



Tenth
Edition

CONGRESSIONAL PROCEDURES & the POLICY PROCESS

Walter J. Oleszek
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For Janet and Eric
—WJO and MJO

For Nathaniel
—BH and ER

Preface

CONGRESS IS constantly adapting to change. New procedures, processes, and practices come about in response to developing conditions and circumstances. Some procedural innovations are incorporated formally into the rules of the House or Senate; others evolve informally. For all their variability over time, the rules of the House and Senate are constant in this sense: They establish the procedural context within which individual members and the two chambers raise issues and make—or avoid making—decisions. Members of Congress must rely on rules and procedures to expedite or delay legislation, to secure enactment of a law, or to defeat a bill.

Congressional Procedures and the Policy Process was first published in 1978, in the aftermath of major changes that affected legislative decision making and the political system. Many of these developments on Capitol Hill diffused policymaking influence widely throughout Congress. Six years later, when the second edition appeared, the House and Senate had undergone further procedural transformations. The House, for instance, began gavel-to-gavel television coverage of its floor proceedings. The third edition was published in the late 1980s. By then, the Senate also had begun gavel-to-gavel television coverage of its floor proceedings. Furthermore, Congress had revamped its budgetary practices with the enactment of Gramm-Rudman-Hollings I and II; the House Rules Committee had crafted creative new rules for regulating floor decision making; and greater use had been made of comprehensive bills, or “omnibus” legislation, to process much of Congress’s annual workload. One effect of these and other changes was to centralize authority in fewer legislative hands.

The fourth edition was updated during another time of momentous change on Capitol Hill. After 40 years as the “permanent minority,” Republicans captured control of the House in the November 1994 elections and reclaimed control of the Senate as well. The fifth edition, published in 2001, examined many of the rules and practices introduced on Capitol Hill by the Republican majority and the new fiscal environment of surpluses, not deficits. The sixth edition, published in 2004, focused on a number of significant procedural and political developments that shaped the lawmaking process, such as the return of fiscal deficits, innovative rules from the House Rules Committee, and attempts to change the Senate’s cloture rule.

The seventh edition was published at a time of major change on Capitol Hill. For the first time in a dozen years, congressional Democrats took charge of both chambers as a result of the November 2006 elections. What

made the 110th Congress (2007–2008) especially significant, in addition to important procedural and agenda changes, was the election of the first woman in congressional history—Nancy Pelosi of California—to be Speaker of the House, the highest elective post ever held by a woman in American history. As a history maker, Speaker Pelosi was under intense scrutiny from her colleagues, the minority party, the president, the media, and many others as she employed the formidable procedural and political resources of her high office to address the country's pressing issues. The November 2008 elections also proved momentous. Barack Obama became the first African American to be elected president. As he said, "I don't look like all those other presidents" on our currency. Further, the 111th Congress (2009–2010) saw Democrats expand their number of seats in the House by double digits, just as they did in the prior election. Back-to-back electoral successes of this magnitude had not occurred for more than 50 years. Democrats also gained seats in the Senate. The return of unified government enabled the Democratic Congress and President Obama, despite vigorous opposition from Republicans, to enact truly consequential legislation, such as overhauling health care and revamping the financial regulatory system.

The 112th Congress (2011–2012), however, was another story. Democrats took heavy losses in the 2010 midterm elections. They held the Senate narrowly but lost control of the House to Republicans, many of them tea party supported. It was a Congress filled with bitter clashes among the chambers, branches, and parties. Much of the focus of the 112th Congress was the agenda of the 111th Congress but in reverse, such as repealing the health care law and cutting federal spending. Legislative gridlock was commonplace. Some analysts called the 112th the worst Congress in recent memory, only to have that title affixed also to the next Congress.

