Parliamentary Strategy & the Amendment Process: Rules & Case Studies of Congressional Action*

Stanley Bach
Congressional Research Service

Congressional rules and procedures not only make for orderly debate but offer legislators strategic opportunities to advance their policy preferences by defining and ordering the choices to be made on the floor. Using two case studies, Stanley Bach shows that these opportunities arise most often during the amendment process.

Stanley Bach is Head of the Legislative Process Section of the Congressional Research Service of the Library of Congress.

I. Introduction

The final outcome of the legislative process in Congress rarely is in doubt. During the 95th and 96th Congresses, the House passed 3,013 measures and defeated 72; in the Senate, 2,626 measures were passed and only 8 were defeated.[1] For the overwhelming majority of measures that reach a vote on final passage on the floor, approval in some form

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1. Measures that failed to pass by one means but later passed by another (for example, bills that failed to pass the House under suspension of the rules but later passed by majority vote) are not included in the count of measures defeated.

by the House or Senate has been a foregone conclusion. This does not mean, of course, that the process of floor consideration is an empty formality, devoid of significant impact on the shape and content of national policy. Instead, such an extraordinary success rate suggests that the vote to pass or not to pass a measure often is not the key decision in the process.

Many measures must be passed each year merely to continue the current operations of government: the annual general appropriation bills, necessary supplemental appropriation bills and continuing resolutions, and bills to re-authorize existing programs, agencies, and departments. Other measures are necessary to meet the requirements of congressional rules and operations: for example, committee funding resolutions in both chambers, concurrent budget resolutions, special rules in the House, and resolutions waiving provisions of the Budget Act in the Senate. Still others are considered and passed in response to compelling political pressures or national needs that most representatives and senators recognize and accept as legitimate. Collectively, these measures constitute a form of mandatory agenda on which Congress can be expected to act.

It is exceptional for a measure that falls within any one of these categories to be defeated. Moreover, whenever either chamber does reject such a measure—for instance, a special rule or a bill extending the public debt ceiling—there usually is an expectation, shared by most proponents and opponents alike, that another measure on the same subject or for the same purpose will be considered and approved. In addition, measures frequently are passed by margins that do not accurately reflect the divisions of opinion over their most important and controversial provisions. Some members may vote to pass a bill because they believe that its enactment is necessary, for one reason or another, even though they object strenuously to certain of its provisions. Other members may feel free to vote against final passage, and thereby stake out an unambiguous public position, because they are confident that the measure will pass over their opposition.

As a result, while the vote on final passage is a stage through which all successful legislation must pass, it does not necessarily mark the key point at which policy decisions are made. Instead, these decisions often are made during the course of the amendment process. It is through votes on amendments that the House and Senate determine the content of legislation—legislation that, once amended, is very likely to pass. And it is during the amendment process, therefore, that most members have the greatest opportunity to influence the course of public policy.

In most cases, the amendment process in either the House or the Sen-

ate is relatively uncomplicated.[2] A member offers an amendment that proposes to change the text of the measure under consideration. That amendment is debated and then is subjected to a vote, after which another amendment is offered. The rules and practices of the two chambers governing this process do differ in important respects—for example, in the kinds of amendments that may be offered, the manner in which additional restrictions on amendments may be imposed, and the order in which amendments may be called up for consideration. But these and other differences aside, floor amendments in both chambers normally are considered one at a time, and they are debated and decided on their substantive merits.

Sometimes, however, the amendment process in the House or the Senate can become much more complex. Generally, an amendment to a measure (an amendment in the first degree) is itself subject to amendment (an amendment in the second degree). Before the chamber votes to change the text of a measure by adopting a proposed first-degree amendment, the members may change that amendment by adopting one or more second-degree amendments. In addition, depending on the form of the amendments that are proposed, circumstances can arise under which a number of different amendments, all addressed to the same subject, can be offered before the House or Senate votes on any one of them.

These amending possibilities allow members to debate the merits of various alternative decisions before beginning to cast the votes that result in a choice among them. These possibilities also offer strategic opportunities that members may use to promote adoption of their preferred positions by defining alternatives, foreclosing other alternatives, or determining the order in which the choices among alternatives are to be made. An analysis of some of the House and Senate rules governing the amendment process and their use by members during action on specific bills illustrates some of the strategic opportunities that are available and suggests some implications for the study of congressional action.

II. The House of Representatives and H.R. 4473

A first-degree amendment offered on the House floor during proceedings in the House or in Committee of the Whole normally may be amended to the second degree. House rules and precedents distinguish between

2. For a general discussion of the amendment process in both chambers, see Walter J. Oleszek, *Congressional Procedures and the Policy Process* (Washington: Congressional Quarterly Press, 1978), pp. 105–131, 151–180.

second-degree amendments that are perfecting in nature and those that are substitutes. A second-degree perfecting amendment proposes to modify a pending first-degree amendment in some respect—by striking language from it, by adding new language to it, or by replacing one or more words or numbers in it. By contrast, a second-degree substitute amendment proposes to replace the entire text of a pending first-degree amendment with an alternative text that differs in one or more respects.[3]

Under the rules of the House, a second-degree perfecting amendment and a second-degree substitute amendment may be offered to the same first-degree amendment, and both may be debated before either of the second-degree amendments or the first-degree amendment is put to a vote. The two second-degree amendments may be proposed in either order. Thus, after Representative Alpha has proposed an amendment to a bill and spoken in support of it, Representative Beta may offer a second-degree perfecting amendment to make some change in Alpha's amendment. While the Alpha and Beta amendments both are pending, Representative Gamma also may offer a second-degree substitute for the Alpha amendment. Moreover, House Rule XIX states that this substitute is amendable, as if it were a first-degree amendment. Consequently, Representative Delta may propose an amendment to the Gamma substitute while the Alpha and Beta amendments remain pending.

