided by an estimate of the Committee on the Budget under section 312 of the Budget Act that an amendment providing any net increase in new discretionary budget authority would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentleman from Texas would, by striking a rescission contained in the bill, increase the level of new discretionary budget authority in the bill. As such, the amendment violates section 302(f) of the Budget Act.

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2. 147 CONG. REC. 11246, 11248, 11249, 107th Cong. 1st Sess.

3. Douglas Bereuter (NE).

The point of order is sustained. The amendment is not in order.

### ***Striking Limitation***

**§ 11.12 Where a limitation on funds in a general appropriation bill was estimated (by the Committee on the Budget) under section 312(a) of the Congressional Budget Act to provide negative new budget authority in an amount below the pertinent allocation of such authority, an amendment striking the limitation from the bill was held to provide new budget authority causing a breach in violation of section 302(f) of the Congressional Budget Act.<sup>(1)</sup>**

On June 13, 2000,<sup>(2)</sup> during consideration of a Labor–HHS appropriation bill (H.R. 4577), the following occurred in the Committee of the Whole:

#### AMENDMENT NO. 13 OFFERED BY MS. PELOSI

Ms. [Nancy] PELOSI [of California]. Mr. Chairman, I offer Amendment No. 13.

The CHAIRMAN.<sup>(3)</sup> Is the gentlewoman from California a designee of the gentleman from Wisconsin (Mr. OBEY)?

Ms. PELOSI. Yes, I am, Mr. Chairman.

Mr. [John] PORTER [of Illinois]. Mr. Chairman, I reserve a point of order on the gentlewoman's amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 13 offered by Ms. PELOSI:  
Page 49, strike line 1 through 12 (section 213).

The CHAIRMAN. Pursuant to the order of the House of Thursday, June 8, 2000, the gentlewoman from California (Ms. PELOSI) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Chairman, I yield myself such time as I may consume. . . .

The CHAIRMAN. All time has expired on this amendment.

#### POINT OF ORDER

Mr. PORTER. Mr. Chairman, I make a point of order against the amendment because it is in violation of Section 302(f) of the Congressional Budget Act of 1974.

The Committee on Appropriations filed a suballocation of budget totals for fiscal year 2001 on June 8, 2000, House Report 106–660. This amendment would provide new budget authority in excess of the subcommittee's suballocation made under Section 302(b), and is not permitted under section 302(f) of the Act.

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1. 2 USC § 633(f).
  2. 146 CONG. REC. 10501, 10505, 10506, 106th Cong. 2d Sess.
  3. Douglas Bereuter (NE).

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I would ask a ruling of the Chair.

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Ms. PELOSI. Yes, Mr. Chairman.

The CHAIRMAN. The gentlewoman from California (Ms. PELOSI) is recognized.

Ms. PELOSI. Mr. Chairman, the distinguished chairman lodged a point of order on the basis that this is outside the budget allocation. On that score, he may be correct. But the fact is that despite the expressions of priority for the funding at the National Institutes of Health, which the chairman has very sincerely made and others have made in this Chamber, we had other choices in this bill.

In fact, if this is of the highest priority, why was it not given the same status that other Republican priorities are given in this bill?

As we know, there is a \$500 million budget adjustment to accommodate \$500 million of other spending in this bill. That could have been done for this \$1.7 billion and we could have ensured, guaranteed, given peace to the American people that their health and that the research to ensure it to be protected.

Instead, the only thing protected in this bill is the tax break for the wealthiest people in America. That is the decision that Members have to make. It is not about this being fiscally responsible. We all want to be that. Indeed, our alternative Democratic budget resolution had this \$1.7 increase and it was fiscally responsible.

Two things, Mr. Chairman. Because the distinguished chairman has said he is calling a point of order because this is beyond the allocation of the budget, it could be protected just the way this other funding had a lifting of the budget, had an adjustment of the budget figure.

□ 1145

Secondly, I would say that if we are not going to go down that path then it is not the priority we say it is, and we have to answer to the American people for that.

Technically, on the point of order, the rule protects the wealthiest 1 percent at the expense of the National Institutes of Health, and I concede the point of order.

Mr. PORTER. Mr. Chairman, can I be heard further on the point of order?

The CHAIRMAN. The gentleman from Illinois (Mr. PORTER) is recognized.

Mr. PORTER. Mr. Chairman, I would simply respond to the gentlewoman that she had every opportunity to make those choices by offering an amendment within the rules that would have taken money from lower priority accounts and put it in this account if that was her desire. She did not take that opportunity to operate within the bounds of fiscal restraint and has simply offered an amendment without any offset, which is clearly out of order.

The CHAIRMAN. The Chair is prepared to rule.

Ms. PELOSI. Mr. Chairman, if I may, since the gentleman characterized my remarks, if I may?

The CHAIRMAN. Very briefly the gentlewoman from California may respond.

Ms. PELOSI. Mr. Chairman, the distinguished gentleman knows that I had no opportunity to have an offset of the \$1.7 billion. All I am saying is give this the same treatment as has been given to other Republican priorities by making a budget cap adjustment so that this can be afforded in this bill.

The CHAIRMAN. The gentlewoman from California (Ms. PELOSI) has conceded the point of order, but the Chair would say that he is authoritatively guided by an estimate

of the Committee on the Budget, pursuant to section 312 of the Budget Act, that an amendment providing any net increase in new discretionary budget authority would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentlewoman from California, by proposing to strike a provision scored as negative budget authority, would increase the level of new discretionary budget authority in the bill. As such, the amendment violates section 302(f) of the Budget Act.

The point of order is therefore sustained. The amendment is not in order.

**§ 11.13 Where a limitation on funds in a general appropriation bill was estimated to provide negative new budget authority in an amount sufficient to avoid a breach of the pertinent allocation of such authority, an amendment striking the limitation from the bill was held to provide new budget authority causing a breach (as estimated by the Committee on the Budget), in violation of section 302(f) of the Congressional Budget Act.<sup>(1)</sup>**

On June 26, 1991,<sup>(2)</sup> during consideration of an agriculture appropriation bill (H.R. 2698), the following transpired in the Committee of the Whole:

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary administrative expenses of the Agricultural Stabilization and Conservation Service, including expenses to formulate and carry out programs authorized by title III of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301–1393); the Agricultural Act of 1949, as amended (7 U.S.C. 1421 et seq.); sections 7 to 15, 16(a), 16(f), and 17 of the Soil Conservation and Domestic Allotment Act, as amended and supplemented (16 U.S.C. 590g–590o, 590p(a), 590p(f), and 590q); sections 1001 to 1004, 1006 to 1008, and 1010 of the Agricultural Act of 1970 as added by the Agriculture and Consumer Protection Act of 1973 (16 U.S.C. 1501 to 1504, 1506 to 1508, and 1510); the Water Bank Act, as amended (16 U.S.C. 1301–1311); the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101); sections 202(c) and 205 of title II of the Colorado River Basin Salinity Control Act of 1974, as amended (43 U.S.C. 1592(c), 1595); sections 401, 402, and 404 to 406 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 to 2205); the United States Warehouse Act, as amended (7 U.S.C. 241–273); and laws pertaining to the Commodity Credit Corporation, \$720,705,000; of which \$719,289,000 is hereby appropriated, and \$573,000 is transferred from the Public Law 480 Program Account in this Act and \$589,000 is transferred from the Commodity Credit Corporation Program Account in this Act: *Provided*, That other funds made available to the Agricultural Stabilization and Conservation Service for authorized activities may be advanced to and merged with this account: *Provided further*, That these funds shall be available for employment pursuant to the second sentence of section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225), and not to exceed \$100,000 shall be available for employment under 5 U.S.C. 3109: *Provided further*, That no part of

1. 2 USC § 633(f).

2. 137 CONG. REC. 16484–16486, 102d Cong. 1st Sess.



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the funds made available under this Act shall be used (1) to influence the vote in any referendum; (2) to influence agricultural legislation, except as permitted in 18 U.S.C. 1913; or (3) for salaries or other expenses of members of county and community committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, for engaging in any activities other than advisory and supervisory duties and delegated program functions prescribed in administrative regulations: *Provided further*, That none of the funds appropriated or otherwise made available by this Act shall be used to establish or implement a wetlands reserve program as authorized by 16 U.S.C. 3837 et seq.

AMENDMENT OFFERED BY MR. NAGLE

Mr. [David] NAGLE [of Iowa]. Mr. Chairman, I offer an amendment.  
The Clerk read as follows:

Amendment offered by Mr. NAGLE: Page 28, beginning in line 23, strike “: *Provided*” and all that follows through line 2 on page 29.

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Chairman, I reserve a point of order against the amendment.

Mr. NAGLE. Mr. Chairman, I ask unanimous consent that the amendment, which is to title I, and the amendment, which is to title II, which is directly related to it, be considered en bloc so that we can get this out of the way at the same time.

The CHAIRMAN.<sup>(3)</sup> Is there objection to the request of the gentleman from Iowa?

Mr. WHITTEN. Mr. Chairman, I reserved a point of order. I now object.

The CHAIRMAN. Objection is heard.

Mr. NAGLE. Mr. Chairman, I would ask Chairman WHITTEN to reconsider that objection, since I do not, when we are done, intend to offer the amendment. I intend to withdraw the amendment.

Mr. WHITTEN. Mr. Chairman, if the gentleman will yield, if I may say so, I hate to make this objection here but, we are going to have to start using our land to produce so we can pay our debts and keep our farmers in business. . . .

Mr. NAGLE. . . .

My amendment will transfer appropriations from within the conservation title to the Wetlands Reserve Program and the Water Quality Reserve Program. It is my intention to fight for these programs so that the future of the great compromise and more importantly, the future of the farm program can be maintained. . . .

