



# The New Orthodoxy: How Congress Passes Laws Now

John Cannan

Faculty Scholarship Librarian & Legal  
Research Instructor

Villanova University Charles Widger  
School of Law, Law Library

# Overview



- What's to come
  - Traditional legislative procedure & information sources produced
  - Unorthodox legislative procedure
  - Procedures Congress using now & effect on information sources produced
    - Preliminary data
- Learning objectives:
  - How Congress works
  - How to research federal bills and laws
  - How to use legislative data

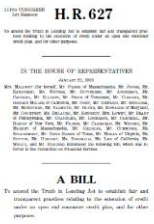




# Traditional Congressional Procedure



# Legislative Procedure: "Short Form"



**Referred to Committee**



- Hearing
- Mark up

**Reported to Floor**

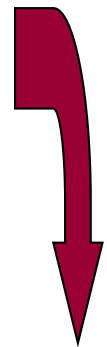


- Debate
- Amendments
- Vote
- Engrossed

**Reported to Other Chamber**

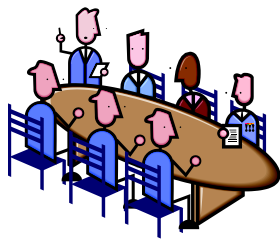


**Referred to Committee**



**Bill introduced**

**Reported to Floor**



**Referred to Conference Committee**



- Conference:**
- Chamber differences resolved



**Reported to Floor**



- Hearing
- Mark up

- Debate
- Vote
- Enrolled

- Debate
- Amendments
- Vote
- Engrossed



**Presented to President**





**Sure glad I found that  
committee report.**



**LEGISLATIVE HISTORY GIVES YOU STATUTORY INTENT**



# Unorthodox Congressional Procedure



# Another Model of Legislative Procedure





# House

# Senate

Preservation of Access to Care for Medicare Beneficiaries & Pension Relief Act

H.R. 3200

## Committees

- Education & Labor
- Energy & Commerce
- Ways & Means

## Committees

- Finance
- Health, Education, Labor & Pensions

Service Members Home Ownership Tax Act

• Budget

H.R. 4872

H.R. 3962

S. 1679

S. 1796

## Rules Committee

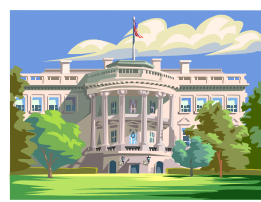
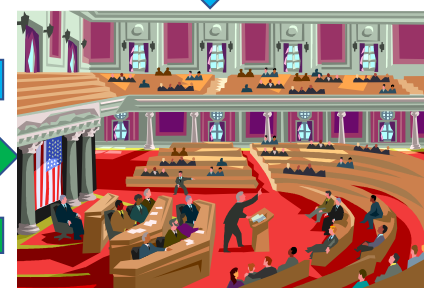
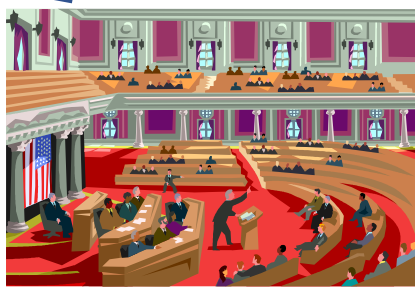
+ H. Res. 1203