President Obama was elected to a second term in November 2012, much to the chagrin of Republicans. Democrats also won eight additional seats in the House (still in GOP hands) and bolstered their control of the Senate by two seats. Even so, legislative stalemate rather than policymaking success largely characterized the polarized and divided 113th Congress (2013–2014). For example, legislators faced a series of fiscal deadlines that precipitated a government shutdown in 2013. Moreover, controversies continued between the parties, chambers, and branches over such issues as raising the statutory borrowing limit, reforming immigration, repealing Obamacare, and dealing with sequestration (automatic spending cuts in domestic and defense programs). Compared to other Congresses, the 113th enacted fewer public laws and failed to resolve many outstanding domestic and international issues. Dismayed by the gridlock on Capitol Hill, among other factors, voters in November 2014 expressed their dissatisfaction with the legislative status quo by turning complete control of Congress to the Republicans.

The tenth edition arrives in the aftermath of the November 2014 midterm elections, which saw Republicans win their largest majority in the House since 1946. The GOP also took control of the Senate by a 54 to

46 margin, which allowed Mitch McConnell of Kentucky to become the majority leader, a party post he has long sought. Senator McConnell, like Speaker John Boehner, R-Ohio, promised a return to the “regular order,” which emphasizes such things as a stronger policy role for committees and more amendment and debate opportunities for all lawmakers regardless of party. The first 100 days of the 114th Congress (2015–2016), especially in the Senate, witnessed some examples of a bipartisan regular order. It is too soon to know whether and for how long a revived regular order might last, particularly given the soon-to-arrive partisan intensity of the 2016 presidential and congressional elections.

Suffice it to say that many of the contemporary procedural developments will continue to shape the lawmaking process in significant ways. Accordingly, the tenth edition analyzes the heightened importance of campaigning by legislating, policy and political messaging, the centralization of authority in the principal party leaders of both chambers, and policymaking by brinksmanship. Additional developments of consequence include the rise of acrimonious partisanship that encourages a quasi-parliamentary style (party-line voting) of decision making, the skeptical view of compromise held by many of today’s lawmakers, the intense legislative focus on fiscal austerity, and the sharp disagreement between the two parties on the role and reach of the federal government.

The fundamental objective of *Congressional Procedures and the Policy Process* is to discuss how Congress makes laws and how its rules and procedures shape domestic and foreign policy. The theme of the book is that the interplay of rules, procedures, precedents, and strategies is vital to understanding how Congress works. We emphasize the rules and procedures most significant to congressional lawmaking; we do not attempt to survey all the rules and procedures used by Congress.

Every chapter of the tenth edition has been revised to incorporate new developments and insights. Chapter 1 presents an overall view of the congressional process. Chapter 2 examines Congress’s budget process, which shapes much legislative decision making.

Chapter 3 turns to the initial steps of the legislative process—the introduction of legislation, referral of bills to House and Senate committees, and committee action on measures. Chapter 4 explains how legislation that has emerged from committee is scheduled for floor consideration in the House. Chapter 5 then examines the main features of floor decision making in the House. Chapter 6 puts the spotlight on the Senate, with discussion of how legislation is scheduled in that chamber. Senate floor action is the subject of Chapter 7. In a significant procedural development, the 113th Senate imposed restrictions on the use of the filibuster (the so-called nuclear option). This change, along with other procedural developments, is discussed in this chapter.

Chapter 8 describes how House–Senate differences are reconciled when each chamber passes a different version of the same bill and then discusses

the president's veto power. Chapter 9 deals with how Congress monitors the implementation of the laws it has passed. Finally, Chapter 10 reexamines the legislative process and its evolution, pulling together the major themes of the book.

The tenth edition of this book adds three new authors, and we are honored to participate in updating the book that introduced us to congressional procedure years ago. Our combined goal is to continue to explain the intricacies of the legislative process in a clear and accessible manner, which we believe has been a hallmark of the book since it was first published in 1978. The next edition will celebrate the 40-year anniversary of *Congressional Procedures*. We plan to include a new chapter that examines the most significant institutional changes that have occurred in Congress over the past four decades. This new chapter will allow us in other chapters to examine innovative contemporary legislative practices and to provide new examples of how congressional procedures are used strategically by the participants in the policymaking process.

