

J. Additional Budget Controls

§ 30. Unfunded Mandates

Part B of title IV of the Congressional Budget Act was added by the Unfunded Mandates Reform Act of 1995 (UMRA).⁽¹⁾ The Act established points of order against certain legislation alleged to carry Federal mandates and procedures to preclude the consideration of a rule or an order waiving such points of order in the House.⁽²⁾

The Act defines “Federal intergovernmental mandates” as an enforceable duty on State, local, or tribal government or a reduction in the authorization of appropriations for Federal financial assistance provided to those governments for compliance with such duty; or a provision which compels State and local spending for participation in an entitlement program under which at least \$500 million is provided to the States locally.⁽³⁾

The Act defines “Federal private sector mandates” as an enforceable duty on the private sector or a reduction in the authorization of appropriations for Federal financial assistance, provided to the private sector for compliance with such a duty.⁽⁴⁾

Section 425 of the Act establishes a point of order against consideration of a bill,⁽⁵⁾ joint resolution,⁽⁶⁾ amendment,⁽⁷⁾ motion,⁽⁸⁾ or conference report⁽⁹⁾ containing unfunded intergovernmental but not private sector mandates.⁽¹⁰⁾ Section 426(a) establishes a point of order against consideration of any rule or order that waives the application of section 425.⁽¹¹⁾

1. 2 USC §§ 658–658g.
2. For a statement by the offeror of the amendment establishing this point of order during consideration of the bill in the House, see Deschler-Brown Precedents Ch. 31 § 1.57, *supra*.
3. 2 USC § 658(5). The Act does not apply to conditions of Federal assistance, duties stemming from participation in voluntary Federal programs, national security and other exclusions. 2 USC § 658a. Although the Act lays out definitions of an unfunded mandate, there is no parliamentary mechanism for the Chair to evaluate whether a provision constitutes an unfunded mandate. Instead, the House chooses to proceed (or not) on legislation containing possible unfunded mandates via the question of consideration (see below).
4. 2 USC § 658(7).
5. See § 30.3, *infra*.
6. See § 30.4, *infra*.
7. See § 30.6, *infra*.
8. Such as a motion to recommit. See § 30.7, *infra*.
9. See § 30.5, *infra*.
10. 2 USC § 658d.
11. 2 USC § 658e(a).

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

In order for a point of order brought under section 426(b)(2)⁽¹²⁾ of the Congressional Budget Act to be cognizable by the Chair, the proponent must identify the specific language in the text of a special order (usually a waiver of “all” points of order against consideration) that waives section 425 of the Act. When a point of order is raised on this basis, the special order itself is subject to the question of consideration. The identification of specific text is required for section 426 points of order.⁽¹³⁾ A “hereby” special order implicitly waives section 425 by precluding the opportunity to raise the point of order, and is thus subject to section 426.⁽¹⁴⁾

Points of order under sections 425 or 426 are disposed of by the House by the question of consideration.⁽¹⁵⁾ Pursuant to the Act, the Member raising the point of order and a Member opposed are each allocated 10 minutes, after which the Chair puts the question of consideration as follows: “Will the House now consider the [measure]?” In this manner, the House chooses whether or not to proceed on a measure allegedly containing an unfunded mandate.

There is no point of order for private sector mandates.

Under the Act, the Congressional Budget Office must provide an authorizing committee with a detailed cost-estimate for each bill reported by such committee containing mandates that have the requisite annual aggregate impact on the public sector or on the private sector.⁽¹⁶⁾ The committee must publish this estimate in the committee report prior to consideration of the measure.⁽¹⁷⁾

An unfunded mandates point of order must be raised prior to the House resolving into the Committee of the Whole to consider the measure.⁽¹⁸⁾

Cost Estimates

§ 30.1 In response to parliamentary inquiries, the Speaker advised that section 424 of the Congressional Budget Act⁽¹⁾ provides for estimates of unfunded mandates by the Congressional Budget Office,

12. 2 USC § 658e(b)(2).

13. See § 30.8, *infra*.

14. See § 30.9, *infra*.

15. 2 USC § 658e(b). See also Deschler-Brown Precedents Ch. 29 § 5, *supra*.

16. See § 30.1, *infra*.

17. See sections 423 and 424 of the Budget Act; 2 USC §§ 658(b)–(c); *House Rules and Manual* § 1127 (2011). These sections provide no point of order to enforce this requirement in the House. If the CBO estimate is not available prior to the filing of the report, section 423(f) directs the committee to publish in the *Congressional Record* such estimate as soon as it is received. See § 30.2, *infra*.

18. See § 30.10, *infra*.

1. 2 USC § 658c.

and the Speaker further advised that questions about the content of a Congressional Budget Office estimate are properly addressed by debate.

On June 8, 2006,⁽²⁾ the following occurred:

COMMUNICATIONS OPPORTUNITY, PROMOTION, AND ENHANCEMENT ACT
OF 2006

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 850 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 850

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5252) to promote the deployment of broadband networks and services. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. Notwithstanding clause 11 of rule XVIII, no amendment to the bill shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report 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. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1115

UNFUNDED MANDATE POINT OF ORDER

Ms. [Tammy] BALDWIN [of Wisconsin]. Mr. Speaker, I make a point of order.

Mr. Speaker, pursuant to section 426 of the Congressional Budget Act of 1974, I make a point of order against consideration of the rule, H. Res. 850. Page 1, line 7, through page 2, line 1, states: "All points of order against consideration of the bill are waived."

The rule makes in order H.R. 5252, the Communications Opportunity, Promotion, and Enhancement Act of 2006, which contains a large unfunded mandate on State and local governments in violation of section 425 of the Budget Act. Section 426 of the Budget Act specifically states that the Committee on Rules may not waive section 425; and, therefore, this rule violates section 426.

2. 152 CONG. REC. 10453, 10454, 10457, 10458, 109th Cong. 2d Sess.

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The SPEAKER pro tempore.⁽³⁾ The gentlewoman from Wisconsin makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974. In accordance with section 426(b)(2) of the Act, the gentlewoman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

Under section 426(b)(4) of the Act, the gentlewoman from Wisconsin (Ms. BALDWIN) and the gentleman from Florida (Mr. LINCOLN DIAZ-BALART) each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate the Chair will put the question of consideration, to wit: Will the House now consider the resolution? . . .

PARLIAMENTARY INQUIRY

Mr. [Edward] MARKEY [of Massachusetts]. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman from Massachusetts may state his inquiry.

Mr. MARKEY. Mr. Speaker, under the rules, is it the Congressional Budget Office that determines whether or not an item is an unfunded mandate or not?

The SPEAKER pro tempore. Section 424 of the Congressional Budget Act does provide for estimates by the Congressional Budget Office of unfunded mandates.

Mr. MARKEY. And in this instance, has the CBO not determined that there is an unfunded mandate that could be upwards of 500 million to 1.5 billion on cities and towns over the next 5 years?

The SPEAKER pro tempore. The issue of the estimate may be addressed in debate. The point of order was made against the resolution for waiving any point of order under the Congressional Budget Act, as provided by section 426 of such Act. . . .

All time having expired, pursuant to section 426(b)(3) of the Congressional Budget Act of 1974, the question is: Will the House now consider the resolution? . . .