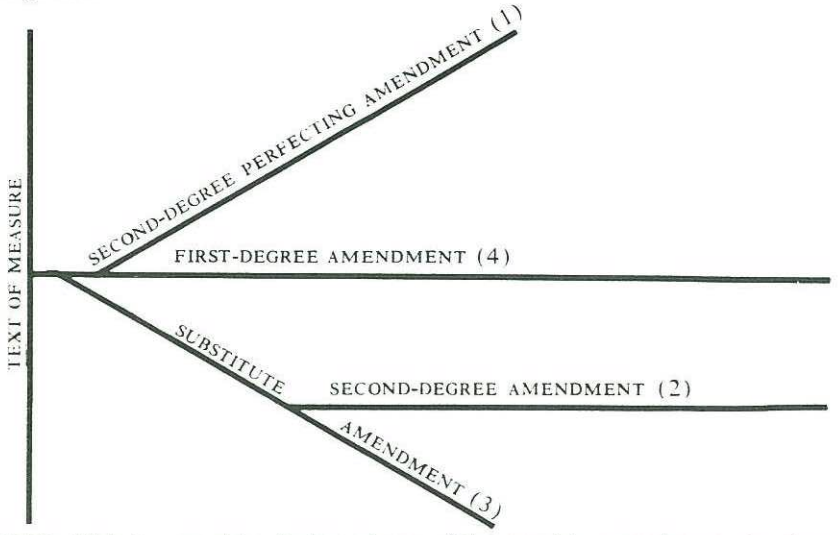
Alternatively, the substitute may be the first amendment to be proposed after the first-degree amendment has been offered. In this case, both the second-degree perfecting amendment to the first-degree amendment and the second degree amendment to the substitute (which is considered to be in the first degree) are still in order and either may be offered before the other.

Thus, there may be as many as four amendments pending on the floor at the same time. (See Figure 1.) The logic implicit in this arrangement is that members are being presented with two alternatives to the language of the measure—the first-degree amendment and the substitute for it—and they should have an opportunity to refine both before choosing between them. In order that both alternatives may be refined, the substitute must be treated as a first-degree amendment. Otherwise, any amendment to the substitute would be in the third degree and, therefore, out of order.

If all four amendments are offered in Committee of the Whole (or in

3. This distinction is a matter of form, not substance. A perfecting amendment may make a radical change in the text to which it is offered, and a substitute amendment may be identical to the text it would replace except for one word or number. It sometimes is possible to achieve the same policy result by either a perfecting or a substitute amendment.

Figure 1



NOTE: This is a graphic display of one of the possible amendment situations that may arise on the House floor during consideration of a measure in Committee of the Whole. The numbers in parentheses indicate the order of voting on amendments if all four amendments are offered.

the House), and after debate on them has concluded, members vote on the amendments in a specific order: (1) the second-degree perfecting amendment to the first-degree amendment; (2) the second-degree amendment to the substitute; (3) the substitute, as and if amended, for the first-degree amendment; and, finally, (4) the first-degree amendment, as and if amended. First the Committee refines the two alternatives by voting on the amendments to them. Then the Committee chooses between the two alternatives, as they may have been amended, by voting on the substitute.

After the Committee votes on a second-degree perfecting amendment, additional such amendments may be proposed (while the other amendments remain pending) that modify the first-degree amendment in other respects. These additional second-degree perfecting amendments are in order if they are different amendments that do not propose only to amend language in the first-degree amendment that already has been amended. The Committee does not vote on the substitute until after it has considered and disposed of all the second-degree perfecting amendments that representatives are prepared to offer.

If the Committee then agrees to the substitute, it proceeds immedi-

ately to vote on the first-degree amendment, as amended by the substitute (in effect, a second vote on the same proposition). No further amendments are in order to the first-degree amendment because it has been amended in its entirety; any amendments to it proposed at this stage would constitute attempts to re-amend language that already has been amended and, for this reason, would be subject to a point of order. If, however, the substitute is rejected, another such substitute may be offered and amended, and the first-degree amendment remains open to additional perfecting amendments as well. In short, the amendment process may continue until the first-degree amendment has been amended in its entirety or until there are no additional amendments that Representatives wish to offer.

It is unusual for all four amendments to be proposed. More often than not, a first-degree amendment and the language of the bill that it would amend present a satisfactory and sufficient pair of alternatives. From time to time, however, one or more of the other three possible amendments may be offered to present a third alternative or to refine one or both of the alternatives to the provision of the bill that is at issue. On other occasions, amendments to a first-degree amendment may be offered for a combination of both policy and strategic reasons. Amendments offered in 1979 to H.R. 4473 evidently present such a case.[4]

H.R. 4473 of the 96th Congress, making appropriations for foreign aid programs for Fiscal Year (FY) 1980, was reported by the House Committee on Appropriations on June 14, 1979. On July 17, the House considered and agreed to H. Res. 353, a special rule reported by the Rules Committee which waived points of order against certain provisions of the bill that violated clauses 2 and 6 of Rule XXI. These clauses prohibit consideration of provisions and amendments that appropriate for unauthorized purposes, that constitute legislation on a general appropriation bill, or that reappropriate balances of unexpended appropriations. Consideration of the bill itself began on the following day.

