



# United States Congress Committees and Legal Reform

March 2004

LL File No. 2004-00589  
LRA-D-PUB-000277

This report is provided for reference purposes only.  
It does not constitute legal advice and does not represent the official  
opinion of the United States Government. The information provided  
reflects research undertaken as of the date of writing.  
It has not been updated.

**LAW LIBRARY OF CONGRESS**  
**UNITED STATES CONGRESS**  
**COMMITTEES AND LEGAL REFORM**

The United States Congress consists of the lower House of Representatives, with 435 Representatives and five non-voting delegates, and the upper Senate, with 100 Senators. Representatives are elected from single-member districts of approximately equal population for 2-year terms. Senators are elected at large by the population of a State, with each State, regardless of population, having two Senators. Senators serve a 6-year term. Every 2 years the entire House and one-third of the Senate is elected. Congresses are numbered, beginning with first Congress in 1789. The current Congress is the 108<sup>th</sup>, and the 109<sup>th</sup> will be elected in November 2004 and meet early in January 2005.

Article I of the Constitution of the United States vests legislative powers in the Congress and sets out the procedures for elections and the major powers of the Congress. Section 5 of article I provides that each House (of Congress) may determine the rules of its proceedings.<sup>1</sup> Each House prints its standing rules such as the “Rules of the House of Representatives” or the “Senate Manual Containing the Standing Rules, Orders, Laws and Resolutions Affecting the Business of the United States Senate.” These are supplemented by a large body of precedents that are collected and printed in several sources. Beyond precedent are informal traditions and customs. In addition, each of the two major political parties in each House has its own set of party rules that affect such matters as the assignment of Members to committees or legislative procedure.<sup>2</sup> In theory, each Congress begins with a clean slate and it would be possible for a newly-elected Congress to totally rewrite its rules or to vote to ignore precedents. In practice, on the first day it is in session the House of Representatives will vote to adopt the Rules of the House, which will in most instances be the same as the rules of the previous Congress.<sup>3</sup> Amendment and change are always possible.

## **I. Congressional Committees**

The general responsibilities of the Congress are to pass legislation, levy taxes, allocate revenue, and oversee the operation of programs it has authorized and funded. Each House has special competencies. All revenue bills must originate in the House of Representatives, and the Senate must approve all treaties and Presidential appointments of ambassadors, judges of the Supreme Court “and all other officers of the United States.”<sup>4</sup> The Congress has very broad responsibilities, and the volume of Congressional business is very high. It is estimated that in its 2-year term every Congress, with its

---

<sup>1</sup> *THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION* (Washington, Congressional Research Service, 1966) pp. 121-124.

<sup>2</sup> *Walter J. Oleszek, CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS (5<sup>th</sup> Edition)* (Washington, CQ Press, 2001) Box 1-1 Major Sources of House and Senate Rules, pp. 6-7.

<sup>3</sup> *Martin Gold, Michael Hugo, Hyde Murray, Peter Robinson. A.L. Singleton, THE BOOK ON CONGRESS: PROCESS, PROCEDURE, AND STRUCTURE* (Washington, The Big Eagle Publishing Company, 1992) p. 41.

<sup>4</sup> *U.S. CONST., art. I, §7 for revenue bills; art. II, § 2 for Senate approval of treaties and appointments.*

535 voting members, must deal with about 10,000 bills and nearly 100,000 nominations for office.<sup>5</sup>

This is done by assigning tasks to a number of permanent committees for initial review and screening. Bills are examined in functionally specialized committees before being referred to the entire House for action. In practice, some 90 percent of all bills never make it out of the committees that contribute to the manageability of Congressional business by reducing the number of items brought before the body as a whole. In the 105<sup>th</sup> Congress (1997-1999), only 394 of the 7,732 bills and joint resolutions introduced (5.1 percent) became public laws.<sup>6</sup> Committees do not make final decisions, but forward recommendations for the consideration of the full House or Senate. The specialized committees and subcommittees also review the administration of federal programs that fall in their area of expertise, such as agriculture or banking. To achieve this, they may hold public hearings. Congressional committees have subpoena powers and may compel witnesses to appear and testify on a matter being investigated. They may also grant immunity to subsequent prosecution in the federal courts.