So the question of consideration was decided in the affirmative.

§ 30.2 If a committee has been unable to include in its report on a measure the cost estimates from the Congressional Budget Office relating to any intergovernmental and private sector mandates contained in the reported measure, the committee is directed under section 423(f)(2) of the Congressional Budget Act⁽¹⁾ to submit the estimate for publication in the *Congressional Record* once received.

On Mar. 18, 1996,⁽²⁾ the following was inserted into the *Congressional Record*:

CBO UNFUNDED MANDATE REPORT ON H.R. 2202, IMMIGRATION IN THE NATIONAL INTEREST ACT OF 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 15, 1996.

3. John Boozman (AR).

1. 2 USC § 658b(f)(2).

2. 142 CONG. REC. 5101, 104th Cong. 2d Sess.

Hon. NEWT GINGRICH,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: The Committee on the Judiciary has received further costs estimates from the Congressional Budget Office relating to intergovernmental and private sector mandates cost estimates for the "Immigration in the National Interest Act of 1995" (H.R. 2202). I am placing this letter in the CONGRESSIONAL RECORD so that all members may have the benefit of this information.

Sincerely,

HENRY J. HYDE,
Chairman.

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 13, 1996.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Wash-
ington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed intergovernmental and private sector mandates cost estimates for H.R. 2202, the Immigration in the National Interest Act of 1995. CBO provided a federal cost estimate for this bill on March 4, 1996.

This bill would impose both intergovernmental and private sector mandates, as defined in Public Law 104-4.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE ESTIMATED COST OF INTERGOVERNMENTAL MANDATES

1. Bill number: H.R. 2202.
2. Bill title: Immigration in the National Interest Act of 1995.
3. Bill status: As ordered reported by the House Committee on the Judiciary on October 24, 1995.
4. Bill purpose: H.R. 2202 would make many changes and additions to federal laws relating to immigration. A number of provisions in the bill, particularly those in titles V and VI, could have a significant impact on state and local governments. Provisions in these two titles would restrict the number of legal entrants to the United States in the future and limit the eligibility of many aliens for public benefits. Title VI would also authorize state and local governments to implement measures to minimize or recoup costs associated with providing certain benefits to legal and non-legal aliens. Other titles contain provisions that would affect the hiring procedures of some state, local, and tribal governments and preempt state and local privacy rules relating to non-legal aliens who use public services.

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

5. Intergovernmental mandates contained in the bill: H.R. 2202 would require that state and local governments:

Deny eligibility in most state and local means-tested benefit programs to non-legal aliens, including those “permanently residing under color of law” (PRUCOL). (PRUCOLs are aliens whose status is usually transitional or involves an indefinite stay of deportation)[.] . . .

Points of Order Under Section 425

§ 30.3 Section 425 of the Congressional Budget Act⁽¹⁾ prescribes a point of order against consideration of certain measures that would increase the unfunded annual costs of Federal intergovernmental mandates by greater than \$50 million (adjusted for inflation).

On May 10, 2000,⁽²⁾ a point of order was brought against a bill:

UNFUNDED MANDATE POINT OF ORDER

Mr. [John] CONYERS [of Michigan]. Mr. Speaker, I have a point of order that I would like to make about the bill that is pending.

The SPEAKER pro tempore (Mr. [John] SUNUNU [of New Hampshire]). Since the Chair is about to declare the House resolved into Committee of the Whole, the gentleman is recognized to state his point of order.

Mr. CONYERS. Mr. Speaker, pursuant to section 425 of the Congressional Budget and Impoundment Control Act of 1974, I make a point of order against the consideration of the bill, H.R. 3709, the Internet Nondiscrimination Act of 2000. Section 425 states that a point of order lies against legislation which imposes an unfunded mandate in excess of \$50 million annually against State or local governments. Page 2, lines 24 and 25 of H.R. 3709 contains a violation of section 425. Therefore, I make a point of order that this measure may not be considered pursuant to section 425.

The SPEAKER pro tempore. The gentleman from Michigan makes a point of order that the bill violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language of the bill on which he predicates the point of order.

Under section 426(b)(4) of the Act, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate, the Chair will put the question of consideration, to wit: Will the House now consider the bill in Committee of the Whole?

-
1. 2 USC § 658d.
 2. 146 CONG. REC. 7483–85, 106th Cong. 2d Sess. For additional examples of section 425 points of order raised against bills, see, *e.g.*, 146 CONG. REC. 3230, 3234–36, 106th Cong. 2d Sess., Mar. 22, 2000; and 143 CONG. REC. 7006–12, 105th Cong. 1st Sess., May 1, 1997.

The gentleman from Michigan (Mr. CONYERS) is recognized for 10 minutes and the gentleman from Pennsylvania (Mr. GEKAS) will also be recognized for 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. [George] GEKAS [of Pennsylvania]. . . .

For that reason, we have already adopted the rule, we ought to proceed with the debate on the bill, and the Members will decide by voting on the bill finally whether or not unfunded mandates has anything to do with their final decision on the vote.

Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS: Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. Speaker, I urge Members to vote “no” on any effort to disregard this point of order and proceed with the consideration of the bill before us. I urge that the point of order be supported.

Mr. Speaker, I yield back the balance of my time.

Mr. GEKAS: Mr. Speaker, I yield back the balance of my time

The SPEAKER pro tempore (Mr. SUNUNU). The question is, Will the House now consider the bill in the Committee of the Whole?

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

Mr. CONYERS: 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 271, nays 129, not voting 34, as follows:

[Roll No. 154] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Against Joint Resolutions

§ 30.4 Section 425 of the Congressional Budget Act⁽¹⁾ prescribes a point of order against consideration of an otherwise statutorily privileged joint resolution that would increase the unfunded annual costs of Federal intergovernmental mandates by greater than \$50 million (adjusted for inflation).

On May 8, 2002,⁽²⁾ a point of order was brought against a privileged joint resolution:

Mr. [Billy] TAUZIN [of Louisiana]. Madam Speaker, pursuant to section 115(e)(4) of the Nuclear Waste Policy Act of 1982, I call up the joint resolution (H.J. Res. 87) approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982.

1. 2 USC § 658d.

2. 148 CONG. REC. 7145, 7146, 7148, 7170, 107th Cong. 2d Sess.

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The SPEAKER pro tempore.⁽³⁾ The Clerk will report the joint resolution.
The Clerk read the joint resolution, as follows:

H.J. RES. 87

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there hereby is approved the site at Yucca Mountain, Nevada, for a repository, with respect to which a notice of disapproval was submitted by the Governor of the State of Nevada on April 8, 2002.

UNFUNDED MANDATES POINT OF ORDER

Mr. [James] GIBBONS [of Nevada]. Madam Speaker, I rise to make a point of order against consideration of H.J. Res. 87.

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

Mr. GIBBONS. Madam Speaker, pursuant to section 425 of the Congressional Budget Act and Impoundment Control Act of 1974, I make a point of order against consideration of H.J. Res. 87.

Section 425 states that a point of order lies against legislation which either imposes an unfunded mandate in excess of \$58 million against State and local governments or when the committee chairman does not publish, prior to floor consideration, a CBO cost mandate of any unfunded mandate in excess of \$58 million against State and local entities.