POINT OF ORDER

Mr. WHITTEN. Mr. Chairman, I insist on the point of order.

May I say that we operated under very strict limitations this year. We had everybody counting what we could do and this would have the effect of striking out a savings on which we had to count to stay within the budget ceilings. Our provision has the effect of saving \$231.8 million in a mandatory program. It has been scored by CBO and by the Budget Committee as a proper savings to the discretionary totals of this bill.

Under Scorekeeping Rule No. 3 of the 1990 Reconciliation Act. If the provision is struck, it will have the effect of breaking the committee’s 602(b) allocation and is, therefore, in violation of section 302(f).

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3. William Hughes (NJ).

We would be in violation of all of our allocation. The effect would be that this would set in motion another sequestration for everything to be cut.

Members will recall last week we had a cut of thirteen ten-thousandths of a percent, it cost thousands of dollars to implement. We faced it because the Office of Management and Budget said we were over some slight amount. CBO and the General Accounting Office differed with them, but nevertheless we had that. So I insist that if this provision should be changed, it would leave us in violation not only in this bill but the effect would be across the board.

The CHAIRMAN. The gentleman from Mississippi insists on his point of order.

Does the gentleman from Iowa [Mr. NAGLE] wish to argue in opposition to the point of order?

Mr. NAGLE. Mr. Chairman, I do.

The CHAIRMAN. Does the gentleman wish to withdraw the amendment?

Mr. NAGLE. Mr. Chairman, the gentleman does not wish to withdraw the amendment with the point of order pending. The gentleman wishes to argue the point of order.

The CHAIRMAN. The gentleman is recognized.

Mr. NAGLE. Mr. Chairman, this is very simple. What I did quite simply was take money that is already being spent and simply transfer it. That is all this does. It does not provide for new money. It does not take money over the cap. It takes existing money inside the bill, simply transfers it to two different programs that the committee in its wisdom and judgment chose not to fund. So it is not over the limit.

It is not an expenditure that is not already authorized. We are simply shifting money within the account.

Therefore, for that reason, the point of order of the distinguished gentleman from Mississippi is not well taken.

□ 1820

The CHAIRMAN. The Chair might remind the gentleman from Iowa that his unanimous-consent request that the amendments be considered en bloc was objected to by the gentleman from Mississippi, the distinguished chairman of the Committee on Appropriations, so the argument is only addressed to that language at the bottom of page 28 and at the top line of 29 which, in essence, strikes the limitation contained in the bill at page 28, line 23.

Mr. NAGLE. That is correct. It spends no money.

The CHAIRMAN. There is no balancing or offset as such within the bill, because the gentleman did not secure, when he sought unanimous consent, to consolidate the two amendments en bloc.

Mr. NAGLE. The gentleman sought it, but the gentleman was denied it.

The CHAIRMAN. The gentleman was denied that by an objection by the distinguished gentleman from Mississippi who had that right.

Mr. NAGLE. I am asking the Chair, and I think I have made my case, and I respectfully ask the Chair to make a ruling.

The CHAIRMAN. The Chair is prepared to rule unless the gentleman from Pennsylvania seeks recognition, and he can in his own right in opposition.

Mr. [Thomas] RIDGE [of Pennsylvania]. I do not seek recognition.

The CHAIRMAN. The Chair is prepared to rule then that the point of order of the gentleman from Mississippi is well taken, and the Chair sustains the point of order, because striking that language under the circumstances would be scored to violate the Budget Act.

*Allocation Adjustment*

§ 11.14 An amendment increasing an amount designated as an “emergency” thus triggering an increase in the relevant section 302(a) committee allocation (pursuant to section 314 of the Congressional Budget Act)<sup>(1)</sup> but failing to trigger a corresponding increase in the section 302(b) subcommittee allocation, was ruled out of order for violating section 302(f) of the Congressional Budget Act<sup>(2)</sup> by exceeding such section 302(b) allocation (as estimated by the Committee on the Budget).

On June 21, 2000,<sup>(3)</sup> the following point of order was raised in the Committee of the Whole:

FEDERAL EMERGENCY MANAGEMENT AGENCY  
DISASTER RELIEF  
(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses in carrying out the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), \$300,000,000, and, notwithstanding 42 U.S.C. 5203, to remain available until expended, of which \$5,500,000 shall be transferred to “Emergency management planning and assistance” for the consolidated emergency management performance grant program; of which \$30,000,000 shall be transferred to the “Flood map modernization fund” account; and up to \$50,000,000 may be obligated for pre-disaster mitigation projects and repetitive loss buyouts (in addition to funding provided by 42 U.S.C. 5170c) following disaster declarations.

□ 1345

AMENDMENT OFFERED BY MR. BOYD

Mr. [Allen] BOYD [of Florida]. Mr. Chairman, I offer an amendment.

1. However, the Budget Control Act of 2011 amended section 314 of the Congressional Budget Act such that it no longer operates in the manner described here. See § 1, *supra* and § 26, *infra*, for more on the Budget Control Act of 2011 and its various reforms to the congressional budget process.
2. 2 USC § 633(f).
3. 146 CONG. REC. 11747–49, 106th Cong. 2d Sess.

*Parliamentarian’s Note:* The following paragraph of the bill, designating these amounts as “emergency requirements” on the condition that the President transmit a reciprocating designation, was later held to constitute legislation in violation of rule XXI clause 2(b) (*House Rules and Manual* § 1038 (2011)): “Notwithstanding any other provision of law, the foregoing amounts are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided*, That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.” See 146 CONG. REC. 11749, 106th Cong. 2d Sess., June 21, 2000.

The Clerk read as follows:

Amendment offered by Mr. BOYD:

Page 66, line 18, after the dollar amount, insert the following: “(increased by \$2,609,220,000)”.

Mr. [James] WALSH [of New York]. Mr. Chairman, I reserve a point of order against the gentleman’s amendment.

The CHAIRMAN.<sup>(4)</sup> The gentleman from New York (Mr. WALSH) reserves a point of order.

The gentleman from Florida (Mr. BOYD) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Florida (Mr. BOYD). . . .

#### POINT OF ORDER

Mr. WALSH. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act of 1974. The Committee on Appropriations filed a suballocation of Budget Totals for fiscal year 2001 on June 20, 2000 (House Report 106–683). This amendment would provide new budget authority in excess of the subcommittee suballocation made under section 302(b) and is not permitted under section 302(f) of the Act.

I ask for a ruling from the Chair.

The CHAIRMAN. The Chair is authoritatively guided by an estimate of the Committee on the Budget, pursuant to section 312 of the Budget Act, that an amendment providing any net increase in new discretionary budget authority would cause a breach of the pertinent allocation of such authority.

The amendment offered by the gentleman from Florida (Mr. BOYD) would increase the level of new discretionary budget authority in the bill. Because of the attending emergency designation, the amendment automatically occasions an increase in the section 302(a) allocation to the Committee on Appropriations, but it does not occasion an automatic increase in the section 302(b) suballocation for the pending bill.

As such, the amendment violates section 302(f) of the Budget Act.

The point of order is, therefore, sustained. The amendment is not in order.

**§ 11.15 An amendment to a general appropriation bill providing new budget authority in excess of the relevant allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) does not trigger a corresponding increase to that allocation pursuant to procedural provisions contained in a concurrent resolution on the budget<sup>(1)</sup> where such provisions specify that the new budget authority must be contained in a reported bill (and not in an amendment), and such an amendment thus violates section 302(f) of the Congressional Budget Act.<sup>(2)</sup>**

4. Edward Pease (IN).

1. 143 CONG. REC. 9984, 105th Cong. 1st Sess., June 4, 1997 (H. Con. Res. 84, sec. 205). This section of the fiscal year 1998 budget resolution authorized committee allocation adjustments in response to qualifying Federal land acquisition legislation. For more on similar adjustment authorities contained in budget resolutions, see § 4, *supra*.

2. 2 USC § 633(f).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

On July 10, 1997,<sup>(3)</sup> the following point of order was raised in the Committee of the Whole:

AMENDMENT OFFERED BY MR. MILLER OF CALIFORNIA

Mr. [George] MILLER of California. Mr. Chairman, I offer an amendment.

Mr. [Ralph] REGULA [of Ohio]. Mr. Chairman, I reserve a point of order on the gentleman's amendment.

The CHAIRMAN.<sup>(4)</sup> The point of order is reserved.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Miller of California:

Page 5, after line 15, insert:

PRIORITY FEDERAL LAND ACQUISITIONS AND EXCHANGES

To carry out priority Federal land exchange agreements and priority Federal land acquisitions by the National Park Service, United States Fish and Wildlife Service, Bureau of Land Management, and the United States Forest Service, up to \$700,000,000 to be derived from the Land and Water Conservation Fund, to remain available until expended, of which not to exceed \$65,000,000 is for the acquisition of identified lands and interests in lands and for other purposes to carry out the Agreement of August 12, 1996, to acquire interests to protect and preserve Yellowstone National Park, and not to exceed \$250,000,000 is for the acquisition of identified lands and interests in lands, at the purchase price specified, in the September 28, 1996, Headwaters Forest Agreement. . . .

POINT OF ORDER

The CHAIRMAN. Does the gentleman from Ohio insist on his point of order?

Mr. REGULA. Mr. Chairman, I make a point of order against the amendment because it is in violation of section 302(f) of the Congressional Budget Act, as amended.

The Committee on Appropriations filed a revised subcommittee allocation for fiscal year 1998 on June 24, 1997, House Report 105-151. This amendment would provide a new budget authority in excess of the subcommittee allocation and is not permitted under section 302(f) of the act.

In addition, Mr. Chairman, section 205 of the budget resolution only makes the \$700 million available for land acquisition if it is in a reported bill from the Committee on Appropriations. The budget resolution does not apply to floor amendments.

