



## **Bring back the conference committees**

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Constitutionally, legislation must pass the House and Senate with identical language. Reconciling differences, no matter how minor, in bills from the two bodies must be made. Even though bicameral agreements are often done informally, on major legislation, conference committees are used to reach consensus between the two bodies.

These committees have almost always met in secret, with bargaining and compromises not made public. In fact, legislation has sometimes been completely rewritten in secret by the conference committee chairs and the majority party leaders. In the past few congresses, party leaders try to avoid conference committees in resolving House-Senate versions of a bill because of institutional rivalries, complexity of the bills, and partisan polarization. Is the resolution of differences without bicameral conferences any different than the resolving of differences in secret conference committee deliberations?

Is it more democratic, deliberative and fair? Is there a better way?

In order to build consensus and approve important legislation quickly, congressional party leadership in recent congresses have avoided conference committees on important, complex and controversial legislation, like healthcare reform and the stimulus.

The specter of Senate filibustering of post-conference legislation or even a filibuster of the formation of conference, as we have seen with the economic stimulus legislation and healthcare reform in the 111th Congress has doomed potential conferences.

Even though conference committees have rarely been used for more than 25 percent of public laws passed by Congress, their use has steadily declined from 38 conferences in the 106th Congress (1999-2000) to 9 in the 110th (2007-2008). In the first sixteen months of the 111th Congress, there have been only ten conferences – all on appropriations bills – and eleven bills using other means.

Resolving differences by “other means” is the most common strategy used by party leaders since the mid-1990s. Sometimes one chamber will adjourn and force the other chamber to accept the bill as is or to drop it. Another strategy is a “ping-pong” approach or a shuffle of amendments back and forth between the two chambers until disagreements are resolved. The “ping-pong” is a short game because there is a parliamentary limit on the number of times measures can be sent between the two bodies. “Ping-pong” also deprives the minority of the ability to use the motion to recommit (send the bill back to the committee of jurisdiction) and allows the majority to avoid politically difficult votes. “Ping-pong” gives more negotiating power to the Senate majority leader and the Speaker and sometimes even reduces the role of committee chairs with jurisdiction over the bill.

The healthcare reform bill illustrates how major legislation can be passed without conference committees. After the Senate passed the bill by a 60-to-39 vote, and the Senate special election in January 2010 of Republican Scott Brown, the Senate Democrats lost their filibuster-proof majority. They no longer had the votes to push through a House-Senate negotiated bill.

The solution for Democrats to overcome the Republican delaying tactics and the filibuster was for the House to pass the Senate bill and not call a conference committee to resolve differences. The Senate Republicans threatened to filibuster every step in the conference committee process. The “bipartisan agreement,” advocated by President Obama, was unattainable with Republicans willing to use the filibuster to stop any version of healthcare reform legislation that had not already passed the Senate. In the end, a conference committee was avoided and verbatim versions of the Senate healthcare reform bill were approved by the House with a promise by the Democratic Party leadership to make certain revisions through the use of reconciliation process from the Concurrent Budget Resolution. Was it a fair, deliberative, democratic, and transparent process?

The decline in the use of conference committees, but more particularly the near extinction of “public conference committees” on major bills with significant disagreements between the houses undermines the “regular order,” deliberation, expertise, transparency, and participation in lawmaking.

Secrecy compromises democracy and fosters voter distrust in government. When the Democrats were in the minority they complained that majority Republicans often shut them out of conference, a complaint now echoed by minority Republicans. Both parties are guilty. The “iron laws of reciprocity and emulation” are at work. When in the majority, both Democratic and Republican leaders have failed to consult the minority before finalizing bicameral agreements on important legislation. Stop “ping pong” and other games. The public is confused, and distrust of Congress grows (now at a historic low of 22 percent job approval) with backroom deals on major legislation.

Here is what I think is a better way: Bring back the conference committees and make them hold meetings in public. Public conference committees allow members to actually read and study legislation, which will lead to more in-depth deliberation and will help educate the public about the bill and what public problems it is trying to solve.

*James A. Thurber is a distinguished university professor and director of the Center for Congressional and Presidential Studies at the School of Public Affairs at American University.*