+ H. Res. 903

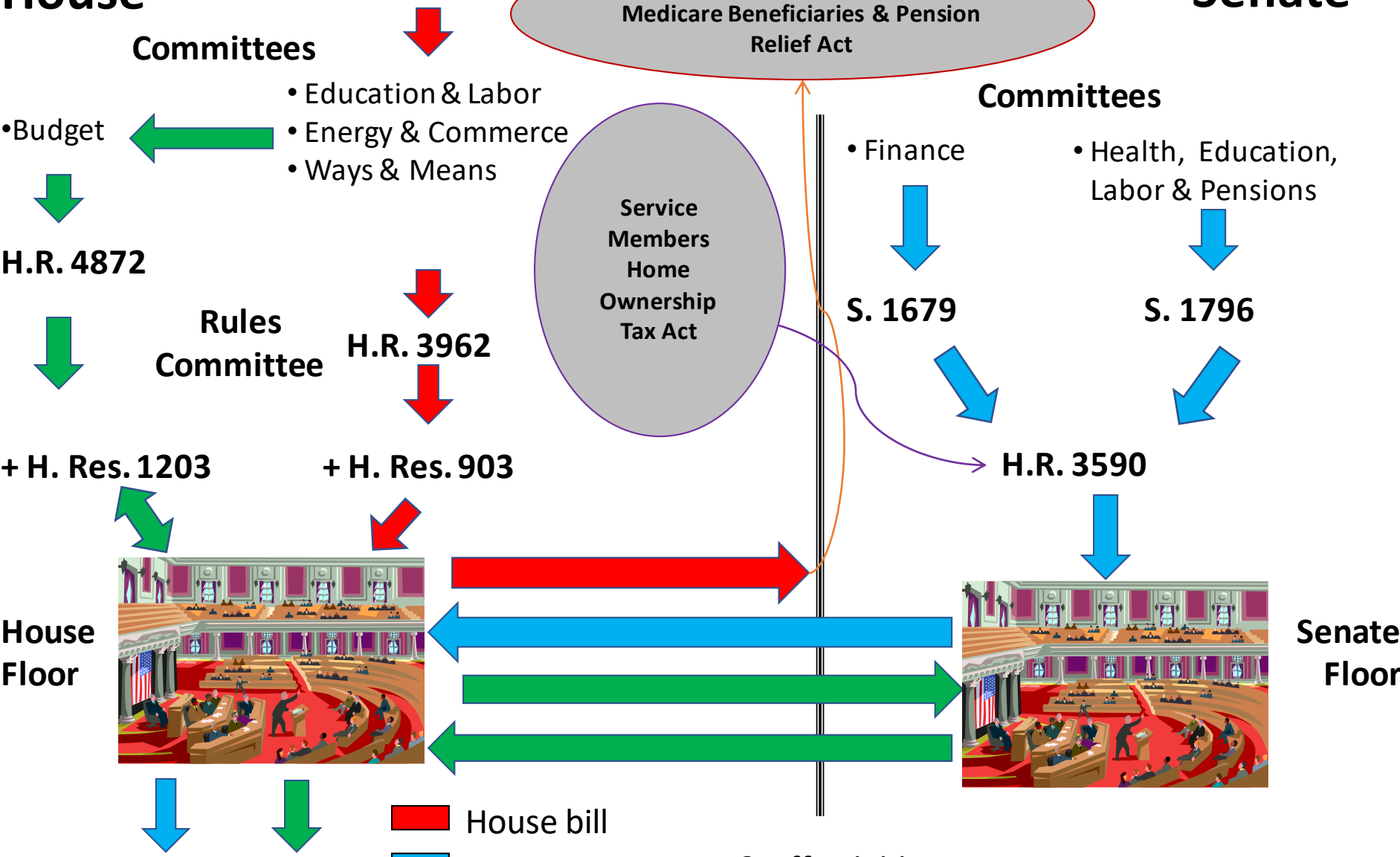
H.R. 3590

House Floor

Senate Floor



- House bill
- Patient Protection & Affordable Care Act
- Health Care and Education Reconciliation Act
- Amendment between houses



# Consensus Model: Defend Trade Secrets Act (2016)

Senate

House

**S. 3381**

**112<sup>th</sup> Congress**

Floor statement



**113<sup>th</sup> Congress**

**S. 2267** (Companion to H.R. 5233)

Hearing 

**H.R. 5233** (Companion to S. 2267)

Hearing   
Mark up   
Report 



**114<sup>th</sup> Congress**

**S. 1890** (Companion to H.R. 3326)

Hearing   
Report   
Floor statements

**H.R. 3326** (Companion to S. 1890)

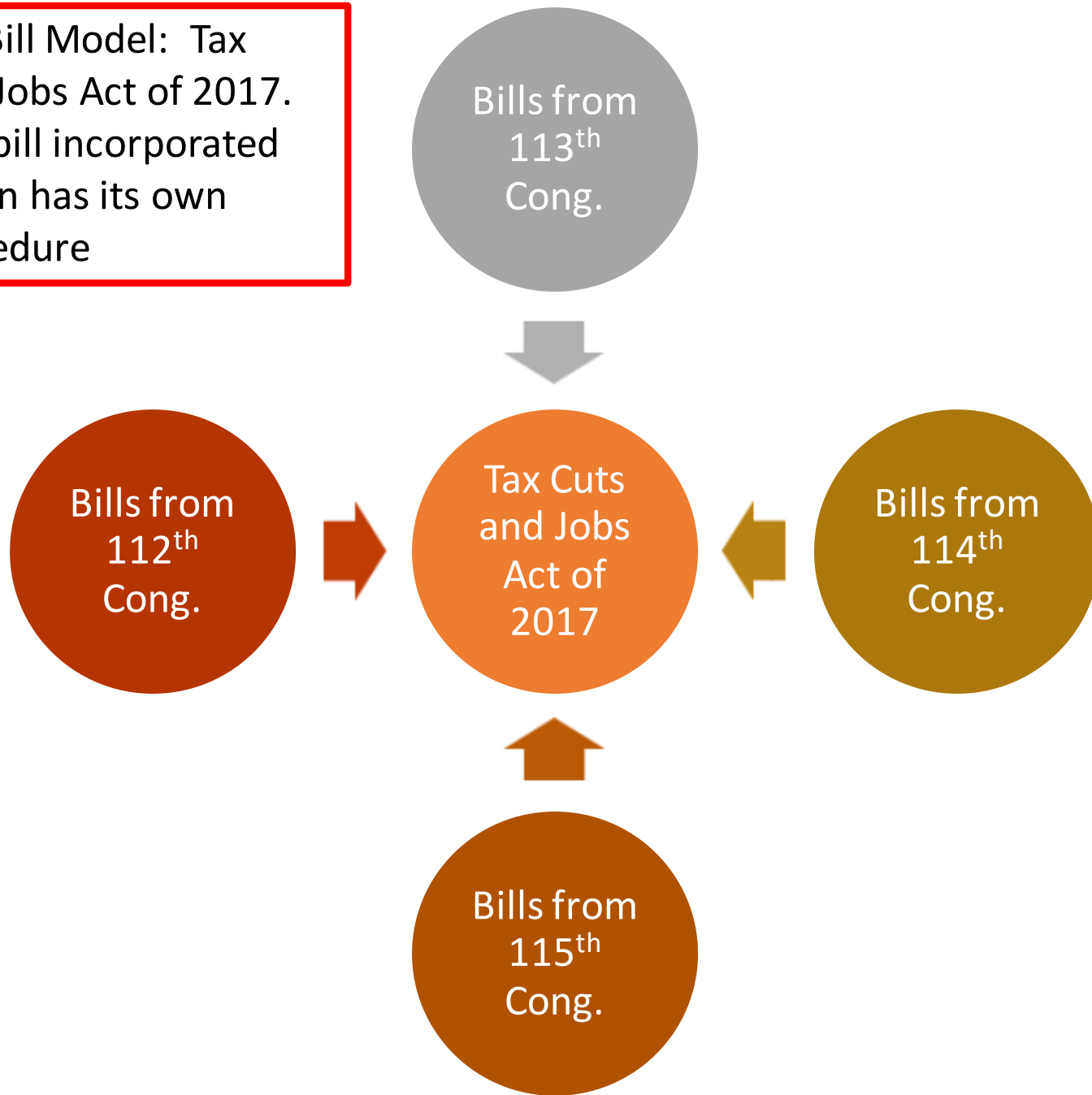
**S. 1890**  
Report   
Floor statements



