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

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Summary

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 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 also any fees paid to the government that are not payments for a specific service, and any change in import restrictions, because of the 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 a definition of revenue bills that is based on two central principles that tend to narrow its application to fewer classes of legislation than the House: (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.

Second, this report 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. As with any question of constitutionality, it may be submitted directly to the Senate for its determination. Such a question would be debatable and decided by majority vote. The Supreme Court has a role in enforcing the origination clause as well, as it would in any question of constitutionality.

Finally, this report looks at the application of the origination clause to other types of legislation. It examines precedents concerning public debt legislation, as well as the unanswered question of whether the origination clause grants the House the exclusive prerogative to originate bills to appropriate money, as well as to raise revenues.

This report will be updated to reflect any changes in practice.

Contents

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

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 non-revenue 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:

> 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 that:

> [A]ll 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

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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, fn 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 constitution. Quoted in Max Farrand, ed., *The Records of the Federal Convention of 1787*, revised edition in four volumes [hereafter cited as Farrand], vol. II (New Haven: Yale University Press, 1937), p. 278.

[2] The Members of the Senate were elected by the various state legislatures until ratification of the 17th Amendment in 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 wasn't 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] Ibid., p. 524.

[6] Ibid.

[7] Ibid., p. 547.

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 incidently raised money, and 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 which 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 to 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] 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 a "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.

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

[9] Ibid., p. 263.

[10] Ibid., p. 273.

[11] Ibid., p. 280.

[12] Ibid., p. 298.

[13] Ibid., p. 510.

[14] Ibid., p. 552.

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 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 which fail to

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[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* [hereafter cited as *Hinds' Precedents*], vol. II, chap. 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* [hereafter cited as *Cannon's Precedents*], vol. VI, chap. 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* [hereafter cited as *Deschler's Precedents*] vol. 3, chap. 13, part C (Washington: GPO, 1977). In addition, House actions to return Senate bills containing revenue provisions for the 97th-106th Congresses may be found in: 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 106th Congress*, 106th Cong., 2nd sess., H.Rept. 106-1036 (Washington: GPO, 2001) pp. 100-105.

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

[17] This policy is articulated in "Policies of the Chair," *Congressional Record*, vol. 137, Jan. 3, 1991, p. 66. The Speaker's announcements at the beginning of the 107th Congress stated that this policy would continue to govern, but that it need not be reiterated, as it is "adequately documented as precedent." "Policies of the Chair," *Congressional Record*, daily edition, vol. 147, Jan. 3, 2001, p. H21.

eliminate large-scale driftnet fishing.[18] In 1999, the House 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 which 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 non-revenue 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 non-revenue 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]

One example of the distinction between revenue and non-revenue receipts having an impact on the House's interpretation of the origination clause is the case of S. 104 (105th Congress). This legislation would have repealed one fee and replaced it with another. It was the repeal of the original fee, but 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. The proceeds from the original fee, however, were uncapped, and fees collected in excess of the associated costs were deposited in the general fund in the Treasury and used to finance 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]

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

[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,* daily edition, vol. 145, July 15, 1999, pp. H5677-H5680.

[20] "Policies of the Chair," *Congressional Record,* vol. 137, Jan. 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,* daily edition, vol. 144, Mar. 5, 1998, pp. H878-H879.

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 the following: a concurrent resolution reinterpreting a definition in the tariff act of 1922;[22] bills providing for a bond issue;[23] amending the Silver 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]

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 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 has 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;[27]

- The Senate has 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;[28]

- The Senate has 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.[29]

Although Article I, Section 7, provides that the Senate may propose or concur with amendments as on other bills, 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

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[22] *Cannon's Precedents*, sec. 319.

[23] *Hinds' Precedents*, sec. 1494

[24] *Deschler's Precedents*, chap. 13, sec. 15.1.

[25] *Deschler's Precedents*, chap. 13, sec. 15.3.

[26] *Deschler's Precedents*, chap. 13, sec. 15.4.

[27] *Cannon's Precedents*, sec. 316.

[28] *Cannon's Precedents*, sec. 317.

[29] *Cannon's Precedents*, sec. 320.

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,[30] 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.[31] In the House, James A. Garfield, stated that:

> 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.[32]

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.[33]

The report, however, conceded that the Senate's amendment authority is not unlimited; that it cannot propose an amendment raising revenue to any House-originated bill, only to a bill for raising revenue.[34]

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. 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" opens the door to Senate action on a wide range of possible alternatives. In this way, the Senate may "originate" specific tax provisions, even though it may not originate tax measures. Chief Justice Edward White, writing the majority opinion in *Rainey* v. *United States* stated that:

> the section was proposed by the Senate as an amendment to a bill for raising revenue which originated in the House. That is sufficient .... it is not for this

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[30] *Hinds' Precedents*, sec. 1481.

