



A Better Byrd Rule: How to Fix the Senate's Reconciliation Process

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Introduction

Republicans' One Big Beautiful Bill Act (OBBBA) is well-known for extending the 2017 tax cuts, among other policy changes. An underappreciated nuance about the law, though, is that it extends the tax cuts permanently, and not just through the 10-year budget window. That was not supposed to happen: bills handled through the "budget reconciliation" process, which are immune to filibusters in the Senate and thus far easier to pass, are not allowed to increase the deficit past the budget window.

Republicans, breaking with standard practice but violating no written rule, evaded this restriction by measuring the bill's cost against "current policy" rather than "current law." In other words, since the lower tax rates were already in effect, extending them forever was assumed not to affect the deficit, even though the cuts would have expired otherwise.¹

This is just one striking example of how broken the reconciliation process is. It relies on norms that can be thrown away when political expedience demands. It gives special privileges to budget legislation, regardless of whether the legislation makes the nation's budget picture better or worse. It relies on subjective judgment calls, often made out of public view, to determine which policies qualify for inclusion in budget legislation and which ones are tainted by non-budgetary motives.

In recent American history, it has been common for one political party to hold a House/Senate/president "trifecta" while also lacking the 60 votes needed to pass bills through the Senate over a filibuster. In its current state, the reconciliation process strongly incentivizes governing parties to focus their efforts on budget bills rather than other legislation, because only a budget bill can clear the Senate with a simple majority. In practice, this often results in deficit-worsening tax cuts and spending hikes.

There is no good reason to continue a budget process that enables partisan bills that make the deficit worse. Budget-conscious members of both parties should agree to write stronger restrictions on reconciliation into the Congressional Budget Act, the statute that governs the process, and to experiment with reforms on a temporary basis.

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Specifically, lawmakers should:

- Require the use of a current-law baseline and a maximum 10-year budget window going forward, by statute.
- Restore the historical norm that reconciliation is for *reducing* the deficit, not merely *changing* it, by codifying the defunct “Conrad Rule.”
- Require full transparency from the Senate parliamentarian in highly subjective “Byrd Rule” determinations, in which this official decides which provisions of a bill are adequately budget-focused to be included in reconciliation legislation.
- Allow the use of spending and revenue “triggers” in reconciliation bills. These triggers would automatically adjust future rates if promised deficit reductions did not materialize. Lawmakers should experiment with requiring these triggers, although unpopular spending cuts or tax hikes may prove easy to repeal with 60 votes when triggered.
- Experiment with more generous rules for bills that significantly reduce the deficit, such as relaxing the Byrd Rule’s “merely incidental” test, which holds that even budget-related provisions are not allowed if the parliamentarian thinks the budgetary effect is “incidental” to other policy goals. Being able to achieve some other policy goals, within reason, could be a reward for Congresses that meaningfully improve the budget.
- Consider allowing bills to reform Social Security, another area off-limits in the current reconciliation process.

The current system targets Congress’s efforts toward budget-busting legislation and then restrains the process largely through norms and closed-door conversations. It is time for a change.

Filibusters, Reconciliation, and the Byrd Rule

The Senate has 100 members, and the vice president votes when necessary to break ties. So, in theory, 50 senators are enough to pass legislation the White House supports. However, the Senate has a long and storied history of filibustering, by which a minority can hold up or kill a bill by refusing to stop debating it.

This practice has evolved over time. Senators no longer need to talk for hours to keep a filibuster going, for instance, and a party can now invoke cloture to end a filibuster with a three-fifths vote. But the bottom line is that controversial bills still need 60 votes to pass the modern Senate.²

The Congressional Budget Act of 1974 established the reconciliation process, a fast-track procedure that is not subject to a filibuster. The House and Senate pass a concurrent resolution outlining budget targets for committees to hit, and the committees in turn develop legislative language to “reconcile” the law to those targets. In the Senate, reconciliation bills are debated under a time limit, and proposed amendments are incorporated or rejected through a rapid-fire so-called “vote-a-rama.”³ Then, only a simple majority is needed for passage, an incredibly streamlined process compared to how the Senate normally operates.



