



The Rules Rule!

Understanding & Researching
Congressional Procedure



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Overview

- Why congressional procedure matters
- Introduction to the rules
- Sources of rules
- Five important facts about congressional procedure



Why Congressional Procedure Matters

HOW OUR LAWS ARE MADE

"Congress shall have Power...to make all laws which shall be necessary and proper"
U.S. Constitution Article 1 Section 8

- Representative
- A State Legislature
- The People
- Executive Branch

Bill

Introducing Legislation

- Like a bill, but less common
- Joint Resolution
- Simple Resolution
- Not Legislation
- Regards House Operations

The code of a bill
H. R. 301 [110]
 House of Representatives # in which bill was received Congressional Session

+ CBO or Congressional Budget Office is a non-partisan office charged with checking and creating budget estimates.

Introducing Legislation

- Senator
- Bill
- Meetings*
- Public Hearings*
- Mark Up*
- Final Reading* & Vote*

+ A bill originating in the Senate must go through HOR approval before going to the President.

+ SEN has 100 members and 16 standing committees.

+ **Filibuster:** A Senator or group of Senators deliver speeches and "block" the floor indefinitely, hoping the prolonged debate will prevent passage of a bill. A filibuster can only be ended if a motion to send it is carried by 60 votes (a super majority).

+ **A Reconciliation** bill is part of the budget process and allows Congress to make changes in law to conform with budget levels set in the budget resolutions. It has become an alternative way to pass contentious legislation in the Senate because it only requires a simple majority to pass.*

Budget & Engrossment

- Reconciliation
- CBO must confirm the bill adheres to spending and revenue constraints in most recent budget.

Committee Work

- Report*
- Put on Calendar
- Bill Called Up

+ Any Senator can call up a bill at the conclusion of morning business.

+ Unlimited debate. Amendments do not have to be germane. Discussion ends when no one seeks to be recognized.

+ Debate ends and presiding chair calls for a vote.

Debate & Amend

- House Vote
- House Action
- Write on each amendment individually
- could fail to pass.
- could send back to committee

Conference

- Each conference committee must report to their respective chambers and both HOR and SEN must pass a report before the bill goes to the President.
- could fail to reach a compromise

Debate & Amend

- Senate Action
- Third Reading
- Senate Vote
- 2 Day Wait

+ A simple majority is required to pass a bill, but the frequent threat of a filibuster has meant that a super majority is needed in more often.

+ A senator on the prevailing side or who abstained can call a motion to recommitt.

Put on Calendar

- Committee of the Whole
- Quorum of one hundred required to open debate. Chair determines length of debate.

Enrollment

- Amended back to bill
- Unamended

Final Approval or Disapproval

+ could fail to pass.

+ could be "tabled"

Put on Calendar

- Report
- Final Reading & Vote
- Vote on final amendments and proposed bill as a whole
- could fail to pass.

Publication

Law

+ The President has ten days to sign a bill into law or veto it OR the bill automatically becomes a law. Congress can override with a 2/3 majority.

+ A Pocket Veto occurs when the President fails to sign a bill into law AND Congress adjourns BEFORE ten days expire.

Committee Work

- Mark Up
- Meetings
- Public Hearings
- Collect information and testimony from opponents and supporters.
- could be "tabled"

LEGEND

- Extra Information
- Chance for Failure
- Lobbying Opportunity
- Path of Bill

A collaboration of Mike Wirth & Dr. Suzanne Cooper-Greene Ph.D. 2010. Data from "How Laws are Made" by John V. Sullivan, Rev. 6, 2007, Thomas, Inc. gov. *brookings.edu/topics/2010/01/21_reconciliation_binder.aspx

Image Source: [Mike Wirth Art](#)

“I’ll let you write the substance . . .
and you let me write the procedure,
and I’ll screw you every time.”

~ John Dingell , former U.S. Representative
and longest serving member of Congress



Image Source: [Wikipedia](#)

“There are significant dangers to roaming around legislative history with no appreciation for congressional procedure.”

~ Victoria Nourse, Professor,
Georgetown University Law Center



Image Source: [Georgetown Law](#)



Introduction to the Rules



Authority to Create Rules

- U.S. Constitution
- Article I, Section 5, Clause 2
- “Each House may determine the rules of its proceedings . . .”



Adoption of Standing Rules in House

- New rules for each Congress, expire at end of Congress
- Drafted by majority party in advance
- Adopted as a House resolution at beginning of new Congress
- Amended by House resolution (usually)

Adoption of Standing Rules in Senate

- Not re-adopted each Senate
- Continue in effect until amended
- Amended by Senate resolution (usually)
 - Supermajority (2/3) required to end debate
 - Simple majority

House v. Senate Rules

- Each chamber has their own rules, very different
- House (435 members)
 - More rules, changed more frequently
 - Structured, strict adherence to rules
 - Majority rules
- Senate (100 members)
 - Fewer rules, not changed often
 - Less strict adherence to rules
 - Respect for minority



What do the rules cover?