Signing  
statement

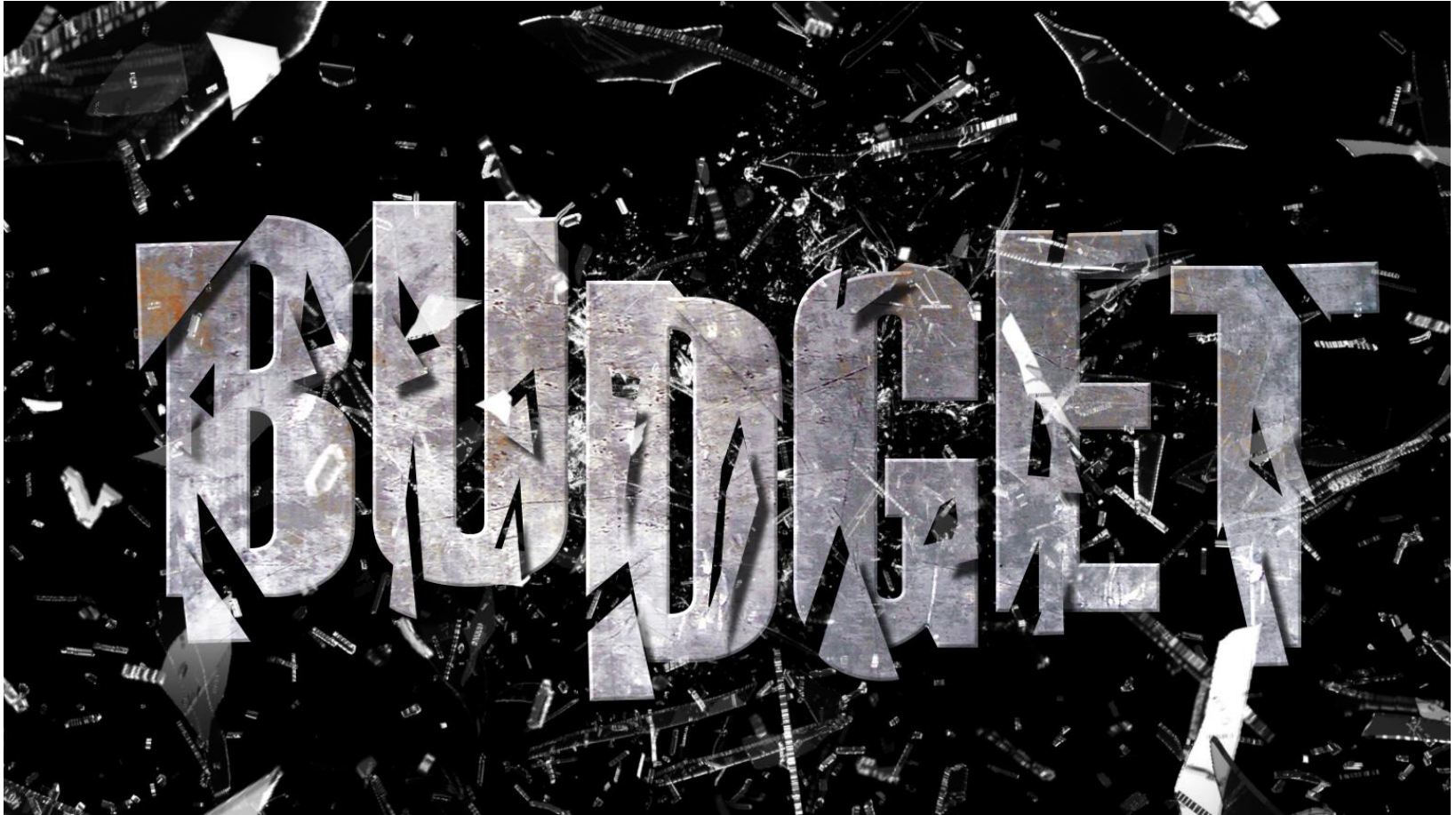


Funding Bill Model: Tax Cuts and Jobs Act of 2017. Each bill incorporated within has its own procedure





# Congressional Budget Process: Broken



VILLANOVA  
UNIVERSITY

Charles Widger School of Law

# Schoolhouse Rock Is DEAD!

The *Schoolhouse Rock!* cartoon version of the conventional legislative process is dead, if it was ever an accurate description in the first place. **Major policy** today is **often** the product of "unorthodox lawmaking" ...deviations from traditional process....

