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The Origination Clause of the U.S. Constitution: Interpretation and Enforcement

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SUMMARY

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The Origination Clause of the U.S. Constitution: Interpretation and Enforcement

Article I, Section 7, clause 1, of the U.S. Constitution is known as the Origination Clause because it provides that "All Bills for raising Revenue shall originate in the House of Representatives." The meaning and application of this clause has evolved through practice and precedent since the Constitution was drafted.

The Constitution does not provide specific guidelines as to what constitutes a "bill for raising revenue." This report analyzes congressional and court precedents regarding what constitutes such a bill. 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 a provision-by-provision review of whether the measure in question has revenue-affecting potential and not simply whether it would raise or lower revenues directly. As a result, the House includes within the definition of *revenue legislation* not only direct changes in the tax code but 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. The precedents of the Senate reflect a similar understanding. The Supreme Court has occasionally ruled on Origination Clause matters, adopting an independent understanding of what constitutes a revenue bill that is based on two central principles: (1) raising money must be the primary purpose of the measure rather than an incidental effect and (2) the resulting funds must be for the expenses or obligations of the government generally rather than a single, specific purpose.

This report also describes the various ways in which the Origination Clause has been enforced. Given the fact that originating revenue measures is the House's prerogative, it falls to the House to enforce this provision of the Constitution most frequently. The House's primary method for enforcement is through a process known as "blue-slipping." *Blue-slipping* is the term applied to the act of returning to the Senate a measure that the House has determined violates its prerogatives. This is done by voting on a privileged resolution. Less typically, the House may choose to enforce its prerogative by taking no action on the disputed Senate measure or referring it to committee. The Senate may also address whether a measure contravenes the Origination Clause, including raising a point of order against its consideration. As a question of constitutional interpretation, the question would be submitted directly to the Senate for its determination. Such a question would be debatable and decided by majority vote. As a question of constitutional interpretation, the Supreme Court may also have a role in enforcing the Origination Clause.

Finally, this report looks at the application of the Origination Clause to legislation concerning public debt and appropriations.

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Introduction

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

> All 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 in both the House and Senate, 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 House-passed nonrevenue measure. The Senate, however, may generally amend a House-originated revenue measure as it sees fit. These prohibitions can be enforced in either the House or the Senate, and there are ample precedents for both.

As with many provisions of the Constitution, the precise meaning and application of these few words has been refined through practice and precedent since it was first ratified. This report examines the historical record with regard to the origins of the clause and analyzes its evolution, describing congressional and court precedents, to provide a summary of how the clause is currently understood. This report also examines the various procedures by which disputes concerning the Origination Clause have been resolved.

The Constitutional Convention and the Origination Clause

Among the most significant issues debated at the constitutional convention in Philadelphia were those relating to the respective roles for the proposed House of Representatives and Senate. Vesting the authority to originate revenue measures in the House exclusively was one aspect of the compromise whereby delegates from small and large states agreed in principle to a bicameral Congress. What role each chamber would play, and what authority each would exercise, was not easily arrived at. In particular, how authority would be assigned with regard to legislation concerning money was one of the more salient aspects of that debate.

The idea that some or all money bills should originate in the popularly elected chamber of the legislature was a product of British and colonial experience, an experience that had been rekindled when the newly independent states adopted new constitutions in 1776 or shortly thereafter.[1] A number of delegates to the Philadelphia convention felt strongly that, for the federal government, the power to originate money bills should also reside solely in the House of Representatives, because it, unlike the Senate, would be directly elected by people.[2] In the words of Elbridge Gerry, a delegate to the convention from Massachusetts:

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[1] J. Michael Medina, "The Origination Clause in the American Constitution: A Comparative Survey," *Tulsa Law Journal*, vol. 23 (Winter 1987), p. 168, footnote 13. According to John Dickinson, a delegate to the constitutional convention from Delaware, in 1787 eight of the states had some form of origination clause in their constitutions. Quoted in Max Farrand, ed., *The Records of the Federal Convention of 1787*, revised edition in four volumes (hereinafter cited as Farrand), vol. II (New Haven: Yale University Press, 1937), p. 278. The proceedings of the convention with respect to the Origination Clause are also discussed in Robert G. Natelson, "The Founders' Origination Clause and Implications for the Affordable Care Act," *Harvard Journal of Law and Public Policy* vol. 38, no. 2 (2015), pp. 636-639.

[2] The Members of the Senate were elected by the various state legislatures until ratification of the 17th Amendment in

> Taxation and representation are strongly associated in the minds of the people, and they will not agree that any but their immediate representatives shall meddle with their purses.[3]

As first proposed by Gerry on June 13, 1787, the convention rejected, 3-8, a proposal to add language providing that "money bills … shall originate in the first branch of the national legislature."[4] The issue was addressed again by the Compromise Committee on Representation, chaired by Gerry, on July 3. The committee's report recommended

> All Bills for raising or appropriating money and for fixing the salaries of the Officers of the Government of the United States, shall originate in the first Branch of the Legislature, and shall not be altered or amended by the second Branch—and that no money shall be drawn from the public Treasury but in pursuance of appropriations to be originated by the first Branch.[5]

This proposal was paired by the committee with one providing that "in the second Branch of the Legislature each State shall have an equal Vote."[6] This time the convention voted, 5-3, to retain the restriction.[7] On August 8, the question was raised again on the grounds that the provision unnecessarily restricted the legislative role of the Senate. Although George Mason of Virginia feared that striking the provision could "unhinge the compromise of which it made a part," the convention voted, 7-4, to strike it.[8]

Edmund Randolph of Virginia subsequently suggested that the problem of the earlier language was that it could be interpreted so broadly that it could apply to legislation that only incidentally raised money, and he proposed modifying it.[9] His proposal made the language more specific regarding what legislation the Senate might originate, prohibiting only "bills for raising money for the purpose of revenue or for appropriating the same." However, the same proposal also included language to restrict the Senate's role in considering such legislation by providing that it could not be "amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation."[10] Randolph's arguments invoked the clause's part in the compromise that had given the smaller states equal representation in the Senate and called on them to support the proposal. On August 11, he successfully moved that the convention reconsider the question, but on August 13 the new language was rejected, 4-7.[11]

On August 15, Caleb Strong of Massachusetts again raised the question of the original Gerry language, this time altered to allow the Senate to "propose or concur with amendments as in other cases." The convention postponed deciding the question that day[12] and again on September 5.[13]

1913.

[3] Farrand, vol. II, p. 275.

[4] Farrand, vol. I, p. 224. Voting at the Philadelphia convention was by state, with each state's delegation having one vote. If a state's delegation was evenly divided, that state's vote was not counted in the tally. In cases where fewer than six states voted on the winning side, the convention would sometimes vote to affirm the result.

[5] Farrand, vol. I, p. 524.

[6] Farrand, vol. I, p. 524.

[7] Farrand, vol. I, p. 547.

[8] Farrand, vol. II, pp. 224-225.

[9] Farrand, vol. II, p. 263.

[10] Farrand, vol. II, p. 273.

[11] Farrand, vol. II, p. 280.

[12] Farrand, vol. II, p. 298.

[13] Farrand, vol. II, p. 510.

