CHAPTER 6
The Enactment of Legislation

A. INTRODUCTION

In Chapter 4 we focused on the organization and governing rules of legislatures. And in Chapter 5 we explored the workings of legislative committees. Together these form the framework for the consideration of legislation. In this chapter we will explore the enactment of legislation within this framework. We again turn to the Voting Rights Act of 1965 as our focal point for observing the formal steps of the enactment process.

B. THE STEPS OF ENACTMENT FOLLOWING THE VOTING RIGHTS ACT OF 1965

The Voting Rights Act of 1965 was one of the most significant pieces of legislation ever adopted by Congress. Its passage, the result of an intense grassroots campaign by the civil rights movement, placed the federal government squarely behind efforts to create equal opportunities for African-Americans to participate in the political process. As the 89th Congress organized itself in
January of 1965, passage of a broad voting rights reform was not a certainty. Although the newly elected president, Lyndon B. Johnson, was committed to such reform and Congress was controlled by Democrats, many of the Democrats (along with many Republicans) opposed significant federal involvement in securing voting rights. Because of the then dominant seniority rules, many of these members held significant positions in Congress and could be counted on to take every opportunity to obstruct serious voting rights legislation.

In the presentation that follows we will watch the 89th Congress consider the voting rights bills that became the Voting Rights Act of 1965. Our window will be the Congressional Record, in which much of the formal work of Congress is recorded (while the style used for our excerpts is very close to that used in the Congressional Record, we are unable to present it in the news column format used in the Congressional Record). This presentation does not include every amendment proposed, nor does it set forth debate on the substance of the legislation. Rather it is intended to introduce the formal mechanics and language of the legislative process and the methods for following it. The substance of the Voting Rights Act of 1965 will be explored in detail in Chapter 7.

1. Congressional and Other Records of Floor Activities

Since 1873 the proceedings and debates of the United States Congress have been published daily in the Congressional Record. The Congressional Record is bound annually with an Index and Daily Digest. While the journal of each house (a constitutionally mandated document distinct from the Congressional Record) serves as the official record of legislative votes, the Congressional Record serves as an authoritative record of the proceedings of Congress. Users of the Congressional Record must be careful. Although a statute requires the Congressional Record to “be substantially a verbatim report of proceedings,” 44 U.S.C. §901, congressional rules allow some poststatement editing, in 1995 limited in the House to grammatical errors, of remarks by members of Congress and, under certain conditions, the insertion into the Congressional Record of remarks not made on the legislative floor. Critics of this process have argued that such remarks are misleading, particularly when such remarks may refer to an ambiguous provision in a statute. The inclusion of, at least, extended remarks—remarks explaining a member’s stated position on a bill—does save floor time that might otherwise be used for their reading. Remarks not made on the floor are so designated in the Congressional Record by a different typeface or by placement in a section entitled “Extensions of Remarks.” For a more detailed discussion of the Congressional Record, see Congressional Quarterly, Guide to Congress, 442 (4th ed. 1991).

State legislatures offer little comparable opportunities to follow their activities. While all state legislatures record or transcribe their sessions, the accessibility of these records varies from state to state.

2. Organization of the House of Representatives for the 89th Congress

In the last chapter we explored the structures and rules that establish the framework under which Congress and state legislatures operate. In this section we will observe the organization of the House of Representatives of the 89th Congress, on January 4, 1965, in which it elected its leadership and adopted its rules. Prior to this organizational meeting, the representatives had been meeting in their respective party caucuses to choose their leaders and make their committee assignments.

HOUSE OF REPRESENTATIVES
Monday, January 4, 1965

This being the day fixed by the 20th amendment of the Constitution for the annual meeting of the Congress of the United States, the Mem-
BERS ELECT OF THE HOUSE OF REPRESENTATIVES OF THE 89TH CONGRESS MET IN THEIR HALL, AND AT 12 O'CLOCK NOON WERE CALLED TO ORDER BY THE CLERK OF THE HOUSE OF REPRESENTATIVES, HON. RALPH R. ROBERTS. 

The CLERK: The Representatives-elect to the 89th Congress: This is the day fixed by statute for the meeting of the 89th Congress.

As the law directs, the clerk of the House has prepared the official roll of the Representatives-elect.

Credentials covering the 435 seats in the 89th Congress have been received and are now on file with the Clerk of the 89th Congress.

The names of those persons whose credentials show they were regularly elected in accordance with the laws of the several States and of the United States will be called; and as the roll is called, following the alphabetical order of the States, beginning with the State of Alabama, Representatives-elect will answer to their names to determine whether or not a quorum is present.

The reading clerk will call the roll.

The Clerk called the roll by States and the following Representatives-elect answered to their names: 

**Election of Speaker**

The CLERK. The next order of business is the election of a Speaker of the House of Representatives for the 89th Congress.

Nominations are now in order.

Mr. KEogh. Mr. Clerk, as chairman of the Democratic caucus, I am directed by the unanimous vote of that caucus to present for election to the office of the Speaker of the House of Representatives of the 89th Congress the name of the Honorable JOHN W. McCORMACK, a representative-elect from the Commonwealth of Massachusetts.

Mr. LAIRD. Mr. Clerk, by authority, by direction, and by unanimous vote of the Republican conference, I nominate for Speaker of the House of Representatives the Honorable GERALD R. FORD, a Representative-elect from the State of Michigan to the 89th Congress.

The CLERK. The Honorable JOHN W. McCORMACK, a Representative-elect from the State of Massachusetts, and the Honorable GERALD R. FORD, Representative-elect from the State of Michigan, have been placed in nomination. Are there further nominations? [After a pause.] There being no further nominations, the Clerk will appoint the following to act as tellers: The gentleman from Texas, Mr. BURLESON, the gentleman from Pennsylvania, Mr. CORBETT, the gentleman from Missouri, Mrs. SULLIVAN, and the gentleman from Illinois, Mrs. REID.

Tellers will come forward and take their seats at the desk in front of the Speaker's rostrum.
All of this contributes to an atmosphere of goodwill and unity. It fosters what I would like to call cooperation in depth...

I am now ready to take the oath of office and will ask the dean of the House of Representatives, Hon. EMANUEL Celler, of New York, to administer the oath.

Mr. Celler then administered the oath of office to Mr. Mccormack, of Massachusetts.

Swearing in of Members

The SPEAKER. According to the precedent, the Chair is now ready to swear in all Members of the House.

The Members will rise.

Objection to Administration of Oath

Mr. Ryan. Mr. Speaker.

The SPEAKER. For what purpose does the gentleman from New York rise?

Mr. Ryan. Mr. Speaker, on my responsibility as a Member-elect of the 89th Congress, I object to the oath being administered to the gentleman from Mississippi, Mr. Abernethy, Mr. Whitten, Mr. Williams, Mr. Walker, and Mr. Colmer. I base this upon facts and statements which I consider to be reliable. I also make this objection on behalf of a significant number of colleagues who are now standing with me.

The SPEAKER. Under the precedents, the Chair will ask the gentlemen who have been challenged not to rise to take the oath with the other Members, for the present at least.

The other Members will rise and I will now administer the oath of office to them.

The Members-elect and the Resident Commissioner-elect rise and the Speaker administered the oath of office to them.

Resolution Authorizing Oath of Office to Certain Members

Mr. Albert. Mr. Speaker, I offer a resolution (H. Res. 1) which I send to the Clerk's desk.

The Clerk read the resolution, as follows:

H. Res. 1

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentlemen from Mississippi, Mr. Thomas G. Abernethy, Mr. Jamie L. Whitten, Mr. John Bell Williams, Mr. William M. Colmer, and Mr. Prentiss Walker.

Mr. Albert. Mr. Speaker, the Members-elect whose names are referred to in the resolution are here with certificates of election in due form on file with the Clerk of the House of Representatives just as all other members of the House.

Any question involving the validity of the regularity of the election of the Members in question is one which should be dealt with under the laws governing contested elections. I therefore urge the adoption of the resolution.

The SPEAKER. The question is on the resolution.

Mr. Roosevelt. Mr. Speaker, will the gentleman yield for a parliamentary inquiry?

Mr. Albert. I yield for a parliamentary inquiry.

Mr. Roosevelt. Mr. Speaker, will the first vote be on the resolution, or on the previous question?

The SPEAKER. If the gentleman from Oklahoma moves the previous question, the vote will be on the previous question.

Mr. Roosevelt. Mr. Speaker, if the motion for the previous question is voted down, would it then be in order to offer a substitute or an amendment providing that the five Representatives-elect from Mississippi not be sworn at this time and that the question of their rights to be seated be referred to the Committee on House Administration?

The SPEAKER. The Chair will state that if the previous question is voted down, it would be in order to offer a proper amendment, which the Chair would not pass upon at this particular time, unless that situation arises.

Mr. Roosevelt. I thank the Speaker.

Mrs. Green of Oregon. Mr. Speaker, will the gentleman yield for a parliamentary inquiry?

Mr. Albert. I yield for a parliamentary inquiry.

Mrs. Green of Oregon. Since the rules of the House have not been adopted, am I correct in understanding that it would require 20 percent of the Members here to stand for a yeas-and-nays vote?

The SPEAKER. The Chair will state that under the Constitution, it would require one-fifth of the Members present to rise to order a yeas- and-nays vote.

Mr. Albert. Mr. Speaker, I move the previous question on the resolution.

Mrs. Green of Oregon. Mr. Speaker, on that I demand the yeas and nays.
The yeas and nays were ordered. The question was taken; and there were — yeas 276, nays 149, present 1, not sworn 8, as follows: The SPEAKER. The question is on agreeing to the resolution. The resolution was agreed to. A motion to reconsider was laid on the table.

Swearing In of Members

The SPEAKER. Will the Members-elect from Mississippi who have been challenged present themselves in the well of the House for the purpose of having the oath of office administered to them.

Messrs. ABERNETHY, WHITTEN, WILLIAMS, COLMER, and WALKER presented themselves at the bar of the House and the oath of office was administered to them.

Majority Leader

Mr. KEOGH. Mr. Speaker, as chairman of the Democratic caucus, I have been directed to report to the House that the Democratic Members have selected as majority leader the gentleman from Oklahoma, the Honorable CARL ALBERT.

Minority Leader

Mr. LAIRD. Mr. Speaker, as chairman of the Republican conference, I am directed by that conference to notify the House officially that the gentleman from Michigan, the Honorable GERALD R. FORD, has been selected as the minority leader of the House.

Chairman of the Republican Policy Committee

Mr. LAIRD. Mr. Speaker, further as chairman of the Republican conference, I am directed by that conference to notify the House that the gentleman from Wisconsin, Mr. BYRNES, has been elected chairman of the Republican policy committee of the House.
The resolution was agreed to.
A motion to reconsider was laid on the table.

Committee to Notify the President of the United States of the Assembly of the Congress

Mr. ALBERT. Mr. Speaker, I offer a resolution (H. Res. 5) and ask for its immediate consideration.
The Clerk read the resolution, as follows:

H. Res. 5

Resolved, That a committee of three Members be appointed by the Speaker on the part of the House of Representatives to join with a committee on the part of the Senate to notify the President of the United States that a quorum of each House has been assembled, and that Congress is ready to receive any communication that he may be pleased to make.

The resolution was agreed to.
A motion to reconsider was laid on the table.
The SPEAKER. The Chair appoints as members of the committee to notify the President the gentleman from Oklahoma [Mr. ALBERT]; the gentleman from New York [Mr. CELLER]; and the gentleman from Michigan [Mr. FORD].

Authorizing the Clerk to Inform the President of the Election of the Speaker and the Clerk of the House of Representatives

Mr. MAHON. Mr. Speaker, I offer a resolution (H. Res. 6) and ask for its immediate consideration.
The Clerk read the resolution, as follows:

H. Res. 6

Resolved, That the Clerk be instructed to inform the President of the United States that the House of Representatives has elected JOHN W. McCORMACK, a Representative from the State of Massachusetts,
Mr. Speaker, it would enable the Speaker, after a resolution had been before the Committee on Rules for 21 days or more, to recognize the chairman or other members of the legislative committee from which the bill emanated to discharge the Committee on Rules on a day set aside for discharging committees... The purpose of these... changes in the rules, of course, is to expedite the business of the House and to make available other methods of handling the legislative business of the House. They do not seek to change any of the rules governing the Committee on Rules or other procedures, all of which are left intact. ...