[31] *Hinds' Precedents*, sec. 1489.

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

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

[34] Ibid.

> Court to determine whether the amendment was or was not outside the purposes of the original bill.[35]

Similarly, 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.[36] Another, illustration of the Senate's latitude is the Tax Equity and Fiscal Responsibility Act of 1982.[37] In this instance, the Senate took a House originated measure concerning tariffs that had passed the House in 1981 (H.R. 4961, 97th Congress), and amended it to include major revenue increases.

The Supreme Court

The Supreme Court has established its own understanding of the phrase "a bill for raising revenues." In general, the Court's definition has had a somewhat narrower application than that used by the House. Some cases that the House has regarded as a violation of its prerogative might not fall within the Court's understanding of a violation of the origination clause. This may be because by the time the Court hears a dispute, the measure in question has been passed by the House and Senate and become law, and therefore carries a presumption of constitutionality. The Court has traditionally been reluctant to void a duly enacted law unless plainly in violation of the Constitution.

The Court's direct involvement in defining the meaning of the origination clause dates back at least to 1813 when Justice Joseph Story wrote that revenue laws are those:

> 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.[38]

Later, in his *Commentaries on the Constitution*, Story reiterated this position when he wrote that the meaning of the origination clause was:

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[35] *Rainey* v. *United States*, 232 U.S. 310, 317 (1914).

[36] *Deschler's Precedents*, chap. 13, sec. 16.1.

[37] P.L. 97-248, 96 Stat. 324. This Act was the subject of several court challenges. In *Moore* v. *U.S. House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984) *cert. denied*, 469 U.S. 1106 (1985) a District Court dismissal of the challenge by a Member of the House was upheld. In *Texas Ass'n of Concerned Taxpayers, Inc.* v. *U.S.*, 772 F.2d 163 (5th Cir. 1985), the Court of Appeals dismissed a challenge based on whether the Senate action was outside the range of amendments permitted under the origination clause as nonjusticiable. 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.

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

> 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.[39]

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.[40]

The court's understanding of the origination clause is therefore based on two central principles that tend to narrow its application to fewer classes of legislation than the House: (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, that also imposed a fee 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 primary purpose of the bill was to establish a national currency, and the fee on banks was incidental to that purpose.[41]

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, rather than to meet the general expenses or obligations of the government.[42]

A more recent ruling based on these principles appeared in *United States* v. *Munoz-Flores*. In this case, the law being challenged required federal courts to

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

[40] *United States ex rel. Michels* v. *James*, 26 Fed. Cas. 577, 578 (C. C. N.Y. 1875) (No. 15,464) quoted in *Hinds' Precedents*, sec. 1494, p. 965. 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*, sec. 317.

[41] *Twin City Bank* v. *Nebeker*, 167 U.S. 196 (1897).

[42] *Millard* v. *Roberts*, 202 U.S. 429 (1906).

impose a monetary "special assessment" on any person convicted of a federal misdemeanor, to be used for some part of the expenses associated with compensating and assisting victims of crime. In the opinion of the Court, the fact that this requirement would create new income for the federal government was not alone sufficient for the measure to be considered a revenue bill. The Court held that the case "falls squarely within the holdings in *Nebeker* and *Millard*.[43] In a footnote to the opinion, however, the Court cautioned that:

> 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.[44]

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.

It should also be noted that federal courts have generally declined to equate the phrase "raising revenue" with "increasing revenue." To do so 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."[45] Instead, contemporary courts have adopted the construction given by Congress, that is, relating to, or providing for, revenue.

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." 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. It is called blue-slipping because the resolution returning the offending bill to the Senate is printed on blue paper. This process is provided for under House Rule IX, clause 2(a)(1), 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* [emphasis added], shall have precedence of all other questions except motions to adjourn.

Any Member of the House may offer such a resolution, but normally it is the Chairman of the Ways and Means Committee who would do so. Occasionally,

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

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

[45] *Texas Ass'n of Concerned Taxpayers, Inc.* v. *U.S.*, 772 F.2d 163, 166 (5th Cir. 1985).

another member of the committee may be designated. Consideration of the resolution takes place in the House of Representatives under the one-hour rule. Clause 2(a)(2) further provides that:

> 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.

It should be noted that because enforcement of the origination clause in the House is based on a question of the constitutional privilege of the House, it is not subject to restrictions based on timeliness. The House can assert its privilege at any time it is in possession of the bill and related papers (that is, anytime the actual documents are not physically in possession of the Senate or a conference committee).[46] Therefore, the House is not limited to enforcing its prerogative only through blue-slipping a measure upon its initial receipt from the Senate. Historically, the House has used a variety of methods for enforcement.