--Abbe R. Gluck et. al., *Unorthodox Lawmaking, Unorthodox Rulemaking*, 115 COLUM. L. REV. 1789 (2015).



Preliminary Results

# What Is Congress Doing?

H. E. A. R. I. N. G. D.  
M. E.  
R. E. P. O. R. T. B.  
N. A.  
D. B. T.  
C. O. M. M. I. T. T. E. E.  
E. L.  
N. L. A. W.  
T.





# Research Objective

- Collect data from 110<sup>th</sup> to 116<sup>th</sup> Congresses
  - Track laws' path to passage
  - Note information sources created
- Track “substantive laws” (SLs)
  - Add, subtract or otherwise amend U.S. Code
  - Authorize or appropriate significant amount of funds
  - Make substantive or significant change in policy
  - E.g. excludes naming of post offices



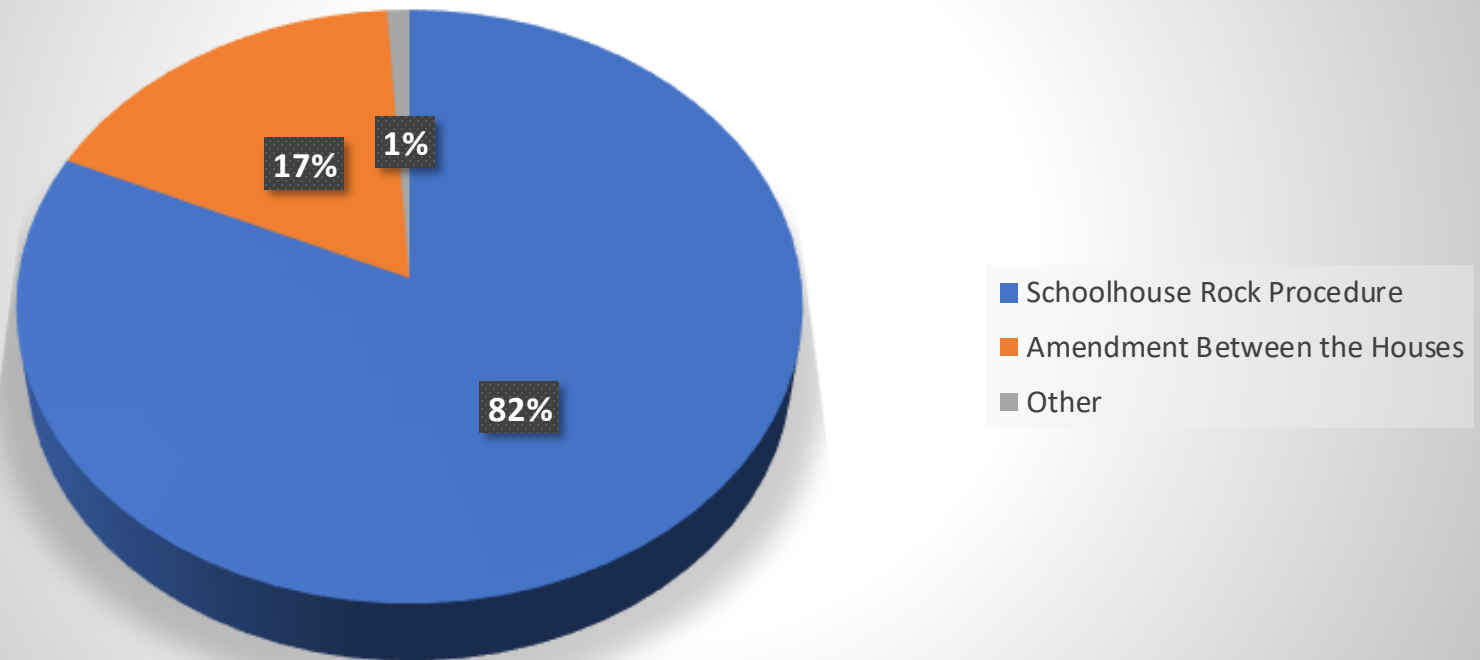
# Databases Used for Collecting Data

- Congress.gov
  - "Official website for U.S. federal legislative information"
    - GPO, Library of Congress & other Congressional entities
  - Has legislative Information from "1973"-pres.
  - Shows bill's procedural path over Congress
- Proquest Congressional
  - Commercial database
  - Legislative information from 1790 – Pres.
  - Shows bill's information sources across Congresses