Anyone who writes ten editions of a book is intellectually indebted to numerous scholars and colleagues, and we welcome the opportunity to acknowledge their generous advice and assistance. Let us start with the talented professionals at CQ Press. The tenth edition benefited enormously from the outstanding management of Sarah Calabi (Acquisitions Editor, Political Science), Natalie Konopinski (Associate Editor), Olivia Weber-Stenis (Production Editor), and Raquel Christie (Editorial Assistant). We also thank Robin Gold for her editorial assistance. Finally, our sincere appreciation extends to Charisse Kiino, Sage's leader of CQ Press, who has promoted and supported this book over many years.

Much credit for whatever understanding we have of the congressional process goes to our colleagues at the Congressional Research Service (CRS). Over the years we have learned the intricacies of the House and Senate from scores of current and former CRS associates. Their research endeavors have expanded our understanding of Congress's role and responsibilities. We especially want to acknowledge Stanley Bach, Richard Beth, Colton Campbell, Curtis Copeland, Christopher Davis, Louis Fisher, Valerie Heitshusen, Frederick Kaiser, Robert Keith, Michael Koempel, Megan Lynch, Betsy Palmer, Morton Rosenberg, Paul Rundquist, James Saturno, Judy Schneider, Stephen Stathis, and Jessica Tollestrup. CRS, we should note, bears no responsibility whatsoever for the views or interpretations expressed within these pages. We must also emphasize that whatever errors remain in this book are ours alone.

We are also indebted to scores of past and present House and Senate members and professional congressional aides who have shared ideas and observations and deepened our understanding of the legislative process. Our deep gratitude goes to all the past and present official parliamentarians of the House and Senate for trying to improve our understanding of Congress's procedural intricacies.

In addition, we are grateful to numerous colleagues in academia who have created, with their research studies and sage counsel, a reservoir of knowledge about congressional activities and operations. Here we would like especially to acknowledge Roger H. Davidson, C. Lawrence Evans, Frances E. Lee, Nelson W. Polsby, Eric Schickler, Steven S. Smith, and James Thurber—who are always generous with their time and who provide excellent suggestions. Our intellectual debt also extends to Donald R. Wolfensberger, resident congressional scholar at the Bipartisan Policy Center and former staff director of the House Rules Committee, and veteran House staffer Matt Pinkus, for their parliamentary advice over the years. We would also like to thank the reviewers of this edition for their thoughtful insights: Thomas J. Baldino (Wilkes University), William F. Connelly (Washington & Lee University), Joshua R. Meddaugh (Clayton State University), Jason Mycoff (University of Delaware), Michael Peress (SUNY–Stony Brook), and Diane Rothleder (Northwestern University).

Finally, we dedicate this tenth edition to our close family members. They provided a loving and encouraging home environment, patience, and support throughout the preparation of every edition.

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About the Authors

Walter J. Oleszek is a senior specialist in the legislative process at the Congressional Research Service (CRS). He has served as either a full-time professional staff aide or consultant to every major House and Senate congressional reorganization effort, beginning with the passage of the Legislative Reorganization Act of 1970. In 1993, he served as policy director of the Joint Committee on the Organization of Congress. A longtime adjunct faculty member at American University, Oleszek is a frequent lecturer before various academic, governmental, and business groups. He is the author or coauthor of several books, including *Congress Under Fire: Reform Politics and the Republican Majority* (with C. Lawrence Evans) and *Congress and Its Members*, 15th edition (with Roger H. Davidson, Frances E. Lee, and Eric Schickler).

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Elizabeth Rybicki began studying congressional procedures 20 years ago as an intern at the Congressional Research Service. She has been an analyst on Congress and the legislative process at CRS since 2002. She earned a B.A. in history from Dartmouth College with an honors thesis on the House amending process and a Ph.D. in Political Science from the University of Minnesota with a doctoral dissertation on the history of the bicameral resolution mechanisms in Congress. Her CRS reports and seminars cover the current rules and procedures of both chambers, and she has published academically on the historical development of legislative institutions. Prior to being hired at CRS she worked at the Center for Legislative Archives and Records Administration.

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