Mr. Chairman, I ask that the amendment be ruled out of order.

The CHAIRMAN. Does the gentleman from California [Mr. MILLER] wish to be heard on the point of order?

Mr. MILLER of California. Unfortunately, Mr. Chairman, I think I have to concede that the gentleman from Ohio [Mr. REGULA] is correct. I wish the rule had been written otherwise. But, in fact, the gentleman is correct.

The CHAIRMAN. The point of order is conceded and sustained.

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3. 143 CONG. REC. 14020-23, 105th Cong. 1st Sess.

4. Steven LaTourette (OH).

***Section 302(f) Points of Order—Applicability to Motions to Re-commit***

**§ 11.16 A motion to recommit a bill with instructions to report “forthwith”<sup>(1)</sup> a direct amendment to existing law providing new budget authority in excess of the relevant subcommittee allocation under section 302(b) of the Congressional Budget Act (as estimated by the Committee on the Budget) was held to violate section 302(f) of the Congressional Budget Act<sup>(2)</sup> and ruled out of order.**

On July 22, 2004,<sup>(3)</sup> during consideration of a military construction appropriation bill (H.R. 4837), the following occurred:

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I offer a motion to recommit. The SPEAKER pro tempore.<sup>(4)</sup> Is the gentleman opposed to the bill?  
Mr. OBEY. Unless the motion is adopted, Mr. Speaker, yes.  
The SPEAKER pro tempore. The Clerk will report the motion to recommit.  
The Clerk read as follows:

Mr. Obey moves to recommit the bill, H.R. 4837, to the Committee on Appropriations with instructions to report the bill forthwith with the following amendment:  
“SEC. 129. Section 2883(g)(1) of title 10, United States Code, is amended by striking “\$850,000,000” and inserting “\$1,300,000,000.”

POINT OF ORDER

Mr. [James] NUSSLE [of Iowa]. Mr. Speaker, I make a point of order against the motion to recommit because it violates Section 302(f) of the Congressional Budget Act.  
The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?  
Mr. OBEY. Mr. Speaker, what this amendment attempts to do is to restore the language just stricken by the gentleman. If the gentleman insists on his point of order, then

1. *Parliamentarian’s Note*: A motion to commit or recommit a bill or joint resolution “forthwith” provides that any amendatory instructions contained therein be carried out immediately, and thus engages the provisions of the Congressional Budget Act. In the 111th Congress, Rule XIX clause 2 was amended to provide that all motions to recommit a bill or joint resolution that contained instructions must be “forthwith.” *House Rules and Manual* § 1001 (2011). Prior to this change, such motions may have specified a different adverb (most often “promptly”) to indicate a mere non-binding recommendation to the committee of recommitment, and therefore such formulations did not engage the Congressional Budget Act. For an example of such a “promptly” motion to recommit, containing an amendment that had previously been ruled out of order for violating section 302(f) of the Congressional Budget Act, see 147 CONG. REC. 11253, 107th Cong. 1st Sess., June 20, 2001. See also Deschler’s Precedents Ch. 23 § 32.25, *supra*.
2. 2 USC § 633(f).
3. 150 CONG. REC. 17321, 108th Cong. 2d Sess.
4. David Camp (MI).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

obviously once again the House will have missed an opportunity to provide housing for these 24,000 military families.

The SPEAKER pro tempore. Does any other Member wish to be heard on the point of order?

If not, the Chair will rule.

The Chair finds that the instructions contained in the motion to recommit offered by the gentleman from Wisconsin (Mr. OBEY) propose to amend existing law. The instructions, therefore, constitute legislation in violation of clause 2 of rule XXI.<sup>(5)</sup> The Chair also finds that the amendment contemplated by the motion to recommit proposes spending in excess of the pertinent allocation therefore under Section 302(b) of the Budget Act, as asserted by the point of order of the gentleman from Iowa.

The point of order is sustained, and the motion to recommit is not in order.

**§ 11.17 A motion to commit a bill with instructions to report “forthwith” an amendment providing new budget authority in excess of the relevant allocation under section 302(a) of the Congressional Budget Act, and not protected by waiver against similar provisions in the bill, was held to violate section 302(f) of the Congressional Budget Act and ruled out of order.<sup>(1)</sup>**

On Jan. 8, 2003,<sup>(2)</sup> the following transpired in the House:

EXTENSION OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION  
ACT OF 2002

Mr. [William] THOMAS [of California]. Mr. Speaker, pursuant to House Resolution 14, I call up the Senate bill (S. 23) to provide for a 5-month extension of the Temporary Extended Unemployment Compensation Act of 2002 and for a transition period for individuals receiving compensation when the program under such Act ends, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. SIMPSON).<sup>(3)</sup> Pursuant to House Resolution 14, the Senate bill is considered read for amendment.

The text of S. 23 is as follows: . . .

MOTION TO COMMIT OFFERED BY MR. McDERMOTT

Mr. [James] McDERMOTT [of Washington]. Mr. Speaker, I offer a motion to commit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. McDERMOTT. Yes, Mr. Speaker, I am.

The SPEAKER pro tempore. The Clerk will report the motion.

The clerk read as follows:

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5. For more on points of order under Rule XXI clause 2, see generally, Deschler's Precedents Ch. 26, *supra*.

1. 2 USC § 633(f).

2. 149 CONG. REC. 181, 193, 194, 108th Cong. 1st Sess.

3. Michael Simpson (ID).

Mr. McDERMOTT moves to commit the bill S. 23 to the Committee on Ways and Means with instructions that the Committee report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Emergency Unemployment Compensation Act of 2003” . . . .

Mr. McDERMOTT (during the reading). Mr. Speaker, I ask unanimous consent that the motion to commit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

POINT OF ORDER

Mr. THOMAS. Mr. Speaker, I have no objection to considering the motion as having been read, but I object to the motion to commit on the basis of its violation of the Budget Act.

The SPEAKER pro tempore. Does the gentleman make a point of order?

Mr. THOMAS. Yes, Mr. Speaker, I wish to make a point of order.

The SPEAKER pro tempore. The gentleman may state his point of order.

Mr. THOMAS. Mr. Speaker, I object and make the point of order because this motion, if passed, would cause the allocation to the Committee on Ways and Means to be further exceeded in the first year and over the 5-year period governed by the budget resolution currently deemed in force. The motion therefore violates section 302(f) of the Congressional Budget Act, and I make a point of order that it violates section 302(f) of the Budget Act.

The SPEAKER pro tempore. Is there any other Member who wishes to be heard on the point of order?

Mr. [Benjamin] CARDIN [of Maryland]. Mr. Speaker, on the point of order, if I understand the objection, it is based upon the fact that, as I understand it, the bill before us has a waiver on the Budget Act from the Committee on Rules, but that because there is no waiver of the Budget Act provided in the rules, the minority will not have a chance to offer a similar type of a motion to recommit.

I would ask the chairman, is that the basis that we were not protected in the rule, whereas the underlying bill did not get a waiver in the rule?

Mr. THOMAS. Mr. Speaker, I would tell the gentleman that that is the technical effect. However, had the minority offered an amendment which was in the—

The SPEAKER pro tempore. Will the gentleman suspend? Members will not engage in colloquy on a point of order. The Chair will hear argument on the point of order from each Member in turn.

Mr. THOMAS. Might I make an argument on the point of order, Mr. Speaker?

The SPEAKER pro tempore. The gentleman from Maryland (Mr. CARDIN) may complete his argument first.

Mr. CARDIN. Mr. Speaker, may I yield on my reservation or argument?

The SPEAKER pro tempore. There is no yielding on a point of order.

Mr. CARDIN. Let me just complete my argument, and then I would welcome the chairman's response.



**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

Mr. Speaker, I think that there needs to be some discretion here as far as fairness in the rules. I know that yesterday we adopted the rules of the House. It seems to me that the minority needs to be protected to be able to offer a motion to recommit.

I understand the chairman's point, but it would seem to me that the rules should permit the minority to offer a motion to recommit if we are going to have an open and full debate in the House.

The SPEAKER pro tempore. Are there other Members who wish to be heard on the point of order?

Mr. THOMAS. Yes, sir.

The SPEAKER pro tempore. The gentleman from California (Mr. THOMAS) is recognized.

Mr. THOMAS. Further on my point of order, Mr. Speaker, the reason I believe a 302(f) budget point of order lies against this measure is that it significantly exceeds in its amount the underlying bill.

The legislation before us was not reported by any committee of the House; rather, it was passed by the Senate, and the Committee on Rules has presented it to us.

So my point of order is not based on the fact that the underlying measure has a waiver from the Committee on Rules; it is that if the minority had offered an amendment equal to or less than the Senate position, it would have been in order and not subject to a point of order. Since it is significantly in excess of the Senate measure, it does in fact violate 302(f) of the Budget Act.

□ 1300

The SPEAKER pro tempore (Mr. SIMPSON). Are there other Members who wish to be heard on the point of order?

The Chair is prepared to rule.

The gentleman from California (Mr. THOMAS) makes a point of order that the amendment proposed by the instructions in the motion to commit offered by the gentleman from Washington (Mr. MCDERMOTT) violates section 302(f) of the Congressional Budget Act of 1974.

Section 302(f) of the Budget Act precludes consideration of an amendment providing new budget authority if the adoption of the amendment and enactment of the bill, as amended, would cause the pertinent allocation of new budget authority under section 302(a) of the act to be exceeded.