Finally, on September 8, the language of Strong's proposal was revised, and the Origination Clause was adopted by the convention, 9-2, in the form that was later ratified.[14]

Interpreting the Origination Clause

Although the application of the Origination Clause was discussed at the Philadelphia convention, the Constitution does not provide specific guidelines as to what constitutes a bill for raising revenue. The meaning of *bill for raising revenue* is therefore a question of interpretation. As a result, Congress and federal courts both have played roles in establishing the precedents that guide interpretation and application of the Origination Clause.

The House

As it is the House that is most frequently called upon to enforce the Origination Clause, its precedents have played a primary role in defining what makes a bill for raising revenue.[15]

The rules and practices of the House use the concept of "revenue" in two separate but related procedures, first in connection with enforcing House prerogatives under the Origination Clause when considering a resolution to return a bill to the Senate (a "blue-slip resolution") and second when enforcing within the House the exclusive jurisdiction of the House Committee on Ways and Means over all measures "carrying a tax or tariff."[16] The connection between the two uses is made explicit when, at the beginning of each Congress, the Speaker of the House enunciates certain policies with respect to several aspects of the legislative process. One of these policies concerns "guidance concerning the referral of bills, to assist committees in staying within their appropriate jurisdictions … and to protect the constitutional prerogative of the House to originate revenue bills."[17]

In both instances, the House applies a broad standard based on a provision-by-provision review of whether the measure in question has revenue-affecting potential and not simply whether it would raise or lower revenues directly. For example, any change in import restrictions may be regarded by the House as falling within the purview of the Origination Clause, because it could have an impact on tariff revenues. In 1992, the House returned to the Senate a bill (S. 884, 102nd Congress) to require the President to impose economic sanctions, including a ban on certain imports, against countries that fail to eliminate large-scale driftnet fishing.[18] In 1999, the House

[14] Farrand, vol. II, p. 552.

[15] House precedents concerning the Origination Clause may be found in: Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States including references to provisions of the Constitution, the laws, and decisions of the United States Senate* (hereinafter cited as *Hinds' Precedents*), vol. II, ch. XLVII (Washington: GPO, 1907); Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States including references to provisions of the Constitution, the laws, and Decisions of the United States Senate* (hereinafter cited as *Cannon's Precedents*), vol. VI, ch. CLXXX (Washington: GPO, 1935); and Lewis Deschler, *Deschler's Precedents of the United States House of Representatives including references to provisions of the Constitution and laws, and to decisions of the courts* (hereinafter cited as *Deschler's Precedents*), vol. 3, ch. 13, part C (Washington: GPO, 1977).

[16] House Rule XXI, clause 5(a).

[17] This policy is articulated in "Policies of the Chair," *Congressional Record*, vol. 137 (January 3, 1991), p. 66. Since that time, the Speaker's announcements at the beginning of each Congress have provided that this policy would continue to govern but that it need not be reiterated, "as it is adequately documented as precedent in the Rules and Manual." The most recent "Announcement by the Speaker Pro Tempore" appeared at *Congressional Record*, daily edition, vol. 157 (January 3, 2019), pp. H198-H199.

[18] "Privileges of the House—Returning to the Senate S. 884, Driftnet Moratorium Enforcement Act of 1991," *Congressional Record*, vol. 138 (February 25, 1992), p. 3377.

returned to the Senate a bill (S. 254, 105th Congress) effectively banning the import of certain assault weapon attachments.[19]

House precedent, as articulated by the policy of recent Speakers of the House, construes the chamber's prerogatives broadly to include "any meaningful revenue proposal" but may also include other types of receipts that may not fall strictly within a technical definition of *revenues*. This interpretation is framed by the Speaker in terms of House committee jurisdictions and referrals, but it also informs the House's understanding of what constitutes nonrevenue receipts that are not subject to the Origination Clause. While the House rules grant exclusive jurisdiction over revenues to the Ways and Means Committee, they also allow for various other standing committees of the House to consider legislation concerning nonrevenue receipts, such as

> user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public, as measures to be utilized solely to support, subject to annual appropriations, the service, program, or activity … for which such fees, charges, and assessments are established and collected and not to finance the costs of Government generally. The fee must be paid by a class benefitting from the service, program or activity, or being regulated by the agency; in short, there must be a reasonable connection between the payors and the agency or function receiving the fee.[20]

Therefore, the House regards nonrevenue receipts to the government to be those based on some type of voluntary or business transaction. In this context, civil and criminal penalties are not regarded as revenue in the constitutional sense under the general premise that malfeasance is elective and therefore does not involve a tax on involuntary behavior.

One example of the distinction between revenue and nonrevenue receipts having an impact on the House's interpretation of the Origination Clause is the case of S. 104 (105th Congress). This legislation purported to repeal one fee and replace it with another. It was the repeal of the original fee, not Senate origination of a new fee, that triggered House action. The new fee was to be limited to the amount appropriated to cover the cost of nuclear waste disposal. Due to the fact that the new fee was tied to the actual cost of the activity and was to be borne by the entities directly involved, the House did not question the Senate's authority to originate it. Despite being designated as a "fee," however, the original fee was considered by the House to be revenue because the proceeds were uncapped, and fees collected in excess of the associated costs were deposited in the general fund in the Treasury to be used to finance activities of the federal government generally. Repeal of the original fee was determined by the House to have a direct impact on revenues and therefore subject to the Origination Clause, resulting in the measure being blue-slipped.[21]

Overall, House precedents indicate a wide spectrum of tax and tariff actions that have been excluded on the basis of the Origination Clause. In addition to the above, examples of measures that the House has returned to the Senate include a concurrent resolution reinterpreting a definition in the tariff act of 1922,[22] bills providing for a bond issue,[23] amending the Silver

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[19] "Privileges of the House—Returning to the Senate the Bill S. 254, Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999," *Congressional Record*, vol. 145 (July 15, 1999), pp. 16317-16320.

[20] "Policies of the Chair," *Congressional Record*, vol. 137 (January 3, 1991), p. 66.

[21] "Privileges of the House—Returning to the Senate the Bill S. 104, Nuclear Waste Policy Act of 1982," *Congressional Record*, vol. 144 (March 5, 1998), pp. 2618-2619.

[22] *Cannon's Precedents*, §319.

[23] *Hinds' Precedents*, §1494.

Purchase Act,[24] exempting receipts from the operation of the Olympic Games from taxation,[25] and redetermining a sugar quota involving a combination of tariff duties and incentive payments.[26]

One recurring issue in recent years has been House concern that broadly framed trade sanction or trade sanction waiver provisions could apply to restrictions on both exports and imports. Because legislation allowing import restrictions to be imposed or lifted is considered to have revenue-affecting potential, in order to avoid possible blue-slip issues, the House has routinely used or insisted on the inclusion of language making explicit that authorities and requirements to impose or lift sanctions authorized in the measure do not include the authority or requirement to impose or lift sanctions on the importation of goods.[27]

It should also be noted that a projection of a change in revenues in a cost estimate for a measure is not, by itself, necessarily dispositive for determining whether a measure might be considered a revenue bill. House precedents regarding what would be considered a revenue provision are based on potential changes in revenues directly attributable to the text of a provision rather than on whether it encourages or discourages behaviors that could ultimately result in a change in revenues. One example is H.R. 1735 (114th Congress). As passed by the House, Title VI, Subtitle C, of the bill provided for the federal government to make matching payments for military personnel participating in the federal TSP program. A cost estimate prepared by the Congressional Budget Office (CBO) at the time the bill was reported from the House Armed Services Committee included the following

> In addition, H.R. 1735 contains provisions that would affect revenues and direct spending. Changes to the uniformed services retirement system would require DoD [the Department of Defense]—beginning in 2018—to make matching contributions (using appropriated funds) to the Thrift Savings Plan (TSP) on behalf of military personnel. Those matching contributions would encourage members to contribute a larger portion of their pay to the TSP, thereby reducing their taxable income. CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would reduce revenues by about $1.3 billion over the 2016-2025 period.[28]

As stated in the CBO estimate, the revenue effect is attributable to possible changes in behavior due to the ability of participating servicemembers to garner matching payments rather than a change in the tax treatment of TSP contributions or withdrawals. As a consequence, H.R. 1735 was not considered to be a revenue measure when considered and passed by the House.

