

Governing by shortcut – Congress is losing ability to function through regular order

By Leslie Belcher, Steptoe LLP

JULY 15, 2026

Congress still passes laws. It still funds the government — eventually. Committees still hold hearings. Members still issue press releases celebrating legislative wins.

But beneath the surface, Congress is quietly losing something more important: the institutional ability to legislate through regular order.

This is not simply a story about polarization or partisan gridlock. It is a story about institutional atrophy.

Over the last five decades, Congress has gradually adapted to the modern Senate filibuster. In 1975, the Senate lowered the cloture threshold from two-thirds to 60 votes in an effort to reduce obstruction and improve efficiency. Around the same period, the Senate also moved toward the modern two-track system, gradually replacing the traditional “talking filibuster.” Senators no longer had to physically hold the floor to block legislation; instead, the mere threat of extended debate effectively became enough to trigger the now-routine 60-vote threshold.

These reforms fundamentally reshaped Congress. Though intended to improve Senate efficiency, they ultimately contributed to the legislative gridlock that defines it today.

Historically, major legislation followed a clear and deliberate process. Committees marked up bills, each chamber passed its own version, and House and Senate conferees publicly reconciled their differences. Members debated priorities in the open, and committees played meaningful roles in shaping final legislation.

Today, much of that process has been replaced by something else: pre-negotiation.

Because the Senate requires 60 votes to move most major legislation, Senate leaders increasingly negotiate bipartisan frameworks at the outset, before a bill fully develops through normal bicameral engagement. The Senate must first determine what can survive the filibuster before Congress can realistically finish a bill.

Congress increasingly legislates backward — beginning with what the Senate can pass rather than what each chamber independently wants to advance.

That dynamic has transformed the Senate from one legislative chamber into the upstream arbiter of what legislation is politically possible.

Congress increasingly legislates backward — beginning with what the Senate can pass rather than what each chamber independently wants to advance.

Instead of the House aggressively legislating and negotiating from its own position of strength, lawmakers often wait to see what can clear the Senate first. The House then reacts to a product largely shaped before any formal conference process ever begins.

Congress still follows constitutional procedure formally, but in practice, much of the real negotiation now occurs behind closed doors, upstream from the traditional legislative process.

The naming of conferees still occurs on occasion, particularly on major legislation like NDAA and appropriations. But increasingly, the difficult compromises are negotiated beforehand by leadership and key senators focused on assembling packages capable of clearing the Senate’s 60-vote threshold. In practical terms, the 2022 CHIPS and Science Act conference process was among the last major examples of Congress using a true conference committee to reconcile major legislation.

That matters because Congress itself has changed dramatically since then.

Nearly 30 percent of Congress has turned over since the 2022 elections. Roughly one-third of today’s lawmakers have never meaningfully participated in a formal conference process on major legislation. Many newer members and staff have never seen Congress complete appropriations through regular

order. Instead, they are learning Congress through continuing resolutions, omnibus packages, reconciliation bills, and leadership-driven negotiations.

Congress is slowly losing the habits and experience that once made regular order possible.

Congress is slowly losing the habits and experience that once made regular order possible.

The problem is not the filibuster alone. Rising polarization, media incentives, and leadership centralization have all contributed to the erosion of regular order. But the Senate's procedural realities accelerate every one of those trends.

This dynamic now extends well beyond appropriations. It shapes authorizing legislation, defense bills, technology policy, and nearly every major bipartisan initiative. The House waits to see what the Senate can pass. Leadership negotiates around procedural constraints. Committees report bills but often do not truly finish them.

Ironically, appropriations has remained one of the last areas where Congress still attempts something resembling regular order. Appropriators still markup individual bills. Hearings still matter. Members still negotiate line by line over priorities and funding decisions.

But even the appropriations process increasingly collides with the same structural problem. Eventually, leadership negotiations take over and Congress waits to see what can clear the Senate.

And when the appropriations committees cannot finish their work, Congress has become increasingly comfortable relying on reconciliation instead.

That should concern both parties.

Reconciliation was originally designed as a narrow budgetary tool. It has since evolved into Congress' preferred mechanism

for major governing because it bypasses the filibuster and avoids the difficult bipartisan negotiations required under regular order.

In the short term, reconciliation can appear efficient. In the long term, however, repeated reliance on it further weakens Congress. Unlike traditional legislating, reconciliation concentrates power in leadership, limits committee involvement, compresses timelines, and sidelines bipartisan negotiation.

This creates a dangerous cycle: The weaker regular order becomes, the more Congress relies on reconciliation, and the more reconciliation is used, the weaker regular order becomes.

When Congress loses the ability to function through regular order, legislating becomes more centralized, less transparent, and less durable.

When Congress loses the ability to function through regular order, legislating becomes more centralized, less transparent, and less durable. Massive year-end packages replace committee work, rank-and-file lawmakers have less influence, and policies swing more dramatically between administrations because fewer bipartisan compromises are built into law.

Congress does not need to abolish the filibuster to recognize the institutional tradeoffs created by the modern Senate process. But a legislature that rarely conferences bills, rarely negotiates openly across chambers, and increasingly governs through procedural shortcuts risks losing confidence in its own processes — and ultimately its ability to govern.

Legislative muscle memory matters. Once lost, rebuilding it is far harder than preserving it.

About the author



Leslie Belcher is managing director of government affairs and public policy at **Steptoe LLP**, where she leads the firm's appropriations practice. She previously served as chief of staff to Rep. Tom Cole, of Oklahoma's 4th congressional district. She is based in Washington, D.C., and can be reached at lbelcher@steptoe.com. York.

This article was first published on Reuters Legal News and Westlaw Today on July 15, 2026.

© 2026 Thomson Reuters. This publication was created to provide you with accurate and authoritative information concerning the subject matter covered, however it may not necessarily have been prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional. For subscription information, please visit legalsolutions.thomsonreuters.com.