Mr. Speaker, I urge the adoption of the resolution.

Mr. SMITH of Virginia. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman Yield to me?

Mr. ALBERT. I first yield to the distinguished gentleman from Virginia [Mr. SMITH] and then I shall yield to the gentleman from Ohio [Mr. BROWN].

Mr. SMITH of Virginia. Mr. Speaker, I would like to propose a few questions. The first question on this resolution is this: Are copies of this resolution available so that the Members may know on what they are voting?

Mr. ALBERT. In response to the gentleman from Virginia, I am not able to answer whether every Member has had copies of this resolution available. I do not know that many Members have had copies of the resolution.

Mr. SMITH of Virginia. If the gentleman will yield further, I picked up a piece of paper here on the floor the other day which makes me think it is a copy of the typeset copy of what is proposed. I do not know. But it seems to me that in a matter of this importance we should at least have the opportunity to have a copy available before us in order to see what we are doing.

Mr. ALBERT. How many copies have been distributed to Members, I do not know.

Mr. SMITH of Virginia. It was not distributed to me. I picked one up off the floor.

Mr. ALBERT. The gentleman from Virginia has exercised his usual initiative in getting things.

Mr. SMITH of Virginia. I assume the gentleman intends to move the previous question.

Mr. ALBERT. I do, at the appropriate time.

Mr. SMITH of Virginia. If the gentleman will yield further, what I want to know is whether or not there is going to be an opportunity for discussion and debate on this resolution?

Mr. ALBERT. I say to the gentleman that I have yielded to the gentleman for the purpose of making a statement at this time.
Mr. ALBERT. I believe the gentleman did.
Mr. BROWN of Ohio. If the Rules Committee does not act, and this new 21-day rule is applicable, it would be the Speaker, and the Speaker alone, who could decide whether the bill would be brought up, if it had been for 21 days before the Rules Committee.
Mr. ALBERT. The Speaker and the legislative committee having jurisdiction over the subject matter.
Mr. BROWN of Ohio. It does not say that.
Mr. ALBERT. The House will have the final determination in all instances. The House can decide whether the resolution should be adopted or whether it should be rejected, or even whether it should be referred to a committee. The House will have complete jurisdiction over the matter, ... 
Mr. BROWN of Ohio. One other question and then I am through. Will the gentleman yield for me to offer a perfecting amendment?
Mr. ALBERT. The gentleman will not yield for that purpose.
Mr. BROWN of Ohio. The gentleman refuses to yield for the purpose of offering an amendment at this time?
Mr. ALBERT. The gentleman cannot yield for that purpose.
Mr. BROWN of Ohio. I say to the gentleman I respect his position, but I want to make very clear what his position might be.
Mr. ALBERT. May I say to the gentleman that this resolution is being offered under instructions of the Democratic caucus. I am the agent of the caucus for that purpose. I have no authority to yield for amendment or to yield for any purpose in order to allow the bill to be divided.
Mr. BROWN of Ohio. May I say to my good friend, the distinguished gentleman from Oklahoma, I have the highest respect and regard for him. I know he is under instructions which he is attempting to carry out, and he always does carry out instructions to the best of his ability whether he likes them or not. I respect him for it.
Mr. ALBERT. In this case I like the instructions that I have had from the Democratic caucus.
Mr. GERALD R. FORD. Mr. Speaker, I yield to the gentleman from Ohio [Mr. BROWN].
Mr. BROWN of Ohio. I would like to say to you that I, representing the minority in connection with those rules matters, have been under instructions from our party conference, as you have been from your caucus, to say to the House we have prepared certain amendments to the rules of the House that we would like to have considered, and that they may be offered as separate resolutions if they cannot be offered as amendments today. I think you are entitled to know this, and the House is entitled to know it, that those resolutions will be presented in due time.
Mr. ALBERT. I thank the gentleman for giving me that information.
Mr. GERALD R. FORD. Mr. Speaker, I appreciate the time given by the gentleman from Oklahoma, the majority leader. I intended to say much of what was said by the distinguished gentleman from Ohio [Mr. BROWN]. The House Republican conference has met twice within the last month. On December 16 we instructed a group, a task force, to undertake a study of the proposed changes in the rules that would be needed and desirable for the protection of the minority and for the orderly prosecution of parliamentary business. This committee, under the chairmanship of Mr. BROWN has functioned and, as a consequence, we do have some proposals that, if we have an opportunity, will be offered if the previous question is defeated. They will be constructive, and I hope and trust that we can prevail in this next vote so that the House can work its will on these and other amendments.
Mr. CURTIS. Mr. Speaker, will the gentleman yield?
Mr. ALBERT. I yield for a brief question.
Mr. CURTIS. The point I would like to make to the gentleman, having worked on these proposed rule changes, is that the procedure we are following right now demonstrates the difficulty that the minority finds itself in where we are considering one of the most serious matters we are going to face; namely, the rules we are going to operate under, and we are not able to debate the question or deliberate on it. I think the gentleman from Oklahoma sees the position that the minority is in, and I think the gentleman must recognize this is unfair. I hope he will, if these resolutions are brought out, take the matter to the Democratic caucus for reconsideration of these rules for fair play.
I thank the gentleman.
Mr. ALBERT. I thank the gentleman and now I yield to our distinguished Speaker, the gentleman from Massachusetts [Mr. MCCORMACK].
Mr. MCCORMACK. Mr. Speaker, as this resolution involves changes in the rules, I feel that my views should be made known to the Members of the House. I strongly favor the resolution offered by the gentleman from Oklahoma [Mr. ALBERT]. I think the 21-day rule is a rule that is for the benefit of the individual Members of the House without regard to party affiliation in giving them the opportunity of passing upon legislation that has been reported out of a standing committee. Some Members may construe it as an attack on the Committee on Rules, but it is not. It is a strengthening of the rules of the House in the direction of the individual Member having an opportunity to pass upon legislation that has been reported out of a standing committee and which has been pending before the Committee on Rules for 21 days or more. We had this rule some few Congresses ago for one Congress. The reason it was not continued is simply and frankly that we did not have the votes. When it was adopted, it was not adopted as a permanent part of the rules but for one Congress. In following Congresses we did not have the votes. So it is not a question whether the advocates of the 21-day rule felt that it
was not workable. I have always felt throughout the years that it would be a strengthening influence not only on the rules of the House but on each Member of the House and on the House collectively in the matter of expressing the will of the House to have the 21-day rule incorporated as a part of the rules of the House.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. McCORMACK. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. Mr. Speaker, the gentleman has made a very able defense of the Committee on Rules for which I am grateful.

Mr. McCORMACK. Mr. Speaker, I have profound respect for the Committee on Rules. May I say that as leader and as Speaker, knowing the power and the charm and the influence of the Committee on Rules, and when I meet individual members of that committee I bow to them. Mr. BROWN of Ohio. And we bow to the Speaker very humbly at times also; sometimes regretfully, but we do bow to him.

Mr. Speaker, may I ask the gentleman a question or two in connection with what is before us? I hate to correct the Speaker, but I believe we did adopt that rule not once, but twice.

Mr. McCORMACK. I am always subject to correction.

Mr. BROWN of Ohio. That was the 21-day rule, but that rule as it was adopted was different from the rule proposed.

Mr. McCORMACK. Slightly different.

Mr. BROWN of Ohio. Under this rule for the first time there is a provision that the Speaker may as a matter of the highest privilege and in his discretion call up a bill, or not call up a bill. It goes further than the 21-day rule that we had before. In other words, the Committee on Rules has had the power of life-and-death control over a bill — yes or no. Now you take it away from the Committee on Rules and put it in the hands of the Speaker, for whom, may I say, I have the greatest respect, love, and admiration.

Mr. McCORMACK. I can conceive of no Speaker exercising his discretion but as a matter of high trust and as a matter of complete equity and fairness to all Members involved. I believe that the discretion of the Speaker is a reasonable provision to put in there in order to have it in connection with the 21-day rule. The original rule left it entirely in the hands of the chairman of the committee. This now, if adopted, would give the Speaker some authority to confer with the chairman of the committee.

Mr. BROWN of Ohio. But not the chairman of the Committee on Rules?

Mr. McCORMACK. Also, if the chairman of a committee should be recalcitrant or noncooperative then we could have the committee to direct some other member of the committee to call the bill up under the 21-day rule.

Mr. BROWN of Ohio. We have the highest respect and the highest regard for the character of the Speaker of this House, but we also realize that sometimes Speakers change. I mean by that we have had a change in the speakership and should this occur there might be someone on this side of the aisle who might abuse that privilege at the present time. There is a question as to whether or not we would want to do that by changing the rules of the House so as to permit any future Speaker — not you, because I am not worried about you, Mr. Speaker —

Mr. McCORMACK. That is very nice.

Mr. BROWN of Ohio. You are too nice a fellow. But I am thinking about some dirty dog that might come along some other time and say here is a nice little wrinkle in the rule which we can use to block this legislation.

In other words, should we give that power to every Speaker in the future?

We gave that power to "Uncle Joe" Cannon and Tom Reed as the gentleman recalls. We gave them too much power.

Mr. McCORMACK. This represents nothing comparable to what the gentleman is now referring. In those days the Speaker had the power to make all committee appointments. This is an entirely different situation. I can conceive of no Speaker doing anything other than exercising his discretion for the best interests of the membership of the House of Representatives. Frankly, I feel that is a minor if not insignificant argument to make against this proposed change.

Mr. BROWN of Ohio. Mr. Speaker, I salute you. You have again proven to the new membership of the House of Representatives why you have been selected as Speaker of this body. You are a very able man in the well of the House.

Mr. COOLEY. Mr. Speaker, will the gentleman yield?

Mr. McCORMACK. I yield to the gentleman from North Carolina.

Mr. COOLEY. I would like to propound a question, if I may:

Suppose the legislative committee passes a bill out and it goes to the Rules Committee and they have the ordinary usual hearing before the Rules Committee and the Rules Committee takes it under consideration and then denies the rule? Can you still bring that bill to the floor of the House?

Mr. McCORMACK. After 21 days.

Mr. COOLEY. If the gentleman will yield further, even though the Rules Committee has denied the rule?

Mr. McCORMACK. That is provided in the proposed change.

Mr. Speaker, I hope that the resolution which has been submitted by the gentleman from Oklahoma [Mr. ALBERT] will be agreed to.

Mr. ALBERT. Mr. Speaker, I move the previous question.

Mr. BROWN of Ohio. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.
The question was taken; and there were — yea 224, nays 201, answered "present" 1, not voting 6. . . .

NOTES AND QUESTIONS

1. Opening day. The Twentieth Amendment to the Constitution provides that Congress shall meet at least once a year and that "such meeting shall begin at noon on the 3d day of January, unless they [Congress] shall decide otherwise." Before the adoption of this amendment in 1933, the Constitution established the first Monday in December as the commencement date. This particular amendment, along with the remaining provisions of the Twentieth Amendment, were intended to remedy several arcane congressional scheduling practices that resulted in one long session and one short lame-duck legislative session in each two-year term. This prior practice is described in Congressional Quarterly, Guide to Congress 54 (4th ed. 1991).

2. The receipt of credentials. The Constitution (Art. I, §4) grants each state the power to regulate its own elections for members of Congress, but reserves for Congress the power to preempt such regulation. Each house of Congress is also granted the power to be the judge of the elections of its own members. The practice is for each state through its own processes to certify the winner of its congressional races and to forward those certifications to each respective house. Generally, these certifications are accepted, but sometimes objections may be raised. One such objection that proved successful — the refusal to seat member-elect Richard McIntyre — is discussed in Chapter 8 on pages 571-574.

3. Choosing the Speaker. The most important organizational decision of the House of Representatives is the choice of its Speaker, who then becomes the second most powerful political officer in the country. In 1965, the House of Representatives, to weaken the power of individual Speakers, amended its rules to provide that no member could hold that office for longer than eight consecutive years. Although the Speaker is elected by the House as a whole, the choice is really that of the majority caucus, whose nominee is inevitably elected. Once the Speaker is elected, his first task, after taking his oath, is to administer the oath to the other representatives-elect.