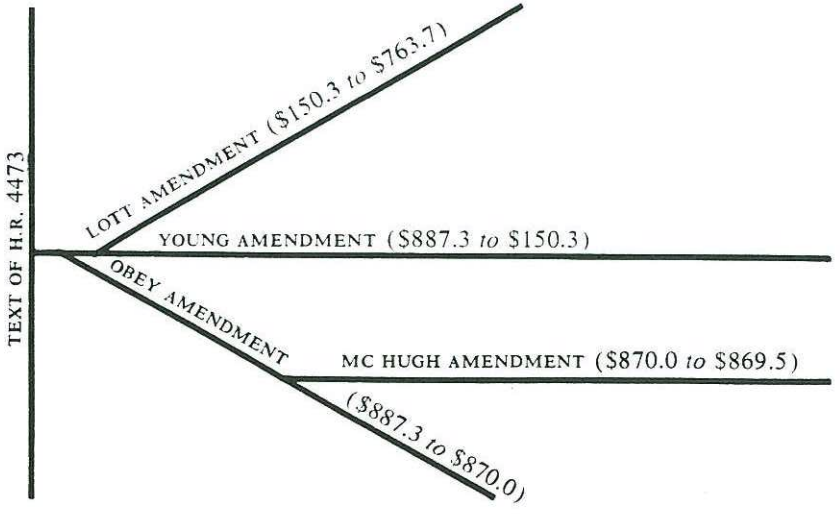
After the conclusion of general debate in Committee of the Whole, the bill was read for amendment by paragraph under the five-minute rule—the normal practice for considering general appropriation bills. Immediately after the clerk had read the first substantive paragraph of the bill, appropriating funds for payment to the Inter-American Development Bank, an amendment was proposed to reduce this appropriation from $887.3 million to $150.3 million. The amendment was offered by Representative C. W. Bill Young (R., Florida), the ranking Republican on

4. The discussion that follows is based solely on the proceedings published in the *Congressional Record* (daily edition), July 18, 1979, pp. H6137–H6145.

the Subcommittee on Foreign Operations that had developed the bill initially. At the beginning of his statement, Young noted the magnitude of his proposed cut, and explained that his purpose was to eliminate that part of the bank's appropriation that had not yet been authorized by law. The special rule under which H.R. 4473 was being considered precluded a point of order from being made against the paragraph as a whole on the ground that it had not been fully authorized. Instead, Young sought to reduce the appropriation by 83 percent by means of his amendment.

After some debate, Representative Trent Lott (R., Mississippi) offered an alternative and less drastic cut in the form of a second-degree perfecting amendment. (See Figure 2.) He proposed to strike the figure of $150.3 million from the Young amendment and replace it with $763.7 million. If both the Lott and Young amendments were to be adopted, their joint effect would be to reduce Bank funding from $887.3 million to $763.7 million. Whereas Young had based his reduction on the difference between the amount proposed to be appropriated in the bill and the amount already authorized, Lott suggested that the bank's appropriation for FY 1980 be held to the previous year's level—a reduction of 13.9 percent below the funding level recommended by the Appropriations Committee.

Figure 2



Young and Lott agreed that bank funding should be reduced, but they apparently disagreed over how severe the cut should be. However, it is also possible that there was no real disagreement between them, and that each of the amendments was offered with the other in mind. It is unusual for the full House to reduce an Appropriations Committee recommendation by as much as 83 percent; such an amendment attacks the operating requirements of an established program. Thus, Young may have offered his amendment without seriously expecting that it would succeed but with the expectation that Lott would offer a perfecting amendment that proposed a more modest cut. Under these circumstances, Lott's amendment might appear to be a reasonable compromise between the Committee's recommendation of $887.3 million and Young's proposal of only $150.3 million. Supporters of the Appropriations Committee's figure would be encouraged to support the Lott amendment for fear that the Young amendment to cut $737.0 million otherwise might be adopted. Lott could contend that his amendment would restore $613.4 million and, at the same time, assure the proponents of reduced spending that his proposal also would *save* $123.6 million.

Thus, Lott could expect to draw support from both sides—from those who wished to reduce bank funding and from those who wished to avoid a more severe cut. By offering his amendment as a second-degree perfecting amendment to increase the bank's appropriation by $613.4 million over the level proposed in the Young amendment, Lott probably stood a better chance of actually reducing the Committee's recommended appropriation by $123.6 million than he would have had if he had offered this reduction as an amendment to the bill after rejection of the Young amendment.