H.J. Res. 87 will in effect set the Nuclear Waste Policy Act as amended in 1987 into action. The bill reads in part, "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that there hereby is approved the site at Yucca Mountain, Nevada for a repository."

In other words, Madam Speaker, passage of this resolution will green-light the Yucca Mountain project, thus allowing for shipment of high level nuclear waste beginning in the year 2010 and continuing for the next 38 years. Thus, passage of H.J. Res. 87 clearly places an unfunded mandate on our taxpayers.

The SPEAKER pro tempore. The gentleman from Nevada (Mr. GIBBONS) makes a point of order that the joint resolution violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language in the joint resolution on which he predicates the point of order.

Under section 426(b)(4) of the Act, the gentleman from Nevada (Mr. GIBBONS) and a Member opposed each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate the Chair will put the question of consideration, to wit: "Will the House now consider the joint resolution?"

The gentleman from Nevada (Mr. GIBBONS) will be recognized for 10 minutes and the gentleman from Louisiana (Mr. TAUZIN) will be recognized for 10 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

Mr. GIBBONS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, passage of H.J. Res. 87 will undoubtedly put a process in place that will exceed the \$58 million threshold outlined in section 425 of the act. Instead of looking

3. Judy Biggert (IL).

at what the CBO score tells us, let us look at what it does not tell us. What the CBO is unable to tell us is how much it will cost our local community to implement the Nuclear Waste Management Act, as far as preparing our State and local governments for the enormous cost of safety monitoring these tens of thousands of high level nuclear waste shipments that are going to occur throughout our community. . . .

The SPEAKER pro tempore. Is the gentleman from Louisiana (Mr. TAUZIN) opposed to the point of order?

Mr. TAUZIN. Yes, Madam Speaker, I am.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Louisiana for 10 minutes.

Mr. TAUZIN. Madam Speaker, I yield myself such time as I may consume. I rise in strong opposition to this effort to block consideration of this very bipartisan consideration. . . .

When my committee filed its report on House Joint Resolution 87, it included a cost estimate from the Congressional Budget Office. This is it here. And the Congressional Budget Office report literally satisfies one of the requirements under the Unfunded Mandate Reform Act. This CBO cost estimate thoroughly reviewed the budget impacts of this resolution, and it did not identify any new mandates in this resolution that would fall under the Unfunded Mandates Reform Act.

The CBO cost estimate, in fact, further clarified that even if some minor costs of State and local governments did fall under the Unfunded Mandates Reform Act, these costs would not exceed the thresholds established under UMRA.

Let me quote from the CBO estimate directly: "H.J. Res. 87 could increase the costs that Nevada and some local governments would incur to comply with certain existing Federal requirements. The Unfunded Mandate Reform Act, UMRA, is unclear about whether such costs would count as new mandates under UMRA. In any event, CBO estimates that the annual direct costs incurred by State and local governments over the next 5 years would total significantly less than the threshold established in the law (\$58 million in 2002, adjusted annually for inflation)."

□ 1215

In other words, CBO is saying we are not sure we even count those costs; but if we did, they do not meet the threshold of the Unfunded Mandates Reform Act. . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Against Conference Reports

§ 30.5 Section 425 of the Congressional Budget Act⁽¹⁾ prescribes a point of order against consideration of a conference report that would increase the unfunded annual costs of Federal intergovernmental mandates by greater than \$50 million (adjusted for inflation).

On June 4, 1998,⁽²⁾ a point of order was raised against a conference report after the conference report had been called up pursuant to a special order of business.

1. 2 USC § 658d.

2. 144 CONG. REC. 11086, 105th Cong. 2d Sess.

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

CONFERENCE REPORT ON S. 1150, AGRICULTURAL RESEARCH, EXTENSION,
AND EDUCATION REFORM ACT OF 1998

Mr. [Robert] SMITH of Oregon. Mr. Speaker, pursuant to previous order of the House, I call up the conference report on the Senate bill (S. 1150) to ensure that federally funded agricultural research, extension, and education address high-priority concerns with national or multistate significance, to reform, extend, and eliminate certain agricultural research programs, and for other purposes.

The Clerk read the title of the Senate bill.

UNFUNDED MANDATES POINT OF ORDER

Mr. [Gerald] SOLOMON [of New York]. Mr. Speaker, I rise to a point of order under section 425 of the Congressional Budget Act regarding unfunded intergovernmental mandates on every single senior citizen homeowner in America.

The SPEAKER pro tempore.⁽³⁾ The gentleman will state his point of order.

Mr. SOLOMON. Mr. Speaker, this does increase property taxes on senior citizens, and everybody ought to be listening.

Pursuant to section 426 of the Congressional Budget Act, the language on which this point of order is premised is contained in section 502 of the subtitle A of title V, "Reductions in Payments for Administrative Costs for Food Stamps," of the conference report.

(For section 502, see CONGRESSIONAL RECORD of April 22, 1998, page 6426.)

The SPEAKER pro tempore. The gentleman from New York makes a point of order that the conference report violates section 425(a) of the Congressional Budget Act of 1974, and according to section 426 (b)(2) of the Act, the gentleman must specify the precise language of his objection in the conference report on which he predicates this point of order.

Having met this threshold burden, the gentleman from New York (Mr. SOLOMON) and a Member opposed each will control 10 minutes of debate. Pursuant to section 426 (b)(3) of the Act and after debate, the Chair will put the question of consideration, to wit: Will the House now consider the conference report?

Will the gentleman from Oregon (Mr. SMITH) claim the 10 minutes in opposition?

Mr. SMITH of Oregon. Mr. Speaker, I am in opposition.

The SPEAKER pro tempore. The gentleman from Oregon (Mr. SMITH) will be recognized for 10 minutes in opposition, and the gentleman from New York (Mr. SOLOMON) is recognized for 10 minutes.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I might consume. . . .

Mr. Speaker, I mentioned CBO had scored this legislation as exceeding the unfunded mandate threshold in the law, which is \$50 million. In fact, those costs on the States are much, much higher, in the hundreds of millions of dollars in administrative costs to our individual States and each one of our counties and cities and towns and villages that we represent. And that is according to the National Governors Association, my colleagues.

Overall, this represents a cost shift from the Federal Government to the States as high in my State of New York as \$280 million, \$280 million, of which local governments are going to have to pay 25 percent of that cost. That is what we are leveling on our senior citizens. What that means, Mr. Speaker, is a "yes" vote for this unfunded mandate is

3. John Sununu (NH).

a vote to increase property taxes on every single one of our homeowners that own a home in America. . . .

Mr. Speaker, I reserve the balance of my time in order to let other people speak as strongly as I have.

—*Against Amendments*

§ 30.6 After a Member has satisfied the threshold burden of section 426(b)(2) of the Congressional Budget Act⁽¹⁾ by reciting language in an amendment allegedly constituting an unfunded intergovernmental mandate, the Member raising the point of order and an opponent each control 10 minutes of debate on the question of consideration.

On May 23, 1996,⁽²⁾ a point of order was raised against an amendment:

The SPEAKER pro tempore.⁽³⁾ It is now in order to consider the amendment printed in part 1 of House Report 104–490.