Under Congressional rules, there are several types of committees. Most are Standing Committees; these are permanent bodies that continue from one Congress to another. Thus, the House of Representatives Committee on Agriculture was established in 1820.<sup>7</sup> Standing Committees are established under House or Senate rules or by a Public Law. There are also Select or Special Committees, which are usually temporary panels whose term expires with a particular Congress's 2-year term. They may handle special issues of current relevance or issues that straddle the jurisdiction of several Standing Committees. They can only study, investigate, and make recommendations; they do not consider bills or appropriations.<sup>8</sup> Some Select Committees have survived from one Congress to another, such as the House of Representatives Permanent Select Committee on Intelligence. A third type of committee is the Joint Committee with members from both the House and the Senate. These committees have little power, meet infrequently and concern themselves with such matters as the Library of Congress, Printing, or Economic information. The Joint Taxation Committee is described as "essentially a holding company for staff who work with the tax-writing committees of each House."<sup>9</sup>

Committees may also be described as being either narrowly specialized or having a broad control or centralizing function. An example of the first would be the Senate Oceans, Fisheries and Coast Guard Subcommittee of the Commerce, Science and Transportation Committee. The second would be represented by the House Ways and Means Committee, or the Appropriations and Budget Committees of both the House and the Senate.<sup>10</sup> Committees of the second type are relatively more

---

<sup>5</sup> Roger H. Davidson and Walter J. Oleszek, *CONGRESS AND ITS MEMBERS (8<sup>th</sup> Edition)* (Washington, CQ Press, 2002) p. 199.

<sup>6</sup> *Supra* note 2, at 77.

<sup>7</sup> *House of Representatives, Committee on Agriculture, Committee Jurisdiction*, at <http://agriculture.house.gov/agjurisdiction.html>.

<sup>8</sup> *Supra* note 5, at 203-207.

<sup>9</sup> *Id.* at 207.

<sup>10</sup> *Id.* at 209.

powerful and therefore more attractive to the individual member of Congress. Another way to categorize committees is by their role in the budget process. Congressional rules distinguish between authorization and appropriation, and these two steps are generally the responsibility of different committees. Authorizing committees establish or continue a government agency or program by means of an authorization bill. They will recommend a level of funding. However, it is the Appropriations Committees that make the final decision on how much money to actually allocate. In theory, authorization bills make policy; appropriations bills deal with fiscal management.<sup>11</sup> Tensions between authorizing and appropriating committees are built into the process.

Most committees are subdivided into subcommittees with yet more narrow responsibilities. In the current (108<sup>th</sup>) Congress, the House of Representatives has 19 Standing Committees and 2 Select Committees, and under them are 97 subcommittees. The Senate has 16 Standing Committees, and 6 Select Committees, with 68 subcommittees. There are 4 Joint Committees.<sup>12</sup> Thus, there are 47 full committees and 165 subcommittees. The Standing Committees of the House are: Agriculture; Appropriations; Armed Services; Budget; Education and Workforce; Energy and Commerce; Financial Services; Government Reform; House Administration; International Relations; Judiciary; Resources; Rules; Science; Small Business; Standards of Official Conduct; Transportation and Infrastructure; Veterans' Affairs; and Ways and Means. The Senate list is comparable.

The committees and subcommittees provide the armature for the Congress and permit it to function as effectively as it does. The members, all 535 of them, are formally equal and none has any inherent authority to tell another how to vote or what to do or say. Although each House of Congress is the sole judge of its own Members' qualifications and may refuse to seat any putative Representative or Senator, and may expel any Member already seated, these powers are exercised very seldom indeed. Members elect a few officers, such as the Speaker of the House and the Majority and Minority Leader and Whip, but the formal internal hierarchy is quite limited. Each committee has a chairman, as does each subcommittee, which provides for 212 positions as chairmen.

Committees vary in size, with House committees averaging between 20 and 30 Members, and Senate committees more on the order of 10 Members. The size of committees and the assignment of individual Members to committees are determined by the leadership of each chamber. This is not an arbitrary decision; the outcome reflects a bargaining process and the efforts of the leaders to satisfy as many demands from individual Members as is practicable. The largest committees in the House are the Transportation and Infrastructure Committee, with 75 Members, and the Financial Services Committee, with 70 Members.<sup>13</sup> These are particularly attractive to individual Members because of the opportunities they provide for steering construction projects (roads, bridges) to the Member's home district or for making contacts with potential sources of campaign contributions.

