

## Ch. 41 § 24 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

Pursuant to clause 10 of rule XXI, the Chair is authoritatively guided by estimates from the Committee on the Budget that the net effect of the provisions in the amendment affecting revenues would increase the deficit for a relevant period.

Accordingly, the point of order is sustained and the motion is not in order.

Mr. McCRERY. Since that was an awfully quick ruling, Mr. Speaker, I most respectfully do appeal the ruling of the Chair because this may be the only opportunity we have to veer from this tax increase interpretation so that we can clear a bill that the Senate will pass and the President will sign.

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. NEAL OF MASSACHUSETTS

Mr. NEAL of Massachusetts. Mr. Speaker, I move to table the motion to appeal.

The SPEAKER pro tempore. The question is on the motion to table.

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

Mr. McCRERY. 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.

Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to table will be followed by a 5-minute vote on the passage of the bill, if ordered, and if arising without further debate or proceedings in recommittal.

The vote was taken by electronic device, and there were—yeas 225, nays 191, not voting 15, as follows:

[Roll No. 1152] . . .

So the motion to table was agreed to.

## § 25. House CUTGO Rule

**§ 25.1 A point of order pursuant to Rule XXI clause 10<sup>(1)</sup> must be made prior to the consideration of a measure, and is untimely pending the question of engrossment and third reading of such measure.**

On Mar. 30, 2011,<sup>(2)</sup> immediately following the rejection of an amendment contained in a motion to recommit (but before the question on engrossment and third reading was put), a Member rose for the following point of order:

### POINT OF ORDER

Mr. [Anthony] WEINER [of New York]. Mr. Speaker, I rise to a point of order.

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1. *House Rules and Manual* § 1068f (2011).

2. 157 CONG. REC. H2079, H2080 [Daily Ed.], 112th Cong. 1st Sess.

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

Mr. WEINER. Mr. Speaker, I make a point of order against consideration of this bill because the legislation violates clause 10 of rule XXI which states that it is not in order to consider a bill if it has the effect of increasing spending for the current year and a 5-year window. CBO estimates this bill will cost \$500 million over 5 years without an offset in the bill.

□ 1630

As you can see, Mr. Speaker, “We are setting PAYGO aside and instituting Cut-As-You-Go, which means if there is any spending called for in any new way or authorization, that there has to be some cutting somewhere.” ERIC CANTOR.

Further, the Speaker said:

“Very simply under the Cut-Go rule, if it is your intention to create a new government program, you must also terminate or reduce spending on an existing government program of equal or greater size—in the same bill.”

I would point out, Mr. Speaker, as we already know, on January 5, there was a violation of the rules where Members failed to take the oath when they were not in the room.

On February 9: Failed to offer a proper constitutionality statement with legislation that was offered.

On March 3: Failed to require a three-fifths majority for the passage of a bill that raised tax rates.

On March 17, we failed to make legislation available for 72 hours.

And now we are failing to include an offset for a new government program required under these rules under Cut-Go.

In order for these rules to be taken seriously, we can’t simply say, Because it’s a favorite program of the Speaker, we’re going to waive the rules. The rules are there for a reason. We voted on those rules, and they were made an important part of the change of hands in this House. When you have statements like this by the Speaker, they should be taken seriously. There is no argument that the funds in this bill are simply not paid for, and I insist on my point of order.

The SPEAKER pro tempore. The Chair is not aware of any point of order against the pending measure that would be timely or cognizable at this time.

**§ 25.2 A motion to recommit a bill with instructions to report “forthwith” an amendment containing provisions the net effect of which would increase direct spending over a relevant period of time, as authoritatively estimated by the chairman of the Committee on the Budget pursuant to Rule XXIX clause 4,<sup>(1)</sup> was held to violate Rule XXI clause 10<sup>(2)</sup> and ruled out of order (sustained by tabling of appeal).**

On Mar. 3, 2011,<sup>(3)</sup> the following proceedings took place:

3. Candice Miller (MI).

1. *House Rules and Manual* § 1105d (2011).

2. *House Rules and Manual* § 1068f (2011).

3. 157 CONG. REC. H1549–551 [Daily Ed.], 112th Cong. 1st Sess.

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MOTION TO RECOMMIT

Mr. [Jerry] McNERNEY [of California]. Madam Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore.<sup>(4)</sup> Is the gentleman opposed to the bill?

Mr. McNERNEY. I am opposed in its current form.

Mr. [David] CAMP [of Michigan]. Madam Speaker, I reserve a point of order.

The SPEAKER pro tempore. A point of order is reserved.