4. Administering the oath of office. Normally the administration of the oath of office to representatives-elect is perfunctory, but for the 89th Congress, it was disturbed by the motion of Representative-elect Ryan to exclude the representatives from Mississippi. Although Ryan's objection was quickly overcome, it is a window on the political environment in which the voting rights legislation will be considered. During the prior summer's Democratic Convention, delegates from the Mississippi Freedom Democratic Party (MFDP), an integrated pro-civil rights party, had tried to replace the all-white delegation of the Mississippi Democrats, which had adopted a platform opposing civil rights and rejecting the civil rights planks of the national party. The MFDP's efforts were defeated, although they were supported by a number of delegates, including the delegations from Michigan and New York. At the start of the 89th Congress, the MFDP went to Washington to object to the seating of the five member, all-white Mississippi delegation. While this effort was unsuccessful, it was supported by close to 150 representatives, of which Representative Ryan was one.

On what basis do you think Congress could have voted to refuse to seat the Mississippi delegation? The Constitution, Article 1, §5, provides: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . ." In Chapter 8 we will discuss the authority to judge elections and returns and the authority to judge qualifications.

5. The amendment to the rules. We discussed the importance of legislative rules in Chapter 4. At the commencement of each new Congress, the House must adopt new rules. The traditional procedure is to adopt the rules of the prior Congress with, if necessary, amendments. The determination of what rules will remain in effect and which will be amended is generally made by the majority party and the rules are almost always sent to the floor without opportunity for amendment. The politics surrounding rules changes can be intense because such changes can have substantial impacts on political power and public policy. In this case several amendments were offered. The amendment to establish a 21-day rule illustrates the impact a rule can have on legislative politics and policy. The rule reduces the power of the Chair of the Rules Committee. The Speaker and Democratic caucus were concerned that the Rules Committee, which controls the scheduling and terms of legislative debate, had become too independent and might thwart the caucus' legislative goals, even though the committee has a Democratic majority. This was of particular concern for voting rights legislation, which was opposed by the committee's chair. The 21-day rule was introduced to circumvent any log-
jam. A different procedural change to effect the same end was adopted in the Senate. In later years, the 21-day rule was again repealed, and, at present, has been replaced by a discharge procedure, which is discussed in Chapter 5. See note 4 on page 365 of this chapter for an example of another rule (three-fifths voting for any federal tax rate increase) adopted by the House in the 104th Congress (1995–1996) that could have a profound effect on policy.

3. Introduction of Bills

In Chapter 1, we presented a statute. A bill is a proposal for a change in the law that becomes a statute after it has been enacted. The bills that ultimately led to the adoption of Public Law 89-110, the Voting Rights Act of 1965, were recorded as introduced into the 89th Congress, 1st Session, on March 17, 1965, in the House of Representatives (H.R. 6400) and on March 18, 1965, in the Senate (S. 1564).

HOUSE OF REPRESENTATIVES
Wednesday, March 17, 1965

The House met at 12 o'clock noon.

Public Bills and Resolutions

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. Celler:

H.R. 6400: A bill to enforce the 15th amendment to the Constitution of the United States; to the Committee on the Judiciary.

SENATE
Thursday, March 18, 1965

The Senate met at 12 o'clock meridian, and was called to order by the Vice President.

Bills Introduced

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. Mansfield (for himself and Senators Dirksen, Kuchel, Aiken, Alcott, Anderson, Bartlett, Bass, [plus many others]):
S. 1564. A bill to enforce the 15th amendment to the Constitution of the United States.

In Congress, as in most legislative bodies, ideas for legislation are introduced in the form of a bill. While such ideas can emanate from a variety of sources, e.g., the executive branch, lobbyists, constituents, legislative staffs (see Chapter 2), only members of a legislature can introduce bills. However, the budget processes in some states require the governor of that state to submit budget bills to the legislature. See, e.g., Art. IV, §12 of the California State Constitution; Art. VII, §2 of the New York State Constitution; and Art. VIII, §2 of the Illinois State Constitution. In the U.S. House of Representatives, bills are introduced by depositing a bill in the "hopper," provided for that purpose in the chamber. In the Senate, bills are usually introduced in a similar manner. On occasion, if a Senator seeks some particular procedural treatment for a bill, the Senator will rise and introduce the bill from the floor. The latter path was followed for the introduction of S. 1564. In state legislative bodies, bills are usually introduced by depositing them with the legislative clerk of the house of which the introducer is a member. After introduction, bills are assigned numbers by clerks of the legislative bodies and referred to the appropriate committees by the presiding officer of each house. The numbers usually run sequentially, based on time of introduction, but sometimes certain numbers will be held for particular legislation. After a bill is introduced, in most legislative bodies, it is printed.

Only a small percentage of bills become law. The system, politically and administratively, winnows the number of bills enacted to a minimal percentage of those introduced. Bills are divisible into a number of cubbyholes that roughly bespeak their possibilities for passage: bills with little support; noncontroversial bills; controversial bills; major bills; and "must" bills. Bills with little support, the most frequently introduced bill, are not introduced with an enactment expectation, at least, on the part of the legislator. They are intended generally to publicize an issue, initiate debate on such issue, or curry political favor with a constituent
or interest group. The introduction of a bill can shift political "heat" from the legislator to a legislative committee. Noncontroversial bills, by definition, are bills that can be expedited through the process without opposition, generally by the use of special calendars. They include bills to exchange real property, to rename parks or streets, or to name a building after a former legislator. Controversial bills, of course, are those surrounded by political controversy. Mostly they are major bills, those pieces of legislation that have broad redistributive or regulatory impact. The likelihood of their enactment is unpredictable. It is on these bills that legislative bodies focus most of their attention. "Must" bills are, generally, controversial bills about which there is general legislative agreement that there must be a solution before the end of a legislative session. These bills generally garner the most attention as members struggle to find compromises to build majorities. The Voting Rights Act is an example of major, controversial, "must" legislation. For a fuller discussion of the division of bills into similar categories, see Walter Oleszek, Congressional Procedures and the Policy Process 81-84 (1989).

Excerpts from H.R. 6400 and S. 1564 follow. Their form is similar to the form of bills used in the nation’s state legislatures (though the style and typeface do not exactly duplicate that used by Congress).

89TH CONGRESS
1ST SESSION
H.R. 6400

IN THE HOUSE OF REPRESENTATIVES
March 17, 1965

Mr. Cellers introduced the following bill; which was referred to the Committee on the Judiciary

A BILL
To enforce the fifteenth amendment to the Constitution of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965."

Sec. 2. No voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color.

4. Assignment of Bills to Committees

One of the most important decisions about a bill is the choice of committee to which it is assigned. Committee decisions to kill bills are rarely overturned, and committee amendments usually frame
the ensuing legislative debate. References to committees are usually routine acts by legislative staff under the formal authority of the legislative leadership of the particular house in which the bill has been introduced. For example, in the Congress, it is the parliamentarians who usually make the referrals. Most referrals are simple, based on the subject of the bill and the jurisdiction of the particular committee. But, while each legislative committee has its own jurisdiction (either codified or set forth in the legislative rules of the particular house), there are many jurisdictional ambiguities. As one observer has written about the House of Representatives:

The House suffers from a chronic case of jurisdictional ambiguities. In 1971, the Belling Committee examination of the House jurisdictional lines found "disarray" and "endemic" jurisdictional conflict, of which "hundreds of such cases, involving virtually every committee, were detailed in the staff-prepared monographs." A classic 1980s example was nuclear waste disposal, an area that was claimed by Energy and Commerce (with jurisdiction over nuclear energy), Science and Technology (technology), and Interior (public lands, where the disposal sites would be), among others. When the issue came to a hold in 1992, the bill referrals reflected the overlap. The Chair referred one bill ... to Interior; another bill ... to Energy and Commerce; and a third ... to Science and Technology.


The decision about which committee to refer a bill can be of life or death significance, and the selection of a committee may be part of the overall strategy for the passage of a bill. For example, the Civil Rights Act of 1964 was drafted to permit its referral to a friendly Senate Commerce Committee rather than to a hostile Senate Judiciary Committee. But in all referrals there must be some relationship between the bill's subject matter and the committee's jurisdiction. New York provides another example. For years, a "bottle" bill (providing for refunds for the return of bottles) had been sent to the State Assembly's commerce committee because of its impact on industry. After years of having the bill killed in this committee, it was finally sent by a new Speaker to the committee charged with responsibility for environmental issues, where it was quickly reported to the floor and passed. The functions and procedures of committees are the subject of Chapter 5. When the Voting Rights Act of 1965 was introduced in the Senate, it was accompanied by a motion that the Senate Judiciary Committee report the bill within a specific number of days. The motion triggered a procedural dispute that signaled the rugged debate the passage of this bill would entail.

Mr. MANSFIELD. Mr. President, on behalf of the distinguished minority leader and myself, I move that the bill be referred to the Committee on the Judiciary, with instructions to report back not later than April 9, 1965.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Montana.

Mr. EASTLAND. Mr. President—

The VICE PRESIDENT. The motion is debatable.

The Senator from Mississippi [Mr. EASTLAND] is recognized.

Mr. EASTLAND. Mr. President, as I understand, the motion is to refer the bill to the Judiciary Committee, the bill to be reported back not later than the 9th day of April.

The VICE PRESIDENT. That is the understanding of the Chair.

Mr. EASTLAND. Mr. President, this is a bill which flies directly in the face of the Constitution of the United States. What is being proposed is an unheard of thing. It is proposed to give the Judiciary Committee only 15 days to study a bill as far reaching as this. Of course, there cannot be the attention paid to it which it should have. I assure the Senate that the Committee on the Judiciary will hold hearings expeditiously and will go into all phases of the bill.

Let me make myself clear: I am opposed to every word and every line in the bill. I believe that it is an unheard of thing. I believe that it is bad procedure to refer a bill of this character to a committee with instructions to report after only 15 days.

Consider the poll tax amendment. We passed an amendment to the Constitution to prohibit the poll tax as a qualification for voting in Federal elections. Some of those who signed the bill took the position that it would require a constitutional amendment. Now, they are backing up and attempting to do by statute what they said would require an amendment to the Constitution.

This bill would apply to only five States. It is sectional legislation. It is regional legislation. I tell the Senate now that when it considers a regional bill, such a bill is suspect, not only in this instance, but also in every other instance. Certainly, there should be study and deliberation. If the committee is dragging its feet, all the Senate has to do is to adopt a motion to discharge the committee and bring the bill back to the floor.
The Attorney General of the United States — if I read the press reports correctly — and all his staff of lawyers have been working for a number of weeks on the bill. The majority leader and his staff have been working for a number of weeks on the bill. The minority leader and his staff have been working for a number of weeks on the bill.

My information is that they were able to come together only yesterday morning. Then the bill was dropped in the hopper, and it is proposed to refer it to the Judiciary Committee, with only 15 days' time to consider it.

(At this point, Mr. Tydings took the chair as Presiding Officer.)

Mr. EASTLAND. I do not see that is an orderly, legislative process. It seems to me that when a Senator believes he has the votes to pass a bill, regardless of its merits, the roll should be called.

This bill would lodge vast discretionary power in the Attorney General without any guidelines. I believe there is a very grave question involved.

Are we delegating legislative responsibility? Are we delegating legislative power which the Constitution of the United States prohibits?

Should not the Judiciary Committee have the opportunity to study that phase?

The Constitution of the United States provides that the Congress shall have power to regulate the time and place of holding Federal elections. That is as far as it goes.

There is one basic fact: The Federal Government cannot go into voter qualifications in the States. I do not believe that there is any room for argument on that point. That is basic to our system of government. This bill would do violence to that provision in the Constitution.

Is the Senate willing to undertake a study which would show whether it should proceed by constitutional amendment or by statute?

Is that not the legal way to do it? Is that not the proper way to consider legislation?

The asserted basis of the bill is the 15th amendment to the Constitution. The 15th amendment does not provide that the Congress may assert a single standard for voter qualifications for alleged discrimination on account of race.

I call the attention of the Senate to section 2 of the Constitution, which clearly lodges the authority within the States themselves.

Mr. President, 15 days is wholly inadequate. The Judiciary Committee will expeditiously proceed to consider the bill. I remember that in 1860, the committee made a number of amendments to one bill, which greatly improved it, and reported it back to the Senate, and the Senate agreed to the committee amendments.

