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Blue-Slapping: Enforcing the Origination Clause in the House of Representatives

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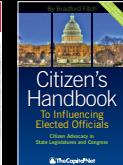
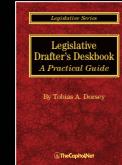
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Article I, Section 7, clause 1, of the U.S. Constitution is known generally as the Origination Clause because it requires that

[a]ll bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

As generally understood, this clause carries two kinds of prohibitions. First, the Senate may not originate any measure that includes a provision for raising revenue, and second, the Senate may not propose any amendment that would raise revenue to a non-revenue measure. However, the Senate may generally amend a House-originated revenue measure as it sees fit.

The House's primary method for enforcement of the Origination Clause is through a process known as "blue-slipping."¹ Blue-slipping is the term applied to the act of returning to the Senate a measure that the House has determined violates its prerogatives as defined by the Origination Clause. The House takes this action by adopting a resolution stating that a Senate bill (or Senate amendment(s) to a non-revenue House bill) "in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill [or such bill with the Senate amendment(s) thereto] be respectfully returned to the Senate with a message communicating this resolution." It is called blue-slipping because historically the resolution returning the offending bill to the Senate is printed on blue paper. The consideration of questions of privilege by the House is provided for under House Rule IX, clause 2(a)(1),² which states:

A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or *offered as privileged under clause 1, section 7, article I of the Constitution*, shall have precedence of all other questions except motions to adjourn [emphasis added].

Any Member of the House may offer such a resolution. In most cases it is the chairman of the Ways and Means Committee who would do so, although another member of the committee may be designated. Consideration of the resolution takes place in the House of Representatives under the one-hour rule. Clause 2(a)(2) of House Rule IX further provides:

The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

Because enforcement of the Origination Clause in the House is based on a constitutional privilege of the House, it is not subject to restrictions based on timeliness, as points of order based on House rules would be. The House can assert its privilege at any time it is in possession of the bill and related papers (that is, anytime the actual documents are not physically in the possession of the Senate or a conference committee). The House is not limited to enforcing its prerogative through blue-slipping a measure upon its initial receipt from the Senate or during its consideration on the House floor.³

¹ The term "blue-slipping" is also sometimes used in an unrelated sense by the Senate in connection with the nomination of federal judges.

² For additional information on the consideration of questions of privilege generally, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by Megan S. Lynch.

³ For example, in the 111th Congress, the House adopted H.Res. 1653, a resolution to return to the Senate a group of five Senate bills and the Senate amendment to a non-revenue-House bill that had passed the Senate and been received in the House at various times during the Congress.

Historically, the House has also used a variety of other methods to enforce the Origination Clause. On a number of occasions the House has chosen to ignore a Senate passed bill and has instead taken action on a corresponding House bill. The House may also refer a questionable Senate measure to a committee. In such instances, a committee may choose simply to report a House bill rather than consider the Senate bill further. The House may also decide to use a conference committee as a venue for deciding Origination Clause questions. It may do so by having the subject committed to conference, or it may determine that an offending provision can be removed in conference without having to take the formal step of blue-slipping. Such an accommodation would not prevent the House from enforcing its prerogatives through blue-slipping after a conference if the offending provision remained in the measure.

The Constitution does not provide specific guidelines as to what constitutes a bill for raising revenue. What constitutes “a bill for raising revenue” is therefore a question of interpretation. The precedents and practices of the House apply a broad standard and construe the House’s prerogatives broadly to include any “meaningful revenue proposal.” This standard is based on whether the measure in question has revenue-affecting potential and not simply whether it would directly raise or lower revenues. Examples of legislation for which this standard would be applicable could include not only legislation to make changes in the tax code directly but also legislation involving any fees not intended as payment for a specific government service, as well as any change in import restrictions because of their potential impact on tariff revenues.

For additional information on the Origination Clause, see CRS Report RL31399, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

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