The Byrd Rule, named after Senator Robert Byrd, was adopted on a temporary basis in the mid-1980s, extended and amended over the next several years, and made a permanent fixture of the Budget Act in 1990.⁴ It was meant to limit the reconciliation process to its core purpose of enacting budget adjustments to hit deficit targets, owing to concerns that unrelated policy changes had been creeping into these bills.⁵ A few of the Byrd Rule's provisions have become especially important in shaping the legislative process.

One such provision is that reconciliation bills may not increase the deficit past the budget window,⁶ which was added to the Byrd Rule in 1987⁷ due to worries about bills that reduced the deficit in the near-term but increased it in the “out-years.”⁸ However, the rule does not specify which type of baseline is to be used when measuring deficit changes—or even, for that matter, how long the budget window may run—and questions of budget math are generally decided by the Budget Committee chair. Thus, it was relatively straightforward for Republicans to switch to a current-policy baseline for the OBBBA: the Republican budget chair decided to use their favored baseline, and Republicans voted down the Democrats' effort to have the Senate's parliamentarian offer an opinion on the question. Republicans argued that this move involved budget numbers rather than parliamentary procedure and thus fell outside the parliamentarian's role.⁹

The parliamentarian does play a strong role in enforcing several other key Byrd restrictions. Two such restrictions bar provisions that do not “produce a change in outlays or revenues” (though changes to “terms and conditions under which outlays are made or revenues are required to be collected” count) and provisions whose budgetary effects are “merely incidental” to the policy changes they make. When senators object to a provision on these grounds, the parliamentarian hears the arguments on both sides and offers a ruling. The Senate's presiding officer traditionally accepts this ruling, though the parliamentarian has no power to impose it on her own.¹⁰ The Senate can overrule this determination with 60 votes and include the provision over the parliamentarian's objections.¹¹

These provisions refer only to *changes* in the budget. They do not explicitly restrict Congress to *reducing* the deficit during the budget window. Nonetheless, such a limitation was in effect through much of reconciliation's history. From 1986 to 1995, the parliamentarian interpreted the Budget Act to impose this restriction, and Congress self-imposed it via budget resolution, a policy known as the “Conrad Rule,” from 2007 to 2015.¹²

The Byrd rule further prevents the use of the reconciliation process to change Social Security. The parliamentarian has rejected, for example, reforms to Social Security numbers' privacy protections. Yet provisions that affect Social Security indirectly have often been allowed, such as the Affordable Care Act's (ACA) tax on “Cadillac” health plans—which was expected to cause more compensation to be paid as wages and salaries rather than through generous health benefits, increasing Social Security taxes and benefits.¹³ Of course, very few budget adjustments would pass muster if they could not have even an indirect effect on payroll taxes.

The reconciliation process is limited to specific types of legislation. However, it is relatively common for a party to hold a House/Senate/president “trifecta” but still lack a full 60 votes in the Senate: every president since Clinton has enjoyed a trifecta at some point,¹⁴ but only Obama, and then for just a few months, also enjoyed a 60-strong caucus in the Senate.¹⁵

As a result of non-supermajority Congresses, reconciliation has become a go-to method for passing partisan bills over the past quarter-century. For Republicans, that means tax cuts, of which both George W. Bush and Donald Trump pulled off multiple rounds. Reconciliation enabled the Economic Growth and Tax Relief Reconciliation Act of 2001, the Jobs and Growth Tax Relief Reconciliation Act of 2003, the Tax Cuts and Jobs Act in 2017, and, of course, 2025's OBBBA.

Obama-era Democrats relied surprisingly little on reconciliation to pass their biggest partisan legislative accomplishments, thanks to a strong Senate majority, and they left the Conrad Rule intact. They passed the ACA, the 2009 stimulus bill, and the 2010 Dodd-Frank law with 60 votes—in



the latter two cases with a small number of GOP supporters to put them over the top. They also extended most of the Bush tax cuts with an overwhelming bipartisan majority. With the ACA, they did use a reconciliation bill to sand down some jagged edges on the law, which had passed the Senate in a rough form during the brief period in which the party had 60 votes.