The Chair is persuasively<sup>(4)</sup> guided by an estimate of the gentleman from Iowa (Mr. NUSSLE) that an amendment providing any net increase in new budget authority for fiscal year 2003, or the period of fiscal years 2003 through 2007, over that provided by the

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4. *Parliamentarian's Note*: The chairman of the Committee on the Budget had not, at the time of this ruling, been elected to that position by the full House, and thus that committee could not provide the Chair with *authoritative* guidance as to the budgetary effect of the amendment contained in the motion to commit, pursuant to section 312(a). However, the presumptive chairman of the Committee on the Budget (Mr. Nussle) had been authorized by a separate order of the House to submit for inclusion in the *Congressional Record* binding section 302(a) allocations for the committees of the House. On this basis, the Chair was *persuasively* guided by estimates from the Member so authorized. For the order of the House authorizing Mr. Nussle to make the binding section 302(a) submission, see 149 CONG. REC. 172, 173, 108th Cong. 1st Sess., Jan. 8,

bill would exacerbate the breach of the applicable section 302(a) allocations of the Committee on Ways and Means.

As such, the motion to commit violates section 302(f) of the Budget Act. The point of order is sustained, and the motion is not in order.

**§ 11.18 A motion to recommit a bill with instructions to report “forthwith” an amendment providing new budget authority in excess of the relevant allocation under section 302(a) of the Congressional Budget Act (as estimated by the Committee on the Budget) was held to violate section 302(f) of the Congressional Budget Act<sup>(1)</sup> and ruled out of order (sustained by tabling of appeal).**

On June 28, 2000,<sup>(2)</sup> the following occurred:

Mr. [Pete] STARK [of California]. Mr. Speaker, I offer a motion to recommit. The SPEAKER pro tempore.<sup>(3)</sup> Is the gentleman opposed to the bill?

Mr. STARK. I am, Mr. Speaker.

Mr. [William] THOMAS [of California]. Mr. Speaker, I reserve all points of order against the motion.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. STARK moves to recommit the bill H.R. 4680 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Medicare Guaranteed and Defined Rx Benefit and Health Provider Relief Act of 2000” . . . .

POINT OF ORDER

The SPEAKER pro tempore. The gentleman from California (Mr. STARK) will suspend. The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I had reserved points of order against the measure.

The SPEAKER pro tempore. The gentleman from California (Mr. THOMAS) has reserved the point of order and is recognized on his point of order.

Mr. THOMAS. Mr. Speaker, I raise a point of order against the motion on the grounds that it violates section 302(f) of the Budget Act which prohibits consideration of legislation that would exceed the Committee on Ways and Means allocation of New Budget Authority for the period of 2001 to 2005.

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2003. Pursuant to Rule XXIX clause 4, added in the 112th Congress, authoritative guidance as to budgetary estimates may now be provided by the chairman of the Committee on the Budget (rather than the committee itself). *House Rules and Manual* § 1095d (2011).

1. 2 USC § 633(f).
2. 146 CONG. REC. 12736, 12750–2, 106th Cong. 2d Sess.
3. Ray LaHood (IL).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The SPEAKER pro tempore. It is proper for the gentleman from California to insist on his point of order.

Mr. STARK. Mr. Speaker, may I be heard on the point of order?

The SPEAKER pro tempore. The gentleman may be heard.

Mr. STARK. Mr. Speaker, I ask the Speaker's brief indulgence as this is a complex issue, but it is important to the seniors in our country.

Mr. Speaker, this Republican resolution has all points of order waived, and we have none. The budget resolution which the Republicans have created that makes our hundred billion dollar bill out of order does not comport with what the Republicans have done to provide tax cuts for the wealthiest.

For example, there is \$661,000 each for the wealthiest Americans under a tax cut, and yet only \$460 a year for senior citizens in prescription drugs. That basically gets to the heart of why I would object to the gentleman's point of order against our bill.

There is a doctrine. It is clearly not fair. We have no points of order waived, and they do. . . .

So, Mr. Speaker, I would like to object to the point of order on the grounds of fairness that has been established in this House for over 100 years and urge that the Speaker rule to allow the Democrats to present a plan which is arguably better than the Republican plan. Based on fairness, I do urge that the point of order is overridden.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, am I allowed to speak on the point of order, or would it be appropriate for others to speak?

The SPEAKER pro tempore. The gentleman from California may proceed.

Mr. THOMAS. Mr. Speaker, I am tempted to use the statement of the gentleman from California (Mr. STARK) who conceded that it was, in fact, in violation of the Budget Act, but I believe the Chair is in possession of a statement from the chairman on the Committee of the Budget which, in fact, supports the point of order that has been presented. Therefore, I would insist on my point of order.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Rhode Island (Mr. WEYGAND).

Mr. [Robert] WEYGAND [of Rhode Island]. Mr. Speaker, may I be heard on the point of order? . . .

The SPEAKER pro tempore (Mr. LAHOOD). The Chair is prepared to rule.

The gentleman from California (Mr. THOMAS) makes a point of order that the amendment proposed by the instructions in the motion to recommit offered by the gentleman from California (Mr. STARK) violates section 302(f) of the Congressional Budget Act of 1974.

Section 302(f) of the Budget Act prescribes a point of order against consideration of an amendment providing new budget authority if the adoption of the amendment and enactment of the bill, as amended, would cause the pertinent allocation of new budget authority for the relevant fiscal years under section 302(a) of the Act to be exceeded.

The Chair is authoritatively guided by estimates provided by the Committee on the Budget indicating that (1) any amendment that proposes to provide new budget authority in excess of \$2.964 billion over the amount provided by the underlying bill for the period of fiscal years 2001 through 2005 would exceed the section 302(a) allocation of the Committee on Ways and Means, as adjusted under section 214 of House Concurrent Resolution 290, in violation of section 302(f) of the Congressional Budget Act of 1974; and

(2) the bill, as it is proposed to be changed by the amendment, would so cause the new budget authority provided by the bill to exceed that level.

The Chair therefore holds that the amendment violates section 302(f) of the Budget Act. Accordingly, the point of order is sustained and the motion to recommit is not in order.

Mr. WEYGAND. Mr. Speaker, I respectfully disagree with the Chair's ruling and appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. THOMAS

Mr. THOMAS. Mr. Speaker, I move to table the motion to appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. THOMAS) to lay on the table the appeal of the ruling of the Chair.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. STARK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 224, nays 202, not voting 8, as follows:

[ROLL NO. 355] . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—*Applicability to Motions to Concur in Senate Amendments*

**§ 11.19 A motion to recede and concur in a numbered Senate amendment was ruled out of order for violating section 302(f) of the Congressional Budget Act<sup>(1)</sup> where the Senate amendment exceeded the section 302(b) allocation to the relevant subcommittee of the Committee on Appropriations (as estimated by the Committee on the Budget).**

On Oct. 20, 1990,<sup>(2)</sup> the following occurred:

MOTION OFFERED BY MR. TRAXLER

Mr. [Jerome] TRAXLER [of Michigan]. Madam Speaker, I offer a motion.

The SPEAKER pro tempore.<sup>(3)</sup> The Clerk will designate the motion.

1. 2 USC § 633(f).

2. 136 CONG. REC. 31517, 101st Cong. 2d Sess.

3. Jolene Unsoeld (WA).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The text of the motion is as follows:

Mr. TRAXLER moves that the House recede from its disagreement to the amendment of the Senate numbered 42, and concur therein.

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Madam Speaker, I have a point of order. The SPEAKER pro tempore. The gentleman will state it.

□ 1550

Mr. FRENZEL. Madam Speaker, amendment No. 42 proposes that the House recede from its position of \$140 million in section 108, loan guarantees, which was the proper amount under the Budget Act, and recede to the Senate, which has an excessive amount of \$250 million. This is a violation of section 302(f), and, therefore, it is on that basis that I make the point of order. I state positively that the House position was strictly within the law. It is only by receding to the Senate that we would be in danger of violating the limit, and I urge that my point of order be sustained.

Mr. TRAXLER. Madam Speaker, I concede the point of order.

Mr. [Bill] GREEN of New York. Madam Speaker, I, too, concede the point of order.

The SPEAKER pro tempore (Mrs. UNSOELD). The point of order is sustained based on the estimate from the Committee on the Budget furnished to the Chair.

**§ 11.20 A motion to recede and concur in a Senate amendment with a further House amendment was ruled out of order for violating section 302(f) of the Congressional Budget Act<sup>(1)</sup> where the House amendment exceeded the section 302(b) allocation to the relevant subcommittee of the Committee on Appropriations (as estimated by the Committee on the Budget).**

On Oct. 31, 1989,<sup>(2)</sup> the following transpired:

The SPEAKER pro tempore.<sup>(3)</sup> The Clerk will designate the final amendment in disagreement.

The text of the amendment is as follows:

Senate amendment No. 136: Page 54, after line 11, insert:

TITLE IV—EMERGENCY DRUG FUNDING

SEC. 401. (a) Except as provided in subsection (b) and notwithstanding any other provision of this or any other Act— . . .

MOTION OFFERED BY MR. WHITTEN

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I offer a motion.

The Clerk read as follows:

1. 2 USC § 633(f).
2. 135 CONG. REC. 26540, 26541, 26544, 26545, 26546, 101st Cong. 1st Sess.
3. James McDermott (WA).

Mr. WHITTEN moves that the House recede from its disagreement to the amendment of the Senate numbered 136 and concur therein with an amendment, as follows:

In lieu of the matter proposed by said amendment, insert the following:

TITLE IV—EMERGENCY DRUG FUNDING

CHAPTER I

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For carrying out efforts at National Drug Control and the President's initiative to combat violent crime . . .

POINT OF ORDER

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I have a point of order.

Mr. Speaker, I make a point of order against the language in the pending motion under section 302(f)(1) of the Congressional Budget Act of 1974.

Section 302(f)(1) of the Congressional Budget Act, as amended, provides that it shall not be in order to consider a bill or amendment providing new budget authority for a fiscal year if enactment of such bill would cause the appropriate section 302(b) allocation of new discretionary budget authority for such fiscal year to be exceeded.

