

Learning about Legislation #4 - the Senate Parliamentarian and Reconciliation

By Kierstyn Zolfo - Lower Bucks Indivisible

The reason that the Republicans in the Senate are pushing the Graham-Cassidy healthcare plan so hard is because they have to pass it by September 30th if they want to use that “reconciliation” procedure that lets them pass bills with a simple majority of votes, instead of the filibuster-proof 60 votes. Since it is highly unlikely the GOP will be able to sway 8 Democrats to any of their versions of health care reform, that means that this is their last chance to repeal and replace Obamacare. But why September 30th? Who made that rule? Well, it turns out that there is an unelected staff member of the Senate who has a lot more power than many of us might have thought prior to this month.

The rules, regulations and customs in the Senate are a dense tangle of precedent and parliamentary procedure. It is so complex that the Senate has an “Office of the Parliamentarian of the United States Senate,” where a small staff of employees works to advise the presiding senator of correct procedure. There is always a parliamentary staff member on hand to provide advice. From the position’s creation until 1949 there was only one parliamentarian, and that poor man was once called upon to stay in the senate for a filibuster that lasted 48 hours. That unlucky gentleman, Charlie Wilkins, undertook a massive review of the Congressional Record dating back a number of decades, and was the first person to compile a register of Senate procedures. A book based on his research, Riddick’s Senate Procedure, is still in use today. When a Parliamentarian rules on appropriate procedure, it is within the rights of the presiding Senator to disregard that advice, but it is perishingly rare. The last time a Parliamentarian’s ruling was set aside was in 1975.

The current Senate Parliamentarian is Attorney Elizabeth MacDonough, who has held the position since 2012. Prior to her appointment to the head of the department, she worked in the Senate Parliamentarian’s office since 1999.

The parliamentarian often has to determine if a proposed piece of legislation can be passed by “reconciliation” procedures. In the 1970s a new process was created to allow bills related to finance and spending (like budgets and debt limit bills) to pass via a simple majority, without giving the opposition party any ability to filibuster them. The limit on this process is that the parliamentarian decides whether the bill is indeed strictly spending related, or if it contains prohibited policy content. In the case of the GOP’s repeal and replace efforts, Parliamentarian MacDonough interpreted the existing Senate procedures to note that the deadline for using the financial-related reconciliation process was the end of the fiscal year - thus the September 30th deadline.