AMENDMENT OFFERED BY MR. RIGGS

Mr. [Frank] RIGGS [of California]. Mr. Speaker, I offer an amendment. The SPEAKER pro tempore. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment offered by Mr. RIGGS: Add at the end the following:

SEC. 3. MINIMUM WAGE INCREASE.

(a) SHORT TITLE.—This section may be cited as the “Minimum Wage Increase Act of 1996”.

(b) AMENDMENT.—Paragraph (1) of section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) is amended to read as follows:

“(1) except as otherwise provided in this section, not less than \$4.25 an hour during the period ending on June 30, 1996, not less than \$4.75 an hour during the year beginning on July 1, 1996, and not less than \$5.15 an hour after the expiration of such year;”.

POINT OF ORDER

Mr. [Rob] PORTMAN [of Ohio]. Mr. Speaker, I rise to a point of order against this amendment.

The SPEAKER pro tempore (Mr. WALKER). The gentleman will state his point of order.

Mr. PORTMAN. Mr. Speaker, pursuant to section 425(a) of the Congressional Budget Act, it is not in order for the House to consider any amendment that would increase the direct costs of Federal intergovernmental mandates in excess of \$50 million annually. The precise language in the amendment before us on which this is based is “Paragraph 1 of section 6(a) of the Fair Labor Standards Act of 1938 is amended to read as follows: Not less than \$4.75 an hour during the year beginning July 1, 1996, and not less than \$5.15 an hour after the expiration of such year.”

1. 2 USC § 658e(b)(2).

2. 142 CONG. REC. 12283, 12284, 12287, 104th Cong. 2d Sess.

3. Robert Walker (PA).

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

It is upon this basis and the impact this amendment would have on State and local government as estimated by the Congressional Budget Office that I raise this point of order, and ask for a ruling from the Chair.

The SPEAKER pro tempore. The gentleman from Ohio makes a point of order that the amendment violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the act, the gentleman has met his threshold burden to identify the specific language in the amendment on which he predicates the point of order.

Under section 426(b)(4) of the act, the gentleman from Ohio and a Member opposed each will control 10 minutes of debate on the point of order.

Pursuant to section 426(b)(3) of the act, after debate on the point of order the Chair will put the question of consideration, to wit: "Will the House now consider the amendment?"

The gentleman from Ohio [Mr. PORTMAN] is recognized for 10 minutes. Is there a Member seeking recognition in opposition?

Mr. [David] BONIOR [of Michigan]. Mr. Speaker, I seek time in opposition.

The SPEAKER pro tempore. The gentleman from Michigan will be recognized for 10 minutes.

PARLIAMENTARY INQUIRY

Mr. BONIOR. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. BONIOR. Mr. Speaker, as you correctly stated, I do seek control of the 10 minutes of time noted. I also would ask the Speaker if it would be in order for me to yield 5 minutes of that time to the gentleman from California [Mr. RIGGS], and ask unanimous consent that he be allowed to partition his 5 minutes as he deems fit?

The SPEAKER pro tempore. The gentleman may do that by unanimous consent.

Mr. BONIOR. Mr. Speaker, I ask unanimous consent that the gentleman from California [Mr. RIGGS] be given 5 minutes of my 10 minutes, and that he be allowed to yield that time as he so desires.

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

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Ohio [Mr. PORTMAN].

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume. . . .

Mr. BONIOR. . . .

Mr. Speaker, I reserve the balance of my time. . . .

The SPEAKER pro tempore. The question is, Will the House now consider the amendment offered by the gentleman from California [Mr. RIGGS]?

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

Mr. [William] CLAY [of Missouri]. 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 267, nays 161, not voting 5, as follows:

[Roll No. 191] . . .

Mr. ROGERS changed his vote from “nay” to “yea.”
So the question of consideration was decided in the affirmative.
The result of the vote was announced as above recorded.

—*Against a Motion to Recommit*

§ 30.7 Where the House has decided not to consider one motion to recommit with instructions as a disposition of a point of order arising under section 425 of the Congressional Budget Act,⁽¹⁾ one valid motion to recommit remains in order.

On Mar. 28, 1996,⁽²⁾ a point of order was raised against a motion to recommit a bill and the question of consideration was decided in the negative.

UNFUNDED MANDATE POINT OF ORDER

Mr. ARCHER. Mr. Speaker, I urge my second point of order that the motion to recommit with instructions constitutes an unfunded governmental mandate under section 425 of the Congressional Budget Act. Section 425 prohibits consideration of a measure containing unfunded intergovernmental mandates whose total unfunded direct costs exceeds \$50 million annually. The precise language in question is the text of the instructions that amends the Fair Labor Standards Act to increase the minimum wage. . . .

The SPEAKER pro tempore. The gentleman from Texas makes a point of order that the motion violates section 425 of the Congressional Budget Act of 1974. In accordance with section 426(b)(2) of the Act, the gentleman has met his threshold burden to identify the specific language of the motion. Under section 426(b)(4) of the Act, the gentleman from Texas [Mr. ARCHER] and a Member opposed will each control 10 minutes of debate on the point of order.

Pursuant to section 426(b)(3) of the Act, after debate on the point of order, the Chair will put the question of consideration, to wit: Will the House now consider the motion?

Mr. BONIOR. Mr. Speaker, I seek time in opposition to the point of order.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. BONIOR] will control 10 minutes.

The Chair recognizes the gentleman from Texas [Mr. ARCHER]. . . .

PARLIAMENTARY INQUIRY

Mr. ARCHER. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman will state it.

Mr. ARCHER. Would the Speaker please explain to the House how this vote will be framed and what a “yes” or “no” vote will mean, because this is the first time that we have had a test of the unfunded mandate legislation?

The SPEAKER pro tempore. The question will be put by the Chair, to wit, will the House now consider the motion to recommit? So an “aye” vote would mean that the

1. 2 USC § 658e.

2. 142 CONG. REC. 6932, 6933, 6937, 6938, 104th Cong. 2d Sess.

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

House should indeed consider the motion to recommit. A “no” vote would mean that the House would not consider the motion to recommit.

Mr. ARCHER. Mr. Speaker, would it be fair to say that a “no” vote then would sustain the point of order?

The SPEAKER pro tempore. Yes.

Mr. BONIOR. Mr. Speaker, that is not a point of order. Mr. Speaker, may I be heard?

The SPEAKER pro tempore. The statute provides that on this point of order the House shall decide that question and not a ruling from the Chair on whether to consider the motion. It would not be a prerogative of the Chair to make that judgment.

Mr. CLINGER. Mr. Speaker, I would indicate that I think a “yes” vote on this matter would in effect be saying that we would allow an unfunded mandate to be passed through, or open the door to passing through, an unfunded mandate to the States.

Those who would want to sustain the unfunded mandate legislation, and this is our first look at this thing, the first time we have had to consider this procedure, those who want to sustain that should vote “no” on this measure. . . .

□ 1537

Mr. GILMAN changed his vote from “no” to “aye.”

So the question of consideration was decided in the negative.

The result of the vote was announced as above recorded. . . .