I do not see how we are gaining anything, but we are certainly destroying the legislative process by this procedure.

I tell Senators now that there will not be adequate or full consideration of the bill in 15 days.

The PRESIDING OFFICER. The question is on agreeing to the motion to refer the bill to the Committee on the Judiciary with instructions. On this question, the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD (when his name was called). On this vote I have a pair with the junior Senator from Alabama [Mr. SPARKMAN]. If he were present and voting he would vote "nay." If I were at liberty to vote, I would vote "yes." I therefore withhold my vote.

Mr. METCALF (when his name was called). On this vote I have a pair with the senior Senator from Louisiana [Mr. ELLENBERGER]. If he were present and voting he would vote "nay." If I were at liberty to vote, I would vote "yes." I therefore withhold my vote.

The roll call was concluded.

Mr. LONG of Louisiana. I announce that the Senator from Idaho [Mr. CHURCH], the Senator from Louisiana [Mr. ELLENBERGER], the Senator from Alaska [Mr. GRUENING], the Senator from Missouri [Mr. LONG], the Senator from Minnesota [Mr. McCARTHY], the Senator from Oklahoma [Mr. MONROEY], and the Senator from Florida [Mr. SMATHERS] are absent on official business.

I also announce that the Senator from North Carolina [Mr. ERVIN], the Senator from New York [Mr. KENNEDY], the Senator from Wyoming [Mr. McGEE], the Senator from Utah [Mr. MOSS], the Senator from Georgia [Mr. RUSSELL], and the Senator from Alabama [Mr. SPARKMAN] are necessarily absent.

On this vote, the Senator from New York [Mr. KENNEDY] is paired with the Senator from North Carolina [Mr. ERVIN]. If present and voting, the Senator from New York would vote "yea," and the Senator from North Carolina would vote "nay."

I further announce that, if present and voting, the Senator from Idaho [Mr. CHURCH], the Senator from Missouri [Mr. LONG], the Senator from Utah [Mr. MOSS], the Senator from Oklahoma [Mr. MONROEY], and the Senator from Alaska [Mr. GRUENING] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Arizona [Mr. FANNIN], the Senator from California [Mr. MURPHY], and the Senator from Texas [Mr. TOWER] are necessarily absent.

The Senator from Massachusetts [Mr. SALTONSTALL] is absent on official business.

If present and voting, the Senator from Utah [Mr. BENNETT], the Senator from Massachusetts [Mr. SALTONSTALL], the Senator from Texas [Mr. TOWER], and the Senator from California [Mr. MURPHY] would each vote "yea."

So the motion of Mr. Mansfield and other Senators to refer the bill (S. 1564) to the Committee on the Judiciary with instructions was agreed to.
The result was announced — yeas 67, nays 13, as follows:

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<th>Name</th>
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<td>Aiken</td>
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<td>Allott</td>
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<td>Not Voting — 20</td>
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<td>Church</td>
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<td>Ellender</td>
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<td>Kennedy, NY</td>
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Mr. JAVITS. Mr. President, I move that the Senate reconsider the vote by which the motion was agreed to.

Mr. KUCHEL. I move to lay that motion on the table.

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from California to lay on the table the motion of the Senator from New York to reconsider.

The motion to lay on the table was agreed to.

Typically, no formal limits circumscribe a committee's consideration of a bill. Senator Mansfield's motion, which led to the debate, was atypical and intended to ensure that the committee process could not tie up the legislation. This concern was particularly justified by proponents of the bill because the Chair of the Judiciary Committee, Senator Eastland, was opposed to the legislation, and it was feared that he would exercise whatever prerogatives available to delay its movement.

5. Legislative Voting

For an initial observer of the legislative process, legislative voting often seems confusing and sometimes unsettling. In addition to archaic terminology ("ayes and nays"), depending on the legislative jurisdiction one is viewing, bills can pass with few legislators on the floor, and absent legislators can be counted as voting in favor of the legislation.

On this later point, recall the facts in Heimbach v. State of New York (Chapter 4, page 190). The New York State Senate voted in succession on five separate tax bills intended to provide revenues for transportation-related subjects. A review of the journal for that particular day reflects that one particular minority party senator voted yes on three of the taxes and was marked absent for the other two. Witnesses to the votes would note that this particular senator was not on the Senate floor for any of the votes. In fact, he was in the hospital. To make matters worse on several of these taxes, the missing senator was the deciding vote in favor of the taxes. Taxes he later testified he opposed. What happened? From the legislative perspective, nothing unusual. The senator had checked in early on the morning of the day in question. That meant, under New York rules, that on a fast roll call vote (the three on which he was noted in support) he was considered voting yes unless he personally signified his opposition, which he could
Chapter 6  The Enactment of Legislation

not do because he was out of the chamber. The other two votes, on which he was recorded absent, were slow roll calls during which he had to cast his own vote. As he was not on the floor at the time the vote was taken, he was considered absent. If he had not checked in, he would have been considered absent for all of the votes.

The particulars of the above example make voting somewhat unsettling. But the types of voting rules that resulted in this peculiar fact pattern are intended as efficiencies that usually reduce unnecessary legislative delay.

Basically there are two general voting methods: nonrecorded votes, in which individual votes are not recorded (mostly limited to Congress), and recorded votes in which individual votes are noted. Nonrecorded votes are divided into three forms: voice vote, division votes, and teller votes.

On a voice vote, votes are cast in chorus by answering “aye” or “no” to a particular question with the presiding officer determining the outcome of the vote, based on the volume of the response. A division vote, which may be demanded by any member, is a more accurate form of voice vote because it requires members to stand to be counted rather than to just express their view by voice. Even more accurate is the teller vote, in which members are assigned responsibility of making an actual count. This vote must be required by one-fifth of a quorum. In none of these forms are individual votes recorded. The rules of the House of Representatives provide as follows:

He [the Speaker or presiding officer] shall rise to put a question, but may state it sitting; and shall put questions in this form, to wit: “As many are in favor (as the question may be), say ‘Aye’; and after the affirmative voice is expressed, “As many as are opposed, say ‘No’”; if he doubts, or a division is called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and then those in the negative, if he still doubts, or a count is required by at least one-fifth of a quorum, he shall name one or from each side to tell the members in the affirmative and negative, which being reported, he shall rise and state the decision.

Rule I, §5(a), Rules of the House of Representatives, H.R. Doc. No. 248, 100th Cong., 2d Sess. (1988). On a nonrecorded vote the count of the presiding officer is not appealable and the outcome is recorded in the journal and in the Congressional Record. The voice vote will, on occasion, result in legislation passing with no member on the floor of the legislature except for the presiding officer. Such a result can be avoided by a call for a quorum by any member. While nonrecorded votes, particularly voice votes, may afford some legislative efficiency in consideration of noncontroversial legislation, it can also be used to deny the public the opportunity to know how members voted on controversial legislation, like pay-raise bills.

Recorded votes compel the notation of individual votes on the legislative record. As is illustrated by the New York example above, there can be several types of recorded votes. Under the New York Senate rules, all votes are recorded. The normal vote is the fast roll call during which the first and last names on the roll call list (an alphabetically arranged list) are called and everyone who is checked in is recorded “yes” unless they personally indicate “no” by raising their hand or standing. A slow roll call, triggered by five members standing, forces members to come to the floor to vote.

The Mansfield motion, noted earlier, required a recorded vote (yeas and nays). Article I, §5 of the U.S. Constitution requires such a vote on any question, in either house of Congress, whenever demanded by one-fifth of the members present. In the Senate, after a member requests a recorded vote, the presiding officer asks the body whether such a vote is “the desire of one-fifth of those present,” and those in support raise their hands. Although the Constitution only requires one-fifth of those present, under Senate practice this has been interpreted to mean at least 11 members—one-fifth of a quorum (51 members). If more than a quorum is present, then more than 11 members are necessary to “second” a call for a roll call vote. The need for “seconders” has allowed the Senate leadership over the years some discretion in whether roll call votes would occur. See Charles Tiefer, Congressional Practice and Procedure 552-534 (1989) (generally an extraordinary compendium on congressional practice). In the House, a recorded vote can be obtained in one of two ways: through the constitutionally mandated desire of one-fifth of those present (not necessarily a quorum); and through Rule I, §5(a), which compels a roll call when desired by one-fifth of a quorum (44 members). What are the advantages of each method?

A recorded vote is also required in the House if there has been a successful objection to the absence of a quorum for any formal action. This is known as an automatic roll call.
Whenever a quorum fails to vote on any question, and a quorum is not present and objection is made for that cause, unless the House shall adjourn there shall be a call of the House, and the Sergeant-at-Arms shall forthwith proceed to bring in absent Members, and the yeas and nays on the pending question shall at the same time be considered as ordered. The Clerk shall call the roll, and each Member as he answers to his name may vote on the pending question, and, after the roll call is completed, each Member arrested shall be brought by the Sergeant-at-Arms before the House, whereupon he shall be noted as present, discharged from arrest, and given an opportunity to vote and his vote shall be recorded. If those voting on the question and those who are present and decline to vote shall together make a majority of the House, the Speaker shall declare that a quorum is constituted, and the pending question shall be decided as the majority of those voting shall appear…


In the Senate, a recorded vote is accomplished by each member answering the clerk’s call of his or her name. In the House, most recorded votes are taken by use of electronic voting machines into which each member inserts a personal voting card.

In a roll call vote, members of the Congress who are not in attendance can have their vote on a particular bill expressed through pairing with members holding opposite views, either present in the chamber (live pair) or absent (dead pair). As can be seen from the roll call on the Mansfield motion to instruct the Judiciary Committee, pairs are not recorded as votes. If a live pair is made, the present legislator cannot cast his or her vote. (See Senator Mansfield above: “If I were at liberty to vote, I would vote ‘yea.’”) In the Senate, absent members can also have their view of a bill expressed by a present member, while in the House, nonpaired (absent) members can only be listed without reference to their preference on a bill.

6. Reporting a Bill from Committee

Pursuant to the Mansfield motion referring S. 1564 to the Senate Judiciary Committee with instructions, the committee reported the voting rights bill on April 9, 1965, with amendments.

Reports of Committees

The following reports of committees were submitted:

By Mr. EASTLAND, from the Committee on the Judiciary, with amendments, without recommendation…

S. 1564. A bill to enforce the 15th amendment to the Constitution of the United States (Rept. No. 162).

Usually a committee will make a recommendation to its legislative body with respect to a bill as amended. In this case, the committee made no recommendation. A consensus could not be reached on a number of issues, and the committee was required to report a bill by April 9. Recall, also, that Senator Eastland, chair of the committee, was opposed to every line of the legislation. Note also the form in which the bill is reported. The original bill is reported with amendments. This means that both the bill and the amendments will be before the parent chamber. The committee could have reported a "clean" bill, one with a new number, in which all adopted amendments had been incorporated. There is no rule that determines which method a committee will follow on this point. But, as you will see, the form chosen can make a difference in the way a bill may be considered, particularly for purposes of subsequent amendment.

The Congressional Record does not record much about committee proceedings, only a notice that a committee has reported a bill and the committee’s recommendation, if any. To find out what happened at the committee, including the votes of its members, one must turn to the committee report, in this case S. Rep. No. 162 (of the Judiciary Committee), or other committee records, such as transcripts of committee meetings (if made) or voting sheets. Committee reports are printed by the U.S. Government Printing Office and can be found, at least in part, in the U.S. Code Congressional and Administrative News. Excerpts from a committee report are found in Chapter 5.

On April 13, 1965, Senator Mansfield moved that the Senate consider the bill, which motion was agreed to by voice vote.
Voting Rights Act of 1965

Mr. MANSFIELD. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 149, Senate bill 1564.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

Mr. ELLENDER. Mr. President, before the question is put, I should like to ask what the intention of the leadership is.

Mr. MANSFIELD. The intention is not to debate the bill until the Senate convenes on April 21.

Mr. ELLENDER. At 12 o'clock noon on that day.

Mr. MANSFIELD. At 12 o'clock noon.

Mr. ELLENDER. No action will be taken in respect to the bill in the meantime.

Mr. MANSFIELD. Nothing before that time. There will be a morning hour when we return. Then we shall lay down the bill and again make it the pending business.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to, and the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment, to strike out all after the enacting clause and insert:

This motion did not require any immediate action on the bill but only signaled the commencement of its consideration. In fact, later that day, consideration of the bill was resumed and Senator Williams offered an amendment to add certain prohibitions to the bill.