The net effect of the language in amendment No. 136 is to increase new discretionary budget authority by \$3.02 billion. This amendment causes the transportation subcommittee of the Committee on Appropriations to exceed its 302(b) allocation for new discretionary budget authority as set forth in House Report 101-302 by some \$2.113 billion.

The appropriate 302(b) allocation for the new discretionary budget authority for the Transportation Subcommittee is \$13.454 billion. The total enacted by the subcommittee to date is \$1 billion in Public Law 101-130. The total contained in the conference agreement plus all the amendments in disagreement is \$14.567 billion. Therefore, enactment of this amendment would cause the subcommittee's 302(b) allocation to be exceeded by \$2.113 billion.

I urge the Speaker to sustain my point of order. . . .

Mr. WHITTEN. Mr. Speaker, first may I congratulate my fellow subcommittee members, my colleagues and friends. A great job on this bill has been done.

I asked unanimous consent to proceed so that I may discuss the point of order rather than speak in opposition to it.

□ 1420

The point raised by the gentleman from Minnesota raises objection to the action of the conference with regard to title IV of the Transportation bill—that dealing with funding for the war on drugs. As all Members know, the war on drugs is the No. 1 priority of both the Bush administration and the Congress. To this end, the conferees worked with the administration to present a deficit-neutral package for consideration to the Congress that would address this problem.

The conferees worked diligently to develop a deficit-neutral package that is balanced between supply reduction and demand reduction. The conferees worked hard to develop

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a responsible funding package that will address our most immediate concerns while keeping our eye on the issue of government spending. We are presenting in amendment No. 136, a package that provides \$3,183,000,000 in budget authority and \$1,237,000,000 in outlays. The actual spending from the Treasury that will result from enactment of this bill is completely offset by a combination of spending reductions, or restraints through the 302 allocation process between the various subcommittees.

Mr. Speaker, the vote that we had, 394 to 21, on the conference report represents the feeling of the Members of Congress. I would like an opportunity to express my appreciation in the RECORD for the job that our committee has done in trying to handle this matter within the rules of the House.

The SPEAKER pro tempore (Mr. McDERMOTT). Does the gentleman concede the point of order?

Mr. WHITTEN. Mr. Speaker, I do not. I moved to strike the last word.

Mr. [Silvio] CONTE [of Massachusetts]. Mr. Speaker, may I be heard on the point of order.

The SPEAKER pro tempore. The Chair will hear the gentleman.

Mr. CONTE. Mr. Speaker, if I may, I am surprised that this point of order is being raised. The drug package in title IV is deficit neutral. All the outlays expected in this year have been offset; \$1.2 billion in new drug outlays, \$1.2 billion in outlay reductions in all 13 appropriation bills.

I don't know if the gentleman recalls, but when we had the 1989 supplemental up here all last spring, the proposal was to spend \$1.2 billion more on drugs without offsets. We battled that one to the ground, to the point where we now have a drug package with outlay offsets. Combine that one with what we did on the earthquake package, insisting that that money count against Gramm-Rudman-Hollings, and it's clear we're not taking money off budget. Any money spent this year is offset. Any money spent in the outyears will have to fit within budget and Gramm-Rudman ceilings. I would have thought that the gentleman would be pleased.

This package was negotiated in conjunction with the administration. It had their concurrence. No objection to passing this bill has been registered. This is the President's drug package, and the gentleman is knocking it down.

The SPEAKER pro tempore (Mr. McDERMOTT). The Chair must sustain the point of order, based upon the estimates submitted by the Committee on the Budget, pursuant to section 203(g) [sic] of the Budget Act, which are inserted at this point, that the allocation of new budget authority to the Subcommittee on Transportation and Related Agencies contained in House Report 101-302, pursuant to section 203(b) [sic] would be exceeded by the adoption of the Senate amendment No. 136 as amended.<sup>(4)</sup>

### **§ 11.21 The House has, by unanimous consent, agreed to recede from a House amendment to a numbered Senate amendment and concur in the original Senate amendment, notwithstanding the fact that budget authority in the Senate amendment exceeded the applicable section 302(b) allocation (as estimated by the Committee on the**

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4. As recorded in the *Congressional Record*. The Speaker pro tempore most probably meant section 302(g) of the Congressional Budget Act and section 302(b) of the Budget Act based on context.

**Budget) and would have thus violated section 302(f) of the Congressional Budget Act.<sup>(1)</sup>**

On Oct. 31, 1989,<sup>(2)</sup> the following transpired:

Mr. [Jerome] TRAXLER [of Michigan]. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2916) making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1990, and for other purposes, with a House amendment to the Senate amendment numbered 25, recede from the House amendment to the Senate amendment numbered 25, and concur in the Senate amendment numbered 25.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment No. 25: Page 20, after line 13, insert:

FEDERAL HOUSING ADMINISTRATION FUND

For payment to cover losses, not otherwise provided for, sustained by the Special Risk Insurance Fund and General Insurance Fund as authorized by the National Housing Act, as amended (12 U.S.C. 1715z-3(b) and 1735c(f)), \$350,093,000, to remain available until expended.

During fiscal year 1990, within the resources available, gross obligations for direct loans are authorized in such amounts as may be necessary to carry out the purposes of the National Housing Act, as amended.

During fiscal year 1990, additional commitments to guarantee loans to carry out the purposes of the National Housing Act, as amended, shall not exceed a loan principal of \$75,000,000,000.

During fiscal year 1990, gross obligations for direct loans of not to exceed \$88,600,000 are authorized for payments under section 230(a) of the National Housing Act, as amended, from the insurance fund chargeable for benefits on the mortgage covering the property to which the payments made relate, and payments in connection with such obligations are hereby approved.

Mr. TRAXLER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore (Mr. MCDERMOTT).<sup>(3)</sup> Is there objection to the request of the gentleman from Michigan?

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, reserving the right to object, under my reservation of objection, I rise to express my reservations about the action taken by the Senate in amendments Nos. 25 and 54 of this appropriations bill.

The Senate wants to spend more on this bill than had been allocated for this purpose. To raise an additional \$104 million, the Senate increased the FHA loan limit for a one-family home from \$101,250 to \$124,875 in fiscal year 1990. The higher loan limit would result in higher premium revenue paid by borrowers.

The Senate's action caused a Budget Act violation which the House corrected last week by lowering the FHA loan guarantee ceiling. On October 27, the Senate reasserted its

1. 2 USC § 633(f).
2. 135 CONG. REC. 26519, 101st Cong. 1st Sess.
3. James McDermott (WA).



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original position so that we are again faced with a bill which violates section 302(F)(1) of the Budget Act.

Mr. Speaker, even if we forced this contest to go for several more rounds, the final outcome is already evident. Compelling the Appropriations Committee to get a rule would only use up time and energy but it would not alter the final decision.

The Senate's action is bad policy and we should not allow this to set a precedent.

The Senate has legislated in an appropriations bill. Its action has a direct impact on the FHA insurance fund—the soundness of which has recently been questioned. The Senate's action does not represent a concern for housing but a concern for additional spending. In order to allow \$104 million in additional spending, the Senate is using a backdoor device and creating \$3.8 billion in additional loan guarantees which the Government must stand behind.

This is not good budget policy, housing policy, or legislative policy. I hope that today's action will not become a precedent for future action.

Mr. Speaker, I withdraw my reservation of objection.

The Speaker pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Michigan?

There was no objection.

***Withdrawal***

**§ 11.22 A point of order raised against a bill on the grounds that it violates section 302(f) of the Congressional Budget Act<sup>(1)</sup> may be withdrawn as a matter of right and such withdrawal does not require unanimous consent.**

On Sept. 8, 1999,<sup>(2)</sup> during consideration of an appropriation bill (H.R. 2684), the following occurred in the House:

POINT OF ORDER

Mr. [David] OBEY [of Wisconsin]. Madam Speaker, I make a point of order against the consideration of the bill.

The SPEAKER pro tempore (Mrs. BIGGERT).<sup>(3)</sup> The gentleman will state his point of order.

Mr. OBEY. Madam Speaker, I make a point of order that the bill provides new discretionary budget authority in an amount which would exceed the applicable allocation made pursuant to section 302(b) of the Congressional Budget Act, and therefore violates section 302(f) of the Congressional Budget Act.

The most recent subcommittee allocations filed under section 302(b), as contained in House Report 106–288, allocate a total \$68.633 billion in new discretionary budget authority to the Subcommittee on VA, HUD, and Independent Agencies. According to the

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1. 2 USC § 633(f).

2. 145 CONG. REC. 20865, 20866, 106th Cong. 1st Sess.

3. Judy Biggert (IL).

scoring table from the Congressional Budget Office, the bill appropriates \$71.632 billion in discretionary budget authority. Therefore, and as the CBO scoring table indicates, the bill exceeds its section 302(b) allocation by \$2.999 billion. A point of order, therefore, should lie against its consideration under section 302(f) of the Budget Act.

The reason that the bill is scored as exceeding its allocation is that the Committee on Appropriations is apparently counting as an offset a \$3 billion reduction in the borrowing authority of the TVA. This is authority for TVA to borrow from the public and has nothing to do with appropriations or amounts in this bill. Neither CBO nor OMB regard this so-called offset as producing any budget authority savings whatsoever. Therefore, the bill exceeds its allocation.

I should also note a second consequence. Because OMB does not recognize the \$3 billion supposed offset, if this bill were enacted in its present form, it would trigger an automatic across-the-board sequestration of appropriations under the Budget Enforcement Act, in the amount of \$3 billion. That would roughly be about a billion and a half dollars sequestration that would be required in the Defense budget and about a billion and a half dollars that would be required to be sequestered on the domestic side of the appropriations ledger.