Under Biden, Democrats used reconciliation to increase the deficit through spending hikes in the 2021 American Rescue Plan Act.¹⁶ Interestingly, the CBO predicted the Biden Democrats' 2022 Inflation Reduction Act would modestly improve the deficit, thanks mainly to improved tax enforcement, higher taxes on corporations, and higher rebates from drug makers to Medicare,¹⁷ though there is ongoing debate over how much of this predicted savings will materialize.¹⁸

The Byrd Rule: An Obscure Standard

The Byrd Rule exists to enforce the limits of the reconciliation process, and it profoundly shapes what policies a party with a trifecta chooses to pursue. But it can be difficult to understand how the Byrd Rule works in practice. As Ellen P. Aprill and Daniel J. Hemel noted in a 2018 law-review article:¹⁹

While points of order are raised and decided in public view, the Parliamentarian exerts her influence over the interpretation of the Byrd rule largely behind closed doors. In a so-called “Byrd bath,” representatives from the majority and minority parties in the Senate ... will meet with the Parliamentarian and debate which provisions violate the Byrd rule’s strictures. Sponsors generally remove such provisions before the bill goes to a final vote.

Aprill and Hemel added that the “merely incidental” test—which, remember, holds that even budget-related provisions are not allowed if the parliamentarian thinks the budgetary effect is “incidental” to other policy goals—“adds most to the opacity of the Byrd bath process,” as this is “a ‘standard’ rather than a ‘rule,’ and it is an especially amorphous standard at that.”

Fortunately, there are some windows into the process accessible to the public. For example, members of the Senate Budget Committee have put out press releases detailing which provisions of major bills have been struck or approved on Byrd grounds,²⁰ and the Congressional Research Service produced a report tallying Byrd points of order from the rule’s inception through 2022.²¹

A 1,580-page report prepared for the Budget Committee in late 2022, authored by chief counsel Bill Dauster, analyzed the budget process in detail, with copious documentation of the Byrd ritual, ranging from debates on the Senate floor to the text of emails from the parliamentarian herself explaining her reasoning to the committee’s staff. This document is helpful, not only for the insider’s view of numerous fights, but also for the clear description of the parliamentarian’s methodology.

These debates play out in an adversarial proceeding similar to courtroom litigation. Like a judge, the parliamentarian tries to conform her rulings to any relevant precedents. It is a strong precedent if a similar provision survived or failed a previous Byrd challenge, and a weaker one if the provision was included in a previous reconciliation bill without being challenged.²² Precedents created through points of order, as opposed to those made in behind-the-scenes “Byrd baths,” are also considered more formal.²³

A handful of examples serve to illustrate the broad principles, the hair-splitting distinctions, and on occasion the downright silliness that can go into these rulings:



- The parliamentarian's 2021 refusal to allow a \$15 minimum wage to be included in the American Rescue Plan Act is a good example of the “merely incidental” test. The provision would certainly have changed the federal deficit, perhaps by tens of billions of dollars (such as through changes in tax revenue, unemployment benefits, and higher costs for federal agencies when they buy goods and services²⁴). Yet the core purpose and biggest effect of the proposal would have required businesses to pay workers more, that is, to effect transfers among entities in the private sector. It was not just the dollar amount involved in the proposal that mattered; it was also how the budget impact compared with the policy and behavioral changes, which were the real intention.
- The same year, the parliamentarian ruled against a number of immigration changes included in the Build Back Better Act (which never became law). In explaining one rejection, the parliamentarian wrote that to “remove existing barriers to adjustment of status to that of lawful permanent resident(s) (LPR) for a variety of existing and newly created classes of immigrants and nonimmigrants, including many not legally present in the United States, is a policy change that substantially outweighs the budgetary impact of that change.”²⁵
- Abortion policy has been a recurring point of contention in reconciliation bills, and it illustrates how even direct restrictions on federal funds can be found insufficiently budget-focused depending on why, in the view of the parliamentarian, they “really” exist. In a 2010 interview with NPR, for instance, former parliamentarian Robert Dove reflected on his decision to strike a provision from a 1995 bill that would have barred the use of federal funds for abortion: “It was my view that the provision was not there in order to save money. It was there to implement social policy. Therefore, I ruled that it was not in order and it was stricken. That is a tough rule: to go into the motives of people who have either amendments, or have put provisions into bills.”²⁶
- Another abortion-related example shows how similar provisions can face different fates, depending on technical details and the factual support marshaled by the involved parties. The parliamentarian okayed a one-year block on Medicaid funding for Planned Parenthood in a 2015 bill, but then nixed the same idea in 2017, explaining in an email: “This provision has been shown to affect only one provider in contravention of what was believed when it was included in the 2015 bill; the policy of singling out one person/company/organization for a benefit or penalty outweighs the small budgetary change that it makes.”²⁷ In 2025, she also reportedly disallowed a similar provision lasting 10 years that had been included in the House version of the OBBBA.²⁸ Surprisingly, however, she eventually did allow a one-year ban in the OBBBA.²⁹ Her grounds for distinguishing this policy from the ones she rejected were apparently not made public, though reports indicate the final provision will apply to some abortion providers besides Planned Parenthood.³⁰
- Republicans included a provision in the 2017 Tax Cuts and Jobs Act (TCJA) to allow drilling in the Alaska National Wildlife Refuge. But was the main goal to collect a little more revenue from federal lands, or to permit the drilling? The parliamentarian allowed it.³¹
- In 2009, during the process leading up to the enactment of the ACA, the parliamentarian found that an individual health-insurance mandate could not be enacted through reconciliation.³² Consistently, the parliamentarian later declined to allow Republicans to repeal the mandate (which, in the end, had been enacted with 60 votes) through reconciliation—but did allow them to reduce the penalty for violating it all the way down to \$0, seeing this as a fairly standard adjustment of dollar amounts in existing law. This \$0 mandate sparked a convoluted legal challenge that threatened to take down the entire ACA, but it was rejected by the Supreme Court.³³



- Sometimes the Byrd Rule forces senators to achieve policy goals in different ways. In the run-up to the OBBBA, the parliamentarian rejected a provision that would have preempted state-level artificial-intelligence regulations, but she allowed a provision *conditioning federal funds* on states' compliance.³⁴ (The provision nonetheless did not make it into the final law.³⁵)
- The Byrd Rule has been used against basic clerical material with no legal impact whatsoever. Many bills, for example, have a provision declaring a "short title" that serves as a pithy way to refer to them, such as the "Tax Cuts and Jobs Act." However, since short titles do not affect the budget, these provisions are removed from reconciliation bills when challenged. As a result, the Tax Cuts and Jobs Act has no provision actually naming itself the "Tax Cuts and Jobs Act," even though other provisions of the bill use that name.³⁶ (The long title is "An Act To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.") Fortunately, this principle has not been extended to section headings.³⁷
- During the debate over the same bill, the parliamentarian rejected a "trigger" proposal from former senator Bob Corker (R-TN) that would have automatically raised tax rates if revenue fell short of expectations. A similar thing happened during the crafting of the 2001 tax cuts.³⁸ In other words, the Byrd Rule apparently does not allow senators to exercise fiscal responsibility this way, perhaps because a trigger mechanism has no budget impact if it is not, well, triggered.³⁹

The Byrd Rule is clearly valuable for keeping the reconciliation process confined to budget matters. Just as clear, though, is that the current process lacks transparency, gets bogged down in irrelevant political squabbling, and sometimes even hinders fiscal responsibility.