Voting Rights Act of 1965

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States.

Mr. WILLIAMS of Delaware. Mr. President, I understand from the able majority leader that no action will be taken on the pending measure until April 21. However, on behalf of the Senator from Iowa [Mr. MILLER] and myself, I send to the desk an amendment and ask that it be stated. I shall discuss the amendment when the Senate reconvenes and I ask that the amendment be made the pending business.

The Presiding Officer (Mr. KENNEDY of New York in the chair). The amendment will be stated.

The legislative clerk read as follows:

On page 29, line 20, strike all down to and including line 4 on page 30 and insert in lieu the following:

"Whoever knowingly or wilfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration or illegal voting, or pays or offers to pay or accepts payment either for registration or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Mr. WILLIAMS of Delaware. Mr. President, I ask that the amendment just read be made the pending business. I shall discuss it next week.

7. Floor Amendments

As noted above, the Judiciary Committee reported S. 1564 to the floor with amendments. In Congress, as in many states, floor amendments are a very important part of the process and are often adopted. In some states, however, floor amendments, although frequently offered, are almost never adopted due to strict party discipline. (New York State is one such example.)

In the Senate, a decision to consider a bill opens the floor amendment process. In the House, where size requires floor actions to be far more controlled, the amendatory process is circumscribed by "rules" from the Rules Committee that must be adopted by the House. In either case, the offering of a floor amendment requires a response from a bill's sponsor or manager.

The moment of truth... comes when a... [legislator] has offered a floor amendment and the bill manager must decide how to respond. Floor managers work in two dimensions. They work strategically, to obtain passage of the bill in some form, which motivates them to oppose amendments that would kill or reshape the bill, but to accept amendments that move the bill towards passage in acceptable shape. Also they work tactically. . . .


Amendments are frequently characterized as either "friendly" or "hostile" amendments. A friendly amendment, such as the Wil-
liams amendment, is one that is acceptable to a bill’s sponsor, either because it resolves a substantive problem or furthers its chances for passage. A hostile amendment is one that is intended to make it impossible to achieve the goals of the bill’s sponsor.

Under the rules of the Senate, an amendment can be offered at any time on any subject, without regard to the germaneness of the amendment to the bill. This procedure creates opportunities for confusing or obstructing the process. It also creates opportunities for forcing unpopular votes on Senators. For example, in 1993, members of the Senate who were opposed to President Clinton’s decision to permit gays in the military offered an amendment, prohibiting such action, to the Home Leave Act of 1992 in order to create a possible election issue against those who voted against the amendment. This procedure would have been considered out of order in the House of Representatives.

Senate rules permitting members to offer non-germane amendments to most legislation allow senators to bypass committee consideration and force a floor vote on pet proposals. Just last month, for example, Howard M. Metzenbaum, D-Ohio, won Senate approval of stiffer infant-formula standards as an amendment to another bill (H.R. 1846), although he had been unable to get even a hearing on his proposal in the Labor and Human Resources Committee.


To amend a bill in the House the “rule” that governs floor consideration will set forth the conditions, if any, for amendment. In addition, the House has a standing rule prohibiting nongermane amendments, which is in effect unless there is a contrary rule. Whether a particular amendment is germane is, of course, another question that is sometimes quite difficult to resolve. By introducing his amendment well before commencement of the bill’s consideration, Senator Williams chose a tactical path that maximizes notice of his intention and his opportunities to garner support for his view. Contrast this tactic with a surprise amendment—one called up for debate on the same day as it is introduced—which is frequently intended to slow consideration of a bill or embarrass a member by forcing a vote on a particular issue.

The debate on the proposed amendment of Senator Williams started on April 22, 1965.

Voting Rights Act of 1965

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Chair lay before the Senate the unfinished business.

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, which is S. 1564.

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Delaware [Mr. WILLIAMS] numbered 82, to the committee substitute.

Under the precedents of the Senate, in such a case, the substitute, for the purpose of amendment, is regarded as original text. Any amendment proposed thereto is therefore in the first degree, and any amendment to such amendment is in the second degree, and not open to amendment. Any amendment to the original text of the bill, or any amendment to such an amendment, would have precedence over the committee substitute or any amendment thereto.

In the event the committee amendment is agreed to, no further amendment is in order.

Senator Williams had moved to amend the committee’s substitute (amendment in the nature of a substitute) for the original bill S. 1564. The substitute was an amendment that replaced everything following the bill’s enactment clause. Both S. 1564 and the committee substitute were before the Senate, and, at some point, the Senate had to adopt the substitute as an amendment to S. 1564 before it then adopted S. 1564 as amended. The procedural point under discussion above related to certain limits on the amendment process. According to Senate practice, an amendment in the first degree is subject to further amendment, but an amendment to amend such an amendment (an amendment in the second degree) is not subject to further amendment. This serves the obvious purpose of avoiding the confusion and delay that would accompany the freedom of unlimited amendments.

This point is illustrated by Senator Ervin, who on April 29 offered an amendment to the amendment of Senator Williams. The
Williams amendment was in the first degree, so the Ervin amendment was appropriate. If the Williams amendment had been an amendment in the second degree, the Ervin amendment would not have been in order. Procedurally, this amendment was accepted by Senator Williams, which normally would have ended the matter. But because the Senate had ordered a recorded vote on the Williams amendment, unanimous consent was required to permit this amendment. Unanimous consent is a procedure generally used to temporarily amend the normal legislative rules for a particular purpose.

**Voting Rights Act of 1965**

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States.

**Amendment No. 117**

Mr. ERVIN. Mr. President, I send to the desk an amendment to amendment No. 82 of the Senator from Delaware [Mr. WILLIAMS], and ask that it be stated.

The PRESIDING OFFICER. The amendment to the amendment will be stated for the information of the Senate.

The LEGISLATIVE CLERK. On page 1, line 10, of the amendment numbered 82, change the period to a colon and add this additional sentence:

"Provided, however, That this provision shall be applicable only to elections held for the selection of presidential electors, Members of the United States Senate, and Members of the United States House of Representatives."

Mr. ERVIN. Mr. President, let me state briefly the reason why I offer my amendment to the pending amendment of the Senator from Delaware. I am in favor of amendment No. 82. However, in my opinion amendment No. 82 in its present form is unconstitutional because it is not restricted to Federal elections. By the term "Federal elections," I mean elections in which presidential electors and Members of the U.S. Senate and Members of the U.S. House of Representatives are chosen. The only effect of my amendment would be to confine the application of amendment No. 82 to Federal elections and thereby make it constitutional under the interpretation placed on the 15th amendment by the Supreme Court of the United States in a number of cases.

**Voting Rights Act of 1965**

On April 30, the day after the Williams proposal (as amended by the Ervin amendment) passed on a roll call vote, the majority and minority leaders, Senators Mansfield and Dirksen, offered an amendment in the form of a substitute for the voting rights legislation.

**Amendment No. 124**

Mr. MANSFIELD. Mr. President, on behalf of the distinguished minority leader and myself, I send to the desk a substitute for the voting rights bill which was reported by the Judiciary Committee about 2 weeks ago. The substitute does not differ greatly from the committee bill. On the contrary it recognizes and adopts most of the legal contributions which were made by the distinguished lawyers of the Judiciary Committee. The brilliant work in committee of the able Senator from Michigan [Mr. HART], the Senator from Missouri [Mr. LONG], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Indiana [Mr. BAYH], the Senator from North Dakota [Mr. BURDICK], the Senator from Maryland [Mr. TYDINGS], the Senator from Nebraska [Mr. HRUSKA], the Senator from Hawaii [Mr. FONG], the Senator from Pennsylvania [Mr. SCOTT], the Senator from New York [Mr. JAVITS], as well, of course, as that of the distinguished minority leader [Mr. DIRKSEN] — the great contributions of these Senators to more effective insurance of the right to vote for all, have been, for the most part, retained in the substitute.
The actual changes from the committee version of the bill originally introduced by the joint leadership are not great. I now list them in summary form.

The first appears in the so-called cleansing portion of the bill, section 4(a). Our amendment strikes the escape clauses of the present bill, including the controversial 60 percent escape hatch. In brief, it provides that a State or subdivision may get out from under the act only when the effects of the denial and abridgment of the right to vote have been effectively corrected and there is no reasonable cause to believe that a test or device will be used for the purpose or will have the effect of discrimination in voting. As in the present bill, the court maintains jurisdiction of the matter for 5 years to insure against backsliding.

In section 7 the substitute simplifies the procedure for listing voters by Federal examiners. An applicant to an examiner need only allege that he is not registered and that he has been denied the opportunity to do so. The Attorney General may waive the latter requirement.

The amended bill contains a new poll tax provision — section 9 — which is clearly constitutional, which places the Congress clearly on record against discriminatory poll taxes, and which assures a speedy determination on the matter by the Supreme Court. It is true that this provision does not automatically abolish all poll taxes as some would have the Congress attempt by legislation. But we are convinced, largely by the arguments of the Attorney General, that there would be a significant constitutional question involved in such an attempt. Indeed, it might, in the end, result in no action at all being taken on poll taxes. We are persuaded, too, that the language of the substitute not only insures against the use of poll taxes where there is even the slightest suggestion of discriminatory purpose or use but also provides for the most rapid and direct court test of the constitutionality of this question.

Finally, a new section 10 assures that persons listed by Federal examiners will actually have the ballot placed in their hands.

The amendment proposed by the senior Senator from Delaware [Mr. WILLIAMS], as modified by the senior Senator from North Carolina [Mr. ERVIN] and adopted by the Senate yesterday, is included.

The distinguished minority leader and I are in agreement in our belief that these changes will strengthen the effectiveness of the legislation. We believe they will be helpful in bringing about the earliest possible moment the equal treatment of all citizens in their right to vote in all elections — Federal, State, and local.

I realize that other Members may not feel the same way. Each lawyer in the Senate as well as all those outside has his own ideas about how to achieve the same legal purpose. There are many roads which lead to the same end and they are followed by Senators who are at least as able as the lawyers who worked with us to perfect this substitute. But, in the end, Senators who are generally trying to go in the same direction must also try to get together on the same road, if there is to be any legislation in the Senate at all. The joint leadership is hopeful that this substitute provides such a road. We are hopeful that, with the key questions now placed in focus, the Senate will proceed steadily until the matter is resolved. For the information of the Senate, it is our intention to consider the substitute at the earliest possible moment consistent with respect for the rights of all other Members. Once it is before the Senate we will stay with it until a decision is made one way or the other. In view of the amount of time already spent on the voting rights legislation, moreover, the Senate is on notice that beginning Monday, sessions will be lengthened. The intention is to come in at noon as heretofore in order to permit committees to meet on other essential business. But Members should anticipate that the Senate will be in session until about 7 p.m. or later every day. Beginning on Monday the possibility of quorums and votes at any time will exist. Senators should make their plans accordingly.

The PRESIDING OFFICER. The amendment will be stated.

Note that this amendment was offered by the leadership of both parties of the legislative body. This meant that the bipartisan leadership of the Senate had been spending time negotiating differences with Senators in order to build a majority around compromises reflected in this legislation. This is evident in the comments on the amendment by one of its sponsors, Senator Dirksen.

Mr. DIRKSEN. I believe the distinguished majority leader has very clearly stated the case. Insofar as possible, we have sought to preserve the text in all sections of the bill that was first offered as it came to the Senate from the committee before the deadline on April 9. We were careful to preserve that language so that it could not be said that we were coming here with an entirely new bill.

However, there were provisions concerning which deep conviction rose on both sides of the aisle. I come within that orbit of conviction. That concern related, first, to the poll tax; second, with respect to making clear the real objective of the bill; third, with respect to the cleansing provision. Those are the major items as to which modifications have been made.

As the majority leader has indicated, we hope that the subject of the poll tax, without actually being resolved in the Senate, and leaving it in the status which it presently enjoys, will finally go to the Supreme Court with as much dispatch as possible for the purpose of obtaining a declaratory judgment. Then we shall know, notwithstanding the recent decision — in fact, this week — in the Virginia case, and notwithstanding the dicta in that case, where we stand on the subject of the poll tax.
I was afraid an impression might go abroad that there was something punitive about the bill and that we were missing the objective of trying to secure the voting rights of people. That was the reason for section 10, verifying and simplifying it, and going to the heart of the subject.