The public record does not indicate conclusively whether or not Young and Lott had acted in concert. However, other members evidently recognized that the votes on these two amendments might well result in a reduction of more than $100 million in the bank's appropriation. Immediately after Lott concluded his statement in support of his amendment, Representative David Obey (D., Wisconsin), also a member of the Subcommittee on Foreign Operations, offered a substitute for the Young amendment—both his substitute and Lott's second-degree perfecting amendment being in order at the same time—to reduce the appropriation in the bill from $887.3 million to $870.0 million. Obey conceded that most of the appropriation had not yet been authorized, but argued that this was a familiar consequence of the deadlines imposed by the Budget Act, deadlines over which the Appropriations Committee had no control.

Obey's statement did not convey any particular enthusiasm for reducing the bank's appropriation. Instead, the sequence of events suggests

that Obey offered his amendment to avoid any deeper cut. If the Lott amendment were to win with the support of some members who wished to avoid a vote on the more drastic cut proposed by Young, there also was reason to think that a majority then might vote for the Young amendment, as amended. The members who wished to reduce the Bank's appropriation probably would vote for the amended Young amendment. And members who supported the Lott amendment only to ameliorate the effect of the Young amendment might find it difficult to oppose any change in the bill by voting against the amended version of the Young amendment, because doing so would require them to cast two contradictory votes in succession—voting for the Lott amendment to cut $123.6 million and then voting against the amended Young amendment to cut the same amount.

Perhaps for this reason, Obey proposed a substitute amendment to cut the bank's appropriation by almost 2 percent or a little more than $17 million. This amendment offered members a second alternative to the Young amendment. Moreover, it made it possible for them to vote for the Lott amendment but then to nullify the effect of that vote by voting also for the Obey amendment. With the Young, Lott, and Obey amendments all pending, the first vote would occur on the Lott amendment—the second-degree perfecting amendment to Young's first-degree amendment. If a majority voted for the Lott amendment, the possibility of a Draconian cut of 83 percent would be eliminated. The second vote then would occur on the Obey substitute for the Young amendment, as amended. If the Committee of the Whole agreed to that amendment as well, the effect of the Lott amendment would be nullified because the entire text of the Young amendment, as amended, would be replaced by the text of the Obey substitute. The final vote, on the Young amendment as amended by the Obey substitute, would be a vote on a 2 percent cut, not the 83 percent cut originally proposed nor the 13.9 percent cut proposed by Lott.

The Obey substitute, therefore, may well have represented a damage-limiting strategy. Foreign aid appropriation bills frequently have had a difficult passage through the Congress. Especially under the economic and budgetary conditions of 1979, Obey had reason to fear that a majority wanted to be on record in favor of reducing the bank's funding. The Young amendment might have been too drastic, but the Lott amendment was more moderate and could attract a majority, either on its own merits or as a preferable alternative to the Young amendment. Thus, the Obey alternative offered members an opportunity to oppose both the Young and Lott amendments and still support a spending reduction—one that would do minimal damage to the bank and its operations.

If this interpretation is correct, it was critical to supporters of the bank's current operations that members have a chance to vote for a minimal cut. It was necessary therefore, to forestall a potentially damaging second-degree amendment to the Obey substitute. For example, Lott or another member might have offered an amendment to the substitute to decrease the funding level from $870.0 million to $763.7 million—the same figure Lott had proposed already as a perfecting amendment to the Young amendment. Had this occurred, the first two votes would both have been on the same proposed figure, $736.7 million—first, as an alternative to the Young proposal of $150.3 million, and, second, as an alternative to the Obey proposal of $870.0 million. For this figure to be accepted in the first instance but then rejected in the second, some members would have been compelled to reverse their positions on successive votes; and such a voting strategy can be difficult to explain to constituents and equally difficult to communicate quickly and successfully on the floor. The outcome, therefore, could well have precluded any direct vote on Obey's proposed 2 percent cut.

Instead, after Obey concluded his opening statement, Representative Matthew McHugh (D., New York), another member of the Foreign Operations Subcommittee, rose to offer an amendment to the Obey substitute to replace $870.0 million with $869,555,958, a figure which was exactly 2 percent less than the $887.3 million proposed by the Appropriations Committee. Obey noted that there was no significant difference between these two amendments and announced his willingness to accept the McHugh figure. Neither Obey nor McHugh stated that he had consulted the other in formulating his amendment, but it seems beyond question that the McHugh amendment was designed to block other possible amendments to the Obey substitute.

The McHugh amendment was the last of the four possible amendments in order. During the ensuing debate, Young opposed the Obey and McHugh amendments but supported the Lott amendment; his position lends support to the speculation that he did not expect a majority to vote for his own original amendment.[5]

> Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the Lott amendment to the Young amendment and in opposition to the Obey substitute and in opposition to the McHugh amendment to the Obey substitute.
>
> Mr. Chairman, we have seen some very skillful footwork here.

5. Ibid., pp. H6141–H6142.

> We all know the old adage, "If you can't use reason or logic, dazzle them with footwork."
>
> That is what we are seeing today, some footwork that is dazzling, and I commend my colleagues for coming up with this strategy. As the gentleman from New York [Mr. McHugh] suggested, speaking about his own amendment, this is a strategically offered amendment.
>
> I would be willing to acknowledge this: that if we get the McHugh amendment adopted, we save $17 million. But I also say this: If we had not offered the Young amendment in the first place, we never would have gotten the McHugh amendment to save $17 million.
>
> But that is not enough reason to go with the amendment offered by the gentleman from New York [Mr. McHugh] rather than the amendment offered by the gentleman from Mississippi [Mr. Lott].