The Senate

Although the Senate's role in determining what constitutes a bill for raising revenues is less prominent than that of the House, its precedents have, nevertheless, also shaped the application of the Origination Clause. The Senate's practices have influenced the definition of *revenues* in two ways: (1) when the Senate rules certain measures out of order and (2) when the Senate declines to

[24] *Deschler's Precedents*, ch. 13, §15.1.

[25] *Deschler's Precedents*, ch. 13, §15.3.

[26] *Deschler's Precedents*, ch. 13, §15.4.

[27] For example, see H.R. 5515 (115th Congress) which was recommitted to the committee on conference by H.Res. 1019 (115th Congress) because such language had been deleted. *Congressional Record*, daily edition, vol. 164 (July 24, 2018), p. H7150.

[28] CBO, Cost Estimate for H.R. 1735, National Defense Authorization Act for Fiscal Year 2016 As reported by the House Committee on Armed Services on May 5, 2015, May 11, 2015, p. 2, https://www.cbo.gov/sites/default/files/hr1735hasc.pdf.

take up certain measures absent a House-originated revenue bill. The primary impact of Senate practices, however, has been to underscore the House's interpretation of what constitutes revenue in a constitutional sense. Some examples of this include the following

- The Senate sustained a point of order against a bill that included revenues that would be paid into the general fund of the Treasury rather than being set aside for a specific purpose;[29]
- The Senate declined to sustain a point of order against a bill that included postal rates on the grounds that postal charges are not considered revenue, even though they would be deposited into the general fund, because the payments would be made in exchange for specific services;[30]
- The Senate refused to consider a bill concerning international commerce in oil and oil products on the grounds that import restrictions have a direct impact on tariff revenues.[31]

Article I, Section 7, clause 1, provides that the Senate may propose or concur with amendments to House-originated bills raising revenues as on other bills, but there have been occasions on which either the House or Senate has debated the question of how expansively the Senate's amending authority should be interpreted. Some of the earliest precedents show that in the 19th century the House sometimes exhibited a fairly restrictive view of the Senate's authority to amend a revenue bill and regarded the Origination Clause as limiting the Senate only to germane amendments. For example, in 1807, the House objected to consideration of Senate amendments to a tariff bill that went beyond the details of the bill,[32] and in 1872, the House tabled a Senate substitute to a House revenue bill when it sought to expand significantly the scope of the underlying measure. In the latter example, the House had passed H.R. 1537 (42nd Congress), which repealed duties on coffee and tea, whereas the Senate amendment contained a general revision of various laws imposing duties and internal taxes.[33] In the House, James A. Garfield, stated

> I do not deny their [the Senate's] right to send back a bill of a thousand pages as an amendment to our two lines. But I do insist that their thousand pages must be on the subject matter of our bill.[34]

In reaction to the House, the Senate Committee on Privileges and Elections issued a report stating that

> it has been urged that to permit the Senate to ingraft, by way of amendment, a general tariff bill upon a bill of the House laying a duty on peanuts, is entirely to disregard the spirit of the clause of the Constitution before quoted. In reply it may be said, however, that any other construction of this constitutional provision would deny to the Senate the power to amend a House bill laying a duty on peanuts so as to lay a duty upon English walnuts; that is, would deny to the Senate the power of making to the bill anything more than mere formal amendments.[35]

Furthermore, the report argued that the meaning of the phrase *raising revenue* as used in the Origination Clause was not dependent on the relative levels of revenue provided in the House bill

[29] *Cannon's Precedents*, §316.

[30] *Cannon's Precedents*, §317.

[31] *Cannon's Precedents*, §320.

[32] *Hinds' Precedents*, §1481.

[33] *Hinds' Precedents*, §1489.

[34] *Congressional Globe*, 42nd Cong., 1st sess., April 2, 1872, p. 2107.

[35] S.Rept. 146, 42nd Cong., 2nd sess., discussed in *Hinds' Precedents*, §1489.

or Senate amendment, and therefore the question of whether a Senate amendment would provide more or less revenue than the House bill does not inhibit the Senate's power to amend revenue bills:

> Suppose the existing law lays a duty of 50 per cent upon iron. A bill repealing such law, and providing that after a certain day the duty upon iron shall be only 40 per cent, is still a bill for raising revenue because that is the end in contemplation. Less revenue will be raised than under the former law, still it is intended to raise revenue, and such a bill could not constitutionally originate in the Senate, nor could such provisions be ingrafted, by way of amendment upon any House bill which did not provide for raising—that is, collecting—revenue.[36]

The report, however, conceded that the Senate's amendment authority is not unlimited: It cannot propose an amendment raising revenue to any House-originated bill but only to a House-originated bill for raising revenue.[37]

More recent precedents exhibit no general restriction on the Senate's amendment authority, leaving the Senate free to propose any amendment allowed under Senate rules to House-originated revenue measures. For example, in 1968, the House refused to hold that a Senate amendment to add a general surtax on income to a House-originated bill concerning excise tax rates was a violation of the Origination Clause.[38]

As currently understood, because the Senate has no rule requiring that amendments to revenue bills be germane, the constitutional provision allowing the Senate to "propose or concur with amendments as on other Bills" leaves open the door to Senate action on a wide range of possible alternatives. In this way, the Senate may be said to "originate" specific tax provisions, even though it may not originate tax measures.[39]

The Supreme Court

The Supreme Court is not bound by congressional interpretation of the Origination Clause. As a consequence, the Court has independently construed the phrase *a bill for raising revenues*. If a

[36] S.Rept. 146, 42nd Cong., 2nd sess., discussed in *Hinds' Precedents*, §1489.

[37] S.Rept. 146, 42nd Cong., 2nd sess., discussed in *Hinds' Precedents*, §1489.

[38] *Deschler's Precedents*, ch. 13, §16.1.