- Debate
- Voting
- Amendments
- Committees
- Financial issues (e.g., disclosure, gifts)
- Decorum (no smoking)
- Documents and records

Senate Rule on Debate (R. XIX)

- “When a Senator desires to speak, he shall rise and address the Presiding Officer, and shall not proceed until he is recognized, and the Presiding Officer shall recognize the Senator who shall first address him.”
- “No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.”
- “No Senator in debate shall refer offensively to any State of the Union.”



House Rule on Debate (R. XVII)

- “A Member ...who desires to speak or deliver a matter to the House shall rise and respectfully address the Speaker and, on being recognized, may address the House from any place on the floor.”
- “When a Member ... is speaking, a Member ... may not pass between the person speaking and the Chair.”
- “Remarks in debate (which may include references to the Senate or its Members) shall be confined to the question under debate, avoiding personality.”

Key Players

- Chairs
 - Presiding Officer in Senate (Senate President Pro Tempore / designee)
 - Speaker of the House
- Committees
 - Senate Committee on Rules and Administration
 - House Committee on Rules
- House and Senate Parliamentarians



Sources of Rules



Main Sources of Rules and Procedure

- U.S. Constitution
- Standing rules
- Standing orders (Senate)
- Jefferson's Manual (House)
- Precedents
- Statutes and resolutions

Other Sources of Rules and Procedure

- Committee rules
- Internal party rules
 - Republican Conference
 - Democratic Caucus
- Informal practice and custom
 - E.g., “holds” in the Senate

Standing Rules +

- *Senate Manual Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate* ("**Senate Manual**")
- *Constitution, Jefferson's Manual, and Rules of the House of Representatives* ("**House Rules and Manual**")

Precedents

- *Senate*

- *Riddick's Senate Procedure: Precedents and Practice*

- *House*

- *Hinds' Precedents of the House of Representatives (1789-1907)*
- *Cannon's Precedents of the House of Representatives (1908-1936)*
- *Deschler's Precedents of the House of Representatives (1936 -)*



Riddick's Example – Expunging Matters from the Congressional Record

- “Matters placed in the *Record* by unanimous consent under the precedents may be stricken out by a majority vote on motion as well as a unanimous consent”
- List of matters expunged with cites to Cong. Rec.
- Many concern remarks and documents referring to other Senators
- One incident – accidental reference to confidential FBI report



Additional Resources

Handout

Researching Congressional Rules & Procedure

This is a select list of resources for researching and understanding rules and procedures in the United States Congress. For finding other congressional documents related to rules and procedures (e.g., resolutions adopting or amending rules, Rules Committee reports, points of order documented in Congressional Record), the best online resources are [ProQuest Congressional](#), [Congress.gov](#), [FDsys](#), and [HeinOnline](#).

Background and Explanation

Walter J. Oleszek, [Congressional Procedures and the Policy Process](#) (10th ed. 2016)

The best and most well-known book on congressional procedure.

Charles Tiefer, [Congressional Practice and Procedure: A Reference, Research, and Legislative Guide](#) (1989)

While a bit older, this book is still well-regarded and a great in-depth examination of procedure.

Barbara Sinclair, [Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress](#) (4th ed. 2012)

Examines how procedure “really” works in Congress (compared to standard textbook descriptions) and how it has changed in recent years. It is also well-known and heavily cited. *The fifth edition will be published in July 2016.*

Charles Tiefer, [The Polarized Congress: The Post-Traditional Procedure of Its Current Struggles](#) (2016)

This new book also examines how procedure has changed in recent years and how those changes have impacted lawmaking in Congress.

CQ Guide to Congress (7th ed. 2013)

A good, basic guide to Congress that includes several chapters on congressional procedure.



Congressional Research Resources

- NCLA's [Help! I'm an Accidental Government Information Librarian](#) Webinars
- Research guides (e.g., LLSDC's [Legislative Sourcebook](#))
- Online tutorials (e.g., Georgetown Law Library's [Legislative History Research](#) video)
- Key Online Sources: ProQuest Congressional, Congress.gov, FDsys, HeinOnline



Five Facts About Congressional Procedure You Can't Live Without...