When the debate concluded, the Lott perfecting amendment to the Young first-degree amendment was agreed to by voice vote. On the second vote, the McHugh amendment also was approved by voice vote. Obey then demanded a recorded vote on his substitute, as amended. The vote was 413 to 4, with both Young and Lott joining Obey and McHugh in support. Finally, the Young amendment as amended by the Obey substitute was agreed to by voice vote.

All four amendments were approved, and none of the four votes was seriously contested. (The recorded vote on the Obey substitute may have been intended to stake out a staunch House position in anticipation of negotiations with the Senate in conference committee.) Obey or McHugh might have demanded a recorded vote on the Lott amendment in the hope of defeating it so that members would have to choose between only a minimal cut and the Draconian cut in the original Young amendment. In turn, Young or Lott might have sought a recorded vote on the McHugh amendment; if this amendment had been rejected, a compromise between the Obey and Lott figures then could have been offered as an amendment to the Obey substitute in the hope of undermining support for a cut of only 2 percent. Instead, both amendments were agreed to by voice vote. Finally, Young and Lott both voted for the Obey substitute instead of the 13.9 percent reduction for which they had argued in debate.

The outcome of these votes seems to indicate that proponents of reduced funding for the bank were prepared to accept a 2 percent reduction, notwithstanding their proposals for more substantial cuts. If Young or Lott had proposed the 2 percent cut initially, it might well have been opposed by Obey, McHugh, and other supporters of the bank's current

operations. Instead, Young and Lott proposed deeper cuts which, Young contended, made it advisable for Obey and McHugh themselves to offer and then support the smaller reduction. The Young amendment by itself might not have provoked Obey and McHugh to take protective action, but the Lott amendment could have succeeded if Obey and McHugh had been unwilling to give ground. Perhaps Young and Lott never expected to achieve anything more than a 2 percent reduction. Alternatively, they might have hoped for a greater cut, but then decided that their interests were best served by a modest savings that virtually all members would support.

As the clerk proceeded to read additional parts of the bill for amendment, Obey and McHugh could contend that their actions had prevented more serious damage to the bank's appropriation. On the other hand, Young and Lott could argue that there would have been no reduction at all if they had not offered their amendments. Young's original proposal lost when the Lott amendment won. Then the Lott amendment (once incorporated into the Young amendment) lost when it was supplanted by the Obey substitute. After the McHugh and Obey amendments both won, the final vote was in favor of the Young amendment, as amended. But to whom did the victory ultimately belong? The answer cannot be determined simply by examining the outcomes of the various votes. Instead, it depends on what the members involved sought to accomplish and on how they attempted to use the amendment process to create options and define choices.

III. The Senate and S. 7

In the Senate, as in the House, there are circumstances in which more than one amendment in each degree may be offered before votes occur on any of them.[6] Moreover, once these amendments have been proposed, there is a specific order in which the Senate votes on them (or on motions to table). However, the amendment possibilities in the Senate are not the same as those in the House; in the Senate, these possibilities depend on the kinds of amendments that are offered and the order in which they are offered.

The amendment process in the Senate is governed by certain principles of precedence among amendments. An amendment with precedence may be offered while other amendments are pending, and, once offered,

6. See Stanley Bach, "The Amending Process in the Senate," Report for the Congress by the Congressional Research Service, Library of Congress, Washington, D.C., March 7, 1980.

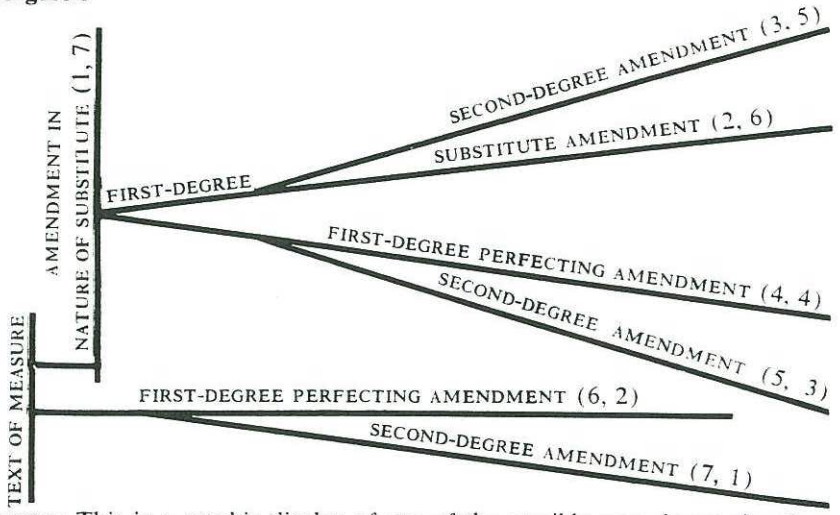
it is voted on first. If amendment A has precedence over amendment B, amendment A may be offered while amendment B is pending, and the Senate acts on amendment A before it acts on amendment B. For instance, a perfecting amendment has precedence over a substitute amendment directed to the same text. Thus, if Senator Alpha offers a substitute for a section of a measure, Senator Beta may offer another first-degree amendment, while Alpha's amendment is pending, to perfect the language of the section that the substitute would replace. The Senate then acts on the perfecting amendment before it votes on the substitute. However, if the first amendment to be proposed is an amendment to perfect the section, a substitute for that section may not be offered until after disposition of the perfecting amendment.