[39] Federal courts have generally rejected claims that particular amendments exceeded the Senate's amendment power under the Origination Clause. For example, in *Rainey v. United States*, 232 U.S. 310, 317 (1914), Chief Justice Edward White's majority opinion quoted a lower court opinion that "it is not for this Court to determine whether the amendment was or was not outside the purposes of the original bill." A recent D.C. Circuit decision interpreting the clause and *Rainey* concluded that the clause "imposes no germaneness requirement on the Senate." Sissel v. U.S. Dep't of Health & Human Services, 799 F.3d 1035, 1061 (D.C. Cir. 2015). Another circuit court compared a Senate amendment to the measure being amended when rejecting an origination clause claim. The Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248) involved the Senate acting on a House-originated measure concerning tariffs that reduced revenues by amending it to include major revenue increases. The law was subsequently the subject of over 50 court challenges (none of which were reviewed by the Supreme Court). In one such case, *Texas Ass'n of Concerned Taxpayers, Inc. v. U.S.*, 772 F.2d 163 (5th Cir. 1985), the Fifth Circuit rejected a challenge based on whether the Senate action was outside the range of amendments permitted under the Origination Clause as "squarely foreclosed" by Supreme Court precedent that the Fifth Circuit read to "merely require that both the amendment and the amended portion address revenue collection." For a detailed discussion of this example, see John L. Hoffer Jr., "The Origination Clause and Tax Legislation," *Boston University Journal of Tax Law*, vol. 2 (May 1984), pp. 1-22; and Thomas L. Jipping, "TEFRA and the Origination Clause: Taking the Oath Seriously," *Buffalo Law Review*, vol. 35 (Spring 1986), pp. 633-692. In addition, the issue of the extent of the Senate's power to amend revenue measures is addressed in Rebecca M. Kysar, "The 'Shell Bill' Game: Avoidance and the Origination Clause," *Washington University Law Review*, vol. 91, no. 3 (2014), pp. 659-720.

party challenges a statute's enactment as conflicting with the Origination Clause, the federal courts will consider that challenge for cases in which the House has either not objected or chosen not to act with respect to a Senate action during the lawmaking process.[40]

Judicial interpretation of the Origination Clause's meaning has roots in decisions dating back at least to 1813. Sitting as a circuit justice, Justice Joseph Story wrote that the phrase *revenue laws*, as used in a criminal statute of limitations, included those laws that

> made for the direct and avowed purpose for creating and securing revenue or public funds for the service of the government. No laws, whose collateral and indirect operation might possibly conduce to the public or fiscal wealth, are within the scope of the provision.[41]

Later, in his *Commentaries on the Constitution*, Justice Story applied this same understanding to the Origination Clause, writing that that provision was

> confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes, which may incidentally create revenue.[42]

The meaning of *revenue* was further discussed in *United States ex rel. Michels v. James*, where a circuit court held that a bill to increase postage rates that had originated in the Senate did not violate the Origination Clause because it did not fall within the definition of a revenue bill.

> Certain legislative measures are unmistakably bills for raising revenue. These impose taxes upon the people, either directly or indirectly, or lay duties, imposts or excises, for the use of the government, and give to the persons from whom the money is exacted no equivalent in return, unless in the enjoyment, in common with the rest of the citizens of the benefit of good government.… A bill regulating postal rates for postal service, provides an equivalent for the money which the citizen may choose voluntarily to pay.[43]

As discussed below, the Court's understanding of the Origination Clause is based on two central principles that contrast with the interpretation generally applied by the House. As described above, the House distinguishes between nonrevenue receipts that are "levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity" and revenues that finance the activities of government generally. For the Court to consider a measure to be a revenue bill, (1) raising money must be the primary purpose of the measure, rather than an incidental effect, and (2) the resulting funds must be for the expenses or obligations of the government generally, rather than a single, specific purpose. These principles are illustrated in two often cited cases.

In *Twin City Bank v. Nebeker*, the Supreme Court held that an act to establish a national currency backed by United States bonds, which also imposed a "tax" on banks based on the average amount of notes in circulation, did not violate the clause because it was not a revenue bill. In this case, the Court ruled that the "main purpose" of the bill was to establish a national currency, and

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[40] United States v. Munoz-Flores, 495 U.S. 385, 391 (1990) ("congressional consideration of constitutional questions does not foreclose subsequent judicial scrutiny of the law's constitutionality. On the contrary, this Court has the duty to review the constitutionality of congressional enactments"). For more in relation to the Supreme Court and enforcement, see discussion below.

[41] United States v. Mayo, 26 Fed. Cas. 1230, 1231 (C. C. Mass. 1813) (No. 15,755).

[42] Joseph Story, *Commentaries on the Constitution* (Boston: Hilliard, Gray & Co., 1833; reprint edition Littleton, CO: Fred B. Rothman & Co., 1991) vol. 2, ch. XIII, §877, p. 343.

[43] United States ex rel. Michels v. James, 26 Fed. Cas. 577, 578 (C. C. N.Y. 1875) (No. 15,464) quoted in *Hinds' Precedents*, §1494. Despite the Court's decision, the House has subsequently maintained on occasion that postal rates do fall within the scope of their prerogatives. See, for example, *Cannon's Precedents*, §317.

the "tax" on banks was "a means for effectually accomplishing [that] great object."[44] "There was no purpose by the act, or by any of its provisions, to raise revenue to be applied in meeting the expenses or obligations of the government."[45]

In *Millard v. Roberts*, the Court held that a bill to impose a tax on property in the District of Columbia to raise money for the express purpose of providing railroad terminal facilities was not a bill to raise revenue because the money raised was for a specific purpose—in the Court's words, the tax was only a "means to the purposes provided by the act."[46]

In a more recent case, the Supreme Court addressed significant questions concerning the application of these holdings and the meaning of the Origination Clause. In *United States* v. *Munoz-Flores*, the Supreme Court heard a challenge to a law that required federal courts to impose a monetary "special assessment" on any person convicted of a federal misdemeanor to be deposited, along with other funds, in a Crime Victims Fund, which, in turn, would be available to meet expenses associated with compensating and assisting victims of crime, although amounts collected in excess of an annual cap would be deposited in the general fund of the Treasury and thus be available for any purpose for which Congress might make an appropriation.[47]

In the opinion of the Court, the fact that the special assessment could create new general fund revenue for the federal government was not alone sufficient for the measure enacting the special assessment to be considered a revenue bill. "Although any excess was to go to the Treasury, there is no evidence that Congress contemplated the possibility of a substantial excess, nor did such an excess in fact materialize."[48] Thus, the Court held that the case "falls squarely within the holdings in *Nebeker* and *Millard*" and the measure in question was not a revenue bill within the meaning of the Constitution because "the special assessment provision was passed as part of a particular program to provide money for that program." Any general fund revenue the special assessment provision created would be "incidental to the provision's primary purpose."[49] In a footnote to the opinion, however, the Court cautioned:

> A different case might be presented if the program funded were entirely unrelated to the persons paying for the program.… Whether a bill would be "for raising Revenue" where the connection between payor and program was more attenuated is not now before us.[50]

In other words, the method by which funds are raised, the purposes for which they are raised, and the connection between these two elements are issues that may affect the Court's interpretation of the Origination Clause's application in a given case.

In 2014, Representative Dave Camp, chairman of the Ways and Means Committee, raised concerns about the potential for confusion arising from contrasting application of the Origination Clause by the House and federal courts.[51] Representative Camp stated that the D.C. Circuit Court of Appeals decision in *Sissel v. HHS* was at odds with House practice. More specifically,

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[44] Twin City Bank v. Nebeker, 167 U.S. 196, 202-03 (1897).

[45] Ibid., 203.

[46] Millard v. Roberts, 202 U.S. 437 (1906).