# Results: Schoolhouse Rock Still Rules

Use of Procedures to Pass Substantive Laws









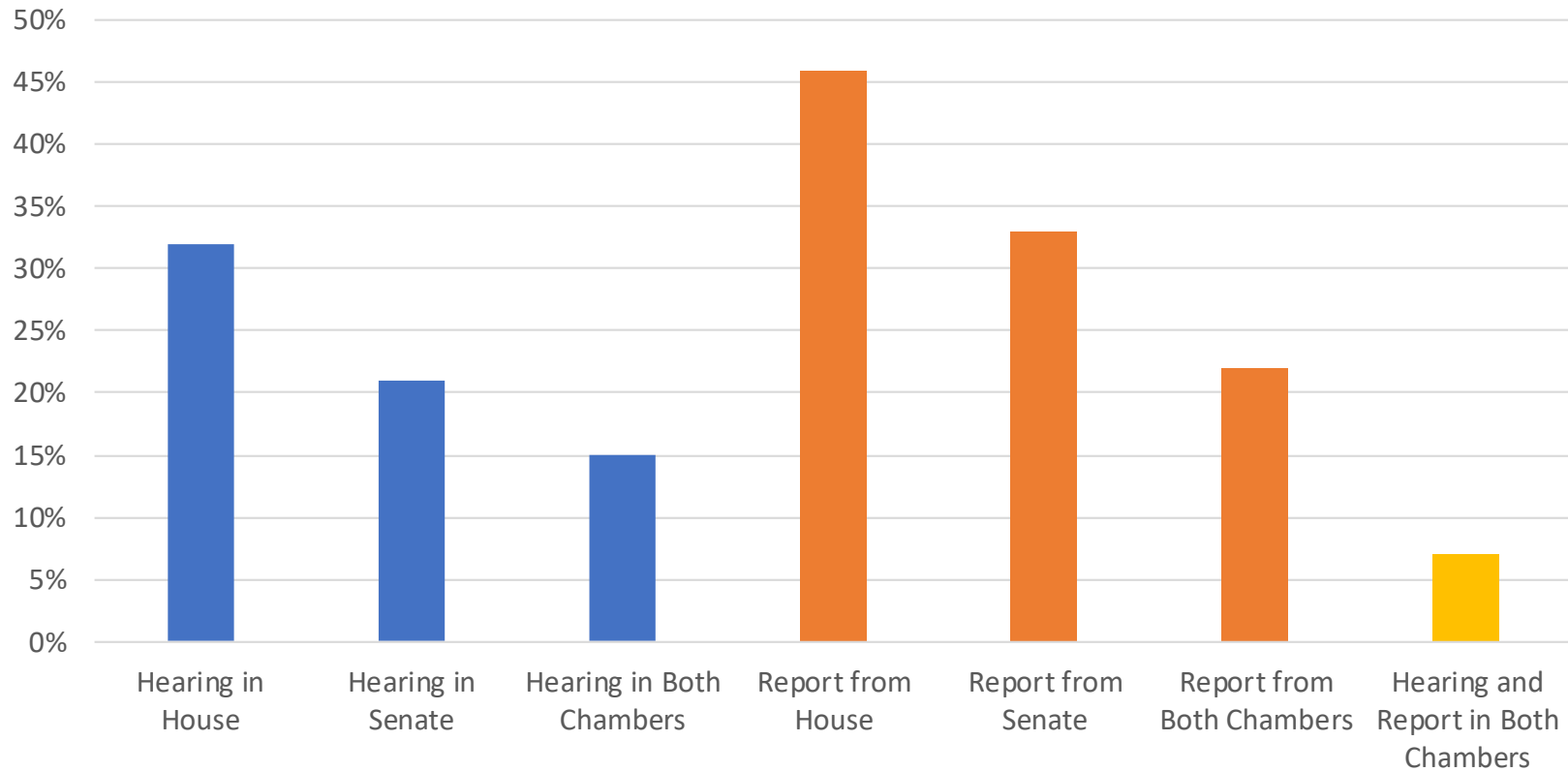
# Committee Information

Reports & Hearings

# Reports & Hearings



Information Reported from Committees







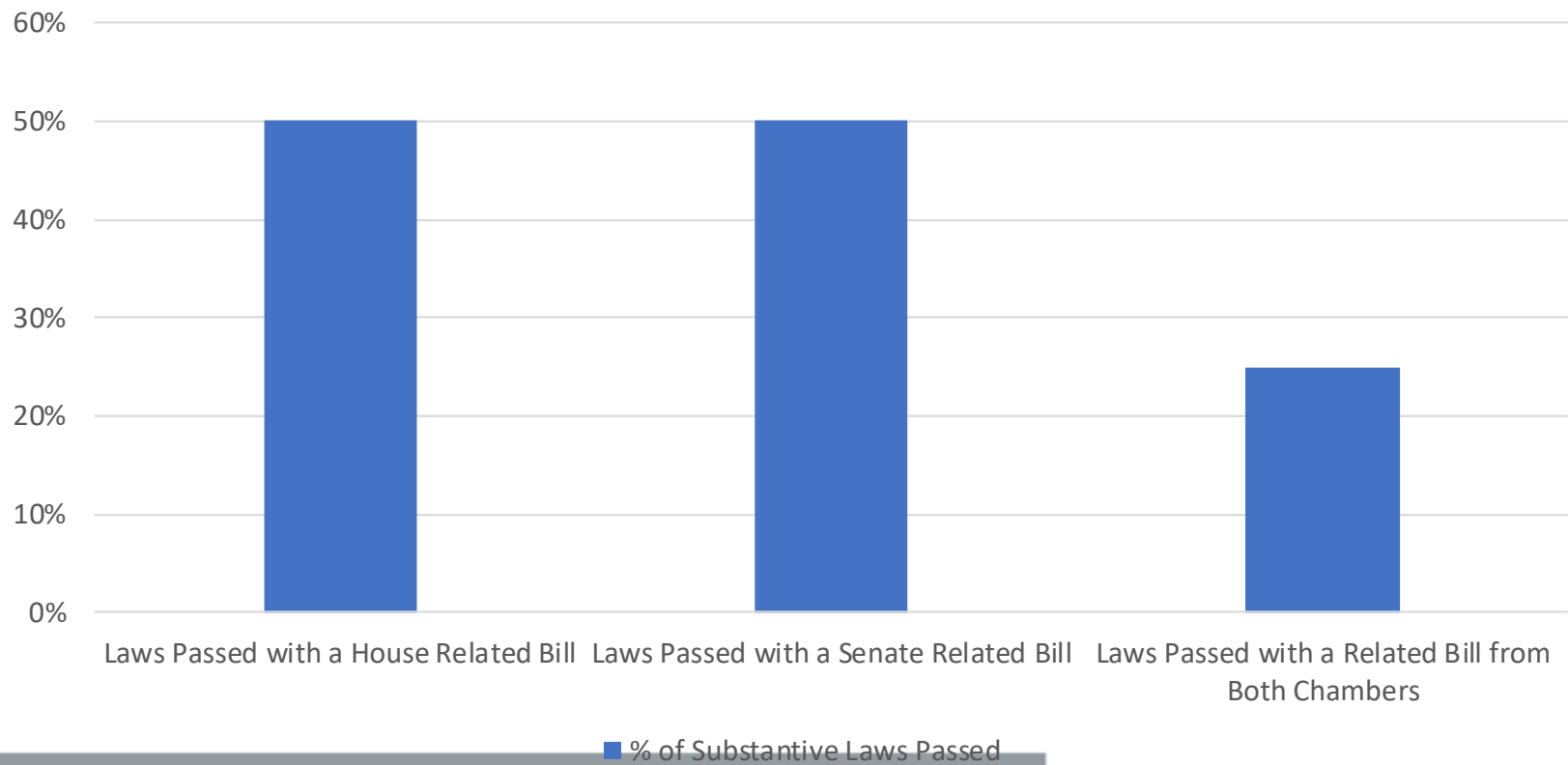
# Floor Information

---



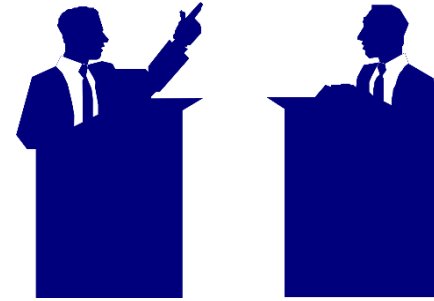
# Bills

## Laws Passed with Related Bills

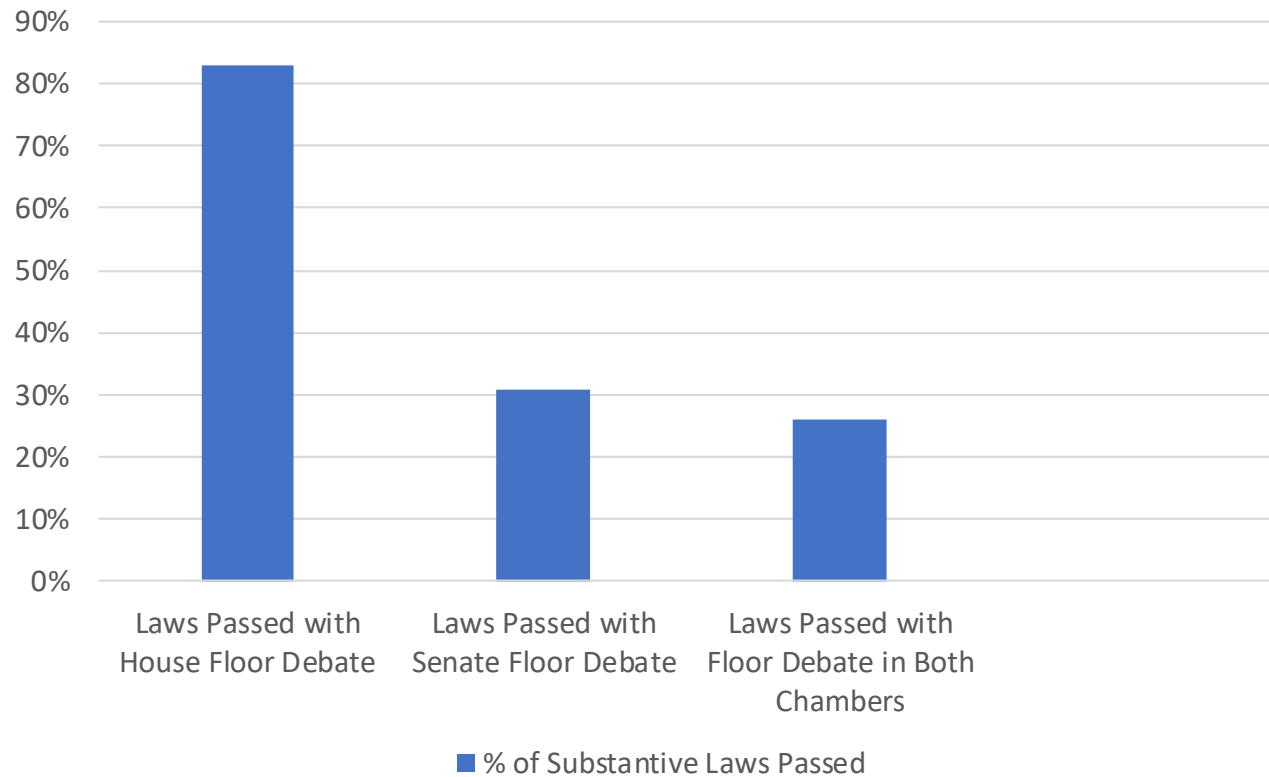




# Floor Debate



Laws Passed with Floor Debate



TAX CUTS AND JOBS ACT

---

CONFERENCE REPORT

TO ACCOMPANY

H.R. 1



# Conference Committee Report

AGRICULTURAL ACT OF 2014

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2642



# Whither the Conference Committee Report?

---

“Don't expect to see any more conference committees on controversial party-line bills. Ever.”