Finally, there was the so-called cleansing provision in section 4.

Those items constitute the real improvements in the bill. I earnestly hope that when we resume explanation and discussion, not merely today, but in the next week, we can move apace and finally get the bill out of the Senate and on the way to the House of Representatives.

8. A Legislative Quorum

The debate on the Williams amendment (which occurred before the Mansfield-Dirkson amendment was offered) was interrupted for a quorum call.

Mr. ELLENDER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

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Mr. LONG of Louisiana. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Alaska [Mr. BARTLETT], the Senator from Tennessee [Mr. BASS], the Senator from Nevada [Mr. BIBLE], the Senator from Virginia [Mr. BYRD], the Senator from Nevada [Mr. CANNON], the Senator from Connecticut [Mr. DODD], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Washington [Mr. MAGNUSON], the Senator from Wyoming [Mr. MCGEE], the Senator from Oregon [Mr. MORSE], the Senator from Utah [Mr. MOSS], the Senator from Oregon [Mr. NEUBERGER], the Senator from Mississippi [Mr. STENNIS], the Senator from Texas [Mr. YARBOROUGH], and the Senator from Tennessee [Mr. CORE] are absent on official business.

I also announce that the Senator from North Dakota [Mr. BURDICK], the Senator from West Virginia [Mr. BYRD], the Senator from Illinois [Mr. DOUGLAS], the Senator from North Carolina [Mr. JORDAN], the Senator from Ohio [Mr. LAUSCHE], the Senator from South Dakota [Mr. McGOVERN], the Senator from New Hampshire [Mr. McINTYRE], the Senator from Montana [Mr. METCALF], the Senator from Maine [Mr. MUSKIE], the Senator from West Virginia [Mr. RANDOLPH], the Senator from Connecticut [Mr. RIBICOFF], the Senator from Georgia [Mr. RUSSELL], the Senator from Florida [Mr. SMATHERS], the Senator from Missouri [Mr. SYMINGTON], and the Senator from Georgia [Mr. TALMAGE] are necessarily absent.

Mr. KUCHEL. I announce that the Senator from Colorado [Mr. ALLOT], the Senator from Vermont [Mr. PROUTY] and the Senator from Massachusetts [Mr. SALONTAST] are necessarily absent.

The Senator from Hawaii [Mr. FONG], the Senator from Iowa [Mr. HICKENLOOPER], the Senator from Pennsylvania [Mr. SCOTT] and the Senator from Wyoming [Mr. SIMPSON] are absent on official business.

The Senator from Kansas [Mr. CARLSON], the Senator from New Jersey [Mr. CASE], the Senator from Nebraska [Mr. CURTIS], the Senator from Texas [Mr. TOWER], and the Senator from North Dakota [Mr. YOUNG] are detained on official business.

The PRESIDING OFFICER. A quorum is not present.

Mr. HART. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The PRESIDING OFFICER [Mr. MONDALE in the chair]. The question is on agreeing to the motion of the Senator from Michigan.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

After a little delay, Mr. BAYH, Mr. CHURCH, Mr. DOMINICK, Mr. EASTLAND, Mr. ERVIN, Mr. HARTKE, Mr. HAYDEN, Mr. Hruska, Mr. Kennedy of New York, Mr. McCLELLAN, Mr. MONTOYA, Mr. MORTON, Mr. PROXMIRE, Mr. ROBERTSON, Mrs. SMITH, Mr. Thurmond, and Mr. Williams of New Jersey entered the Chamber and answered to their names.

The PRESIDING OFFICER. A quorum is present. The Senator from Michigan is recognized.

A quorum is the number of members of a legislative body necessary to be present for the conduct of legislative business. The Constitution (Art. 1, §5) requires a quorum of a majority of members to be present to conduct business in either house of Congress.
Both houses of Congress operate under the presumption of a quorum's presence, which means that the absence of a quorum must be suggested, through a point of order, by a member. Generally, a member must be recognized to make this point. The consequence of denying such recognition, at least on more than the most infrequent occasions, would almost certainly be chaos. Calling for a quorum has a variety of purposes. First, for purposes of a recorded vote, a quorum call can serve to bring needed seconds to the floor and to maximize the number of members whose vote is recorded. Second, all quorum calls take time. Such time can be used to temporarily delay proceedings in order to negotiate a procedural point or to convince a member to support the legislation. Sometimes the intent of the delay is to actually bring members to the floor; to second a request for a recorded vote; to make as many members as possible cast a recorded vote; to locate and bring to the floor supporters or opponents of legislation; to harass the majority party by generally slowing down the process. Third, a quorum call can be used to tarnish the attendance record of a member who is not present in the capitol. On occasion, the request for a quorum can result in an adjournment if an insufficient number are available to answer the call. In this case, a quorum was not present and the Sergeant-at-Arms was instructed to find the absent members.

9. Unanimous Consent Agreements

On May 4, after debates on numerous amendments, Senate Majority Leader Mansfield offered a “unanimous consent agreement” for the purpose of regulating the continuing debate. As noted earlier, a request for unanimous consent is a request to amend the normal legislative rules for a particular purpose. In the Senate, unanimous consent requests are frequently requests for agreements on the management of the debate on a particular piece of legislation. In this sense they are, if adopted, agreements (called unanimous consent agreements) to limit debate and the freedom of amendment. In the House, this function is served by “rules” from the Committee on Rules (see page 250) and the germaneness rule. In most state legislatures, the function is served by legislative rules limiting debate and requiring Germaneness.

In this case the proposed agreement was objected to by Senator Ellender and was, thus, defeated.

Proposed Unanimous-Consent Agreement

Mr. MANSFIELD. Mr. President, I send to the desk a proposed unanimous-consent agreement and ask that it be read by the clerk.

The PRESIDING OFFICER. The clerk will read the proposal. The legislative clerk read as follows:

Ordered, that at the conclusion of routine morning business on Thursday, May 6, 1965, during the further consideration of S. 1564, debate on the amendment of the senior Senator from North Carolina [Mr. ERVIN] shall be limited to 4 hours, to be equally divided and controlled by Senator ERVIN and the junior Senator from Michigan [Mr. HART]; that debate on the amendment to be offered by the junior Senator from Massachusetts [Mr. KENNEDY] and others dealing with the poll tax shall be limited to 4 hours, to be equally divided and controlled by the mover of said amendment and the majority leader, and that debate on any other amendment, motion, or appeal, except a motion to lay on the table, shall be limited to 2 hours, to be equally divided and controlled by the mover of any such amendment or motion and the junior Senator from Michigan [Mr. HART].

Provided, That in the event the junior Senator from Michigan [Mr. HART] is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the majority leader or some Senator designated by him: Ordered further, that on the question of the final passage of the said bill, debate shall be limited to 6 hours, to be equally divided and controlled, respectively, by the junior Senator from Michigan [Mr. HART] and the senior Senator from Louisiana [Mr. ELLENDER].

Provided, That the said leaders, or either of them, may, from the time under their control, on the passage of the said bill, allot additional time to any Senator during the consideration of any amendment, motion, or appeal.

The PRESIDING OFFICER. Is there objection?

Mr. ELLENDER. I object.

In response to the objection to the proposed unanimous consent agreement, the majority leader warned the members that the leadership was considering filing a motion for cloture.

Voting Rights Act of 1965

The Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States.
Notice of Possibility of Cloture Motion

Mr. MANSFIELD. Mr. President, in view of the fact that it seems impossible to arrive at a unanimous consent agreement on the amendments and the bill, I think it is only fair that the leadership should announce at this time, so that all Senators may be informed, that because of the objection raised, we shall have to give very serious consideration to filing a motion for cloture at an appropriate time.

10. Filibuster and Cloture

A filibuster is a delay tactic that takes advantage of the Senate’s unlimited debate rule. Cloture is the process for ending a filibuster in the Senate. A motion for cloture, under Senate Rule XXII, §2, requires the signature of 16 senators to be introduced and must be approved by three-fifths of the membership. The need for 60 votes to close debate creates extraordinary power for a large minority of senators to oppose a particular bill through a filibuster and makes particularly powerful a minority party that has greater than 30 members in the Senate. In 1965, at the time of the debate on the Voting Rights Act, the cloture rule required two-thirds of the members, or 66 votes of the 100.

After some additional weeks of debate on the bill and various other amendments, on May 21 Senator Hart filed a motion to bring debate on S. 1564 to a close.

Voting Rights Act of 1965

Mr. HART. Mr. President, I ask unanimous consent that the Chair lay before the Senate the unfinished business.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

The ACTING PRESIDENT pro tempore. Is there objection? There being no objection, the Senate resumed the consideration of the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

Cloture Motion

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States.

(1) MIKE MANSFIELD; (2) EVERETT M. DIRKSEN; (3) PHILIP A. HART; (4) THOMAS H. KUCHEL; (5) LEVERETT SALTONSTALL; (6) PAT McNAMARA; (7) JOHN O. PASTORE; (8) FRANK E. MOSS; (9) JACOB K. JAVITS; (10) HUGH SCOTT; (11) HIRAM L. FONG; (12) CLAIRBORNE PELL; (13) EDMUND S. MUSKIE; (14) WAYNE MORSE; (15) JOHN SHERMAN COOPER; (16) STEPHEN M. YOUNG; (17) CLIFFORD P. CASE; (18) EUGENE J. MCCARTHY; (19) WALTER F. MONDALE; (20) DANIEL BREWER; (21) FRED R. HARRIS; (22) DANIEL K. INOUYE; (23) PAUL H. DOUGLAS; (24) JOSEPH S. CLARK; (25) GAYLORD NELSON; (26) JENNINGS RANDOLPH; (27) ABAHAM RIBICOFF; (28) FRANK J. LAUSCHE; (29) THOMAS J. DOOD; (30) VANCE HARTKE; (31) JOSEPH D. TYDINGS; (32) EDWARD V. LONG; (33) BIRCH BAYH; (34) EDWARD KENNEDY; (35) LEE METCALF; (36) GORDON ALLOTT; (37) HARRISON WILLIAMS; (38) QUENTIN BURDICK.

Mr. HART subsequently said: Mr. President, on behalf of the junior Senator from New Jersey [Mr. WILLIAMS] and the junior Senator from North Dakota [Mr. BURDICK], I ask unanimous consent that their signatures may be permitted to be added to the cloture motion filed today under rule XXII with respect to the voting rights bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ALLOTT subsequently said: Mr. President, I ask unanimous consent that my signature may be added to the cloture motion notwithstanding the fact that it has already been filed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.
This motion was adopted on May 25. It was only the second time, after a long history of defeating civil rights legislation through filibustering that debate had been forcibly closed. A successful cloture motion dramatically changes the procedure on the Senate floor.

And if that question shall be decided in the affirmative... then said measure, motion or other matter pending before the Senate... shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure... Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close [with certain limited exceptions]... No dilatory motion or dilatory amendment, or amendment not germane shall be in order. ... After no more than thirty hours of consideration of the... matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof... [which time may be extended, only once, by a three-fifths vote of the members].

Senate Rule XXII, §2. For a full and excellent exploration of the filibuster and cloture procedures, see Charles Tiefer, Congressional Practice and Procedure, ch. 10 (1989).

The successful motion for cloture brought an end to the Senate debate, and on May 26, 1965, the Senate adopted, by roll call vote, the Mansfield-Dirksen substitute, as amended, for the committee substitute for the bill. The Senate then adopted, by voice vote, the committee amendment in the nature of a substitute as amended by the Mansfield-Dirksen substitute. Finally, it adopted, by roll call vote, S. 1564 as so amended.

11. Governing the House Debate: Rules Committee and Its Rules

Floor action on the voting rights issue resumed in the House of Representatives on June 1, 1965, when H.R. 6400, as amended and having passed the Committee on the Judiciary, was referred to the Committee of the Whole House on the State of the Union (Committee of the Whole) under a "rule" from the House Committee on Rules. This Committee of the Whole is the subject of the next section. The scheduling of legislation for the Committee of the Whole (and, usually, in the House itself) is up to the House Rules Committee, which is responsible for scheduling consideration of legislation and the terms for such consideration. Because of this committee's relationship to the procedure on the floor, it will be considered here and not in Chapter 5, in which committee functions are addressed. There is a rules committee in the Senate and in almost all houses of state legislatures, but, for the most part, they serve other functions that need not be addressed here.