[47] United States v. Munoz-Flores, 495 U.S. 385, 398-99 (1990).

[48] Ibid., 399.

[49] Ibid., 398.

[50] Ibid., 400-01, n 7.

[51] "Origination Clause," *Congressional Record* (daily edition), vol. 160 (December 12, 2014), Extension of Remarks, p. E1812. Representative Camp was responding specifically to *Sissel v. United States Dept. of Health and Human Services*, 760 F.3d 1 (D.C. Cir. 2014), reh'g en banc denied, 799 F.3d 1035 (D.C. Cir. 2015).

Representative Camp expressed concern with applying a standard for what constitutes a revenue measure based on its "primary aim." He went on to state that

> Although some courts have taken a narrower view of what constitutes a "bill for raising revenue," the "primary purpose" test articulated in Sissel presents heightened challenges in interpretation that not only threaten the constitutional balance in Congress but invite subjective judicial scrutiny of the legislative process. This analysis may lead to confusion between the legislative and judicial branch on measures where the primary purpose is not easily ascertainable, measures that contain multiple, competing purposes, and measures that state a purpose that is in conflict with its content.
>
> The House's traditional provision-by-provision review of a measure and the effect of each on revenue is the more sound approach. This interpretation has served the Congress well when resolving differences between the House and Senate on the Origination Clause.

It should also be noted that federal courts agree with Congress that the phrase *a bill for raising revenue* includes those measure that collect or levy taxes. Federal courts have rejected a narrower reading that would encompass only those measures that only increase taxes.[52] According to one federal court, to do otherwise would be an attempt to apply a "slippery and potentially chameleonic" label to legislation that "may have an effect of increasing revenue under certain economic conditions and decreasing revenue under others."[53]

Enforcing the Origination Clause

The House

The House's primary method for enforcement of the Origination Clause is through a process known as "blue-slipping."[54] *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 privileged resolution stating that a Senate bill or Senate amendment(s) to a nonrevenue 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),[55] 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, based on the advice of the House Parliamentarian,

[52] Texas Ass'n of Concerned Taxpayers, Inc. v. U.S., 772 F.2d 163, 166 (5th Cir. 1985) (rejecting the contention that the phrase "raising revenue" means "increasing revenue" and explaining "that all contemporary courts have adopted the construction … relating to revenue" (quotation marks omitted)).

[53] Ibid.

[54] The term *blue-slipping* is also sometimes used in an unrelated sense by the Senate in connection with the nomination of federal judges.

[55] 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.

although another member of the committee may be designated to offer the resolution. 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.

There have been instances, however, where other Members have offered blue-slip resolutions when the chairman of the Ways and Means Committee did not believe that the bill in question violated the Origination Clause, and the resolution was subsequently tabled.[56]

Although blue-slipping is the primary method used by the House to enforce the Origination Clause, the House may in its discretion also use a variety of less formal actions. For example, in the past the House has occasionally chosen simply to ignore a Senate-passed bill and instead taken action on a corresponding House bill.[57] 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.[58] The House may also decide to use a conference committee as a venue for deciding Origination Clause questions by having an offending provision removed in conference without having to take the formal step of blue-slipping.[59]

If an effort to use an informal alternative does not result in the removal of an offending provision, it would not prevent the House from later using a blue-slip resolution to enforce its prerogatives. This is because the enforcement of the Origination Clause is based on a constitutional prerogative of the House and is therefore distinct from enforcement of its standing rules, which require that points of order must be raised in a timely manner.[60] The House can assert its prerogative at any time it is in possession of the bill and related papers (that is, any time the actual documents are not physically in the possession of the Senate or a conference committee).[61]

In addition, because enforcement of the Origination Clause raises a constitutional issue, the House may not choose simply to waive its application in a manner that would foreclose later judicial challenges to the enacted law. Although the House is free to determine for itself whether it believes that legislation passed by the Senate infringes on its prerogative to originate revenue

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[56] For example, when H.Res. 571 (97th Cong.), a blue-slip resolution, was offered by Representative John Rousselot, Representative Dan Rostenkowski, the chairman of the House Ways and Means Committee, offered a motion to table it. *Congressional Record* (August 19, 1982), pp. 22127-22128.

[57] *Deschler's Precedents*, ch. 13, §§18.1-18.5.

[58] *Deschler's Precedents*, ch. 13, §18.5.

[59] Such an accommodation was proposed by Representative David Obey, the chairman of the House Appropriations Committee, for dealing with a revenue provision inserted into the FY1995 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill (H.R. 4554, 103rd Congress). During floor remarks concerning this proposed accommodation, Representative Robert Walker stated that such an accommodation had previously been made during consideration of the Senate-passed FY1995 Commerce, Justice, State Appropriations bill (H.R. 4603, 103rd Congress). For details, see the discussion during consideration of H.Res. 518 (103rd Congress) in "Privileges of the House—Returning to the Senate the Senate Amendments to H.R. 4554," remarks in the House, *Congressional Record*, vol. 140 (August 12, 1994), pp. 21655-21658.

[60] For more, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen.

[61] 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 nonrevenue House bill that had passed the Senate and been received in the House at various times during the Congress.

legislation, federal courts have occasionally been asked to rule on whether certain revenue provisions may be unconstitutional as not having originated in the House.[62]

The Senate

According to *Riddick's Senate Procedure*, when a question is raised in the Senate regarding the constitutionality of a measure, including whether the measure contravenes the Origination Clause, it is submitted directly to the Senate for its determination.[63] Similarly, an amendment proposing to raise revenues would be out of order on the same grounds if offered to a nonrevenue measure. A point of order against such an amendment would also be submitted by the presiding officer directly to the Senate.[64] Such a point of order would generally be debatable and decided by majority vote.

Like the House, the Senate may employ less formal means for applying the Origination Clause. For example, on June 27, 2019, the Senate passed S. 1790 (116th Congress). As passed, Title LXIX of this measure (designated as the Otto Warmbier Banking Restrictions Involving North Korea Act of 2019) included language amending waiver provisions in 22 U.S.C. Chapter 99. After the House informally raised concerns about the potential for such a waiver to have an impact on imports, the Senate requested the return of the papers on September 12, 2019, preempting formal action by the House.[65] Upon receiving the papers, the Senate agreed by unanimous consent that "notwithstanding the passage of the bill, amendment No. 938 is agreed to, and the measure will be returned to the House." The amendment deleted the change in the waiver language and inserted new language to clarify that the "authorities and requirements to impose sanctions authorized under this title or the amendments made by this title shall not include the authority or requirement to impose sanctions on the importation of goods."[66] The bill was then returned to the House for further action.

The Supreme Court

In most instances in which the courts have ruled with regard to Origination Clause matters, they have decided whether the particular measure was a revenue bill within the meaning of the clause. Courts have not decided disputed questions of whether the measure originated in the House or in the Senate.[67]

Historically, the Court's role in enforcing the Origination Clause has been limited. In most circumstances, Supreme Court Justices have been reluctant to look behind a bill as enrolled to determine its validity. That is, the Court has primarily limited its role to determining whether a given measure fits the definition of *a bill for raising revenue*. Under this approach, the Court would look to the measure's designation as a House or Senate bill but would not examine the

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[62] U.S. Congress, House Committee on Ways and Means, *Report on the Legislative and Oversight Activities of the Committee on Ways and Means during the 115th Congress*, H.Rept. 115-1115, 115th Cong., 2nd sess. (Washington: GPO, 2019), p. 136. The report cites *United States v. Munoz-Flores* as an example.