Individual Members of Congress serve on several committees, and committee work takes up

---

<sup>11</sup> *Supra note 2, at 43-51.*

<sup>12</sup> *United States Congress, Joint Committee on Printing 2003-2004 OFFICIAL CONGRESSIONAL DIRECTORY 108<sup>TH</sup> CONGRESS (Washington, U.S. Government Printing Office, 2003) at vii-x.*

<sup>13</sup> *Supra note 5, at 204.*

the greater part of their time and attention. Some develop expertise in a particular topic and serve on the same specialized subcommittee for their entire Congressional career, perhaps ending up as Chairman of a subcommittee or a full Standing Committee. Senators typically serve on three to five committees, while Representatives serve on one to three committees.<sup>14</sup> It is recognized that not all committees are equally desirable or equally powerful, and the rules of each party organization take this into account. Thus, Members may generally serve on only one of the most powerful committees, such as Appropriations or Ways and Means, and a Member may be the Chairman of only one committee. In the Senate, committees are categorized as “A,” “B,” and “C,” with Senators able to serve on only one “B” committee (Budget; Rules and Administration, Veteran’s Affairs, and Joint Economic Committee).<sup>15</sup>

The committee system serves to provide structure and continuity to a large legislative body elected anew every 2 years. It also creates certain organizational problems. Having 212 full committees and subcommittees presents manifest dangers of fragmentation and lack of coordination. Many of the issues that Congress confronts do not fit neatly into the competence of one or another specialized subcommittee, and jurisdictional disputes between committees are common. The specialized nature of subcommittees, such as those with responsibility for the beef industry, mortgage lending, or the taxation of energy corporations, necessarily brings ties with the entities being legislated about, taxed, or supervised. It is possible to create mutually reinforcing alliances of specific industries and the Congressional committees and the Executive Branch agencies that oversee them. Such alliances, sometimes called subgovernments or issue networks, may result in committees becoming advocates of policies intended to serve special interests, rather than either the public good or the policy goals of the majority controlling the Congress.<sup>16</sup>

In the abstract, overall coordination and central control are provided by the party structure and the elected leadership. That is to say, a political process balances the structural tendencies toward fragmentation and the creation of semi-autonomous kingdoms based on committees and ties with bodies outside the Congress. It is generally agreed that political parties have less power over individual legislators in the United States Congress than they do in many other countries, such as the United Kingdom.<sup>17</sup> Although individual leaders of either of the two Houses of Congress may occasionally be able to amass considerable power and the ability to direct the activities of their House, such power relies on personal qualities and networks and tends not to be sustainable for many years.

## II. The Role of Congress in Legal and Judicial Reform

For the Congress, legal or judicial reform would be one of the many issues brought before it every year, and would proceed in the same manner as any other issue. Article III, Section 1 of the

---

<sup>14</sup> *Supra note 11, at 333-440.*

<sup>15</sup> *Supra, note 3, at 48-54; Ross M. English, THE UNITED STATES CONGRESS (Manchester and New York, Manchester University Press, 2003) p. 70-72.*

<sup>16</sup> *Supra note 2, at 17-19.*

<sup>17</sup> *Id. at 19.*

Constitution states that the judicial power of the United States “shall be vested in one Supreme Court and in such inferior courts as the Congress may ... establish.”<sup>18</sup> In the Judiciary Act of 1789, Congress created 13 district courts and three circuit courts, and has from time to time established new courts.<sup>19</sup> The extensive body of Congressional legislation relating to the judiciary passed since 1789, and still in force, is collected in the United States Code, Title 18, Crimes and Criminal Procedure, and Title 28, Judiciary and Judicial Procedure. The length and complexity of each of the Titles of the Code indicate the elaboration and institutionalization of the legal and judicial systems of the United States, and this in turn suggests that large-scale reform of such systems is not too likely. Conversely, the legal and judicial systems are constantly adapting to a changing social and economic environment and new issues that must be adjudicated. To some degree, such adaptation is made through jurisprudence and a body of court decisions that take account of new circumstances. But, amendment of the existing legislation is also a constant process.