--Jeff Davis, ATLANTIC MONTHLY

# Amendment Between the Houses



- Purpose: Resolves differences between House and Senate versions of bill
  - Cut text from bill passed by other chamber
  - Paste in text of another bill
  - Send back to other chamber
  - Now favored means of achieving chamber agreement
- Result:
  - No Conference Committee Report
  - Can combined histories unrelated bills



# The Conference Committee Report



VILLANOVA  
UNIVERSITY

Charles Widger School of Law



1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2017.

4 SEC. 13543. MODIFICATION OF TREATMENT OF S CORPORA-  
5 TION CONVERSIONS TO C CORPORATIONS.

6 (a) IN GENERAL.—Section 1371 is amended by add-  
7 ing at the end the following new subsection:

8 “(f) CASH DISTRIBUTIONS FOLLOWING POST-TERMI-  
9 NATION TRANSITION PERIOD.—

10 “(1) IN GENERAL.—In the case of a distribu-  
11 tion of money by an eligible terminated S corpora-  
12 tion after the post-termination transition period, the  
13 accumulated adjustments account shall be allocated  
14 to such distribution, and the distribution shall be  
15 chargeable to accumulated earnings and profits, in  
16 the same ratio as the amount of such accumulated  
17 adjustments account bears to the amount of such ac-  
18 cumulated earnings and profits.

19 “(2) ELIGIBLE TERMINATED S CORPORA-  
20 TION.—For purposes of this subsection, the term ‘el-  
21 igible terminated S corporation’ means any C cor-  
22 poration—

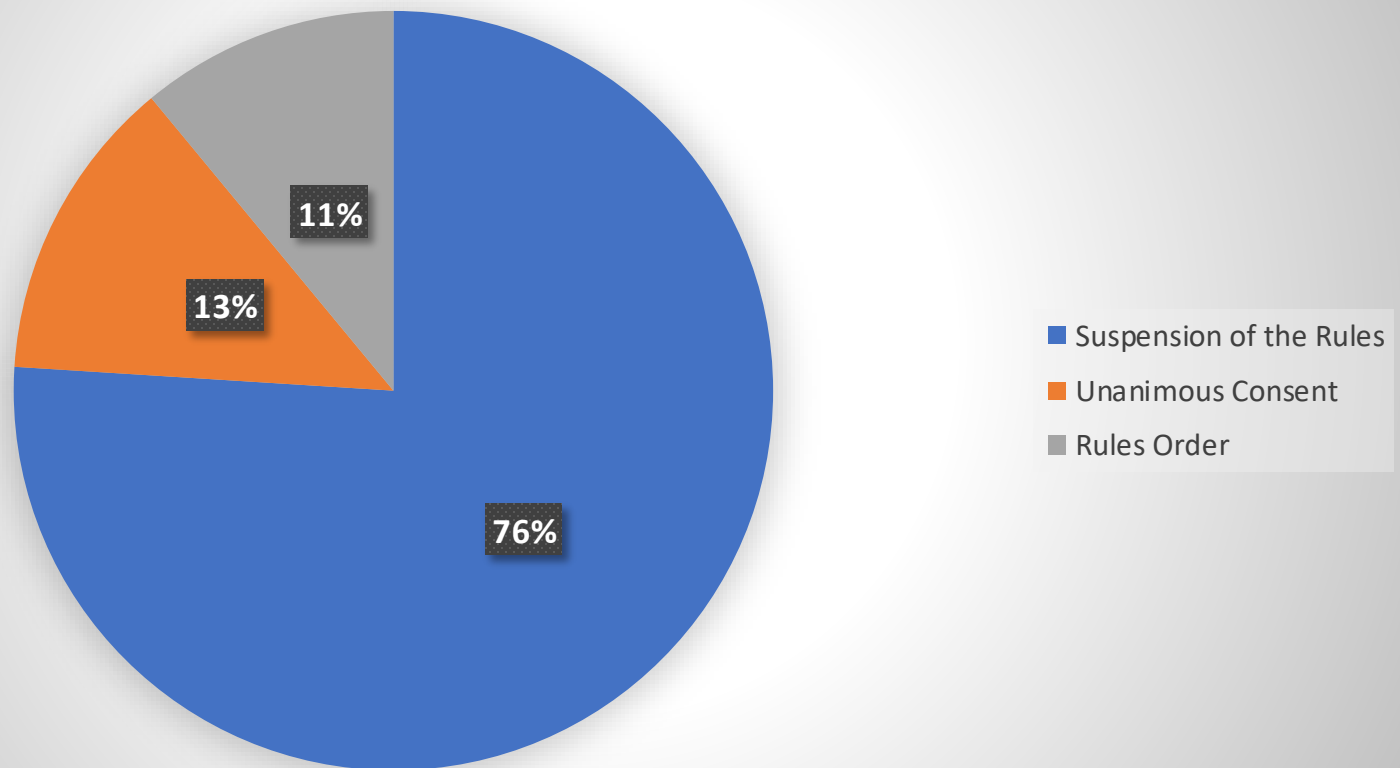
23 “(A) which—

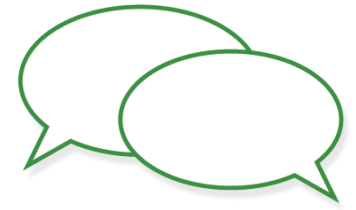
*ADD*  
*(a) adjustments attributable to conversion from S corporation to Corporation - Section 481 is amended by adding at the end the following new subsection:*  
*(d) Adjustments attributable to conversion from S corporation to Corporation -*  
*(1) In general, in the case of an eligible terminated corporation any in- adjustment attributable to conversion from S corporation to Corporation -*  
*(2) Eligible terminated S corporation - For purposes of this subsection, the term 'eligible terminated S corporation' means any C corporation—*  
*(A) which—*