MOTION TO RECOMMIT OFFERED BY MR. ORTON

Mr. ORTON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is the gentleman opposed to the bill?

Mr. ORTON. I am in its present form, Mr. Speaker.

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

Points of Order Under Section 426

§ 30.8 Pursuant to section 426(b)(2) of the Congressional Budget Act,⁽¹⁾ in order to be cognizable by the Speaker, a point of order under section 426 of the Act must specify the precise language⁽²⁾ upon which it is premised.

On Jan. 28, 2009,⁽³⁾ the following took place:

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 1, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Ms. [Louise] SLAUGHTER [of New York]. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 92 and ask for its immediate consideration.

1. 2 USC § 658e(b)(2).
2. *Parliamentarian’s Note*: Section 426 of the Unfunded Mandates Reform Act prohibits the consideration of any rule or order waiving the application of section 425 (prohibiting consideration of measures, including amendments, containing unfunded mandates). Because the rule here did not waive points of order against consideration of the *bill* (merely against provisions therein), the rule’s near-blanket waiver for *amendments* was the correct basis on which to raise the unfunded mandates point of order.
3. 155 CONG. REC. 1796, 1798, 111th Cong. 1st Sess.

The Clerk read the resolution, as follows:

H. RES. 92

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the State of the Union for further consideration of the bill (H.R. 1) making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes. Further general debate shall be confined to the bill and amendments specified in this resolution and shall not exceed one hour equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations. The amendment printed in part A of the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived. Notwithstanding clause 11 of rule XVIII, no further amendment to the bill, as amended, shall be in order except those printed in part B of the report of the Committee on Rules. Each such further amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report 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. All points of order against such further amendments are waived except those arising under clause 9 of rule XXI. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Sec. 2. The chair of the Committee on Appropriations shall insert in the CONGRESSIONAL RECORD not later than February 4, 2009, such material as he may deem explanatory of appropriations measures for the fiscal year 2009.

Sec. 3. The chair of the Committee on Ways and Means may file, on behalf of the Committee, a supplemental report to accompany H.R. 598.

POINT OF ORDER

Mr. [Cliff] STEARNS [of Florida]. Madam Speaker, I rise to make a point of order against consideration of the rule.

The SPEAKER pro tempore.⁽⁴⁾ The gentleman will state his point of order.

Mr. STEARNS. Madam Speaker, I raise a point of order against consideration of the rule because the rule contains a waiver of all points of order against the provisions in the bill and amendments made in order by the rule and, therefore, it is in violation of section 426 of the Congressional Budget Act.

The SPEAKER pro tempore. The gentleman from Florida makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden to identify the specific language consisting of the waiver against amendments in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

4. Ellen Tauscher (CA).

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The gentleman from Florida and a Member opposed, the gentlewoman from New York (Ms. SLAUGHTER), each will control 10 minutes of debate on the question of consideration.

After that debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?

The Chair recognizes the gentleman from Florida. . . .

The SPEAKER pro tempore. All time for debate has expired. The question is, Will the House now consider the resolution?

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

On June 26, 2001,⁽⁵⁾ a point of order was brought against a pending rule considered as a special order of business.

UNFUNDED MANDATE POINT OF ORDER

Mr. [James] MORAN of Virginia. Mr. Speaker, pursuant to section 426 of the Congressional Budget and Impoundment Control Act of 1974, I make a point of order against consideration of the rule (H. Res. 178) because it contains an unfunded Federal mandate.

Section 426 of the Budget Act specifically states that the Rules Committee may not waive this point of order.

In the rule of H. Res. 178, and I quote: “All points of order against consideration of the bill are waived.” Therefore, I make a point of order that this bill may not be considered pursuant to section 426.

The SPEAKER pro tempore.⁽⁶⁾ The gentleman from Virginia makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974. According to section 426(b)(2) of the act, the gentleman must specify language in the resolution that has that effect. Having met this threshold burden to identify the specific language of the resolution under section 426(b)(2), the gentleman from Virginia (Mr. MORAN) and a Member opposed will each control 10 minutes of debate on the question of consideration under section 426(b)(4).

Following the debate, the Chair will put the question of consideration, to wit: Will the House now consider the resolution?

The gentleman from Virginia (Mr. MORAN) is recognized for 10 minutes.

Mr. MORAN of Virginia. Mr. Speaker, I raise a point of order because section 343 of this appropriations act directs the local transit authority to change the name of its transit station at Ronald Reagan Washington National Airport with local funds. The cost to comply with this provision is estimated to be \$405,476; but the principle being violated is far more costly. . . .

Mr. [Thomas] REYNOLDS [of New York]. Mr. Speaker, I rise in opposition to the point of order.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from New York is recognized for 10 minutes.

-
5. 147 CONG. REC. 11906, 11907, 11909, 11910, 107th Cong. 1st Sess. For additional examples of points of order raised under this section, see, *e.g.*, 155 CONG. REC. 1796–98, 111th Cong. 1st Sess., Jan. 28, 2009; 154 CONG. REC. 9050–52, 110th Cong. 2d Sess., May 14, 2008; 153 CONG. REC. 28302, 28304–306, 110th Cong. 1st Sess., Oct. 25, 2007; and 144 CONG. REC. 11852–54, 105th Cong. 2d Sess., June 10, 1998.
 6. Michael Simpson (ID).

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I would like to take this opportunity to put to rest fears that this provision would violate the Unfunded Mandates Reform Act. While a review by the Congressional Budget Office determined the requirement to rename the station to be an intergovernmental mandate under the Unfunded Mandates Reform Act, renaming the station falls well below the 2001 threshold of \$56 million. In fact, this project is estimated to cost approximately \$500,000. I submit CBO's findings for the RECORD. . . .

Mr. Speaker, I reserve the balance of my time. . . .

The SPEAKER pro tempore (Mr. SIMPSON). All time for debate has expired. The question is, Will the House now consider the resolution?

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

Mr. MORAN of Virginia. 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 219, nays 202, not voting 12, as follows:

[Roll No. 190] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

—Against “Hereby” Special Order

§ 30.9 A “hereby” special order,⁽¹⁾ although not explicitly waiving section 425 of the Congressional Budget Act, nevertheless waives the application of section 425 of the Budget Act by precluding the opportunity for raising a point of order under section 425.⁽²⁾

On Feb. 1, 2006,⁽³⁾ a point of order was raised against consideration of a rule:

RELATING TO CONSIDERATION OF S. 1932, DEFICIT REDUCTION ACT OF 2005

Mr. [Adam] PUTNAM [of Florida]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 653 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 653

Resolved, That the House hereby concurs in the Senate amendment to the House amendment to the bill (S. 1932) to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

1. A “hereby” special order of business resolution, reported from the Committee on Rules, provides that by adoption of the resolution, the House “hereby” takes a legislative action. In this case, by the adoption of H. Res. 653, the House “hereby” concurred in a Senate amendment.
2. 2 USC § 658d.
3. 152 CONG. REC. 549, 550, 552, 553, 109th Cong. 2d Sess.