Options for Reform

The Senate relies heavily on norms to govern its basic workings, but norms wither in times of polarization, acrimony, or an urgent desire to accomplish policy changes. For example, the 2010s saw the end of the filibuster for presidential nominations.⁴⁰ The erosion of the reconciliation process, from allowing its use to increase the deficit in the 1990s to allowing *permanent* deficit increases in 2025, is also part of this trend.

Extrapolating from this pattern, the near future may well see the end of the filibuster for all legislation, which would render the reconciliation process moot. (There have been calls for exactly this amid 2025's government shutdown.⁴¹) It would also create the risk of extreme policy whiplash, as a party holding a trifecta would have carte blanche to rewrite as much of the statute books as it has time for, and the other party could later respond in kind. (A more hopeful possibility would be for parties to tire of this and work to develop ideas with more bipartisan support.)

So long as the filibuster holds, those who care about the Senate's institutional procedures and the nation's budget should think deeply about the structure of reconciliation, which strongly shapes the agenda for partisan legislation. Several major fixes are in order.

First, Congress should mandate the use of current-law baselines to determine whether legislation increases the deficit beyond the budget window and explicitly cap the budget window at 10 years. These standard practices have been enforced only by norms, and one has already been cast aside.



Without reform, reconciliation bills will be able to increase the deficit over much more than a 10-year time span—indeinitely, in the case of extending policies that are already “temporarily” in effect—and there is no reason to expect future trifectas from either party to restrain themselves. We may have a future of generous welfare-state expansions from the left, coupled with yet more unpaid-for tax cuts from the right.

Second, Congress should write the “Conrad Rule” into the statute, banning the use of reconciliation to increase the deficit. It makes sense to give special privileges to legislation that *addresses* the enormous problem of our public debt. It makes no sense to privilege efforts that *make it worse*.

It may be far-fetched to ask for this level of self-restraint from lawmakers. And yet, not too long ago, the reconciliation process was indeed restricted to deficit-reducing bills, and parties seeking to increase the deficit needed to put together 60 votes. To this day, many members of both parties at least purport to care about deficits, and they should be asked to vote on it.

Third, the Senate should require full transparency regarding parliamentary rulings, with all decisions made and explained in writing. The public should know exactly why some provisions are allowed in these bills while others are not. As we have seen, the limits of reconciliation have profound implications for important policy areas ranging from abortion to immigration to energy.

Fourth, the Byrd Rule should allow the use of revenue and spending triggers to ensure that promised deficit reduction comes to fruition. There is often intense debate over how new bills will change the deficit, in part because the Congressional Budget Office and Joint Committee on Taxation, which provide spending and revenue estimates, are hardly infallible, and it is difficult to predict how the economy will evolve under new tax and spending policies. Another factor is that partisans are motivated to downplay the costs of their spending policies and the growth effects of their tax cuts.

Adjusting rates based on how the policies play out is an obvious solution, and it is wrong to ban this approach from the reconciliation process. If triggers prove effective and workable, they could be required rather than merely allowed.

And fifth, over the longer term, Congress should experiment with other structural changes to encourage deficit reduction. For example, reconciliation bills that meet certain deficit-reduction targets, ideally with enforcement triggers included, could be largely exempted from the “merely incidental” test. Perhaps their provisions could still be required to directly affect the budget by changing tax rates, spending levels, and funding conditions but not to pass an entirely subjective judgment call about whether their true purpose is indeed budgetary. Even Social Security reform could be put on the table, given that the program’s trust funds are expected to run out of money in about a decade,⁴² although opening the door to changing Social Security with a slim Senate majority is a dicey political proposition.

In other words, Congresses that managed to pass substantial deficit reduction could be rewarded with the ability to achieve, within reason, some policy objectives tainted with non-budgetary motives.

Conclusion

To fully address the deficit and debt, Congress will need to be truly motivated to do so. There’s no structural fix for that. In the meantime, however, the structure of the reconciliation process can limit the damage that partisan “trifecta” governments can do. It should be used only for legislation that reduces the deficit, should play out in a transparent process, and should give fiscally responsible legislators the leverage to demand fiscal triggers to ensure deficit targets are actually met.



Endnotes

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