The generalizations that about 95 percent of all bills introduced to Congress fail to be enacted as laws and that it is always much easier to delay or defeat a measure than to pass it apply to legal or judicial reforms as they do to any issue.<sup>20</sup> In the House of Representatives, proposals for judicial reform would fall under the jurisdiction of the Committee on the Judiciary, and within that Committee would be dealt with by the Subcommittee on Courts, the Internet, and Intellectual Property.<sup>21</sup> In the Senate, the Committee on the Judiciary has a Subcommittee on Administrative Oversight and the Courts, with explicit jurisdiction over 9 fields. Of these, number 2 is Judicial Rules and Procedures and number 6 is Legal Reform and Liability Issues.<sup>22</sup>

### A. A Bill to Improve the Courts

As an example of a common effort at amendment, the proposed Federal Courts Improvement Act of 2003 (H.R. 1302) may be examined. This is a bill, introduced into the House of Representatives on March 18, 2003 by a Representative who is Chairman of the House Subcommittee on the Courts, the Internet and Intellectual Property. The proposed bill was referred to the Committee on the Judiciary on the same day, and on March 19, 2003, it was then referred to the Subcommittee. On March 20, 2003, the Subcommittee considered the bill and voted to forward it to the full Judiciary Committee. Since then there has been no action on the bill.<sup>23</sup>

According to the summary of the bill, prepared by the Congressional Research Service of the

---

<sup>18</sup> *Supra* note 1, at 597.

<sup>19</sup> *Id.* at 599-607.

<sup>20</sup> *Supra* note 2, at 20-21.

<sup>21</sup> U.S. House of Representatives, Committee on the Judiciary, 108<sup>th</sup> Congress, at <http://www.house.gov/judiciary/>.

<sup>22</sup> U.S. Senate, Committee on the Judiciary, Administrative Oversight and the Courts, 108<sup>th</sup> Congress, at <http://judiciary.senate.gov/subcommittees/oversight.cfm>.

<sup>23</sup> U.S. House of Representatives, H.R. 1302, Federal Courts Improvement Act, information from the bill search function of the Library of Congress's legislative information on the Internet database, Thomas, at <http://thomas.loc.gov>.

Library of Congress, it contains a list of items relating to the federal courts but otherwise seeming to have no common theme. It would modify provisions on: the authority of a bankruptcy administrator to appoint trustees; the places of holding court in the Eastern District of Texas and the Northern District of New York; the conditions of probation and supervised release (of convicts); and the requirements for reporting court orders for wiretaps. It would eliminate the automatic excuse from jury duty for Members of the armed forces, Members of police and fire departments, and public officers. It would modify disability retirements and cost-of-living adjustments in the retirement annuities of territorial judges; modify the compensation of Federal Judicial Center employees; and modify the maximum compensation for attorneys. In all, it contains 23 discrete new provisions or amendments to existing laws.<sup>24</sup>

The next step toward enacting this bill would be for the full House Judiciary Committee to consider it, perhaps change the text or eliminate some of the items, and then vote to refer it to the House of Representatives. If this were done, then the Speaker of the House would have to decide to list it in the calendar of bills to be considered and voted on by the full House. The bill could be amended at this stage. If the House voted to approve it, it would then be sent to the Senate for its consideration. Before any legislation can be sent to the President for his consideration, it must be passed by both Houses of Congress in identical form. This is achieved by various procedures of mutual consultation that offer many possibilities for delaying or killing a bill.<sup>25</sup>

In summary, there are many decision points through which all bills must pass before becoming law, and at each step a majority coalition must be assembled to move the measure along. Often bills that fail to be passed in one Congressional session will be re-introduced in the subsequent Congress, perhaps with modifications intended to win wider support. Bills providing for major reforms of such matters as the legal or judicial system may take up to 10 years to win enough approval to become law. The legislative process is highly complex and prone to delay, but it does operate to ensure that most provisions for significant reform will have broad support and represent a consensus of most legislators.

## **B. Reform of Federal Sentencing**

As an example of Congressional action that significantly reformed the federal judicial system, the Sentencing Reform Act of 1984 may be considered.<sup>26</sup> This Act significantly changed the way federal courts imposed sentences.<sup>27</sup> Congress, in order to establish a more consistent system of sentencing for federal crimes, created the United States Sentencing Commission, an independent

<sup>24</sup> *Id.*

<sup>25</sup> *Supra* note 2, ch. 8, pp. 245-273.

<sup>26</sup> *Sentencing Reform Act of 1984, Pub L No. 98-473, 98 Stat. 1987 (codified as amended at 18 U.S.C. [subsection] 3551-3559, 3561-3566, 3571-3574, 3581-3586 and 28 U.S.C. [subsection] 991-998 (1994).*

<sup>27</sup> Kirby D. Behre, A. Jeff Ifrah, "Foreward: You Be the Judge: the Success of Fifteen Years of Sentencing under the United States Sentencing Guidelines" 40, 1 *AMERICAN CRIMINAL LAW REVIEW* (Winter 2003) at 5. Aaron J. Rappaport, "Rationalizing the Commission: The Philosophical Premises of the U.S. Sentencing Guidelines" 52, 2 *EMORY LAW JOURNAL* (Spring 2003) at 557. *Recent Legislation: Criminal Law - Federal Sentencing Guidelines - Congress Amends the Sentencing Guidelines in an Attempt to Reduce Disparities*, 117, 2 *HARVARD LAW REVIEW* (December 2003) p. 751.