Also under Senate precedents, an amendment in the nature of a substitute—that is, an amendment that proposes to strike all after the enacting clause of a measure and replace the entire original text with a different text—is considered an original question for purposes of amendment, meaning that it is subject to amendment in two degrees. Therefore, an amendment that is a substitute for part or all of the amendment in the nature of a substitute is a first-degree amendment, and is amendable in the second degree. If such a first-degree substitute and an amendment to it are offered, a perfecting amendment also is in order if it would modify the part of the amendment in the nature of a substitute that the first-degree substitute would replace. And the perfecting amendment, being a first-degree amendment, is subject to a second-degree amendment.

Hence, four amendments may be offered to an amendment in the nature of a substitute before any votes occur: a first-degree substitute and an amendment to it, and a first-degree perfecting amendment and an amendment to it. (See Figure 3.) For all four of these amendments to be pending at the same time, however, the first-degree substitute and the amendment to it must be offered before the first-degree perfecting amendment. The latter has precedence over the first-degree substitute because both are directed to the same text—the text being the amendment in the nature of a substitute. So the first-degree perfecting amendment may be proposed while the first-degree substitute is pending, but the converse is not allowed.

In addition, the principles of precedence permit amendments in two degrees to the original text of the measure while the amendment in the nature of a substitute, and amendments to it, are pending. Once an amendment in the nature of a substitute has been offered, any amendment to the measure itself is considered a perfecting amendment, and a perfecting amendment to a measure (and a second-degree amendment to it) has precedence over amendments to a substitute for part or all the

Figure 3



NOTE: This is a graphic display of one of the possible amendment situations that may arise on the Senate floor. The numbers in parentheses indicate, first, the order in which amendments must be offered if all seven amendments are to be pending, and, second, the order of voting on amendments if all amendments are offered.

measure. Thus, first- and second-degree amendments to the measure may be offered while two amendments in each degree also are pending to the amendment in the nature of a substitute, but only if the amendments to the measure are proposed after all the amendments to the amendment in the nature of a substitute. If first- and second-degree amendments to the measure are the first amendments offered after the amendment in the nature of a substitute is proposed, no amendments to the full substitute may be considered until after the Senate has acted on the perfecting amendments directed to the original text.

If the most complicated possible situation arises in which seven amendments are pending, including the amendment in the nature of a substitute, the Senate acts first on the perfecting amendments to the measure. Then it acts, in order, on the perfecting amendments to the amendment in the nature of a substitute, on the first-degree substitute and the amendment to it, and, finally, on the amendment in the nature of a substitute, as it may have been amended. Furthermore, as the Senate acts on each amendment, another amendment may be proposed to replace it in the sequence before voting resumes on the amendments already pending.

Most amendments in the nature of substitutes offered on the Senate floor

are committee amendments. In such cases, both the original text and the committee substitute are open to amendment, but amendments usually are directed to the committee substitute. It is the committee's version of the measure that is the focus of debate and amendment, and the Senate almost always agrees to the committee substitute, as it may have been amended, as the final step in the amendment process. The effect of agreeing to the substitute is to replace the entire original text of the measure, including any amendments to it that may have been accepted. For this reason, there usually is little incentive for Senators to propose amendments to the original text when a committee substitute is pending. On occasion, however, such amendments may be offered for strategic reasons, even though everyone expects that the original text, as amended, will be supplanted before the vote on final passage. Senate action on S. 7 in the 96th Congress illustrates why this situation may arise.[7]

On May 16, 1979, the Senate began consideration of S. 7, the Veterans' Health Care Amendments of 1979, which had been reported from the Committee on Veterans' Affairs with an amendment in the nature of a substitute. Because the measure came to the floor in this way, both the text of S. 7 and the text of the committee substitute were subject to amendments in two degrees. After opening statements by Senators Alan Cranston and Alan Simpson, the committee's chairman and ranking minority member, the Senate acted on the first two amendments to the committee substitute in more or less routine fashion. Senator Larry Pressler (R., South Dakota) then offered a perfecting amendment to insert a new section in the committee substitute. After Pressler explained his amendment briefly, Senator John Heinz (R., Pennsylvania) proposed an amendment to the Pressler amendment. The Heinz amendment evidently was unexpected, and Senator Cranston took the unusual step of insisting that the amendment be read in full, and, after confirming that the Heinz amendment was a second-degree amendment to the Pressler amendment, he suggested the absence of a quorum. When Senator Spark Matsunaga (D., Hawaii), a member of the committee, asked that the order for the quorum call be rescinded, Heinz objected.

