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Constitutional Guidance for Lawmakers

Hands Off My Purse! Why Money Bills Originate in the House

Legislative checks and balances is one of the key inventions that convinced Alexander Hamilton in Federalist *No. 9 that the cause of liberty was not lost, in spite of the failure of previous republics throughout the ages. According to the Framers, powers ought not only to be distributed between the three branches of government (separation of powers), but Congress, as the most powerful branch, should be divided into two, with different constituencies, term lengths, sizes, and functions for each house. In this spirit, the Constitution allocates the power to raise revenue—part of the power of the purse—to the House of Representatives, the legislative body closest to the people. Regrettably, this clause has had little effect in practice as the Senate has construed its power to amend so broadly as to replace the entire text of revenue bills that had originated in the House. Members of the House of Representatives should be more zealous in protecting this exclusive prerogative. This essay is adapted from* The Heritage Guide to the Constitution *for a new series providing constitutional guidance for lawmakers.*

"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."
— Article I, Section 7, Clause 1

Consistent with the English requirement that money bills must commence in the House of Commons, the Framers expected that the Origination Clause would ensure that "power over the purse" would lie with the legislative body closer to the people. Under the Articles of Confederation, the national government could not tax individuals, and the clause was one of several provisions meant to cabin the national revenue power created under the Constitution. The clause was also part of a critical compromise between large and small states, helping to temper the large states' unhappiness with equal representation in the Senate by leaving the power to initiate tax bills with the House of Representatives, where the large states had greater influence.

The final version of the clause was much weaker than the form proposed by Elbridge Gerry of Massachusetts, which would have required all "money bills" (including appropriations) to originate in the House and would have given the Senate no power to amend.

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Gerry feared that the Senate would become an aristocratic body because of its small size, its selection by legislatures rather than by election, and its six-year term of office. "It was a maxim," he said, "that the people ought to hold the purse-strings."

The strongest proponents of national power opposed the clause in any form. As James Wilson of Pennsylvania explained at the Convention, "If both branches were to say yes or no, it was of little consequence which should say yes or no first." What survived the contentious debates was closer to Wilson's vision than to Gerry's. The clause was restricted to bills for raising revenue, and the Senate was given the amendment power (which, Gerry thought, gutted the provision of any real effect).

Even in weakened form, however, the Origination Clause was not meaningless. James Madison, no supporter of the clause at the Convention, gave it a generous interpretation in *The Federalist* No. 58: "The House of Representatives cannot only refuse, but they alone can propose the supplies requisite for the support of the government....This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect, every just and salutary measure."

As it turned out, the Origination Clause has had little effect. For one thing, many revenue bills have their intellectual genesis in the Treasury Department, not in Congress. Furthermore, Elbridge Gerry's fears were well founded: the Senate's power to amend is generally understood in practice to be so broad that the Senate can replace the entire text of a bill that technically originates in the House.

The understanding that the clause is a nullity reflects practice, however, not doctrine. In its most recent Origination Clause case, *United States v. Munoz-Flores* (1990), a divided Supreme Court rejected the argument that origination issues are nonjusticiable political questions. The Court held that a plaintiff with standing may pursue a claim that a revenue statute improperly originated in the Senate. In *Munoz-Flores*, however, the Court did not reach the larger issues, concluding that a bill to impose a user's fee, where raising revenue was a secondary concern, was not a "bill for raising revenue." The larger issues await another case where a taxpayer subject to an unquestioned revenue statute can raise serious questions about the statute's origin.

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