On a number of occasions the House has chosen to ignore a Senate passed bill, and instead to take action on a House bill.[47] The House may also refer a questionable Senate measure to a committee. In such instances, the committee may choose simply to report a House bill, rather than consider the Senate bill further.[48] The House may also decide to use a conference committee as a venue for deciding origination clause questions. It may do so by having the subject committed to conference,[49] or it may determine that an offending provision can be removed in conference without having to take the formal step of blue-slipping.[50] Such an accommodation would not prevent the House from enforcing its prerogatives through blue-slipping after a conference if the offending provision remained in the measure.[51]

The House may also move to take up the measure and disagree to the offending Senate amendment, giving the Senate the option of deciding how to proceed. The Senate could then insist on its amendment and attempt to go to conference regardless

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[46] *Deschler's Precedents*, chap. 13, sec. 14.2.

[47] *Deschler's Precedents*, chap. 13, sec. 18.1-18.5.

[48] *Deschler's Precedents*, chap. 13, sec. 18.5.

[49] *Hinds' Precedents*, sec. 1487.

[50] Such an accommodation was proposed by Representative David Obey, then 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, Aug. 12, 1994, pp. 21655-21658.

[51] *Deschler's Precedents*, chap. 13, sec. 14.2.

of House concerns. The Senate could also recede from its amendment and concur with a new amendment not violating House prerogatives. Such a course of action, however, would require unanimous consent. It would also be possible for the Senate simply to recede to the House-passed version, although politically this would be less likely.

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.[52] Similarly, an amendment proposing to raise revenues would be out of order on the same grounds if offered to a non-revenue measure. A point of order against such an amendment would also be submitted by the Presiding Officer directly to the Senate.[53] Such a point of order generally would be debatable and decided by majority vote.

The Supreme Court

As with other provisions of the Constitution, if the Court were to find that a revenue bill had been passed in violation of the origination clause, the consequence would be for the statute to be struck down. In most instances where the courts have ruled with regard to origination clause matters, it has been as to whether the particular measure was a revenue bill within the meaning of the clause, not as to the question of its origin.[54]

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 primarily limits its role to determining whether a given measure fits the definition of a bill for raising revenue. When questions of origination are involved, the Court looks to the measure's designation as a House or Senate bill, but does not examine the journals of the House or Senate to determine in which house a specific revenue provision may actually have originated. This "enrolled bill rule" generally precludes the courts from questioning the certification by the presiding legislative officers of the House and Senate[55] that an enrolled bill was passed pursuant to proper procedures.[56] The

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[52] U.S. Congress, Senate, *Riddick's Senate Procedure*, S.Doc. 101-28, 101st Cong., 2nd sess., by Floyd M. Riddick and Alan S. Frumin (Washington: GPO, 1992), pp. 685, 1215.

[53] Ibid., pp. 52, 1215.

[54] For example see: *United States ex rel. Michels* v. *James*, *Twin City Bank* v. *Nebeker*, and *Millard* v. *Roberts* discussed at pp. 8-10 above.

[55] The Speaker of the House and the President Pro Tempore of the Senate, respectively.

[56] The enrolled bill rule was established in *Marshall Field & Co.* v. *Clark*, 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) chap. 15, pp. 743-774.

application of the enrolled bill rule to the origination clause is illustrated in two cases.

In *Flint* v. *Stone Tracy Co.*, the Court refused to 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."[57]

In *Hubbard* v. *Lowe*, the Cotton Futures Act[58] was voided based on the same idea. In this case, the bill had originated in the Senate, and it was instead the House which had amended the bill. The original Senate bill had sought to prohibit certain contracts by banning them, and all related matters, from the mail, but had been silent with regard to taxes. The House had amended the bill to prohibit these contracts by imposing a prohibitive tax instead. The Supreme Court agreed with the District Court's refusal to go behind the measure's designation as a Senate bill to determine that the tax provision had actually originated in the House.[59]

The application of the enrolled bill rule to cases arising from the origination clause, however, does not appear to be absolute. In his concurring opinion in *United States* v. *Munoz-Flores*, Justice Antonin Scalia stated that under the enrolled bill rule the Court should not look behind the legislation's origination as H.J. Res. 648 (98th Congress) to determine its validity. 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."[60]

In the majority opinion, however, the Court held 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' judgement, that this was not sufficient to make a question nonjusticiable, on the basis either of the enrolled bill rule or as a political question.[61] Justice Thurgood Marshall, writing the majority opinion of the Court, stated that:

> If it were, *every* [italic in original] judicial resolution of a constitutional challenge to a congressional enactment would be impermissible ....

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

[58] Public Law 174, 63rd Congress, 38 Stat. 693-698.