The House Rules Committee is "specifically designed to function as the responsible agent of the majority party, using its great discretionary authority over pending legislation to facilitate the consideration and adoption of the majority party's programs."... [The Rules committee performs the critical task of assuring the orderly consideration of legislation. Although it generally works in harmony with the majority leadership today, the committee can and sometimes does act contrary to the leadership's wishes and to the will of the House.]


The committee's instrument for communicating its determination is a "rule." Such a rule is distinct from the standing rules of the House and functions as the procedural guide under which a particular piece of legislation will be considered. The authority to control scheduling and procedure makes this committee extremely powerful.

The process for obtaining a rule is begun by a sponsor of the bill or the chair of the substantive committee that reported the bill (in this case, the Committee on the Judiciary) requesting a rule from the chair of the Rules Committee. If the Rules Committee, mostly through its chairperson, agrees to proceed with this request, hearings will generally be held. If it does not, the bill is most frequently killed. It is to this problem that the 21-day procedure (page 246) is addressed.

Hearings before the Rules Committee usually include discussion of the substance of the bill as well as discussion of the terms of debate. The Rules Committee cannot amend a bill but can express its view of the bill by the rule it fashion, including authorizing the consideration of particular amendments, or by not granting a rule, or by recommending that the bill be recommitted
to the substantive committee. The committee can also trade a rule for changes in the bill.

A rule from the Rules Committee, in the form of a House Resolution (H.R.), must be approved by the House prior to the commencement of the consideration of the bill that the rule addresses. In effect, it is treated as a separate piece of legislation.

**Voting Rights Act of 1965**

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up a resolution (H. Res. 440) and ask for its immediate consideration.

The Clerk read as follows:

H. Res. 440

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6400) to enforce the fifteenth amendment to the Constitution of the United States. After general debate, which shall be confined to the bill and shall continue not to exceed ten hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now in the bill and such amendment shall be considered under the five-minute rule as an original bill for the purpose of amendment. It shall also be in order to consider the text of the bill H.R. 7896 as a substitute for the committee amendment in the nature of a substitute printed in the bill. At the conclusion of such consideration the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any of the amendments adopted in the Committee of the Whole to the bill or the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of the bill H.R. 6400, it shall be in order in the House to take from the Speaker's table the bill S. 1564 and to move to strike out all after the enacting clause of said Senate bill and to insert in lieu thereof the provisions contained in H.R. 6400 as passed by the House.

There are basically three types of rules: open, closed, and modified closed. All of the rules fix the time for general debate on the bill. Under an open rule, the most typical and the type granted for H.R. 6400, any germane amendment, simple or complex, may be offered after the general debate has occurred. Such amendments in the Committee of the Whole are subject to the five-minute rule. A member may speak in favor of his or her amendment for five minutes, and an opponent has five minutes to reply. In practice, debate over an amendment can last significantly longer by a successful request for unanimous consent to continue or by a motion to "strike out the last word" of the amendment under debate: This latter motion is a ploy that permits continued debate on the same amendment (minus its last word). Under H.R. 440 an amendment cannot be discussed beyond the five-minute exchange. The motion to "strike the last word" puts a new amendment for debate before the body, although it is effectively the same amendment for which time to debate has expired.

Closed rules prohibit floor amendments. They are controversial because they contradict the democratic values of the House. Historically, tax bills and other products of the Ways and Means Committee were debated under closed rules, ostensibly because their highly technical nature was inconsistent with the limited consideration available in the floor amendment process. This custom has been considerably weakened over the years with no apparent increased tendencies toward irrationality.

Modified closed rules are a cross between open and closed rules, with some parts of the bill open to amendment and other parts closed. Within these broad contours, the Rules Committee can be quite creative in fashioning particular rules to effect various goals. In addition to authorizing an open amendment period, H.R. 440 contained additional instructions, relating to the treatment of certain proposed amendments. As noted earlier, the Judiciary Committee had proposed an amendment in the nature of a substitute. H.R. 440 allowed the committee substitute to be treated as the original bill which meant that it, and not the original bill, was the bill that would be the subject of debate and proposed amendments. Also, Representatives Ford and McCulloch planned to offer H.R. 7896 as an amendment to the committee's bill. The rule allowed this bill to be treated as a substitute amendment, which meant that it could be the subject of further amendment under the five-minute rule (normally amendments to amendments can-
not be further amended). Most likely this special treatment was part of an agreement with supporters in the minority party (Republicans) that gave them an opportunity to present a somewhat different bill for consideration in return for support of the committee substitute, if their amendment did not pass. (As noted later, this amendment failed and both of its sponsors supported the committee substitute.)

H.R. 440 was approved by the House on July 6, 1965, by a voice vote, which was converted into an automatic recorded vote by a successful quorum call by Representative Williams, an opponent of the bill.

Mr. BOLLING. Mr. Speaker, I move the previous question.
The previous question was ordered.
The SPEAKER. The question is on agreeing to the resolution.
The question was taken; and the Speaker announced that the ayes appeared to have it.
Mr. WILLIAMS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that the quorum is not present.
The SPEAKER. Evidently a quorum is not present.
The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.
The question was taken; and there were — yea 308, nay 58, not voting 56, as follows: [Roll No. 167]

While the adoption of a rule by the House, particularly an open rule, is usually perfunctory, sometimes the consideration of a rule precipitates a major fight, either on the terms of the rule or on the substance of the legislation to which the rule is addressed. If the motion to cut off such debate is defeated, sponsors of the underlying legislation will frequently withdraw the bill for further coalition-building. An example of a major fight over a rule was the battle that surrounded the 1994 federal crime legislation. The rule was defeated and the bill replaced by one much more palatable to its opponents. For an in-depth study of the Rules Committee, its processes, and its products, see S. Bach and S. S. Smith, Managing Uncertainty in the House of Representatives (1988); Walter Oleszek, Congressional Procedures and the Policy Process (1989); Charles Tiefer, Congressional Practice and Procedure (1989).

12. The Committee of the Whole House on the State of the Union
All bills that involve a tax, an appropriation, or the authorization of an appropriation (almost all bills) are by House rules referred to the Committee of the Whole House on the State of the Union (the Committee of the Whole). The Committee of the Whole is, in effect, the House of Representatives, operating under some different procedures designed, in some part, to make the consideration of bills more efficient. All representatives are members, but a quorum consists of only 100 members instead of the 218 required for the House. A recorded vote needs 25 members. There are no automatic roll call votes. It is in the Committee of the Whole where the House debate occurs and where amendments are offered.

When the House constitutes itself as the Committee of the Whole, the Speaker steps down as presiding officer and is replaced by the chair of the Committee of the Whole, a member so designated by the Speaker. This action is accompanied by the removal of the Speaker's mace (a traditional symbol of the Speaker's authority consisting of a bundle of 13 ebony rods bound in silver, topped with a silver globe and a silver eagle). Both of these acts are rooted in the historically close relationship between the English kings and parliamentary speakers and the determination of the House of Commons during the rule of King John to create a forum in which debate could occur outside of the King’s "ears."

Pursuant to the rule, general debate commenced in the Committee of the Whole on July 6, 1965.

Mr. CELLER. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 6400) to enforce the 15th amendment to the Constitution of the United States.
The SPEAKER. The question is on the motion offered by the gentleman from New York.
The motion was agreed to.

In the Committee of the Whole

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 6400, with Mr. Bolling in the chair.
The Clerk read the title of the bill.
By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from New York [Mr. CELLER], will be recognized for 5 hours, and the gentleman from Ohio [Mr. McCULLOCH], will be recognized for 5 hours. The Chair recognizes the gentleman from New York.
Mr. CELLER. Mr. Chairman, I yield myself such time as I may consume.

Debate in legislative bodies serves various purposes, only one of which is occasionally affecting the vote of members who remain undecided at that time. Professor Oleszek sums it up nicely:

General debate is both symbolic and practical. It assures both legislators and the public that the House makes its decision in a democratic fashion, with due respect for majority and minority opinions. "Debate appropriately tests the conclusions of the majority." General debate forces members to come to grips with the issues at hand; difficult and controversial sections of the bill are explained; constituents and interest groups are alerted to a measure's purpose through press coverage of the debate; member sentiment can be assessed by the floor leaders; a public record, or legislative history, for administrative agencies and the courts is built, revealing the intentions of the proponents and opponents alike; legislators may take positions for reelection purposes; and, occasionally, fence-sitters may be influenced.

Not all legislators agree on the last point. Some doubt that debate can really change views or affect the outcome of a vote. But debate, especially by party leaders just before a key vote, can change opinion...

In sum, reasoned deliberation is important in decision making. Lawmaking consists of more than log rolling, compromises, or power plays. General debate enables members to gain a better understanding of complex issues, and it may influence the collective decision of the House.

Walter Oleszek, Congressional Procedures and the Policy Process 149 (1989). In recent years, several scholars have become concerned about the decline of general debate in the House of Representatives, a phenomenon more noticeable in many state legislatures. Such decline to them represents increasingly lost opportunities to educate and inform a public hungry for such information. General debate on a bill is defined as "a time of pure discussion about a bill, without amendments or votes." The purpose would be to explore the bill as a whole and hopefully the larger policy context into which it fits. Indeed, to emphasize the significance of this latter purpose, these scholars have proposed that each house of the Congress set aside time each week for debates on issues such as America in the post-Cold War world and the need for a national industrial policy. See The American Enterprise Institute and the Brookings Institution, Renewing Congress, a First Report (1992).

The ten-hour debate on H.R. 6400 was held over a three-day period. On July 8, after general debate had ended, the amendment process began. In the House, this is normally done on a section-by-section basis starting with the enactment clause. In this manner, amendments are offered after the section to which they relate has been read. Under the rule, it was in order for the House to consider H.R. 7896 (Ford-McCulloch) as a substitute for the committee amendment in the nature of a substitute. No time for such consideration was explicit in the rule, but two hours were agreed to by unanimous consent of the Committee of the Whole.

The CHAIRMAN. All time has expired. The Clerk will read:

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965."

Amendment Offered by Mr. McCulloch

Mr. McCULLOCH. Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. McCULLOCH as a substitute for the committee amendment:

Mr. McCULLOCH (interrupting the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with, and that the amendment be printed in the RECORD and be open for amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. CELLER. Mr. Chairman, I ask unanimous consent that all debate on the so-called McCulloch substitute and all amendments thereto be
limited to 2 hours, and that such time be equally divided and controlled
by myself and the gentleman from Ohio [Mr. McCULLOCH].

The CHAIRMAN. Is there objection to the request of the gentleman
from New York?

There was no objection.

On July 9, 1965, H.R. 7896, which had been amended, was de-
feated on a teller vote.

The CHAIRMAN. All time has expired.
The question is on the amendment offered by the gentleman from
Ohio, as amended.
Mr. McCULLOCH. Mr. Chairman, I demand tellers.
Tellers were ordered, and the Chairman appointed as tellers Mr.
McCULLOCH and Mr. CELLER.
The Committee divided, and the tellers reported that there were—
ayes 166, noes 215.

The amendment process continued throughout the day, with
some amendments adopted and some rejected. One amendment,
offered by Congressman Cramer, illustrates the value of different
forms of nonrecorded voting, as a ruling of the chair was over-
turned by a teller vote.

The CHAIRMAN. The time of the gentleman has expired. All time
has expired. The question is on the amendment offered by the gentleman
from Florida.
The question was taken; and the Chairman announced that the noes
appeared to have it.
Mr. CRAMER. Mr. Chairman, I demand tellers.
Tellers were ordered and the Chairman appointed as tellers Mr. CRA-
MER and Mr. RODINO. The Committee divided and the tellers reported
that there were—ayes 136, noes 132.
The amendment was agreed to.

At 7:20 p.m. on July 9, 1965, with debate concluded in the Com-
mittee of the Whole, a voice vote on H.R. 6400 (as amended by
the Judiciary Committee and by the Committee of the Whole) was
taken, the amended bill was adopted, the Committee of the Whole
rose, the Speaker took the rostrum, and the bill was ready for
consideration by the House.

