



# Blue-Slapping: Enforcing the Origination Clause in the House of Representatives

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# Blue-Slipping: Enforcing the Origination Clause in the House of Representatives

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

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

As generally understood, this clause carries two kinds of prohibitions. First, the Senate may not originate any measure that includes a provision for raising revenue, and second, the Senate may not propose any amendment that would raise revenue to a House-passed nonrevenue measure. However, the Senate may generally amend a House-originated revenue measure as it sees fit.

Although the House may choose to enforce its prerogative through any of several methods, the most common is through the adoption of a privileged resolution returning the measure to the Senate. Because this resolution has historically been printed on blue paper, this is known as blue-slipping.

This report also includes a table identifying all measures returned to the Senate as a result of a blue-slip resolution during the 102<sup>nd</sup>-116<sup>th</sup> Congresses (1991-2020).

For more information on the Origination Clause and its enforcement, see CRS Report RL31399, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

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The formal method for enforcement of the Origination Clause by the House is through a process known as “blue-slipping.”<sup>1</sup> *Blue-slipping* is the term applied to the act of returning to the Senate a measure that the House has determined violates its prerogatives as defined by the Origination Clause. The House takes this action by adopting a privileged resolution stating that a Senate bill or Senate amendment(s) to a nonrevenue House bill, “in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill [or such bill with the Senate amendment(s) thereto] be respectfully returned to the Senate with a message communicating this resolution.” This action is called blue-slipping because historically the resolution returning the offending bill to the Senate is printed on blue paper. The consideration of questions of privilege by the House is provided for under House Rule IX, clause 2(a)(1),<sup>2</sup> which states

A resolution reported as a question of the privileges of the House, or offered from the floor by the Majority Leader or the Minority Leader as a question of the privileges of the House, or *offered as privileged under clause 1, section 7, article I of the Constitution*, shall have precedence of all other questions except motions to adjourn [emphasis added].

Any Member of the House may offer such a resolution. In most cases it is the chairman of the Ways and Means Committee who would do so based on the advice of the House Parliamentarian, although another member of the committee may be designated. Consideration of the resolution takes place in the House of Representatives under the one-hour rule. Clause 2(a)(2) of House Rule IX further provides:

The time allotted for debate on a resolution offered from the floor as a question of the privileges of the House shall be equally divided between (A) the proponent of the resolution, and (B) the Majority Leader, the Minority Leader, or a designee, as determined by the Speaker.

There have been instances, however, where other Members have offered blue-slip resolutions when the chairman of the Ways and Means Committee did not believe that the bill in question violated the Origination Clause, and the resolution was subsequently tabled.<sup>3</sup>

Although the House may enforce its prerogative through blue-slipping, it may in its discretion also use a variety of less formal actions. For example, in the past the House has occasionally chosen simply to ignore a Senate-passed bill and instead taken action on a different measure. The House may also refer a questionable Senate measure to a committee. In such instances, a committee may

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<sup>1</sup> The term *blue-slipping* is also sometimes used in an unrelated sense by the Senate in connection with the nomination of federal judges.

<sup>2</sup> For additional information on the consideration of questions of privilege generally, see CRS Report R44005, *Questions of the Privileges of the House: An Analysis*, by Megan S. Lynch.

<sup>3</sup> For example, when Representative John Rousselot offered a blue-slip resolution, Representative Dan Rostenkowski, the chairman of the House Ways and Means Committee, offered a motion to table it. *Congressional Record* (August 19, 1982), pp. 22127-22128.

choose simply to report a House bill rather than consider the Senate bill further. The House may also decide to use a conference committee as a venue for deciding Origination Clause questions by having an offending provision removed in conference without having to take the formal step of blue-slipping. In recent practice, the House has informally requested that the Senate revise the offending measure. Accomplishing this requires the Senate to take two steps, both by unanimous consent: first, that the House return the measure to the Senate, and second, that the Senate revise it before sending it back to the House for further action.

If an effort to use an informal alternative does not result in the removal of an offending provision, it would not prevent the House from later using a blue-slip resolution to enforce its prerogatives. This is because the enforcement of the Origination Clause is based on a constitutional prerogative of the House and is therefore distinct from enforcement of its standing rules, which require that points of order must be raised in a timely manner.<sup>4</sup> The House can assert its prerogative at any time it is in possession of the bill and related papers (that is, anytime the actual documents are not physically in the possession of the Senate or a conference committee).<sup>5</sup>

In addition, because enforcement of the Origination Clause raises a constitutional issue, the House may not choose simply to waive its application. Although the House is free to determine in its sole discretion whether it believes that legislation passed by the Senate infringes on its prerogative to originate revenue legislation, in the absence of such a determination, federal courts have occasionally been asked to rule on whether certain revenue provisions may be unconstitutional as not having originated in the House.<sup>6</sup>

The Constitution, however, does not provide specific guidelines as to what constitutes a bill for raising revenue. What constitutes such a bill has therefore been a question of interpretation. The precedents and practices of the House apply a broad standard and construe the House's prerogatives broadly to include any "meaningful revenue proposal." This standard is based on a provision-by-provision review of whether a measure may be considered to have revenue affecting potential and not simply whether they would directly raise or lower revenues. Examples of the types of legislation for which this standard would be applicable include not only legislation to make changes in the tax code directly but also legislation involving any fees not intended as payment for a specific government service, as well as any change in import restrictions because of their potential impact on tariff revenues.

**Table 1** identifies all measures returned to the Senate as a result of a blue-slip resolution during the 102<sup>nd</sup>-118<sup>th</sup> Congresses (1991-2024).

For additional information on the Origination Clause, see CRS Report R46558, *The Origination Clause of the U.S. Constitution: Interpretation and Enforcement*, by James V. Saturno.

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<sup>4</sup> For more, see CRS Report 98-307, *Points of Order, Rulings, and Appeals in the House of Representatives*, by Valerie Heitshusen.

<sup>5</sup> For example, in the 111<sup>th</sup> Congress, the House adopted H.Res. 1653, a resolution to return to the Senate a group of five Senate bills and the Senate amendment to a nonrevenue House bill that had passed the Senate and been received in the House at various times during the Congress.

<sup>6</sup> U.S. Congress, House Committee on Ways and Means, *Report on the Legislative and Oversight Activities of the Committee on Ways and Means during the 115<sup>th</sup> Congress*, H.Rept. 115-1115, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2015), p. 136. The report cites U.S. v. Munoz-Flores, 495 U.S. 385 (1990) as an example.

**Table 1. Blue Slip Resolutions, 102<sup>nd</sup>-118<sup>th</sup> Congress (1991-2024)**

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

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

## 114<sup>th</sup> Congress

June 25, 2015

H.Res. 340

H.R. 1735 (National Defense Authorization Act for Fiscal Year 2016). The Senate amendment would have changed the tax treatment of the Military Retirement Fund.

**Source:** Congressional Research Service, including information from U.S. Congress, House Committee on Ways and Means, *Report on the Legislative and Oversight Activities of the Committee on Ways and Means during the 114<sup>th</sup> Congress*, H.Rept. 114-887, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2016), pp. 130-33.

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

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