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

UNFUNDED MANDATE POINT OF ORDER

Mr. [James] McDERMOTT [of Washington]. Mr. Speaker, pursuant to section 426 of the Congressional Budget Act of 1974, I make a point of order against consideration of this rule, H. Res. 653. Section 425 of that same act states that a point of order lies against legislation which imposes an unfunded mandate in excess of specified amounts against State or local governments. Section 426 of the Budget Act specifically states that a rule may not waive the application of section 425.

H. Res. 653 states that the House hereby concurs in the Senate amendment to the bill S. 1932 to provide for reconciliation. This self-executing rule effectively waives the application of section 425 to provisions in the underlying bill on child support enforcement which the Congressional Budget Office informs us impose an intergovernmental mandate as defined by the Unfunded Mandates Reform Act.

Therefore, I make a point of order that the rule may not be considered pursuant to section 426.

The SPEAKER pro tempore.⁽⁴⁾ The gentleman from Washington makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of that Act, the gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated.

Under section 426(b)(4) of the Act, the gentleman from Washington (Mr. McDERMOTT) and the gentleman from Florida (Mr. PUTNAM) each will control 10 minutes of debate on the question of consideration.

Pursuant to section 426(b)(3) of the Act, after that debate, the Chair will put the question of consideration. [sic] to wit: Will the House now consider the resolution?

The Chair recognizes the gentleman from Washington (Mr. McDERMOTT) for 10 minutes. . . .

The SPEAKER pro tempore (Mr. SIMPSON).⁽⁵⁾ The question is: Will the House now consider the resolution?

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

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 226, nays 201, not voting 6, as follows:

[Roll No. 2] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Timeliness

§ 30.10 Where all points of order against consideration of a bill have been waived by unanimous consent and the House has already embarked on consideration, a point of order against consideration of

4. Ray LaHood (IL).

5. Michael Simpson (ID).

the bill under section 425 of the Congressional Budget Act⁽¹⁾ as allegedly containing an unfunded mandate comes too late.

On July 18, 1996,⁽²⁾ an untimely point of order was attempted against a bill after consideration of that bill had begun:

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

WELFARE AND MEDICAID REFORM ACT OF 1996

The SPEAKER pro tempore [Mr. KOLBE].⁽³⁾ Pursuant to House Resolution 482 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3734.

□ 1047

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3734) to provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997, with Ms. GREENE of Utah in the chair.

The Clerk read the title of the bill.

POINT OF ORDER

Mr. [William] ORTON [of Utah]. Madam Chairman, I rise to make a point of order against consideration of H.R. 3724.

The CHAIRMAN.⁽⁴⁾ The gentleman will state his point of order.

Mr. ORTON. Madam Chairman, section 425 of the Congressional Budget Act prohibits us from considering legislation which would create an unfunded mandate upon the States. The Congressional Budget Office has ruled that H.R. 3734 falls \$12.9 billion short in funding necessary to fund the work requirements of the bill. Also the National Governors Association has stated: We are concerned that the bill restricts State flexibility and will create additional unfunded costs.

This bill clearly creates an unfunded mandate, violates section 425 of the Congressional Budget Act, and I would further point out that section 426 of the Congressional Budget Act prohibits this House from considering a rule which would waive section 425. So that in any event we would have a vote and a determination as to whether or not a bill does in fact create an unfunded mandate.

-
1. 2 USC § 658d.
 2. 142 CONG. REC. 17668, 104th Cong. 2d Sess. For the initial unanimous-consent request waiving all points of order against consideration of the bill, see 142 CONG. REC. 17602, 17603, 104th Cong. 2d Sess., July 17, 1996.
 3. James Kolbe (AZ).
 4. Enid Greene (UT).

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

The CHAIRMAN. The Chair would respond to the gentleman's point of order as follows. Points of order against consideration of the bill H.R. 3734 were waived by unanimous consent on July 17, 1996. Further, a point of order against consideration of House Resolution 482 would not be timely after adoption of that resolution.

The gentleman's points are not in order.

Mr. ORTON. I thank the Chairman. I think it is clear to the House and the country that in fact we are violating the first bill we passed in this Congress with the adoption of this bill.

Debate

§ 30.11 Debate on the point of order under section 426 of the Congressional Budget Act⁽¹⁾ should be confined to the question of considering the underlying measure.

On May 14, 2008,⁽²⁾ the following occurred:

PROVIDING FOR CONSIDERATION OF CONFERENCE REPORT ON H.R. 2419,
FOOD, CONSERVATION, AND ENERGY ACT OF 2008

Mr. [Dennis] CARDOZA [of California]. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1189 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1189

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 2419) to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read. The previous question shall be considered as ordered on the conference report without intervening motion except (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture and (2) one motion to recommit.

□ 1045

UNFUNDED MANDATE POINT OF ORDER

Mr. [Jeff] FLAKE [of Arizona]. Mr. Speaker, I raise a point of order against H. Res. 1189 because the resolution violates section 426(a) of the Congressional Budget Act. The resolution contains a waiver of all points of order against consideration of the conference report which includes a waiver of section 425 of the Congressional Budget Act which causes a violation of section 426(a).

The SPEAKER pro tempore.⁽³⁾ The gentleman from Arizona makes a point of order that the resolution violates section 426(a) of the Congressional Budget Act of 1974.

The gentleman has met the threshold burden to identify the specific language in the resolution on which the point of order is predicated. Such a point of order shall be disposed of by the question of consideration.

1. 2 USC § 658e.
2. 154 CONG. REC. 9050–52, 110th Cong. 2d Sess.
3. Ed Pastor (AZ).

The gentleman from Arizona and a Member opposed, the gentleman from California (Mr. CARDOZA), each will control 10 minutes of debate on the question of consideration.

After that debate, the Chair will put the question of consideration, to wit: "Will the House now consider the resolution?"

The Chair recognizes the gentleman from Arizona. . . .

Mr. FLAKE . . .

I should mention there are other problems with this and other reasons why this rule should not go forward. We are waiving PAYGO rules. Now one thing the majority said when they came into power is we will not waive PAYGO. We are going to live by PAYGO. When we give money out, we have to make sure that that many money is in the Treasury or we won't do it.

This waives PAYGO because there is simply no way you can be in compliance with PAYGO and pass a \$300 billion farm bill. And in this case, the writers of the legislation did something very creative. They actually went baseline shopping. What PAYGO says is that you have to take the current baseline, the most current baseline of spending, and total up your spending in the bill based on that current baseline.

Instead, what the authors of this legislation did was said, oh, let's go to last year's baseline because we spent less money then and it means we can spend more money in this legislation. Baseline shopping. It is as if I were to say, I don't want to pay so much in taxes this year. So I am going to use last year's wages that I was paid, and I am going to report that instead. Now if I did that, I would be thrown in jail. But we are allowed to do this here. We are allowed to say, we will take whatever baseline we want as long as it allows us to spend more money in the legislation. And then when the bill comes to the floor, we will just waive the rule that required us to be honest in terms of bringing legislation that complies with PAYGO.

I would love an explanation from the Rules Committee as to why PAYGO was waived in this regard. . . .

Mr. FLAKE. I will gladly yield to my colleague from California on the Rules Committee for a question.

Did we waive the PAYGO rules in this rule?

Mr. CARDOZA. We have accommodated the Senate PAYGO rules as we have moved forward. And it is my opinion that this is a technical situation because we started this bill and passed this bill off the floor in 2007.