[63] U.S. Congress, Senate, *Riddick's Senate Procedure*, S.Doc. 101-28, 101st Cong., 2nd sess., by Floyd M. Riddick and Alan S. Frumin (hereinafter cited as *Riddick's Senate Procedure*) (Washington: GPO, 1992), pp. 685, 1215. See also CRS Report R40948, *Constitutional Points of Order in the Senate*, by Valerie Heitshusen.

[64] *Riddick's Senate Procedure*, pp. 52, 1215.

[65] *Congressional Record*, daily edition (September 12, 2019), p. S5461.

[66] *Congressional Record*, daily edition (September 12, 2019), p. S5466.

[67] For example see *United States ex rel. Michels v. James*, *Twin City Bank v. Nebeker*, and *Millard v. Roberts* discussed above.

journals of the House or Senate to independently determine in which chamber the specific revenue provision at issue may actually have originated. This approach is similar to the "enrolled bill rule" adopted in *Marshall Field & Co. v. Clark*, which generally precludes courts from questioning the certification by the presiding legislative officers of the House and Senate[68] that an enrolled bill was passed in identical form by both the House and Senate as required under Article I, Section 7, clause 2.[69]

In *Flint v. Stone Tracy Co*., the Court decided the Origination Clause issue on an undisputed view of the legislative history of the measure and did not look beyond the designation of the underlying measure as a House bill. In this case, a House bill that included inheritance tax provisions had been amended by the Senate to contain corporate taxes instead. The Court held that the "bill having properly originated in the House, we perceive no reason in the constitutional provision … why it may not be amended in the Senate in the manner which it was in this case."[70]

More recently, however, the Court has rejected the idea of ruling on cases arising under the Origination Clause based on the application of the principle embodied in the enrolled bill rule. In a footnote to the majority opinion in *United States v. Munoz-Flores*, Justice Thurgood Marshall quoted from the decision in *Marshall Field* to state that in "the absence of any constitutional requirement binding Congress" as to how enrolled bills are to be authenticated, the courts must accept as passed all bills authenticated in the manner provided by Congress. Justice Marshall continued, however, and wrote that when "a constitutional provision *is* implicated, *Field* does not apply."[71]

The Court's analysis of *Marshall Field* responded to the concurring opinion of Justice Antonin Scalia, which stated that "the same principle [of *Marshall Field*], if not the very same holding, leads me to conclude that federal courts should not undertake an independent investigation into the origination of the statute at issue here."[72] Thus, Justice Scalia would have accepted the designation of the bill as originating in the House because the bill bore the designation H.J.Res. 648 (98th Congress). Justice Scalia stated that this approach would not entirely insulate acts from Origination Clause challenges: "This disposition does not place forever beyond our reach the only issue in this area that seems to me appropriate for judicial rather than congressional resolution: what sort of bills constitute 'Bills for raising Revenue.'"[73] To do otherwise would "manifest a lack of respect due a coordinate branch." Further, the Court "should no more gainsay Congress' official assertion of the origin of a bill than we would gainsay its official assertion that the bill was passed by the requisite quorum."[74]

The majority opinion's response to Justice Scalia also stated that while a judicial finding that Congress had passed an unconstitutional law might in some sense be said to entail a "lack of respect" for Congress's judgment, that was not sufficient to make a question nonjusticiable either on the basis of the enrolled bill rule or as a political question.[75] Furthermore

[68] The Speaker of the House and the President pro tempore of the Senate, respectively.

[69] 143 U.S. 649 (1892). For an overview of the enrolled bill rule, see Norman J. Singer, *Statutes and Statutory Construction*, 5th ed. (Deerfield, IL: Clark, Boardman, and Callaghan, 1992), ch. 15, pp. 743-774.

[70] Flint v. Stone Tracy Co., 220 U.S. 107, 143 (1911).

[71] United States v. Munoz-Flores, 495 U.S. 385, 391, n. 4.

[72] Ibid., 409 (Scalia, J., concurring).

[73] Ibid., 410 (Scalia, J., concurring).

[74] Ibid.

[75] In Baker v. Carr 369 U.S. 186, 217 (1962), the Supreme Court identified the features that characterize a case rising from a nonjusticiable political question, including "the impossibility of a court's undertaking independent resolution

> If it were, *every* [italic in original] judicial resolution of a constitutional challenge to a congressional enactment would be impermissible.… Congressional consideration of constitutional questions does not foreclose subsequent judicial scrutiny.[76]

As a consequence, the Court held that the House was not the sole authority with respect to determining the meaning or enforcement of its prerogatives under the Origination Clause.

> Although the House certainly can refuse to pass a bill because it violates the Origination Clause, that ability does not absolve this Court of its responsibility to consider constitutional challenges to congressional enactments.… Nor do the House's incentives to safeguard its origination prerogative obviate the need for judicial review.… In short, the fact that one institution of government has mechanisms available to guard against incursions into its power does not require the judiciary remove itself from controversy by labeling the issue a political question.[77]

The majority opinion further stated

> A law passed in violation of the Origination Clause would thus be no more immune from judicial scrutiny because it was passed by both Houses and signed by the President than would a law passed in violation of the First Amendment.[78]

Thus, the House may certainly determine for itself whether the Origination Clause does or does not apply in a particular case, but a House determination that the clause does not apply does not prevent a federal court from later reviewing that same question. As a consequence, unlike its rules, which the House may choose not to enforce at its discretion, the House's passage of a bill does not foreclose later challenges to the resulting act under the Origination Clause.

Other Legislation and the Origination Clause

Appropriations Legislation

Historically, the House has asserted from time to time that the Origination Clause applies not only to bills to *raise* revenues but to bills to *spend* revenues as well.[79] This principle is asserted by the House as "immemorial custom" from which "there has been no deviation … since the establishment of the Constitution."[80] Due to this interpretation, the House has insisted on originating general appropriations bills. The House and Senate disagree on this interpretation, however.

Proponents of the House's position have maintained that the phrase *bills for raising revenues* that appears in the Constitution is synonymous with the more inclusive phrase *money bills*. This view has its basis in the fact that when the Constitution was drafted, the British House of Commons possessed the undivided authority to originate all types of money bills. Proponents argue that

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without expressing lack of the respect due coordinate branches of government."

[76] United States v. Munoz-Flores, 390-391.

[77] Ibid., 392.

[78] Ibid., 397.

[79] The House does not appear to treat revenue measures and appropriations measures as equivalent, however. For example, in the 111th Congress, the House returned the Senate amendment to H.R. 5875, a supplemental appropriations bill, to the Senate on the grounds that the Senate amendment contained a revenue provision. "Returning Several Measures to the Senate," *Congressional Record,* vol. 156 (September 23, 2010), pp. 16379-16380.

