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Farewell, School House Rock (Understanding Legislative History through the Lens of the ACA)

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Nicole Huberfeld

The legislative history of the Patient Protection and Affordable Care Act (ACA) is dizzyingly complex and maddeningly opaque. Happily, a guide to this law's history was published recently and undoubtedly will become an essential piece of understanding the puzzle of the ACA. Though John Cannan wrote the article to instruct law librarians in the modern methods of tracking increasingly intricate legislative history, anyone engaged in studying the implementation of the ACA and the ongoing challenges to that law will benefit from the meticulous detail this article provides.

Traditional sources of legislative history will thwart the casual researcher seeking to understand the provisions of the ACA. At one end of the spectrum, the United States Code Congressional and Administrative News (USCCAN), an ordinarily reliable source of legislative history, has no documentation for the ACA and one unrelated committee report for the ACA's companion legislation, the Health Care Education and Reconciliation Act (HCERA). At the other end of the spectrum, THOMAS contains more legislative history than could possibly pertain to the subject matter of the ACA, yet it provides no guideposts for wading through the legion of amendments that appear to have applied to the ACA. The Justices called the legislative history impenetrable during the severability oral arguments in *NFIB v. Sebelius*. Cannan makes the impenetrable understandable by diligently tracking the genesis and progress of two House bills and three Senate bills that became the ACA so that we can understand how to find the history that exists between these extremes.

Cannan's first point is that legislating is dynamic, non-linear, and often subject to the unknowable rules imposed by each house of Congress on its legislators. Historically, the life-cycle of a bill was capable of being tracked through committee reports and amendments that were published in public sources such as the USCCAN. Now, however, much of the drafting and amending process occurs behind closed doors. Cannan explains why and how Congress's reliance on lateral and vertical maneuvers to ensure that a bill gets drafted, debated, and voted on dictates the modern availability of legislative history.

The article then walks the reader through the separate drafting, amending, and voting on the individual House and Senate bills that ultimately led to the ACA. These sections of the paper are quite dense, and the reader may find it useful to chart the progress of each bill to fully grasp how a handful of separate bills became one public law. This is not a criticism of the paper, simply a suggestion for thoroughly understanding the detailed history of each bill as it traveled through Congress.

If you seek to understand the congressional reasoning for drafting a particular aspect of the ACA, this article will not answer your question. But, this “bibliographic essay” will point to the sources that may answer those legislative questions and explain why those sources are dependable. Ongoing challenges to the ACA and its implementation make this procedural and structural map invaluable. In particular, as plaintiffs continue to dispute the availability of tax credits for private insurance premiums in federally run exchanges, more people have begun to wonder how and why the law does not make clear the universal availability of tax credits. This is where the fourth substantive section of the article is most helpful. Cannan explains that the reconciliation process was fraught with pitfalls, given the disconnect between the various House and Senate healthcare reform bills and given how the rules for reconciliation limit the types of bills and amendments to those bills that can be brought to vote through reconciliation. According to Cannan, a conference committee would have resulted in more transparent legislative history by virtue of negotiating and combining the House and Senate bills, but such a conversation became politically infeasible when Scott Brown was elected to the Senate. Additionally, the article explains why reconciliation led to the creation of the HCERA, which contained amendments to the ACA that could not be added to the bill being reconciled given the procedural limitations of reconciliation.

Cannan’s final point is a practical warning to think both broadly and carefully when studying legislative history. For example, the negotiations that occur behind closed doors may still result in leaks reported in national media. Floor debate may be broadcast on C-SPAN or on YouTube. The Congressional Budget Office provides detailed reports that can be hard to find. Reliable nonprofit organizations track bills as they progress and often attempt to make them understandable for the polity. Or, the long list of amendments for a bill may hide the moment in which the Service Members Home Ownership Act of 2009 became the Senate proposal for nationwide healthcare reform, which was named the Patient Protection and Affordable Care Act only after the substance of the bill had been debated and passed.

If we can’t have the good old days of School House Rock, at least we have this fine description of the new school of legislative history and a lesson in the complex history of the ACA.

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