Mr. FLAKE. Reading from the House rules after the beginning of a new calendar year—

Mr. CARDOZA. Mr. Speaker, I raise a point of order.

I believe we are supposed to be talking about the unfunded mandates in this bill. If the gentleman would like to talk about the PAYGO rules, we should talk about this when we bring up the rule which that is germane to.

The SPEAKER pro tempore. The gentleman should confine his remarks to the question of order. . . .

The SPEAKER pro tempore. The question is, Will the House now consider the resolution?

The question of consideration was decided in the affirmative.

§ 30.12 Any member of the committee managing the consideration of a bill who controls time in support of the question of its consideration under section 426(b)(4) of the Congressional Budget Act⁽¹⁾

1. 2 USC § 658e(b)(4).

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

constitutes a “manager” for the purpose of determining the right to close that debate.

On May 1, 1997,⁽²⁾ a point of order was raised against an amendment in the nature of a substitute made in order as original text:

HOUSING OPPORTUNITY AND RESPONSIBILITY ACT OF 1997

The SPEAKER pro tempore.⁽³⁾ Pursuant to House Resolution 133 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2.

□ 1210

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2) to repeal the United States Housing Act of 1937, deregulate the public housing program and the program for rental housing assistance for low-income families, and increase community control over such programs, and for other purposes, with Mr. GOODLATTE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Wednesday, April 30, 1997, all time for general debate had expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered under the 5-minute rule by titles and each title shall be considered read.

Before consideration of any other amendment, it shall be in order to consider the amendment printed in the CONGRESSIONAL RECORD on April 29, 1997, if offered by the gentleman from New York [Mr. LAZIO] or his designee. That amendment shall be considered read, shall be debatable for 10 minutes, equally divided and controlled by the proponent and an opponent, shall not be subject to an amendment, and shall not be subject to a demand for division of the question.

If that amendment is adopted, the bill, as amended, shall be considered as an original bill for the purpose of further amendment. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device without intervening business, provided that the time for voting by electronic device on the first in any series of questions shall not be less than 15 minutes.

UNFUNDED MANDATE POINT OF ORDER

Mr. [Melvin] WATT of North Carolina. Mr. Chairman, pursuant to section 425 of the Congressional Budget Act and Impoundment Control Act of 1974, I make a point of order against consideration of the committee amendment to the bill, H.R. 2.

2. 143 CONG. REC. 7006–12, 105th Cong. 1st Sess.

3. Robert Goodlatte (VA).

Section 425 states that a point of order lies against legislation which either imposes an unfunded mandate in excess of \$50 million annually against State or local governments, or does not publish prior to floor consideration a CBO estimate of any unfunded mandates in excess of \$50 million annually for State and local entities or in excess of \$100 million annually for the private sector.

Sections 105 and 106, on pages 25 through 49 of H.R. 2, contain violations of section 425 of the Congressional Budget and Impoundment Control Act. Therefore, I make a point of order that this measure may not be considered pursuant to section 425.

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] makes a point of order that the amendment in the nature of a substitute violates section 425(a) of the Congressional Budget Act of 1974.

In accordance with section 426(b)(2) of the act, the gentleman has met his threshold burden to identify the specific language in the amendment on which he predicates the point of order.

The text of section 105 and section 106 of the amendment, on pages 25 through 49 of the reported bill, is as follows: . . .

Under section 426(b)(4) of the act, the gentleman from North Carolina [Mr. WATT] and a Member opposed to the point of order each will control 10 minutes of debate on the point of order.[sic]

Pursuant to section 426(b)(3) of the act, after debate on the point of order, the Chair will put the question of consideration, to wit: "Will the Committee now consider the amendment?"

The gentleman from North Carolina [Mr. WATT] is recognized for 10 minutes, and the gentleman from Iowa [Mr. LEACH] who is opposed, will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

□ 1215

Mr. WATT of North Carolina. Mr. Chairman, my colleagues, especially those on the Republican side, have made a significant point that many of us agree on a bipartisan basis is a valid point; that we should not continuously pass along to State and local governments and entities of State and local governments mandates which mandate that they take certain action without passing along to them the funds to pay for those mandates.

This bill, sections 105 and 106, in combination, pass such a mandate along. Sections 105 and 106, in combination, according to the Congressional Budget Office, impose an unfunded mandate of approximately \$65 million.

Section 105, according to the Congressional Budget Office, would require local governments to expend an additional \$35 million annually. Section 106 would require local governments and public housing agencies to expend an additional \$35 million annually.

These provisions, in combination, should not be passed along to our local housing authorities because we are not funding them. And if we are going to be in compliance with the spirit and letter of the resolutions and rules that we set up to govern ourselves, this bill should not be considered without these provisions being stricken out of the bill.

Mr. Chairman, I reserve the balance of my time.

Mr. [James] LEACH [of Iowa]. Mr. Chairman, I yield myself such time as I may consume. . . .

The CBO states, and I quote directly, "The bill would impose several new requirements on PHA's. These requirements, which are conditions of receiving assistance from HUD

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

and, thus, are not mandates under the Unfunded Mandates Reform Act of 1995, include establishing and enforcing work requirements and self-sufficiency agreements with residents of public housing.”

In further clarification, CBO has informed me today that while H.R. 2 does contain several intergovernmental mandates as defined by the Unfunded Mandates Reform Act, in other parts of the bill, CBO has determined that the cost of those mandates is insignificant and would not exceed the threshold established under the law.

The bill contains other provisions that would have significant budgetary impacts on public housing agencies, such as the one the gentleman from North Carolina is concerned about, but these provisions are conditions of receiving Federal financial assistance and, therefore, would not be considered mandates under the Unfunded Mandates Reform Act of 1995. . . .

Mr. LEACH. Mr. Chairman, I would like to ask how much time the two sides have remaining.

The CHAIRMAN. The gentleman from Iowa has 4 minutes remaining, and the gentleman from North Carolina has 4 minutes remaining.

The gentleman from Iowa has the right to close.

Mr. WATT of North Carolina. Mr. Chairman, let me take issue with that. Why does the gentleman from Iowa have the right to close? It is my point of order.

The CHAIRMAN. That has been established by precedent. The manager of the bill has the right to close.

Mr. WATT of North Carolina. He is not managing the bill. The gentleman from New York [Mr. LAZIO] is managing the bill.

The CHAIRMAN. The chairman of the committee is at this point in time managing the bill.

Mr. [Barney] FRANK of Massachusetts. If the gentleman from North Carolina will yield, maybe it is because he is representing the President on this issue.

The CHAIRMAN. No, that is not correct.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume. . . .

Mr. LEACH. Mr. Chairman, I yield myself the balance of my time. . . .

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time on this question has expired.

Pursuant to section 426(b)(3) of the Act, the question is, Will the Committee now consider the amendment in the nature of a substitute recommended by the Committee on Banking and Financial Services?

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. LEACH. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 237, noes 183, not voting 13, as follows:

[Roll No. 99] . . .

So the question of consideration was decided in the affirmative.

The result of the vote was announced as above recorded.