[80] U.S. Congress, House, *Cannon's Procedure in the House of Representatives*, H.Doc. 122, 86th Cong., 1st sess., by Clarence Cannon (Washington: GPO, 1959), p. 20.

because the British Parliament was the model for much of the constitutional convention's work, the drafters intended to mirror this authority and grant control over all money bills to the House. They suggest that the debate at the convention concerned primarily whether the Senate should have the authority to amend—not whether the House should have exclusive authority to originate—money bills, and they point to *Federalist* No. 58 (attributed to Madison), which states

> The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of government. They, in a word, hold the purse.… This power over the purse may, in fact, be regarded as the most complete and effective weapon with which any constitution can arm the immediate representatives of the people.[81]

In addition, they argue that the practice of the House to insist upon originating appropriations dated back to the First Congress and therefore must have been deliberate rather than accidental. In the words of Senator William H. Seward

> [W]hatever the Convention may have proposed, and however they may have understood the Constitution which they have framed, the fact is a stubborn one that the Senate has never originated an appropriations bill, but that it has always conceded to the House of Representatives the origination of appropriations bills.[82]

Opponents counter that by specifically rejecting more inclusive phrases, such as *money bills* or *bills for raising or appropriating money*, the drafters were clearly deviating from the British model.[83] They argue that the custom of the House originating appropriations was an outgrowth of mere practice and gradually developed into a doctrine despite lacking specific constitutional sanction.[84]

As with the question of the extent of the Senate's authority to amend House-originated revenue bills, the historical record shows that Congress has examined this issue on several occasions with sometimes conflicting results.

- In 1856, during a prolonged contest over election of the Speaker and the organization of the House, the House was unable to transact any legislative business. The Senate debated and adopted a resolution directing that, in the name of expediency, the Committee on Finance should prepare and report appropriations bills rather than wait for House action. However, no appropriations appear to have actually been reported as a result.[85]
- In 1880, a Senate bill making an appropriation was referred to the House Judiciary Committee with instructions that it inquire into the right of the Senate to originate bills making appropriations. The majority of the committee concluded that the right to originate appropriations was not exclusive to the House and recommended the House adopt a resolution supporting this position. The minority filed dissenting views reaching the opposite conclusion and recommended that the House adopt a resolution supporting their position and

[81] Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: New American Library, 1961), p. 359.

[82] *Congressional Globe*, 34th Cong., 1st sess., February 7, 1856, p. 376.

[83] For details on the evolution of the language of the Origination Clause, see the discussion of the constitutional convention above.

[84] *Cannon's Precedents*, §321, describing the position of Senator Francis E. Warren in the *Congressional Record*, vol. 48 (April 11, 1912), p. 4577.

[85] *Hinds' Precedents*, §1500.

return the Senate bill. The House took no action on either recommended resolution nor on the Senate bill.[86]

- In 1885, the House again declined to investigate the authority of the Senate to originate appropriations.[87]

The House, however, has never formally acknowledged that the Origination Clause does not apply to appropriations and has returned to the Senate appropriations bills originated by that chamber. In 1953, the House returned to the Senate a measure making appropriations for the District of Columbia,[88] and in 1962, the House returned a measure making appropriations for the Department of Agriculture.[89] In response to the latter episode, the Senate adopted a resolution (S.Res. 414, 87th Congress) asserting its authority to originate bills appropriating money and requesting that the question be submitted either to the federal courts for a declaratory judgment or a commission.[90] The House took no action on this proposal.

The following year, during hearings on creating a joint committee on the budget, the Senate Committee on Government Operations heard testimony regarding concerns that the proposal might infringe on the House's prerogatives under the Origination Clause.[91] The committee subsequently requested a study on the question that was published both with the hearing and separately as a Senate document.[92] The study reached the same conclusion as the 1881 House Judiciary Committee study: that there was no constitutional basis for the practice of the House originating appropriations. No further action was taken to incorporate this conclusion into congressional practice, however.

Although the Senate has never adopted the House's interpretation, in practice it has generally deferred to the House's insistence on originating appropriations measures while amending them consistent with Senate rules, precedents, and practices, as they do with revenue bills.

Debt Limit Legislation

Questions concerning the level of public debt are often closely related to questions of revenue, because if receipts collected by the federal government are not sufficient to cover outlays, it may be necessary for the Treasury to finance the shortfall through the sale of various types of debt instruments to the public and federal agencies. In addition, legislative jurisdiction over these two issues is exercised by the same committees that exercise jurisdiction over tax legislation in both the House and Senate. Historically, it has been the general custom for the House to originate legislation to provide for the issuance of federal debt or to establish a limit on the level of federal debt. Neither chamber, however, has asserted that public debt legislation is subject to the Origination Clause or that questions concerning the purpose or usage of debt securities are

[86] U.S. Congress, House Committee on the Judiciary, *Power of the Senate to Originate Appropriations Bills*, 46th Cong., 3rd sess., H.Rept. 147 (Washington: GPO, 1881). This report is also discussed in *Hinds' Precedents*, §1500.

[87] *Hinds' Precedents*, §1501.

[88] *Deschler's Precedents*, ch. 13, §20.4.

[89] *Deschler's Precedents*, ch. 13, §20.2.

[90] *Deschler's Precedents*, ch. 13, §20.1.

[91] U.S. Congress, Senate Committee on Government Operations, *Create a Joint Committee on the Budget*, hearings on S. 537, 88th Cong., 1st sess., March 19 and 20, 1963 (Washington: GPO, 1963). See especially the testimony of Lucius Wilmerding Jr., pp. 59-68.

[92] U.S. Congress, Senate Committee on Government Operations, *The Authority of the Senate to Originate Appropriation Bills*, S.Doc. 17, 88th Cong., 1st sess. (Washington: GPO, 1963).

subsumed under questions of origination of revenue bills. The actions of the House since 1946 with regard to debt legislation have been consistent with this interpretation.

On the broad question of whether or not all legislation concerning public debt was subject to the Origination Clause, the House concluded that it is not. In May 1946, the House debated what course of action to take regarding S.J.Res. 138 (79th Congress). The proposed joint resolution would have amended the Second Liberty Loan Act by adding to and expanding the purposes for which the proceeds from the sale of federal debt could be used. In the course of debating House action on the Senate measure, Representative John W. McCormack inserted a memorandum in the *Congressional Record* that stated:

> [I]t appears to be clear that a bill to raise funds through the sale of Government obligations does not violate the privilege of the House as set forth in article I, section 7, clause 1 of the Constitution. Even if it should be concluded, however, that a bill to raise funds by selling Government bonds violates the privilege of the House, it would be necessary for the House to reach the additional conclusion that Senate Joint Resolution 138 does provide for the raising of funds through the sale of Government obligations.… [The resolution] merely instructs the Secretary of the Treasury how to use funds he is already authorized to raise … not increase the limit of public-debt issues.[93]

An unnumbered House resolution to return S.J.Res. 138 to the Senate on the grounds that it infringed on the House's prerogatives under the Origination Clause was subsequently referred to the Judiciary Committee, which undertook no action with regard to the constitutional question.[94]

On the narrower question of whether legislation specifically concerning the amount of federal debt is subject to the Origination Clause, the House also concluded that it does not apply. In June 1946, the Senate passed a bill to lower the debt limit, which was received in the House and referred to the Committee on Ways and Means. The committee voted not to recommend that the House return the bill to the Senate but declined to report the bill to the full House for further action. Instead, the committee reported a House bill on the same subject that was subsequently passed by the House and Senate and became law.[95] In more recent years, Congress has used a Senate bill to increase or suspend the limit on the public debt on several occasions.[96]

[93] "Privilege of the House," *Congressional Record*, vol. 92 (May 14, 1946), p. 5004.