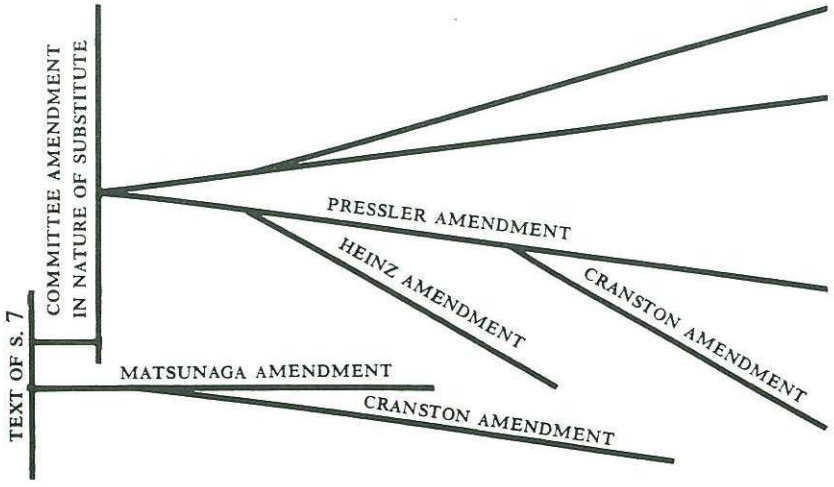
The transcript of these developments in the *Congressional Record* suggests that Senator Cranston, the floor manager of the bill, had anticipated the Pressler amendment but was surprised by the Heinz amendment. The Pressler amendment was a first-degree perfecting amendment to the committee substitute; the Heinz amendment proposed to amend the Pressler amendment in the second degree. (See Figure 4.) With these

7. The discussion that follows is based solely on the proceedings published in the *Congressional Record* (daily edition), May 16, 1979, pp. S5998–S6041.

two amendments pending, no additional amendments to the committee substitute were in order until the Senate acted on the Heinz amendment. Later in the debate, Cranston explained that he had planned to offer a substitute for the Pressler amendment, but that he had been precluded from doing so when Senator Heinz offered his amendment.[8] After the Heinz amendment had been read, the quorum call gave Cranston, Matsunaga, Pressler, and Heinz an opportunity to study the parliamentary situation and consider the options available to them.

Cranston and Matsunaga had two primary alternatives. First, they could oppose the Heinz amendment in debate and offer their substitute after the Senate acted on Heinz's proposal. Because the Heinz amendment was a perfecting amendment—it proposed to replace most but not all of the text of the Pressler amendment—a Cranston-Matsunaga substitute for the Pressler amendment would remain in order, whether or not the Senate agreed to the Heinz amendment. Second, Cranston or Matsunaga could offer their amendment immediately in the only way available to them—as an amendment to the original text of the bill. Both

Figure 4



8. Ibid., p. S6039.

the Heinz amendment and the Cranston-Matsunaga amendment then could be debated before the Senate acted on either of them.

The two Senators chose the second option. As soon as the quorum call was ended, Matsunaga offered an amendment to add to the bill a new section consisting of one sentence, but he did not seek the usual opportunity to explain his amendment. Instead, Cranston immediately sought recognition and offered a substitute for the Matsunaga amendment. This second-degree substitute also proposed to add a new section to the bill; the Cranston version consisted of two sentences, the first of which was the text of the Matsunaga proposal. The subsequent debate strongly suggests that it was the Cranston text that the two Senators really preferred, and that Cranston would have offered it as a substitute for the Pressler amendment had he been able to do so. By offering the two amendments in sequence—the whole proposition as a substitute for part of it—Cranston and Matsunaga ensured that no Senator (for example, Pressler or Heinz) could propose an amendment to Cranston's amendment. Moreover, if and when the Senate agreed to the Cranston amendment, the Matsunaga amendment would be fully amended and, therefore, closed to further amendments.

Cranston and Matsunaga had offered amendments that ultimately would survive the amendment process only if the Senate rejected the amendment in the nature of a substitute proposed by their own committee—an unlikely prospect, and one they presumably did not relish. Why, then, did they adopt this approach to resolving their parliamentary problem?

The answer may lie in a belief shared by all four Senators that a strategic advantage belonged to the proposition on which the Senate would vote first. The two pairs of Senators proposed different approaches to the same issue—counseling and mental health services for Vietnam veterans. If all of them believed that their colleagues would have the time to evaluate the two approaches carefully and choose between them on their merits, then the order in which the alternatives were presented would make little difference. If a majority favored the Pressler-Heinz approach, for example, there would be no need to block the Cranston substitute; it could be offered, debated, and rejected. If, on the other hand, a majority favored the Cranston-Matsunaga approach, the latter Senators could offer it successfully as a substitute for the Pressler amendment after the Heinz amendment was rejected.

Instead, the four Senators may have concluded that most of their colleagues recognized that a problem existed to which they wished to respond, but that they did not strongly prefer one approach to the other. In that case, a majority might be inclined to support the first reasonable

approach presented for a vote, and thereby avoid casting a first vote that could be interpreted as being unsympathetic to Vietnam veterans. If so, defining the subject of the first vote would offer a considerable advantage.

If these were the expectations of the four Senators involved, their strategic moves made good sense. By offering amendments in the first and second degrees to the committee substitute, Pressler and Heinz prevented the first vote from occurring on a Cranston substitute for their approach. They may have assumed that if a majority of Senators voted for the Heinz amendment, the same Senators would be unlikely to reverse themselves and also support a Cranston substitute for the Pressler amendment as amended. Cranston and Matsunaga also may have concluded that it would be disadvantageous for them to permit the first vote to occur on the Pressler-Heinz approach. Their recourse, therefore, was to offer their approach as an amendment to the text of the measure—and as a second-degree amendment that could not be amended. Because perfecting amendments to the text of a measure have precedence over amendments to a substitute for the measure, the first votes would occur on the Cranston and Matsunaga amendments. Thus, the first-vote advantage would be theirs, even though they faced the danger that the effect of their amendments, if approved, would be nullified later by acceptance of the committee substitute.