Motions to Strike

§ 30.13 Pursuant to former Rule XVIII clause 11,⁽¹⁾ a Member offered a motion to strike an unfunded mandate from the portion of a bill then open to amendment in the Committee of the Whole, such motion not having been precluded by the specific terms of a special order.

On Apr. 21, 2005,⁽²⁾ the following occurred:

SEC. 1502. FUELS SAFE HARBOR.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, no renewable fuel, as defined by section 211(o)(1) of the Clean Air Act, or methyl tertiary butyl ether (hereafter in this section referred to as “MTBE”), used or intended to be used as a motor vehicle fuel, nor any motor vehicle fuel containing such renewable fuel or MTBE, shall be deemed a defective product by virtue of the fact that it is, or contains, such a renewable fuel or MTBE, if it does not violate a control or prohibition imposed by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the “Administrator”) under section 211 of such Act, and the manufacturer is in compliance with all requests for information under subsection (b) of such section 211 of such Act. If the safe harbor provided by this section does not apply, the existence of a claim of defective product shall be determined under otherwise applicable law. Nothing in this subsection shall be construed to affect the liability of any person for environmental remediation costs, drinking water contamination, negligence for spills or other reasonably foreseeable events, public or private nuisance, trespass, breach of warranty, breach of contract, or any other liability other than liability based upon a claim of defective product.

(b) EFFECTIVE DATE.—This section shall be effective as of September 5, 2003, and shall apply with respect to all claims filed on or after that date. . . .

ENERGY POLICY ACT OF 2005

The SPEAKER pro tempore.⁽³⁾ Pursuant to House Resolution 219 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 6.

□ 1018

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 6) to ensure jobs for

1. The clause was repealed in the 112th Congress. See 157 CONG. REC. H8 [Daily Ed.], Jan. 5, 2011 (H. Res. 5, sec. 2(e)(5)). *House Rules and Manual* §991 (2011). The rule provided that an amendment in the Committee of the Whole proposing only to strike an unfunded mandate from a portion of the bill could be precluded only by the “specific terms of a special order of business.” In the years prior to the repeal of this rule, special orders of business would routinely specifically preclude this motion. See, e.g., 156 CONG. REC. H6462–3 [Daily Ed.], 111th Cong. 2d Sess., July 30, 2010 (H. Res. 1574).
2. 151 CONG. REC. 7211, 7331, 7349, 7352, 109th Cong. 1st Sess.
3. Candice Miller (MI).

Ch. 41 § 30 DESCHLER-BROWN-JOHNSON-SULLIVAN PRECEDENTS

our future with secure, affordable, and reliable energy, with Mr. BONILLA (Acting Chairman) in the chair.

The Clerk read the title of the bill.

The Acting CHAIRMAN.⁽⁴⁾ When the Committee of the Whole rose on Wednesday April 20, 2005, amendment No. 14 printed in House report 109–49 offered by the gentleman from California (Ms. SOLIS) had been disposed of.

REQUEST TO OFFER AMENDMENT

Mrs. [Lois] CAPPS [of California]. Mr. Chairman, pursuant to clause 11 of rule XVIII, I offer an amendment that will strike an unfunded mandate in section 1502.

The Acting CHAIRMAN. The Chair will respond momentarily.

PARLIAMENTARY INQUIRY

Mr. [Joe] BARTON of Texas. Parliamentary inquiry, Mr. Chairman.

The Acting CHAIRMAN. The gentleman from Texas is recognized.

Mr. BARTON of Texas. My parliamentary inquiry is that that is not an amendment that we knew and precleared under the Committee on Rules.

The Acting CHAIRMAN. Will the gentleman withhold his parliamentary inquiry?

Mr. BARTON of Texas. I will be happy to, Mr. Chairman.

The Acting CHAIRMAN. Will the gentlewoman consider withholding her motion at this time and perhaps bringing it up a little later?

Mrs. CAPPS. Mr. Chairman, could we discuss this, please?

The Acting CHAIRMAN. Bringing up the motion at a later time would be perfectly acceptable and would give the Chair an opportunity to evaluate the situation.

Mrs. CAPPS. Mr. Chairman, I am willing to withhold the amendment without prejudice to give us time for discussion.

The Acting CHAIRMAN. The amendment is withheld without prejudice.

It is now in order to consider amendment No. 15 printed in House report 109–49. . . .

LIMITATION OF DEBATE ON MOTION TO STRIKE OFFERED BY MRS. CAPPS

Mr. [Ralph] HALL [of Texas]. Mr. Chairman, I ask unanimous consent that debate on the motion to strike offered by the gentlewoman from California (Mrs. CAPPS) be limited to 30 minutes equally divided and controlled by Mrs. CAPPS and an opponent.

The Acting CHAIRMAN (Mr. PUTNAM).⁽⁵⁾ Is there objection to the request of the gentleman from Texas?

Mrs. CAPPS. Reserving the right to object, Mr. Chairman, it is my understanding that the amendment will be recognized after the Grijalva amendment and before the Inslee amendment; am I correct?

Mr. HALL. Mr. Chairman, will the gentlewoman yield?

Mrs. CAPPS. I yield to the gentleman from Texas.

Mr. HALL. That is our understanding, Mr. Chairman.

Mrs. CAPPS. Mr. Chairman, I withdraw my reservation of objection.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Texas?

4. Henry Bonilla (CA).

5. Adam Putnam (FL).

There was no objection. . . .

AMENDMENT OFFERED BY MRS. CAPPS

Mrs. CAPPS. Mr. Chairman, I offer an amendment to strike an unfunded mandate. The Clerk read as follows:

Amendment offered by Mrs. CAPPS:

In title XV, in section 1502, strike “, or methytertiary butyl ether (hereinafter in this section referred to as ‘MTBE’)” and strike “or MTBE” in each place it appears.

The Acting CHAIRMAN. Pursuant to the order of the Committee of today, the gentlewoman from California (Mrs. CAPPS) and the gentleman from Texas (Mr. BARTON) each will control 15 minutes.

The Chair recognizes the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Chairman, I yield myself 1½ minutes, and appreciate the opportunity to bring this amendment to strike an unfunded mandate to the floor for debate.

Intervening Motions

§ 30.14 A Member who voted on the prevailing side of an affirmative vote on a question of consideration arising from an unfunded mandates point of order qualifies to offer a motion to reconsider such vote.

On June 28, 2000,⁽¹⁾ the following occurred:

MOTION TO RECONSIDER THE VOTE: OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. [Barney] FRANK of Massachusetts. Mr. Speaker, I move to reconsider the vote.

The SPEAKER pro tempore (Mr. LATOURETTE).⁽²⁾ Did the gentleman from Massachusetts vote on the prevailing side?

Mr. FRANK of Massachusetts. Yes, I did, Mr. Speaker.

MOTION TO TABLE OFFERED BY MR. GOSS

Mr. [Porter] GOSS [of Florida]. Mr. Speaker, I move to lay on the table the motion to reconsider.

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

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

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Speaker, I demand a recorded vote.

1. 146 CONG. REC. 12653, 106th Cong. 2d Sess. See also 146 CONG. REC. 12650–53, 106th Cong. 2d Sess., June 28, 2000.

2. Steven LaTourette (OH).