The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. McNerney moves to recommit the bill H.R. 4 to the Committee on Ways and Means with instructions to report the same back to the House forthwith with the following amendment:

Add at the end of the bill the following new sections:

**SEC. 5. NONREFUNDABLE PERSONAL CREDIT FOR TAXPAYERS SUBJECT TO A TAX INCREASE UNDER THE SMALL BUSINESS PAPERWORK MANDATE ELIMINATION ACT OF 2011.**

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25D the following new section: “SEC. 25E. CREDIT FOR TAXPAYERS SUBJECT TO A TAX INCREASE UNDER THE SMALL BUSINESS PAPERWORK MANDATE ELIMINATION ACT OF 2011.

“(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the excess (if any) of—

“(1) the regular tax liability of the taxpayer for the taxable year, over

“(2) the regular tax liability of the taxpayer for the taxable year, determined by applying section 36B(f)(2) (as in effect on the day before the date of the enactment of this section) in lieu of section 36(b)(f)(2) (as in effect on the day after the date of the enactment of this section).

“(b) CARRYFORWARD OF UNUSED CREDIT.—

“(1) RULE FOR YEARS IN WHICH ALL PERSONAL CREDITS ALLOWED AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX.—In the case of a taxable year to which section 26(a)(2) applies, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(2) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

“(2) RULE FOR OTHER YEARS.—In the case of a taxable year to which section 26(a)(2) does not apply, if the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a)(1) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) of such Code is amended by inserting “25E,” after “25D.”.

(2) Section 25(e)(1)(C) of such Code is amended by inserting “25E,” after “25D,” both places it appears.

(3) Section 25A(i)(5)(B) of such Code is amended by inserting “25E,” after “25D.”.

(4) Section 25B(g)(2) of such Code is amended by inserting “25E,” after “25D.”.

(5) Sections 25D(c)(1)(B) and 25D(c)(2)(A) of such Code are both amended by inserting “and section 25E” after “this section”.

(6) Section 26(a)(1) of such Code is amended by inserting “25E,” after “25D.”.

(7) Section 30(c)(2)(B)(ii) of such Code is amended by inserting “25E,” after “25D.”.

(8) Section 30B(g)(2)(B)(ii) of such Code is amended by inserting “25E,” after “25D.”.

(9) Section 30D(c)(2)(B)(ii) of such Code is amended by striking “sections 23 and 25D” and inserting “sections 23, 25D, and 25E”.

(10) Sections 1400C(d) of such Code is amended by inserting “25E,” after “25D,” both places it appears.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25D the following new item:

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4. Jo Ann Emerson (MO).

“Sec. 25E. Credit for taxpayers subject to a tax increase under the Small Business Paperwork Mandate Elimination Act of 2011.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2013.

**SEC. 6. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.**

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by inserting after clause (iii) the following new clause:

“(iv) in the case of a major integrated oil company (as defined in section 167(h)(5)), the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2014.

**SEC. 7. MAJOR INTEGRATED OIL COMPANIES INELIGIBLE FOR LAST-IN, FIRST-OUT METHOD OF INVENTORY.**

(a) IN GENERAL.—Section 471 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) MAJOR INTEGRATED OIL COMPANIES INELIGIBLE FOR LAST-IN, FIRST-OUT METHOD.—In the case of a major integrated oil company (as defined in section 167(h)(5)(B))—

“(1) the last-in, first-out method of determining inventories shall in no event be treated as clearly reflecting income, and

“(2) sections 472 and 473 shall not apply.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendments made by this section to change its method of accounting for its first taxable year beginning after December 31, 2014—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) if the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 is positive, such amount shall be taken into account over a period of 8 years beginning with such first taxable year. . . .

POINT OF ORDER

Mr. CAMP. Madam Speaker, I insist on my point of order.

I make a point of order against the motion because it violates clause 10 of rule XXI, as it has the net effect of increasing mandatory spending within the time period set forth in the rule.

I ask for a ruling of the Chair.

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

The Chair recognizes the gentleman from California. . . .

The SPEAKER pro tempore. The Chair has heard enough and is prepared to rule at this time.

Mr. [Anthony] WEINER [of New York]. Madam Chair, point of order.

The SPEAKER pro tempore. Does the gentleman from New York have a point of order?

Mr. WEINER. Madam Speaker, Members should have an opportunity to be heard on the point of order. Just because one person you might feel didn't address it doesn't mean all of us should be prejudiced in our opportunity to speak.

The SPEAKER pro tempore. Argument is at the discretion of the Chair, to edify her judgment.

The Chair finds that it is time to now rule on the point of order.

