

insights

TYPES NOT MAPPED YET March 03, 2020 | TTR not mapped yet | Christopher T. Murray

Byrd Rule

Byrd Rule: A rule that prevents extraneous provisions from being included in reconciliation bills.

Fowl Play

When Congress wants to pass budgetary legislation in an expedited manner (i.e., simple majority, no filibuster, streamlined debate), they use a process called [reconciliation](#). Reconciliation is optional, but it has been used in most years since its origination in 1980.

In the early 1980s, reconciliation bills often contained extraneous provisions unrelated to the budget. Then-Senator Robert C. Byrd of West Virginia, whose Senate career included various leadership positions in the Senate Democratic Caucus and ultimately [president pro tempore](#), grew frustrated with what reconciliation had become in practice. In 1985, he first introduced an amendment to focus the budget process and keep superfluous provisions out of reconciliation bills. This amendment was made a permanent part of the Congressional Budget Act in 1990 and is now known as the Byrd Rule.

Flight of Fancy

Under the [Byrd Rule](#), senators can raise a point of order against certain provisions unrelated to the budget to have them stricken from a reconciliation bill (or to prevent them from being included in amendments). A three-fifths majority vote is required to waive the Byrd Rule, and it has proven to be durable over the past four decades. The Senate tends to favor those who move to strike extraneous provisions: between 1985 and 2016, 70 points of order invoked the Byrd Rule, and 60 were sustained. Of the 57 motions to waive the Byrd Rule, 48 were rejected.

A Byrd in the Hand

The Byrd Rule has become increasingly prevalent since its implementation, sometimes with high-profile legislation. In 2010, the Senate utilized reconciliation to finalize passage of Obamacare, which contained several education provisions. Democrats utilized the Byrd Rule to scuttle most Republican amendments. But two points of order were sustained against the Democrats' reconciliation bill, and a Pell Grant measure was subsequently struck from the bill. Ultimately, the Senate passed the [Patient Protection and Affordable Care Act](#) and the [Health Care and Education Reconciliation Act of 2010](#), and President Obama [famously](#) signed both into law (exemplified by Vice President Biden's off the cuff excitement).

The Byrd Rule was in the spotlight again in 2017 when Republicans utilized reconciliation to pass the [Tax Cuts and Jobs Act](#). After the House passed the bill in December, Senate Democrats [objected](#), saying that the bill violated the Byrd Rule. Among their arguments was that the title itself was extraneous. These efforts forced a revote in the House, but President Trump ultimately signed the bill into law two days later.

As Congress begins the appropriations process for [federal fiscal year](#) 2021 in earnest, we will likely once again see reconciliation and the Byrd Rule play a role in Congress's budgetary machinations.



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