Now, I recognize that the chairman of the Committee on the Budget could produce a letter which, in essence, urges the Congress to ignore this financial fact, but the fact is that, if it chooses to do that, there will, in fact, be a sequestration under this bill. Because if we take a look at the OMB Sequestration Update Report to the President and Congress for Fiscal Year 2000, we will see that, on page 11, it states: "Current OMB estimates of House action to date, unless offset, indicate that a sequester of \$3.7 billion in budget authority and \$2.9 billion in outlays would be triggered."

The major amounts in question are related to this bill. If we take a look at the table sent down by the CBO on their budget analysis, on page 18, we will see that they report the same results.

So, therefore, I would suggest that this bill, for reasons that I have cited, should not be before the House. I would certainly say that, even if the Committee on the Budget chairman produces a letter which claims that this bill is not \$3 billion over its authorized allocation, the fact is that, according to the people who are charged by law with actually measuring the bill, it is; and, therefore, it will result in the automatic reduction in the other programs that are not in this bill that I have just cited.

The SPEAKER pro tempore. Is there any other Member who wishes to be heard on the point of order?

Does the gentleman from Wisconsin (Mr. OBEY) insist on his point of order?

Mr. OBEY. Madam Speaker, I have no desire to delay this bill, and so I guess what I would say is that I think I have demonstrated, by raising the point of order, that this bill, in fact, is not in compliance. If the House wishes to proceed and vote for a bill which is going to result in the kind of massive sequestration that I have just indicated, then so be it. That would be the House's choice.

So I guess I am in a position where, in order to contribute to the ability of the House's ability to do its business, I will withdraw the point of order, but I would caution every Member who intends to vote for this bill that, if they do so, they will in fact be imposing just such a sequestration on both the Defense budget and on the domestic programs.

With that, Madam Speaker, I withdraw my point of order.

The SPEAKER pro tempore. The gentleman withdraws his point of order.

***The “Rise and Report” Point of Order***

**§ 11.23 The House has adopted a special order of business resolution reported from the Committee on Rules containing a separate section creating a point of order (applicable during that Congress)<sup>(1)</sup> against rising from the Committee of the Whole and reporting a general appropriation bill that exceeded the applicable section 302(b) allocation and providing additional procedures should such a point of order be sustained.**

On Apr. 28, 2005,<sup>(2)</sup> the House adopted the following resolution:

Mr. PUTNAM. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 248 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 248

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the concurrent resolution (H. Con. Res. 95) establishing the congressional budget for the United States Government for fiscal year 2006, revising appropriate budgetary levels for fiscal year 2005, and setting forth appropriate budgetary levels for fiscal years 2007 through 2010. All points of order against the conference report and against its consideration are waived. The conference report shall be

1. *Parliamentarian’s Note*: As noted, this point of order was applicable only during the 109th Congress. However, in the 110th, 111th, and 112th Congresses, the same point of order was carried as a separate order in the resolution adopting the rules of the House for those Congresses. See 157 CONG. REC. H9 [Daily Ed.], 112th Cong. 1st Sess., Jan. 5, 2011 (H. Res. 5, sec. 3(a)(4)); 155 CONG. REC. 9, 111th Cong. 1st Sess., Jan. 6, 2009 (H. Res. 5, sec. 3(a)(4)); and 153 CONG. REC. 24, 110th Cong. 1st Sess., Jan. 4, 2007 (H. Res. 5, sec. 511(a)(4)). The procedural provisions triggered upon sustaining this point of order operate in a similar manner to the question of consideration (see Deschler-Brown Precedents Ch. 29 § 5, *supra*): the chairman of the Committee of the Whole puts the question, “Shall the Committee of the Whole rise and report the bill to the House with such amendments as may have been adopted notwithstanding that the bill exceeds its allocation of new budget authority under section 302(b)?” Such question is debatable for 10 minutes, equally divided between the proponent and an opponent. If decided in the negative, only one proper amendment is in order—debatable for 10 minutes and not subject to a demand for a division of the question—and certain pro forma amendments. It should also be noted that this point of order lies against a *motion* to rise and report a non-compliant bill. A special order of business resolution reported by the Committee on Rules for the consideration of a bill may specify that the Committee *automatically* rise (without motion) to report the bill back to the House upon the completion of all debate and consideration of any permitted amendments. Such a special order of business prevents any opportunity to raise this point of order. For an example thereof, see 155 CONG. REC. 16078, 16079, 111th Cong. 1st Sess., June 24, 2009 (H. Res. 573).
2. 151 CONG. REC. 8309, 8318, 109th Cong. 1st Sess.

considered as read. The conference report shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget.

Sec. 2. (a) During the One Hundred Ninth Congress, except as provided in subsection (c), a motion that the Committee of the Whole rise and report a bill to the House shall not be in order if the bill, as amended, exceeds an applicable allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974, as estimated by the Committee on the Budget.

(b) If a point of order under subsection (a) is sustained, the Chair shall put the question: "Shall the Committee of the Whole rise and report the bill to the House with such amendments as may have been adopted notwithstanding that the bill exceeds its allocation of new budget authority under section 302(b) of the Congressional Budget Act of 1974?" Such question shall be debatable for 10 minutes equally divided and controlled by a proponent of the question and an opponent but shall be divided without intervening motion.

(c) Subsection (a) shall not apply—

(1) to a motion offered under clause 2(d) of rule XXI; or

(2) after disposition of a question under subsection (b) on a given bill.

(d) If a question under subsection (b) is decided in the negative, no further amendment shall be in order except—

(1) one proper amendment, which shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole; and

(2) pro forma amendments, if offered by the chairman or ranking minority member of the Committee on Appropriations or their designees, for the purpose of debate. . . .

The SPEAKER pro tempore (Mr. [Ray] LAHOOD [of Illinois]). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

### ***Section 302(c) Points of Order***

**§ 11.24 A motion to recommit a joint resolution further continuing appropriations with instructions to report "forthwith" an amendment was held to violate section 302(c) of the Congressional Budget Act<sup>(1)</sup> (sustained by tabling of appeal) by providing new budget authority in a fiscal year for which the Committee on Appropriations had received an allocation under section 302(a) but had yet to file the required section 302(b) report dividing such allocation among its subcommittees.**

On Jan. 28, 2003,<sup>(2)</sup> the following events occurred in the House:

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I offer a motion to recommit.

1. 2 USC § 633(c).

2. 149 CONG. REC. 2009, 2010, 108th Cong. 1st Sess.

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The SPEAKER pro tempore.<sup>(3)</sup> Is the gentleman opposed to the joint resolution?

Mr. OBEY. Without the pending recommit motion, certainly.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. OBEY moves to recommit the joint resolution, H.J. Res. 13, to the Committee on Appropriations with instructions to report the same back forthwith with an amendment:

Section 101 of Public Law 107–229 in further amending by adding at the end:

“*Provided further*, \$3,500,000,000 is available for Federal Emergency Management Agency, Emergency Management and Planning Assistance, for state and local first responders homeland security grants to equip first responders, and \$90,000,000 is available for the Centers for Disease Control for baseline health screening and long-term medical monitoring of emergency response and recovery personnel exposed to toxic substances at the World Trade Center site.”

POINT OF ORDER

Mr. [Adam] PUTNAM [of Florida]. Mr. Speaker, I make a point of order against the motion to recommit.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. PUTNAM. Mr. Speaker, I make a point of order against the motion to recommit because it violates section 302(c) of the Congressional Budget Act. Section 302(c) prohibits the consideration of any amendment that provides new budget authority for a fiscal year until the Committee on Appropriations has made the suballocations required by section 302(b) of the Congressional Budget Act.

This motion to recommit increases the amount of budget authorities provided by the measure. The suballocations published by the Committee on Appropriations on October 10, 2002, lapsed upon the adjournment of the 107th Congress and no new 302(b) suballocations have been made for the 108th Congress. Hence, I make a point of order that this motion to recommit violates section 302(c) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. OBEY. I certainly do, Mr. Speaker.

The gentleman contends the motion is not in order because the majority has failed to file its 302(b) allocations. If this amendment were to be ruled out of order, what that would mean is that the majority has put the fix in in the Committee on Rules so that they can bring what they want to bring to the floor but the minority cannot.

In other words, the minority would be penalized procedurally for a failure to act on the part of the majority. I would find that to be a quaint interpretation indeed. It is patently unfair to allow the majority to bring up a bill without filing its suballocations and then punish the minority for something the majority has not done.

□ 1330

The SPEAKER pro tempore (Mr. THORNBERRY). If no further Members wish to be heard on the point of order, the Chair is prepared to rule.

As the Chair ruled on January 8, 2003,<sup>(4)</sup> supported by the House on appeal, section 302(c) of the Congressional Budget Act of 1974 precludes consideration of an appropriations measure, including an amendment, providing new budget authority after the Committee on Appropriations has received a section 302(a) allocation for a fiscal year until the committee makes the suballocations required under section 302(b).

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3. Mac Thornberry (TX).

4. See § 11.25, *infra*.

The Committee on Appropriations has not made the required section 302(b) suballocations, and the motion to recommit provides new budget authority in violation of section 302(c) of the Budget Act. The point of order is sustained.

Mr. OBEY. Mr. Speaker, if the majority is going to abuse the rules in such a way that the minority is precluded from meeting its responsibilities, I have no alternative but to appeal the ruling of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

## MOTION TO TABLE OFFERED BY MR. PUTNAM

Mr. PUTNAM. Mr. Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. PUTNAM) to lay the appeal on the table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OBEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 222, nays 196, not voting 16, as follows:

[Roll No. 15] . . .

So the motion to table was agreed to.

