



## Reconciliation and the Misuse of Senate Procedures

Jennifer Pollom | March 5, 2010

On Wednesday, President Obama gave a heavily anticipated speech about his vision for the future of health care reform, both in terms of substance and procedure. One of the primary takeaways (that has those inside the beltway chattering) is that the President's suggested using reconciliation procedures to pass the health care legislation – a move that would require only a simple majority vote rather than the seemingly insurmountable 60-vote hurdle faced by “regular” legislation.

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As we previously discussed here, reconciliation is a legislative process that was introduced in 1974

in order to facilitate the passage of legislation to reduce the deficit, reign in spending, and allow Congress to more easily control the fiscal course of the nation. This is important: reconciliation is a deficit reduction tool and was not designed to facilitate the passage of legislation that should be subject to the normal legislative process. When reconciliation was created, it was acknowledged that Congress needed a separate set of tools to make it more likely that deficit reduction measures (namely spending cuts or tax increases) would actually pass, in order to ensure the fiscal health of the nation. Most importantly, reconciliation bills are effectively filibuster-proof, meaning they only require a simple majority (in the case of the Senate, 51 votes) to pass.

However, equally important and often overlooked, reconciliation bills also have a very strict rule for the type of amendments that can be offered. The strict germaneness tests that apply to amendments make it extremely hard to amend a reconciliation bill without lining up 60 votes to overcome procedural hurdles. Why does this matter? If reconciliation is used to try and pass sweeping health care reform, the bill could pass with virtually no amendments – no participation from the minority and no attempts to improve the massive overhaul of the health care system. To put this in perspective, during the last iteration of the health care bill in the Senate, over 800 amendments were filed during the bill's consideration by the Senate Health Education Labor and Pensions Committee (HELP) and over 500 amendments were filed during the bill's consideration by the Senate Finance Committee. Does anyone really think that the health care reform bill will have reached such



a state of perfection that it needs no amendment at all during further consideration? No changes – whatsoever – to any of the numerous provisions? No minor tweaks to improve the monumental program changes?

The bill should be subject to regular legislative consideration and be open to a full amendment process, allowing each Member to offer changes in order to represent their constituents. Limiting amendments through the use of reconciliation, in this case, is inappropriate and an abuse of the system.

Many Democrats have countered that this is not the first time the reconciliation process has been used to pass legislation that has little to do with deficit reduction. While it's true that reconciliation has been used to pass legislative changes that blur the "deficit reduction" line, the Senate Budget Committee reports that an overwhelming majority of those reconciliation bills (89%) have had bipartisan support. In fact only two reconciliation bills have become law on a straight party line vote—the bill to increase Clinton-era top marginal rates to 39.6% and 36% (the Omnibus Budget Reconciliation Act of 1993), and the Deficit Reduction Act of 2005. It has been recently argued that reconciliation was used to pass the 2001 and 2003 Bush tax cuts, however both of those bills passed with a bipartisan vote unlike the partisan vote likely on the health care bill. To claim that the use of such a truncated and specialized process as reconciliation is appropriate for legislation as divisive, partisan and outside the scope of deficit reduction as the current health care bill is, is a misuse of the process and an abuse of the Senate procedures. In fact, Democratic Senator and author of the original reconciliation procedures, Robert C. Byrd, firmly opposed the use of reconciliation for President Clinton's health reform plan in 1993. He was able to prevail over the Democratic majority and prevent the

use of reconciliation then. It's unfortunate that the current political landscape has caused procedural amnesia in the majority party.

Byrd tempered his previous view last week with a letter to the editor of the Charleston Daily Mail, though his comments merely suggest that he will not take a strong stand against the Democrat plan and it remains clear that he supports the use of reconciliation for measures that would truly reduce the deficit. (Critics claim that after removing the budgetary gimmicks contained in the current health care bill, it would have the opposite effect on the deficit.)

As Senator Judd Gregg, Ranking Member of the Senate Budget Committee, succinctly notes in a recently-published white paper, "While some view reconciliation as a magic bullet for ramming through partisan legislation, the origins, requirements, and limitations of reconciliation make it ill-matched for sweeping policy measures such as comprehensive health care reform." One of his final thoughts in the piece rings especially true: the decision to use the reconciliation process for health care reform this year is not based on budget considerations, but on political ones. While this may seem trivial or unimportant to those who don't spend their days contemplating arcane Senate procedures, the practical effects of using this process are very clear. Americans may well end up with a sweeping health care reform that was not subject to proper debate, and in which Americans (through their elected Senators) were never afforded their (necessary) opportunity to amend and improve the bill. Instead, partisan tactics may be employed to pass a bill that isn't subject to the necessary legislative process and as a result does not fully realize and reflect the best interests of Americans, but rather serves the partisan goals of a party that's already lost votes (see Scott Brown).