Once Matsunaga and Cranston had offered their amendments, no additional amendments were in order until the Senate acted on the Cranston second-degree substitute. Perhaps fearing that the Senate would agree to Cranston's amendment, Heinz attempted to retrieve the advantage by portraying the vote on the Cranston amendment as something other than a test vote between the two approaches. The Senator from Pennsylvania characterized the Cranston amendment as "a marginal improvement in the bill," and announced that he would vote for both the Cranston amendment and the Matsunaga amendment so that the Senate could "get to the real issue"—the greater improvement embodied in the Pressler and Heinz amendments.[9] The Senate then agreed to the Cranston amendment by a roll call vote of 93 to 0, with both Pressler and Heinz joining in the "hurrah." The Matsunaga amendment, as amended, was approved by voice vote.

With the next vote coming on the Heinz amendment, the principals attempted to interpret the situation for their colleagues—Cranston and Matsunaga arguing that the first two votes had settled everything, Pressler and Heinz contending that the votes had resolved nothing. For example, the Senator from Hawaii suggested that it would be inconsistent

9. Ibid., p. S6029.

for Senators to vote for the Heinz amendment after having just voted for the alternative approach of his own amendment. On the other hand, Heinz insisted that voting for both amendments would be perfectly consistent. He described the Cranston-Matsunaga amendment as a desirable "small step forward," and then urged that his amendment be adopted by the same overwhelming vote.[10] Whatever impact these contradictory interpretations may have had on Senators' appreciation of the parliamentary situation, the Heinz amendment ultimately was rejected, 42 to 53.

The defeat of the Heinz amendment gave Senator Cranston the opportunity he needed to transform a temporary victory into a permanent one. After disposing of all other amendments, the Senate almost certainly would agree to the committee substitute, and this vote would nullify the earlier vote in favor of the Cranston-Matsunaga amendment to the original text of the bill. To obviate this possibility, therefore, Cranston offered precisely the same amendment as a substitute for the Pressler amendment—something he had planned to do when the Pressler amendment was first proposed. Pressler responded by asserting that he was being denied a vote on the merits of his original amendment; Cranston rebutted this contention by reading from a letter from Heinz and Pressler in which they had referred to the Heinz amendment as "our" amendment.[11] Cranston concluded that the Pressler amendment, like the Matsunaga amendment, had been offered for strategic reasons and that a vote on Pressler's preferred position already had taken place.

After further debate, the Senate agreed to the Cranston amendment by voice vote and the Pressler amendment, as amended by the Cranston substitute, by a vote of 94 to 0. After accepting an additional, technical amendment, the Senate agreed to the committee substitute and passed the bill, both by voice votes.

By a unanimous roll call vote, the Senate had amended the committee substitute by agreeing to the Pressler amendment—the text of which had been offered originally by Senator Cranston as an amendment to the bill instead. Senators Cranston and Matsunaga had proposed amendments that they knew would fall when the committee substitute was approved, and Senators Pressler and Heinz had voted for those amendments even though they preferred a different approach. Of the five votes that occurred, only one was contested, and that was on an amendment to an amendment to an amendment in the nature of a substitute. By the amendments they offered and the interpretations they placed on the votes that took place, Senators attempted to create and define parliamentary situa-

10. Ibid., p. S6032.
11. Ibid., p. S6039.

tions that improved their chances of success. It is impossible to know what difference their efforts made, but they evidently believed the efforts were worth making.

IV. Implications

The House and Senate have developed different rules, precedents, and practices governing the amendment process. These and other differences in the procedures of the two chambers exemplify fundamentally different approaches to the legislative process generally. For purposes of this analysis, however, the specific differences in their amendment procedures are less important than the fact that the amendment process in both chambers imposes constraints and offers opportunities that members may attempt to use for strategic advantage.

The situations that arose during floor consideration of H.R. 4473 in the House and S. 7 in the Senate were rather unusual; such instances of multiple amendments on the same subject are more the exception than the rule. But these case studies illustrate that Representatives and Senators may conclude that they can promote their policy objectives by drafting and proposing their amendments in ways that define the choices their colleagues must make and that determine the sequence in which these choices will be made. A mastery of congressional procedures enables members to construct situations that work to their advantage, rather than simply responding to situations imposed by others.

These case studies also illustrate some of the difficulties involved in understanding congressional action and interpreting members' behavior. The *Congressional Record* documents much of what is said and done, but it is necessary to read between the lines of debate to appreciate motivations, perceptions, and strategies. Vote tallies record the positions members take, but votes do not always reflect members' true preferences. The vote on final passage determines whether legislation will be enacted, but the key decision on an issue sometimes occurs on an amendment to an amendment. Moreover, depending on how the parliamentary situation develops, there may be no vote that accurately reflects the division of opinion within the chamber.

The complexities of the legislative process are not mere technicalities; they are essential elements of policy-making. The operation and manipulation of the process do not alter members' fundamental policy dispositions, but they can affect how these dispositions become translated into the specific language of law.