13. A Bill on the Floor of the House

After the Committee of the Whole has completed its work, in-
cluding the amendment process, the bill moves to the House for
final action. In the House, members must first consider any
amendments approved by the Committee of the Whole and then
consider the bill in its reported or amended form. New amend-
ments may not be offered nor may amendments defeated in the
Committee of the Whole be offered. A motion to recommit the bill
with or without instruction on what is to be reconsidered, if the
bill is recommitted, is in order. This recommittal motion gives the
opposition one last chance to reshape or to kill the bill.

On the floor of the House, each of the amendments that had
been adopted in the Committee of the Whole was considered.
One, the Cramer amendment, was adopted; two remaining ones
were rejected. After the amendments adopted by the Committee
of the Whole were disposed of, pursuant to the rule, the House
turned to the amendment of the Judiciary Committee, which had been considered in the Committee of the Whole along with the original version of H.R. 6400. This amendment was adopted, and now the House was ready for action on H.R. 6400 as amended.

The SPEAKER. The question is on the committee amendment as amended.

The committee amendment as amended was agreed to.

The SPEAKER. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

**Motion to Recommit by Mr. Collier**

Mr. COLLIER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. COLLIER. In its present form I am, Mr. Speaker.

The SPEAKER. The gentleman qualifies.

The Clerk will report the motion to recommit.

Notice in the Speaker’s call of the question the reference to the engrossed bill. An engrossed bill is the final copy of the bill passed by either house (with all of the adopted amendments) certified by that house’s clerk. Each bill in Congress and in state legislatures is supposed to be read three times before passage. This procedure reflects an earlier history when many members of legislatures could not read. In modern practice, bills are not read aloud three times, although in the House, they may be read once in the Committee of the Whole.

After the motion to recommit was defeated on a recorded vote, H.R. 6400 (as amended) was adopted on a recorded vote by the House. Immediately thereafter, in accordance with the terms of the rule, the House amended the Senate bill (S. 1564) by replacing everything following its enacting clause with the text of the House bill.

Mr. CELLER. Mr. Speaker, pursuant to House Resolution 440, I call up from the Speaker’s table for immediate consideration the bill S. 1564.

**Amendment Offered by Mr. Cellar**

Mr. CELLER. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CELLER. Strike out all after the enacting clause of S. 1564 and insert in lieu thereof the text of H.R. 6400, as passed.

The amendment was agreed to.

The bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read:

“A bill to enforce the 15th amendment to the Constitution of the United States, and for other purposes.”

This process of amendment in effect created a single bill, S. 1564, which had been acted upon by both houses, but it did not resolve the substantive disagreements between the version adopted by the Senate and the one adopted by the House; rather it set the stage for the next step in the legislative process. On July 12, 1965, the Senate requested a conference, after it rejected the House amended version of S. 1564.

**Enforcement of the 15th Amendment to the Constitution**

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate the amendments of the House of Representatives to the bill (S. 1564).

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States, and for other purposes, which were, to strike out all after the enacting clause and insert:

Mr. MANSFIELD. Mr. President, I move that the Senate disagree to the amendments of the House to the bill (S. 1564) and request a conference on the disagreeing votes of the two Houses, and that conference on the part of the Senate be appointed by the Chair.
The motion was agreed to; and the PRESIDING OFFICER appointed Mr. EASTLAND, Mr. DODD, Mr. HART, Mr. LONG of Missouri, Mr. DIRKSEN, and Mr. HRUSKA conferees on the part of the Senate.

14. The Conference

The conference is the means by which the two houses of Congress resolve the differences between them on a bill that both houses have considered and adopted. Such agreement is necessary if a bill is to become law, because each house must pass an identical version of the same bill. The Speaker and the presiding officer of the Senate name conferees to the conference committee. Conferees are usually members of the substantive committee that reported the legislation and are recommended by the committee chair and ranking minority member. A conference report must be approved by a majority of the conferees from each house (it does not matter how many members are appointed from each house), although it may change the dynamics of arriving at an intra-house compromise.

In many instances, although not in this case, conferees are instructed on the position they are to take at a conference committee, although these instructions do not strictly bind them. Conferees are not authorized to address provisions of the bill that are not in dispute in the bill. However, during the bargaining process that goes on in the conference, other issues can be put on the table, even if not in dispute in the bill or germane to the bill. An extreme example is using the conference to bring an unrelated issue to the table is recalled by one of the authors, Judge Mikva. In the mid-1970s, each house of Congress had passed a different bill amending the Social Security law. A conference committee was established, chaired by Representative Al Ullman, chair of the House Ways and Means Committee. A meeting was scheduled during the Christmas vacation because of the urgency of the Social Security issue. Senator Russell Long, a member of the conference committee and chair of the Senate Finance Committee, opened the conference by informing the members from the House that he was concerned about a piece of legislation, sponsored by a Senate colleague, dealing with tuition tax credits for parochial schools. This bill had been bottled up by Representative Ullman in the House Ways and Means Committee. Simply stated, Senator Long insisted that the bill be moved as a cost of reaching an agreement on Social Security. After this request was rejected, the conference was adjourned. A number of days later, as time started to run out, Long agreed to proceed with the conference and drop his intransigence if Ullman could win approval for such action from the Senate colleague whose bill was being held. After such approval was granted, a conference report was negotiated and adopted. Some time later, it was reported to Representative Mikva, who had been a member of the conference committee, that the object of Long's ploy had not been his colleague's bill but rather another bill, on oil taxes, which he was trying to have moved in the Ways and Means Committee. For a detailed description of the working of conference committees, see L. D. Longley and W. J. Oleszek, Bicameral Politics and the Conference Committees (1989).

When a conference committee reaches an agreement, it issues a conference report that details the agreement. This report then becomes the vehicle for further legislative action. It may contain exact bill language, but it may only contain references to prior legislative action, such as an amendment of one house or the other. The report is then considered by the house that accepted the request for a conference (in this case the House, which agreed to the conference on July 14). The report is not subject to amendment, and, if not adopted by both houses, it must go back to another conference. When both houses agree to a conference report, that report becomes the mandate for the bill’s enrollment.

The conference report on S. 1564, as amended, was called up in the House of Representatives on August 3, 1965.

Voting Rights

Mr. CELLER. Mr. Speaker, I call up the conference report on the bill (S. 1564) to enforce the 15th amendment to the Constitution of the United States, and for other purposes, and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the statement.

The conference report and statement are as follows:
CONFERENCE REPORT (REPT. No. 711)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1564) to enforce the fifteenth amendment of the Constitution of the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the substantive provisions of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the House amendment insert the following:

"That this Act shall be known as the 'Voting Rights Act of 1965'..."

The House adopted the Conference Report on August 3, and the Senate followed on August 4. The bill, now passed by both houses, was ready for presidential action. Before a bill can be sent to the President, it has to be enrolled (produced as a final copy), printed on parchment and certified by the clerk of the house of origin (the Senate, in this case) and signed by both the Speaker of the House and the Senate president pro tempore. In the House, the Committee on House Administration is charged with responsibility for verifying the bill prior to the Speaker’s signing it. The enrollment process is extremely important because the bill that is sent to the President must reflect exactly the text mandated by the conference report. On August 6, 1965, the President signed the enrolled S. 1564, and the Voting Rights Act of 1965 became law.

NOTES AND QUESTIONS

1. The nature of the legislation. While no legislation is typical, the legislation above is somewhat atypical because of its bipartisan support in both houses of Congress. Also, while the American legislative process is marked by the multitude of opportunities for derailing or compromising legislation, the description above is of a bill that encompasses far-reaching regulatory changes and that passes without major substantive amendments. This success is reflective of a clear legislative understanding that the bill addressed a problem that needed to be solved and solved through federal legislation with substantial federal administrative involvement. This legislation was “must” legislation for a newly elected President (Lyndon B. Johnson) and for most members of Congress. A description of the events surrounding the enactment of this legislation is found in Chapter 7.

2. Legislative voting — recorded votes. Notice the number of unrecorded votes that occur. Every legislative body develops some method for quickly voting on issues over which there is little or no dispute and the unrecorded vote is Congress’. About the unrecorded vote Justice Story wrote: "an unlimited power to call the yeas and nays on every question, at the mere will of a single member, would interrupt and retard, and, in many cases, wholly defeat, the public business." Joseph Story, The Constitution of the United States 117-118 (Regnery Gateway Bicentennial ed. 1986). How does this method of voting compare with New York’s fast roll call? What are the advantages or disadvantages of each from an efficiency and accountability perspective? Do you think that any of the unrecorded votes taken on the Voting Rights Act of 1965 (as excerpted in the materials) should have been recorded? In 1995, as part of the proposed constitutional amendment to require a balanced budget, the sponsors included mandatory roll call voting on tax and debt ceiling increases. As one sponsor, Senator Larry E. Craig, argued: "We want people to stand up and be counted if they want to raise taxes.” David E. Rosenthal, I’ll Sleep on the Idea, But Must I Vote on It?, N.Y. Times, Feb. 2, 1995, at B8.

3. Legislative voting — majority vote. Historically, in Congress (and all American legislatures), the standard for legislative enactment has been one of majority rule. In 1995, at the impetus of a newly elected Republican majority, the House of Representatives adopted a rule that requires a three-fifths vote for an increase in the federal income tax rate. The Constitution contains no express requirement that calls for a majority vote, but does specifically call for a supermajority (two-thirds) in five instances: the Senate’s advice and consent to a treaty (Art. II, §2); the Senate’s vote for guilt on impeachment (Art. I, §3); the vote to expel a member in either house (Art. I, §5); the override of a veto by either house (Art. I, §7); and the vote in either house to approve a constitutional amendment (Art. V). What do you think of the constitutionality of the three-fifths standard? Who and under what circumstances might a party have standing to challenge such a rule?

4. Legislative voting — majority vote relax. As discussed in Note 3, the traditional standard for congressional legislative enactment has been majority rule, changed in the House in 1995 for certain
tax bills. Does this rule require a majority of the membership of the legislative body (at least 218 in the House of Representatives and at least 51 in the Senate) or of the members present on the floor? As noted earlier, the Constitution requires an absolute majority for a quorum. Do you think that it requires an absolute majority for enactment? Compare the language of Article I, §5 (“a majority of each shall constitute a Quorum to do Business, but a smaller number may adjourn from day to day . . . The Yeas and Nays of the members of either House on any question shall at the Desire of one fifth of those Present, be entered on the journal”) with that of Article III, §14 of the New York State Constitution (“nor shall any bill be passed or become law except by the assent of a majority of the members elected to each branch of the legislature”). See United States v. Ballin, 144 U.S. 1 (1891). What policy reasons might be offered to support the enactment of a statute by fewer than a majority of the whole number of members? Consider the comments of James Madison on this point (applicable also to consideration of the questions in Note 3):

It has been said that more than a majority ought be required for a quorum and more than a majority of a quorum for a decision. That some advantages might have resulted from such a precaution cannot be denied. It might have been an additional shield to some particular interests, and another obstacle generally to hasty and partial measures. But these considerations are outweighed by the inconveniences in the opposite scale. In all cases where justice or the general good might require new laws to be passed, or active measures to be pursued, the fundamental principle of free government would be reversed. It would no longer be the majority that would rule; the power would be transferred to the minority.

The Federalist No. 58, at 396-397 (J. Madison) (Jacob Cooke ed. 1961). Interestingly, as part of the effort to achieve a balanced budget amendment in 1995, see Note 2 above, one proposal required a three-fifths vote to pass all tax increases, but a three-fifths vote of an absolute majority.

5. The filibuster. Historically, the filibuster was used on a limited basis, on issues about which Senators felt great passion. Its use brought business in the Senate to a halt. To avoid the latter interference with legislative work, the Senate installed a two-track system that allows the consideration of other legislation, if cloture cannot be achieved. This has made the filibuster almost painless and encouraged its use. So commonplace did it become that in 1994 an editorial in USA Today aptly opined: “Instead of providing a dramatic final forum for individuals against a stampeding majority, it has become a pedestrian tool of partisans and gridlockmeisters.” Nov. 25, 1994, at 8A, col. 1. In 1995, several Senators proposed a scheme by which cloture could, after a time, be effected by a majority vote. This proposal was easily defeated. If the three-fifths vote is unconstitutional, do you think that the filibuster is also unconstitutional?