[94] *Deschler's Precedents*, ch. 13, §17.1.

[95] *Deschler's Precedents*, ch. 13, §18.4.

[96] S. 2578 (107th Congress), enacted as P.L. 107-199; S. 2986 (108th Congress), enacted as P.L. 108-415; S. 312 (112th Congress), enacted as P.L. 112-25; and S. 540 (113th Congress), enacted as P.L. 113-83. For more on public debt legislation, see CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill Heniff Jr.

Table 1. Blue Slip Resolutions, 102nd-116th Congress (1991-2020)

Date	Resolution	Measure Returned to the Senate
102nd Congress		
October 22, 1991	H.Res. 251	S. 1241 (The Violent Crime Act of 1991). This measure included several provisions amending the Internal Revenue Code.
October 31, 1991	H.Res. 267	S. 320 (To reauthorize the Export Administration Act of 1979). This measure included several provisions that would impose, or authorize the imposition of, a ban on certain imports based on certain practices by Iraq, including the proliferation and use of chemical and biological weapons and the transfer of missile technology.
February 25, 1992	H.Res. 373	S. 884 (To amend the Driftnet Moratorium Enforcement Act of 1991). This measure included a provision to require the President to impose economic sanctions (including imposing a ban on certain imports) against countries that fail to eliminate large-scale driftnet fishing.
103rd Congress		
July 14, 1994	H.Res. 479	H.R. 4539 (Treasury, Postal Service, and General Government Appropriation Act, 1995). A Senate amendment would have prohibited the Treasury from using appropriated funds to enforce an Internal Revenue Code requirement.
July 21, 1994	H.Res. 486	S. 729 (To amend the Toxic Substances Control Act). This measure included several provisions prohibiting the importation of specific categories of products containing more than specified quantities of lead.
July 21, 1994	H.Res. 487	S. 1030 (Veterans Health Programs Improvement Act of 1994). This measure included a provision that would exempt from taxation certain payments made on behalf of participants in the Education Debt Reduction Program.
August 12, 1994	H.Res. 518	H.R. 4554 (Agriculture and Rural Development Appropriation Act, 1995). A Senate amendment would have provided authority for the Food and Drug Administration (FDA) to collect fees in excess of the costs of regulating products under their jurisdiction to be charged to a broad cross-section of the public (rather than just those directly connected to the regulated activities) in order to fund the cost of FDA activities generally.
October 7, 1994	H.Res. 577	S. 1216 (The Crow Boundary Settlement Act of 1994). This measure included a provision exempting certain payments and benefits from taxation.
104th Congress		
March 21, 1996	H.Res. 387	S. 1518 (To repeal the Tea Importation Act of 1897). This measure included language changing import restrictions.
April 16, 1996	H.Res. 402	S. 1463 (To amend the Trade Act of 1974). This measure included language that would have had the effect of changing the basis and mechanism for import restrictions that could be imposed under authority granted to the President.
September 27, 1996	H.Res. 545	S. 1311 (The National Physical Fitness and Sports Foundation Establishment Act). This measure included a provision waiving the application of certain rules governing recognition of tax-exempt status for the foundation established in this measure.
September 28, 1996	H.Res. 554	H.R. 400 (The Anaktuvuk Pass Land Exchange and Wilderness Redesignation Act of 1995). The Senate amendment included a provision expanding the definition of actions not subject to Federal, State, or local taxation under the Alaska Native Claims Settlement Act.

Date	Resolution	Measure Returned to the Senate
105th Congress		
March 5, 1998	H.Res. 379	S. 104 (The Nuclear Waste Policy Act of 1997). This measure included language to repeal an existing revenue law (labeled a fee) and replace it with a user fee.
October 15, 1998	H.Res. 601	S. 361 (The Tiger and Rhinoceros Conservation Act of 1998). This measure included language that would have had the effect of changing the basis and mechanism for applying import restrictions on products containing any substance derived from tigers or rhinoceroses.
106th Congress		
July 16, 1999	H.Res. 249	S. 254 (The Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999). This measure included a provision that would have had the effect of banning the import of large capacity ammunition feeding devices.
November 18, 1999	H.Res. 393	S. 4 (The Soldiers', Sailors', Airmen's, and Marines' Bill of Rights Act of 1999). This measure included a provision allowing members of the Armed Forces to participate in the Federal Thrift Savings Program and to avoid certain tax consequences.
107th Congress		
September 20, 2001	H.Res. 240	H.R. 2500 (Departments of Commerce, Justice, and State, the Judiciary, and related agencies Appropriations Act, 2002). The Senate amendment included a provision banning the importation of diamonds not certified as originating outside conflict zones.
111th Congress		
September 23, 2010	H.Res. 1653 (returning six measures)	H.R. 5875 (Emergency Border Supplemental Appropriations Act, 2010). The Senate amendment included a provision requiring certain employers to pay a surcharge with respect to each application for certain worker visas, with the additional amount to be deposited in the general fund of the Treasury. S. 3162. This measure included a provision amending the Internal Revenue Code of 1986. S. 3187 (Federal Aviation Administration Extension Act of 2010). This measure included a provision extending fuel and ticket taxes that fund the Airport and Airway Trust Fund. S. 2799 (Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2009). This measure included a provision banning the importation of goods from Iran. S. 1023 (Travel Promotion Act of 2009). This measure included a provision requiring users of the government's visa waiver program to pay a surcharge, with some of the proceeds to be used to pay for program costs generally. S. 951 (New Frontier Congressional Gold Medal Act). This measure included a provision directing the Secretary of the Treasury to deposit proceeds from the sale of certain commemorative coins into the United States Mint Public Enterprise Fund.
112th Congress		
December 12, 2012	H.Res. 829	H.R. 4310 (National Defense Authorization Act for Fiscal Year 2013). The Senate amendment included provisions imposing sanctions, including import sanctions, on persons conducting sanctionable activities with Iran and the Democratic Republic of Congo.
114th Congress		

Date	Resolution	Measure Returned to the Senate
June 25, 2015	H.Res. 340	H.R. 1735 (National Defense Authorization Act for Fiscal Year 2016). The Senate amendment would have changed the tax treatment of the Military Retirement Fund.

Source: Congressional Research Service, including information from U.S. Congress, House Committee on Ways and Means, *Report on the Legislative and Oversight Activities of the Committee on Ways and Means during the 114th Congress*, H.Rept. 114-887, 114th Cong., 2nd sess. (Washington: GPO, 2016), pp. 130-133.

Notes: To date, there have been no blue-slip resolutions adopted since the 114th Congress. In addition to the blue-slip resolutions identified in this table, however, it should be noted that during the 115th Congress, H.Res. 1019 was offered as a question of the privileges of the House and adopted on July 24, 2018. The privileged resolution recommitted H.R. 5515 (National Defense Authorization Act for Fiscal Year 2019) to the committee on conference as an infringement of the prerogative of the House to originate revenue measures. This marked the first time the House had adopted a resolution that assessed a committee on conference had "originated" a revenue measure, although the House had previously tabled a similar resolution during the 106th Congress (H.Res. 568, *Congressional Record*, July 27, 2000, p. 16565).

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