So the decision of the Chair stands as the judgment of the House.<sup>(5)</sup>

**§ 11.25 A motion to recommit a joint resolution continuing appropriations with instructions to report “forthwith” an amendment was held to violate section 302(c) of the Congressional Budget Act<sup>(1)</sup> by providing new budget authority in a fiscal year for which the Committee on Appropriations had received an allocation under section 302(a) but had yet to file the required report dividing such allocation among its subcommittees (sustained by tabling of appeal).**

On Jan. 8, 2003,<sup>(2)</sup> the following events occurred in the House:

5. *Parliamentarian’s Note*: As the proceedings indicate, a waiver of section 302(c) of the Congressional Budget Act applies only to the specific text or measure referenced in the waiver. Here, although the broad waiver of points of order against the underlying bill covered section 302(c) points of order, no such points of order were waived for amendments thereto (including amendments contained in a motion to recommit). For an example of a special order of business resolution that specifically waived section 302(c) for an amendment in the nature of a substitute, see 135 CONG. REC. 26843, 101st Cong. 1st Sess., Nov. 1, 1989 (H. Res. 277).

1. 2 USC § 633(f).

2. 149 CONG. REC. 217, 224–226, 108th Cong. 1st Sess.

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FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 2003

Mr. [Bill] YOUNG of Florida. Mr. Speaker, pursuant to House Resolution 15, I call up the joint resolution (H.J. Res. 1) making further continuing appropriations for the fiscal year 2003, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The text of H.J. Res. 1 is as follows:

H.J. RES. 1

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 107-229 is further amended by striking the date specified in section 107(c) and inserting in lieu thereof "January 31, 2003". . . .*

MOTION TO RECOMMIT OFFERED BY MR. OBEY

Mr. [David] OBEY [of Wisconsin]. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore.<sup>(3)</sup> Is the gentleman opposed to the joint resolution?

Mr. OBEY. I think the Speaker can safely assume that, yes.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. OBEY moves to recommit the joint resolution H.J. Res. 1 to a select committee consisting of Mr. YOUNG of Florida and Mr. OBEY of Wisconsin with instructions to report the same back to the House forthwith with the following amendments:

Page 1, line 5, after "2003", insert the following:

*"Provided, That notwithstanding any other provision of this joint resolution, \$776,000,000 is available for the Securities and Exchange Commission, Salaries and expenses."*

At the end of the joint resolution, add the following new section:

SEC. 7. Public Law 107-229 is further amended by adding at the end the following new section:

*"SEC. 138. In addition to the amounts made available by section 101, and subject to sections 107(c) and 108, amounts made available in Public Law 107-206 only to the extent that an official budget request is transmitted by the President shall be considered available for obligation."*

Mr. OBEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

POINT OF ORDER

Mr. [Gilbert] GUTKNECHT [of Minnesota]. Mr. Speaker, I make a point of order against the motion to recommit because it violates section 302(c) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman care to argue further on his point of order?

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3. C. L. Otter (ID).

Mr. GUTKNECHT. Mr. Speaker, Section 302(c) prohibits the consideration of any amendment that provides for new budget authority for a fiscal year until the Committee on Appropriations has made the suballocations required by section 302(b) of the Congressional Budget Act.

This motion to recommit increases the amount of budget authority provided by the measure. The suballocations published by the Committee on Appropriations on October 10 of 2002 lapsed upon the adjournment of the 107th Congress, and no 302(b) suballocations have been made for the 108th Congress. Hence I make the point of order that this motion to recommit violates section 302(c) of the Congressional Budget Act.

The SPEAKER pro tempore. Does the gentleman from Wisconsin wish to be heard on the point of order?

Mr. OBEY. Mr. Speaker, what the gentleman from Minnesota is asserting is that the minority should not be allowed to offer a legitimate amendment because the majority did not fulfill its responsibilities to abide by certain provisions of the Budget Act and by the timetable of that act. I find that highly objectionable especially since the Committee on Rules has already waived the requirement as far as the majority party is concerned. It seems to me that the House rules certainly ought to allow the minority the same privilege that the majority has arranged by rule. . . .

Mr. [James] NUSSLE [of Iowa]. Mr. Speaker, I wish to be heard on the point of order.

The SPEAKER pro tempore. The gentleman from Iowa is recognized.

Mr. NUSSLE. Mr. Speaker, just to correct the record, the gentleman from Massachusetts is one of the experts when it comes to the rules of the House, and I commend him for that, but just to be technically correct with regard to his statement, it is not because we failed to do appropriation bills that the 302(b) allocations did not carry forward. It is because the Senate failed to produce a budget that the 302(b) allocation did not carry forward. Had a budget resolution been completed, the 302(b) allocations would have carried forward even though it was a new Congress.

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the gentleman, and that is true. But it is also true that we could have in this House passed those appropriation bills without any action from any other body, and it is a fact in addition that we did not finish the work last year that put us in the situation which the majority takes advantage of by denying the House the chance to have even a germane recommit on the motion.

The SPEAKER pro tempore. The Chair would take this opportunity to remind those who are speaking to the point of order that their comments should be directed through the Chair.

The gentleman from Iowa is recognized.

Mr. NUSSLE. Mr. Speaker, I support the point of order. The gentleman from Massachusetts is correct that certainly appropriation bills could have moved forward. We deemed the budget in order for that process to continue. There are many reasons why appropriation bills did not move forward, but the only fact I wanted to make clear for the RECORD and for the purpose of precedent setting, if there will be precedent setting this evening, is that in fact it was the failure of a budget to be produced by the Senate and not failure of appropriation bills to be produced that causes this extraordinary procedure to occur this evening. I hope this is not precedent setting because it is very unfortunate that in fact for the first time since the 1974 Budget Act was passed that the other body failed to produce a budget.

Mr. Speaker, I support the point of order.

The SPEAKER pro tempore. Unless the gentleman from Minnesota desires to speak further on the point of order, the Chair is prepared to rule.



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Mr. GUTKNECHT. Mr. Speaker, I will let the Chair rule.

The SPEAKER pro tempore. The gentleman from Minnesota (Mr. GUTKNECHT) makes a point of order that the amendment proposed in the motion to recommit offered by the gentleman from Wisconsin (Mr. OBEY) violates section 302(c) of the Congressional Budget Act of 1974. Section 302(c) precludes consideration after the Committee on Appropriations has received a section 302(a) allocation for a fiscal year of a measure within the committee's jurisdiction that provides new budget authority until the committee makes the suballocations required under section 302(b).

The amendment proposed in the motion offered by the gentleman from Wisconsin provides new budget authority, and the Committee on Appropriations has not made the required section 302(b) suballocations, and as such, the motion to recommit violates section 302(c) of the Budget Act. The point of order is sustained, and the motion is not in order.

Mr. FRANK of Massachusetts. Mr. Speaker, I move to appeal the decision of the Chair.

The SPEAKER pro tempore. The question is: Shall the decision of the Chair stand as the judgment of the House?

MOTION TO TABLE OFFERED BY MR. GUTKNECHT

Mr. GUTKNECHT. Mr. Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Minnesota (Mr. GUTKNECHT) to lay the appeal on the table.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OBEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members. . . .

[Roll No. 10] . . .

So the motion to table the appeal of the ruling of the Chair was agreed to.

The result of the vote was announced as above recorded.

**§ 11.26 Where a general appropriation bill containing new budget authority was permitted to be considered by a special order of business waiving the application of points of order under section 302(c) of the Congressional Budget Act<sup>(1)</sup> against the bill, an amendment further increasing budget authority was ruled out of order (despite failure to raise similar points of order against other amendments) for violating section 302(c), which prohibits consideration of such amendments prior to the filing of a section 302(b) report by the Committee on Appropriations.**

On July 13, 1987,<sup>(2)</sup> the following events occurred in the Committee of the Whole:

1. 2 USC § 633(c).
2. 133 CONG. REC. 19513, 19514, 100th Cong. 1st Sess.

The CHAIRMAN.<sup>(3)</sup> The Clerk will read.  
The Clerk read as follows:

## RESEARCH, ENGINEERING, AND DEVELOPMENT

## (AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, in accordance with the provisions of the Federal Aviation Act (19 U.S.C. 1301-1542), including construction of experimental facilities and acquisition of necessary sites by lease or grant, \$161,500,000, to be derived from the Airport and Airway Trust Fund and to remain available until expended. *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for research, engineering, and development.

## AMENDMENT OFFERED BY MR. GLICKMAN

Mr. [Daniel] GLICKMAN [of Kansas]. Mr. Chairman, I offer an amendment.  
The Clerk read as follows:

Amendment offered by Mr. GLICKMAN: On page 12, line 15, strike "\$161,500,000" and insert in lieu thereof "\$175,000,000".

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Chairman, I reserve a point of order against the amendment. . . .

## POINT OF ORDER

Mr. WALKER. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. Does the gentleman persist with his point of order?

Mr. WALKER. I do, Mr. Chairman.

The CHAIRMAN. The gentleman is recognized on his point of order.

Mr. WALKER. Let me say to the gentleman from Kansas first it is my understanding this is the first time that this point of order would be available in the course of the deliberations today. Some of the other amendments did not have the point of order raised against them. In this particular case I make an objection to the amendment, it is in violation of section 302(c) of the Budget Act.

The CHAIRMAN. Does the gentleman from Kansas wish to respond?

Mr. GLICKMAN. Mr. Chairman, I am not going to concede the point of order, because I think that we may be establishing a precedent here and I would like to see the Chair work for his money today and rule on this issue.