Amendments

# House Procedure & Floor Amendments

Procedure Used to Pass Substantive Laws in House



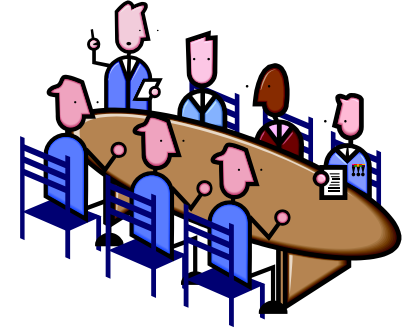


# House Floor Procedure

- Suspension of the Rules: Amendments prohibited
- Unanimous Consent: No objection
- Rule Orders:
  - Closed: No amendments allowed
    - Most common
  - Structured: Certain amendments allowed
    - Uncommon
  - Open: Amendments allowed
    - Rare



# House Rules Committee

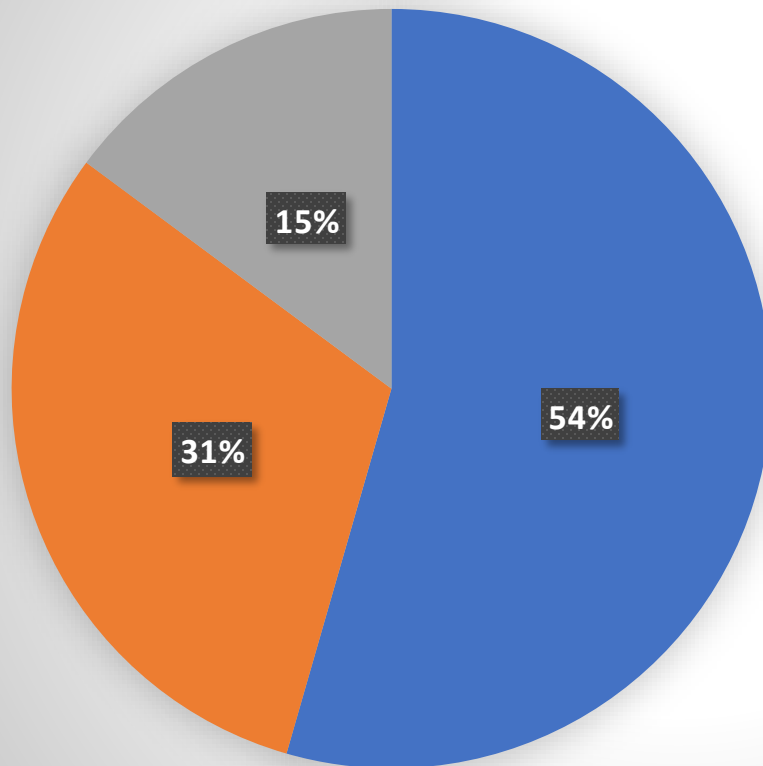


- Purpose: Brings bills to Whole House and sets rules for floor debate
  - Can bring:
    - Bill reported from committee
    - Or completely different bill
  - Determines
    - Amount of time for debate
    - Whether amendments will be offered and which ones
- Result: Can be crucial source of legislative information
  - House Resolution (H. Res.)
  - Report



# House Amendments

Laws Passed with House Amendments



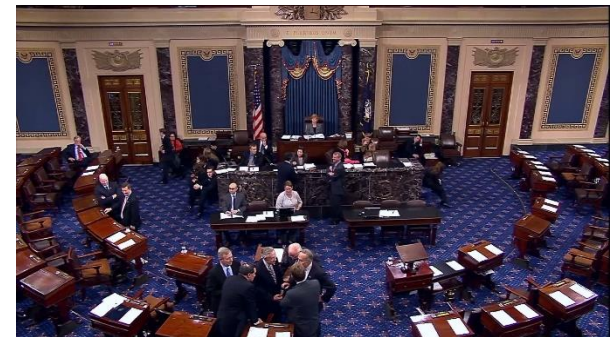
- Laws Passed with Amendment through House Rules Order
- Floor Amendments Made in Order by House Rules Order
- Floor Amendments without House Rules Order





# Senate Floor Amendments

- 27% SLs passed with Senate amendment:
  - 65% of SLs passed with one amendment
  - 83% of SLs passed with two or fewer amendments



# Do You Want to Learn More?

- CRS Reports, <https://crsreports.congress.gov/>
- BARBARA SINCLAIR, UNORTHODOX LAWMAKING (5<sup>th</sup> ed. 2016).
- WALTER OLESZEK, ET AL., CONGRESSIONAL PROCEDURES AND THE POLICY MAKING PROCESS (11<sup>th</sup> Ed. 2019).
- CHARLES TIEFER, CONGRESSIONAL PRACTICE AND PROCEDURE (1989).
- CHARLES TIEFER, THE POLARIZED CONGRESS: THE POST-TRADITIONAL PROCEDURE OF ITS CURRENT STRUGGLES (2016).