[59] *Hubbard* v. *Lowe*, 226 F. 135 (S.D.N.Y. 1915), *dismissed without consideration*, 242 U.S. 654 (1916).

[60] *United States* v. *Munoz Flores*, 495 U.S. 385, 409-410.

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

> Congressional consideration of constitutional questions does not foreclose subsequent judicial scrutiny.[62]

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.[63]

Thus, the Court may review a question concerning the origination clause, and not rely solely on the enrolled bill doctrine when determining its applicability. The House certainly may determine whether the origination clause does or does not apply in a particular case, but a House determination that it does not apply may be subject to Court review. As with other questions brought before it, whether the Court actually would review a case would depend on whether it was brought by someone whom the Court determined had standing, and whether the Court regarded it as a true case or controversy. Unlike its rules, which the House may choose not to enforce at its discretion, the House may not choose simply to waive the origination clause.

Other Legislation and the Origination Clause

Appropriations Legislation

Historically, the House has asserted that the origination clause applies not only to bills to *raise* revenues, but to bills to *spend* revenues as well. Due to this interpretation, the House has customarily originated all money bills, including appropriations bills. The House and Senate disagree on the validity of this position, 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 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:

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[62] *United States* v. *Munoz-Flores*, 495 U.S. 385, 390-391.

[63] Ibid., 392.

> 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 ....[64]

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:

> whatever 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 an appropriations bill, but that it has always conceded to the House of Representatives the origination of appropriations bills ...[65]

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.[66] 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.[67]

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.[68]

- 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

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[64] Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, [introduction, table of contents and index by Clinton Rossiter] (New York: New American Library, 1961) p. 359.

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

[66] For details on the evolution of the language of the origination clause, see the discussion of the Constitutional Convention above.

[67] *Cannon's Precedents*, sec. 321, describing the position of Senator Francis E. Warren in the *Congressional Record*, vol. 48, Apr. 11, 1912, p. 4577.

[68] *Hinds' Precedents*, sec. 1500, p. 972, fn 1.

supporting their position, and return the Senate bill. The House took no action on either recommended resolution, nor on the Senate bill.[69]

- In 1885, the House again declined to investigate the authority of the Senate to originate appropriations.[70]

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,[71] and in 1962, the House returned a measure making appropriations for the Department of Agriculture.[72] 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 judgement, or a commission.[73] 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.[74] The committee subsequently requested a study on the question that was published both with the hearing and separately as a Senate document.[75] 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 constitutional question has never been definitively resolved, in practice the Senate has generally deferred to the House's insistence on originating appropriations.

Debt Limit Legislation

Questions concerning the level of public debt are often closely related to questions of revenue, since the federal government must use borrowed funds to

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[69] 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*, sec. 1500.

[70] *Hinds' Precedents*, sec. 1501.

[71] *Deschler's Precedents*, chap. 13, sec. 20.4.

[72] *Deschler's Precedents*, chap. 13, sec. 20.2.

[73] *Deschler's Precedents*, chap. 13, sec. 20.1

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

[75] 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).

finance obligations when the level of revenues available is not sufficient. 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 custom that the House has originated legislation to provide for the issuance of federal debt or to establish a limit on the level of federal debt. Neither chamber has asserted that public debt legislation is subject to the origination clause, however. Furthermore, questions concerning the purpose or usage of debt securities are not subsumed under questions of origination. The actions of the House in 1946 with regard to debt legislation are 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 .... [76]

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.[77]

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 which was subsequently passed by the House and Senate and became law.[78]

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

[77] *Deschler's Precedents*, chap. 13, sec. 17.1.

[78] *Deschler's Precedents*, chap. 13, sec. 18.4.

Conclusion

The system of government formulated by the framers of the Constitution in 1787 incorporated an intricate balancing of authorities and prerogatives, between the federal and state governments, among the branches of the federal government, and within the legislative branch, between the House and Senate. On the issue of taxation, the framers sought to mirror British practice by requiring that "All Bills for raising Revenue" originate in the popularly elected House, but balanced this by allowing the Senate the right to amend such bills. Left ambiguous was a precise definition about which measures would comprise revenue bills, and how far the Senate's right to amend them extended.

Over the course of more than two centuries of experience, the meaning of the origination clause has been honed by congressional and judicial precedents. Today, the clause applies unambiguously only to those bills that have as their primary purpose raising funds for the general operation of the federal government. However, it remains for the House, Senate, and federal courts to employ this understanding to enforce the application of the clause. The primary method for ensuring the enforcement of the origination clause has historically been blue-slip resolutions adopted by the House of Representatives. This remains true today, although other avenues of enforcement, from simple House inaction on Senate-originated bills to review by the Supreme Court, also play significant roles.

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