As I understand it, the Appropriations Committee has not made an allocation pursuant to section 302(b) of the Budget Act and this particular subcommittee has no such allocation before it and as a matter of fact I am told that this morning they voted down an allocation reflecting the transportation portions of this bill. Inasmuch as there is no pending allocation, pursuant to section 302(b), I submit to you there is no reason why I cannot offer this amendment to add funds under the general bill. Second of all, the rule waives points of order under the Budget Act. I would submit that since it waives points of order under the Budget Act itself it also waives points of order with respect to amendments offered under the Budget Act. Third of all, Mr. Chairman, there have been previous amendments offered that would increase funding including Mr. LEHMAN'S own amendment to increase the Coast Guard authorization appropriation by \$30 million together with Mr. JONES of North Carolina. So for the following reasons I would urge the Chair to reject, overrule the point of order raised by the gentleman from Pennsylvania.

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3. Leon Panetta (CA).

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The CHAIRMAN. [Mr. Panetta]. Is there anyone else who wishes to be heard on the point of order? If not, the Chair is prepared to rule.

The gentleman from Pennsylvania makes a point of order that the amendment offered by the gentleman from Kansas violates section 302(c) of the Budget Act. That section of the Budget Act prohibits consideration of bills, resolutions, or amendments that provide net budget authority within the jurisdiction of a committee until that committee has made the allocations required by section 302(b) of the Budget Act. Although the Appropriations Committee has received an allocation of new budget authority following adoption of the budget resolution, the committee has not filed its report subdividing that allocation among its subcommittees as required by section 302(b). Thus it was necessary for House Resolution 221 to waive the point of order under section 302(c) in order to permit consideration of this bill. House Resolution 221, however, which is the rule, does not apply to amendments providing new budget authority. The amendment offered by the gentleman from Kansas by increasing the amount of new budget authority in the bill provides new budget authority prior to the Appropriations Committee reporting its allocations as required by section 302(b). The amendment thus violates section 302(c) and the Chair sustains the point of order.

The Chair would add that with regard to other amendments that points of order were not raised. The Budget Act applies to each amendment separately. The mere fact that other amendments did not receive a point of order does not argue against a point of order with regard to this amendment.

So for those reasons the Chair sustains the point of order.

***Section 401(b)(2) Referrals***

**§ 11.27 Pursuant to section 401(b)(2) of the Congressional Budget Act,<sup>(1)</sup> the Speaker sequentially referred a bill reported by the Committee on Armed Services (containing new spending authority in excess of such committee's section 302(a) allocation) to the Committee on Appropriations for a period not to exceed 15 legislative days.**

On Mar. 7, 1991,<sup>(2)</sup> the Speaker sequentially referred a supplemental authorization bill (H.R. 1175), reported from the Committee on Armed Services, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. [Leslie] ASPIN [of Wisconsin]: Committee on Armed Services. H.R. 1175, a bill to authorize supplemental appropriations for fiscal year 1991 in connection with operations in and around the Persian Gulf presently known as Operation Desert Shield/

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1. 2 USC § 651(b)(2).

2. 137 CONG. REC. 5579, 5580, 102d Cong. 1st Sess.

Storm, and for other purposes with amendments; referred to the Committee on Appropriations for a period not to exceed 15 legislative days, with instructions to report back to the House as provided in section 401(b) of Public Law 93-344 (Rept. 102-16, Pt. 1). Ordered to be printed.

**§ 11.28 Pursuant to section 401(b)(2) of the Congressional Budget Act,<sup>(1)</sup> the Speaker sequentially referred a bill reported by the Committee on Agriculture (containing new spending authority in excess of such committee's section 302(a) allocation) to the Committee on Appropriations for a period not to exceed 15 legislative days.**

On June 11, 1980,<sup>(2)</sup> the Speaker sequentially referred an agricultural loan bill (H.R. 7142), reported from the Committee on Agriculture, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. [Thomas] FOLEY [of Washington]: Committee on Agriculture. H.R. 7142. A bill to eliminate any cross compliance requirement as a condition of eligibility for loans and purchases in the case of 1979 crop soybeans thus providing soybean producers with a needed source of short-term credit during their financial crisis; with amendments, and referred to the Committee on Appropriations for a period not to exceed 15 legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93-344. (Rept. No. 96-1085, pt. 1). Ordered to be printed.

**§ 11.29 The House has agreed to a unanimous-consent request to extend by another 15 legislative days the sequential referral of a bill to the Committee on Appropriations pursuant to section 401(b)(2) of the Congressional Budget Act.<sup>(1)</sup>**

On Jan. 24, 1980,<sup>(2)</sup> the following unanimous-consent request was agreed to by the House:

EXTENDING FOR CONSIDERATION OF H.R. 1262

Mr. [Jamie] WHITTEN [of Mississippi]. Mr. Speaker, I ask unanimous consent that the period of time for which the bill (H.R. 1262) to amend title 5, United States Code, to provide that civilian air traffic controllers of the Department of Defense shall be treated the same as air traffic controllers of the Department of Transportation for purposes of retirement, and for other purposes, reported from the Committee on Post Office and

1. 2 USC § 651(b)(2).

2. 126 CONG. REC. 14049, 96th Cong. 2d Sess.

1. 2 USC § 651(b)(2).

2. 126 CONG. REC. 559, 96th Cong. 2d Sess.

**Ch. 41 § 11** DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

Civil Service on December 20, 1979, and sequentially referred to the Committee on Appropriations for 15 legislative days as required<sup>(3)</sup> by section 401(a)<sup>(4)</sup> of the Congressional Budget Act, be extended for an additional 15-legislative-day period.

The SPEAKER.<sup>(5)</sup> Is there objection to the request of the gentleman from Mississippi? There was no objection.

**§ 11.30 Where a bill is reported prior to the adoption of a concurrent resolution on the budget, and the subsequent adoption of a budget resolution reveals that such bill exceeds the committee's section 302(a) allocation, the Speaker may discharge the bill from the Union Calendar and, pursuant to section 401(b)(2) of the Congressional Budget Act,<sup>(1)</sup> sequentially refer such bill to the Committee on Appropriations for a period not to exceed 15 legislative days.**

On July 18, 1978,<sup>(2)</sup> the Speaker sequentially referred a child nutrition bill (H.R. 12511), reported from the Committee on Education and Labor, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X,

[*Omitted from the Record of July 18, 1978*]

The bill to extend for 1 year the child care food program of the National School Lunch Act and the women, infants, and children program of the Child Nutrition Act of 1966 (H.R. 12511, as reported on May 15, 1978) was referred by the Speaker as follows:

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Appropriations for a period not to exceed 15 legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93-344.

**§ 11.31 Pursuant to section 401(b)(2) of the Congressional Budget Act,<sup>(1)</sup> the Speaker may discharge from the Union Calendar a bill**

3. The Budget Enforcement Act of 1997 changed the referral process under section 401(b)(2) from a mandatory requirement to discretionary authority that the Speaker may or may not choose to exercise. For more on the BEA of 1997, see § 1, *supra*.
4. As in the *Congressional Record*. This should be section 401(b) of the Congressional Budget Act.
5. Thomas O'Neill (MA).
  1. 2 USC § 651(b)(2).
  2. 124 CONG. REC. 21786, 21787, 95th Cong. 2d Sess. For examples of other bills taken off the Union Calendar and sequentially referred after the adoption of a concurrent resolution on the budget revealed an allocation breach, see 125 CONG. REC. 13385, 96th Cong. 1st Sess., June 5, 1979; and 127 CONG. REC. 10622, 97th Cong. 1st Sess., May 21, 1981.
    1. 2 USC § 651(b)(2).

**that exceeds the reporting committee's section 302 allocation (whenever such breach is discovered) and refer such bill to the Committee on Appropriations for a period not to exceed 15 legislative days.<sup>(2)</sup>**

On Sept. 7, 1977,<sup>(3)</sup> the Speaker sequentially referred a bill establishing a national park (H.R. 3813), reported from the Committee on the Interior, to the Committee on Appropriations for a period not to exceed 15 legislative days:

REPORTED BILL SEQUENTIALLY REFERRED

*[Omitted from the Record of September 7, 1977]*

Under clause 5 of rule X, the bill to amend the act of October 2, 1968, an act to establish a Redwood National Park in the State of California, and for other purposes (H.R. 3813), as reported on August 5, 1977, was referred by the Speaker, as follows:

The Committee of the Whole House on the State of the Union discharged, and referred to the Committee on Appropriations for a period not to exceed fifteen legislative days with instructions to report back to the House as provided in section 401(b) of Public Law 93-344.

## § 12. Section 401(a)

Section 401(a)<sup>(1)</sup> prohibits the consideration of legislation that provides new authority to enter into contracts under which the Federal Government is obligated to make outlays, new authority to incur indebtedness, or new credit authority, unless that legislation provides that the new authority be effective for any fiscal year only to the extent or in the amounts provided in advance in appropriation acts. The point of order prevents such “back-door” spending that is not constrained by the appropriations process. Mere authorizations do not violate this section of the Congressional Budget Act.<sup>(2)</sup> This section applies to reported bills and joint resolutions (in the House), amendments, motions, or conference reports.<sup>(3)</sup>

Prior to the revisions by Gramm-Rudman-Hollings, the Congressional Budget Act did not contain a mechanism to subject credit authority to the

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2. For examples of other bills discharged from the Union Calendar for a sequential referral pursuant to section 401(b)(2), see, *e.g.*, 124 CONG. REC. 28543, 95th Cong. 2d Sess., Sept. 8, 1978; and 128 CONG. REC. 24317, 97th Cong. 2d Sess., Sept. 20, 1982.
  3. 123 CONG. REC. 28173, 95th Cong. 1st Sess.
  1. 2 USC § 651(a). The Budget Enforcement Act of 1997 collapsed the original section 402 point of order into section 401 and repealed the definition of “new spending authority.”
  2. See § 9.2, *supra*.
  3. See § 12.1, *infra*.