The gentleman from Michigan makes a point of order that the motion offered by the gentleman from California violates clause 10 of rule XXI by proposing an increase in mandatory spending over a relevant period of time.

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Pursuant to clause 10 of rule XXI and clause 4 of rule XXIX, the Chair is authoritatively guided by estimates from the chair of the Committee on the Budget that the net effect of the provisions in the amendment would increase mandatory spending over a relevant period as compared to the bill.

Accordingly, the point of order is sustained and the motion is not in order.

Mr. [Sander] LEVIN [of Michigan]. Madam Speaker, I 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

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

The SPEAKER pro tempore. The question is on the motion to table.

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

Mr. CAMP. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, this 15-minute vote on the motion to table will be followed by a 5-minute vote on passage of the bill, if arising without further proceedings in recommittal.

The vote was taken by electronic device, and there were—yeas 243, nays 181, not voting 8, as follows:

[Roll No. 161]

**§ 25.3 An amendment containing provisions the net effect of which would increase direct spending over a relevant period of time, as authoritatively estimated by the chairman of the Committee on the Budget pursuant to Rule XXIX clause 4,<sup>(1)</sup> was held to violate Rule XXI clause 10<sup>(2)</sup> and ruled out of order.<sup>(3)</sup>**

On Jan. 26, 2011,<sup>(4)</sup> the following proceedings occurred:

AMENDMENT NO. 5 OFFERED BY MR. POLIS

Mr. [Jared] POLIS [of Colorado]. Mr. Chairman, I have an amendment at the desk. The CHAIR.<sup>(5)</sup> The Clerk will designate the amendment.

The text of the amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. VOLUNTARY FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS.**

(a) IN GENERAL.—Section 6096 of the Internal Revenue Code of 1986 is amended to read as follows:

1. *House Rules and Manual* § 1105d (2011).
2. *House Rules and Manual* § 1068f (2011).
3. See also 157 CONG. REC. H1746–7 [Daily Ed.], 112th Cong. 1st Sess., Mar. 11, 2011; and 157 CONG. REC. H1695, 1696 [Daily Ed.], 112th Cong. 1st Sess., Mar. 10, 2011.
4. 157 CONG. REC. H494–H496 [Daily Ed.], 112th Cong. 1st Sess.
5. Steven LaTourrette (OH).

**“SEC. 6096. VOLUNTARY DESIGNATION BY INDIVIDUALS.**

“(a) GENERAL RULE.—Every taxpayer who makes a return of the tax imposed by chapter 1 for any taxable year may designate an amount shall be paid over to the Presidential Election Campaign Fund in accordance with the provisions of section 9006(a). The amount designated under the preceding sentence—

“(1) may not be less than \$1, and

“(2) shall be in addition to any payment of tax for the taxable year.

“(b) MANNER AND TIME OF DESIGNATION.—Any designation under subsection (a) for any taxable year—

“(1) shall be made at the time of filing the return of the tax imposed by chapter 1 for such taxable year and in such manner as the Secretary may by regulation prescribe, except that such designation shall be made either on the first page of the return or on the page bearing the taxpayer’s signature, and

“(2) shall be accompanied by a payment of the amount so designated.

“(c) TREATMENT OF AMOUNTS DESIGNATED.—For purposes of this title, the amount designated by any taxpayer under subsection (a) shall be treated as a contribution made by such taxpayer to the United States on the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if later, the date the return is filed.”.

(b) CLERICAL AMENDMENT.—The item relating to section 6096 in the table of sections for part VIII of subchapter A of chapter 61 of such Code is amended to read as follows:

“Sec. 6096. Voluntary designation by individuals.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Mr. [Peter] ROSKAM [of Illinois]. Mr. Chairman, I reserve a point of order against the amendment.

The CHAIR. A point of order is reserved.

The gentleman from Colorado is recognized for 5 minutes. . . .

## POINT OF ORDER

Mr. ROSKAM. Mr. Chairman, I must insist on the point of order. I raise a point of order against the amendment because it violates clause 10 of rule XXI, known as the CutGo rule. The amendment proposed increased mandatory spending without an equal or great reduction in existing mandatory spending relative to the underlying bill in violation of the rule. . . .

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

The Chair is prepared to rule.

The gentleman from Illinois makes a point of order that the amendment offered by the gentleman from Colorado violates clause 10 of rule XXI by proposing an increase in mandatory spending over a relevant period of time.

Pursuant to clause 10 of rule XXI and clause 4 of rule XXIX, the Chair is authoritatively guided by estimates from the chair of the Committee on the Budget that the net effect of the provisions in the amendment would increase mandatory spending over a relevant period as compared to the bill.

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