1. Schoolhouse Rock lied to us



“That Schoolhouse Rock ‘I’m Just a Bill’ video is one of [the] cultural political touchstones that has ruined people's ability to understand politics.” ~ Paul Blumenthal, Sunlight Foundation

Image Source: [Sunlight Foundation](#)

2. The rules are not self-enforcing

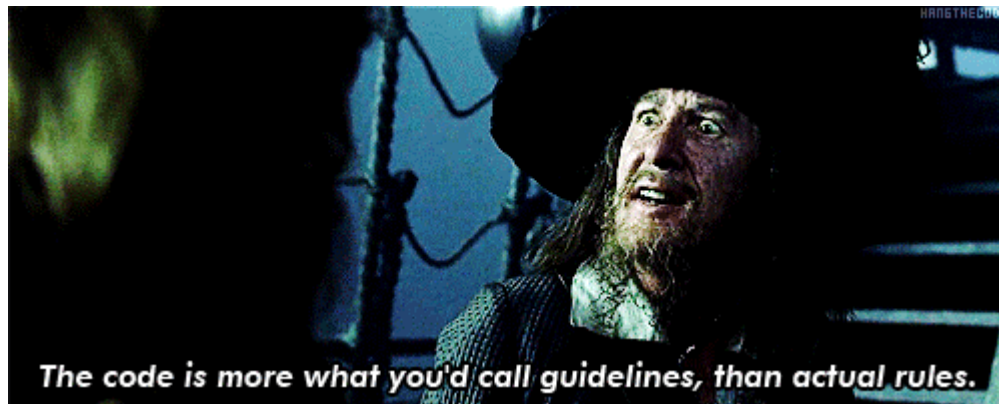


Image Source: [Imgur](#)

3. You don't need a conference committee to resolve differences

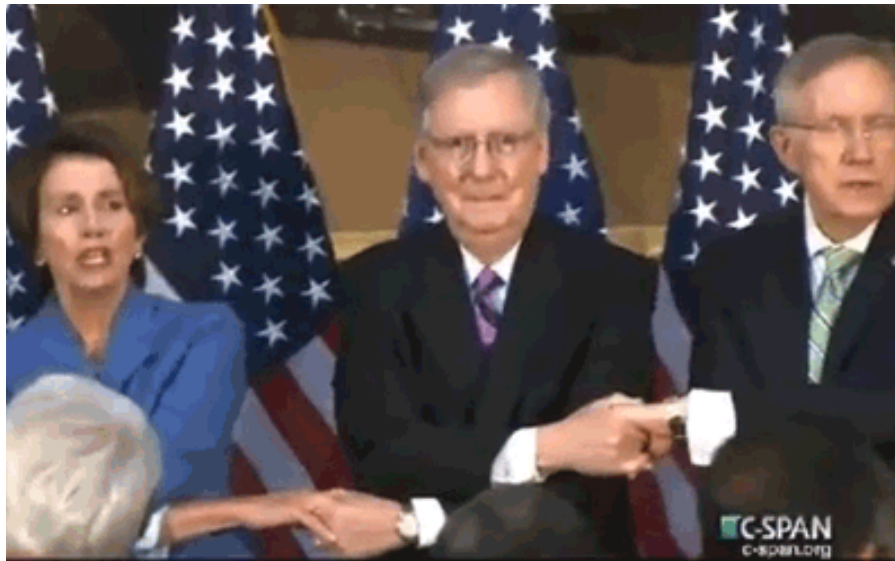


Image Source: [C-SPAN](#)

4. The House rules committee is very powerful



Image Source: [Tumblr](#)

5. The “Nuclear option” is just another means to amend Senate rules



Image Source: [Comedy Central](#)

Questions?

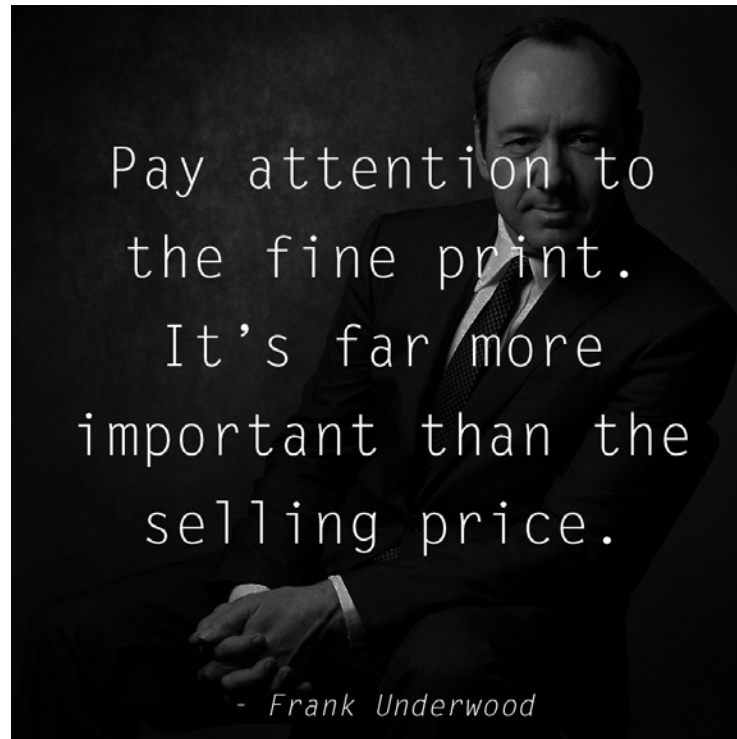


Image Source: [Tumblr](#)