agency in the judicial branch, which was charged with developing detailed guidelines prescribing the appropriate sentences for offenders.<sup>28</sup> The Guidelines became effective on November 1, 1987. The constitutionality of the Guidelines was challenged in the courts, and the U.S. Supreme Court upheld the constitutionality of both the Sentencing Commission and the Guidelines.<sup>29</sup>

The Commission examined many hundreds of criminal statutes in the United States Code and made a statistical analysis based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, and the parole guidelines and policy judgments. The current version of the guidelines is over 500 pages long and reflects more than 600 amendments made between 1987 and 2003.<sup>30</sup> The sentencing table itself consists of a matrix in which 6 categories of criminal history are arrayed against 43 levels of offense. Once these factors are determined, the judge then consults the table which gives a result of months of imprisonment. Each offender is supposed to be assigned a number of “criminal history points.” An offender with 4 to 6 points who is convicted of a level 20 offense is thus to be sentenced to 41 to 51 months imprisonment.<sup>31</sup>

What Congress did to achieve its policy goal of improving consistency in sentencing (or, in another perspective, reducing judicial independence and discretion) was to create a statutory authority and empower it to make detailed rules with the force of law that followed the mandate given in the legislation. Congress has used its oversight powers to monitor compliance with the sentencing guidelines. There is an ongoing academic discussion of the effectiveness of the guidelines and the extent to which the policy goal of consistent sentencing has, in fact, been achieved.<sup>32</sup> The sentencing guidelines clearly bear on the division of power between the legislative and the judicial branches of the federal government, and represent an attempt by the Congress to limit the freedom of action of federal judges. Even though the relevant law was passed in 1984 and the Sentencing Commission continues to meet and issue amendments and interpretations, the basic issues that prompted the legislation continue to draw the attention of the Congressional Committee.

On March 16, 2004, the Chairman of the House Committee on the Judiciary, Representative F. James Sensenbrenner, discussed Congressional responsibility for oversight of the judiciary in remarks to the Judicial Conference, a body composed of federal judges from across the country and headed by the Chief Justice of the Supreme Court.<sup>33</sup> He asserted that: “[u]nfortunately, over the past year or so,

---

<sup>28</sup> *UNITED STATES CODE ANNOTATED, TITLE 18, FEDERAL SENTENCING GUIDELINES* (St. Paul, West Publishing, 2003) p. 1.

<sup>29</sup> *Mistretta v. United States*, 488 U.S. 361, 412 (1989), cited in “Thirty-First Annual Review of Criminal Procedure” 90, 5 *GEORGETOWN LAW JOURNAL* (May 2002) p. 1753.

<sup>30</sup> *Supra* note 27, Behre and Ifrah.

<sup>31</sup> *UNITED STATES CODE ANNOTATED* (St. Paul, West Publishing, 2003) Chapter Five - Determining the Sentence, Part A - Sentencing Table, at 173-175.

<sup>32</sup> *Supra*, note 27.

<sup>33</sup> U. S. House of Representatives, Committee on the Judiciary, “Sensenbrenner Remarks before the U.S. Judicial Conference Regarding Congressional Oversight Responsibility of the Judiciary” (March 16, 2004), at <http://www.house.gov/judiciary/news031604.htm>.

Congress and the House Judiciary Committee in particular, has been under sustained criticism for its constitutionally-mandated legislative and oversight actions concerning the federal judiciary.” He then reviewed Congressional complaints about the sentencing record of three named federal judges. He ended by saying that the experience raises profound questions as to whether the judiciary should continue to enjoy delegated authority to investigate and discipline itself, and that: “If the [j]udiciary will not act, Congress will.”

At this point, it appears that the limits of Congressional authority over the judiciary are being tested. Under the Constitution, federal judges are appointed for life, and the only sanction that Congress can impose on them is impeachment, a cumbersome and seldom-exercised procedure. The experience of the Sentencing Commission and the Sentencing Guidelines could be used to produce a dissertation dealing with the role of Congress in legal and judicial reform.

Prepared by Donald R. DeGlopper  
Senior Legal Research Analyst  
March, 2004