

The Bulletin

The most important Senate officer most Americans have never heard of

Paige Winfield Cunningham

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Sometime in the next few weeks, four Democratic lawyers and four Republican ones will file into the ornate Lyndon Baines Johnson Room just steps from the Senate chamber at the Capitol to consider a bill to overhaul the Affordable Care Act.

They'll sit at a long table before someone unknown to most Americans but with singular power to influence whether Republicans can follow through on their seven-year quest to remake President Barack Obama's signature domestic achievement.

That person is Elizabeth MacDonough — the Senate parliamentarian, who is charged with acting as Congress' version of a referee in the contentious health care debate. MacDonough and her small staff will decide whether the Republican-crafted bill sent over from the House meets the requirements allowing it to be considered under special budget rules designed to protect it from Democratic defeat.

Before MacDonough, Democrats will argue that the GOP measure known as the American Health Care Act bleeds over the boundaries of what can be accomplished under budget rules known as "reconciliation." Republicans will insist the AHCA complies with those rules by containing only provisions that affect federal spending.

MacDonough will listen carefully to both sides. She'll ask questions. She won't appear to favor one side. And when she makes a decision, it will be based on her best understanding of Senate rules and precedent — not on whether she approves or disapproves of the Affordable Care Act or the effort to repeal it, multiple friends and former co-workers say.

MacDonough's rulings on past ACA repeal efforts suggest she may side with Republicans in some instances. But the new GOP bill is different in that it tackles ACA repeal and attempts to replace portions of it.

MacDonough "is in my view completely unbiased and she cares about the institution and she follows the precedent that has been established," said David Schiappa, who for years worked closely with her as secretary for Senate Republicans.

Bill Dauster, a longtime counsel to Senate Democrats, said: "I've always felt I could get a fair hearing."

MacDonough declined a request for an interview.

A stressful role

Washington is filled with people who talk much but affect little. MacDonough is the opposite — she intentionally stays out of the spotlight but wields enormous influence in proceedings on the Senate floor, where she, her deputy and several assistants continually advise senators on arcane procedure and a complex set of rules that few people really comprehend.

MacDonough, who attended a preparatory high school in Connecticut and holds degrees from George Washington University and Vermont Law School, worked her way up in the Senate, starting as an assistant parliamentarian in 1999 and serving for 13 years before the Senate approved her as parliamentarian in 2012 at the recommendation of then-Majority Leader Harry Reid, D-Nev.

Observers say it is a stressful role, especially as the environment in Congress has grown more partisan and toxic. Although past Senate leaders have ousted parliamentarians for decisions they didn't like — and the Senate majority leader has the ability to do the same to MacDonough — the job is still widely considered nonpartisan. Part of being perceived as fair to both sides means that MacDonough keeps her political views to herself.

“My experience with her is that she is fair,” said Sen. Bernie Sanders, I-Vt., the ranking member of the Budget Committee, which has had extensive interaction with MacDonough and her team. “She has a lot of responsibility on her shoulders.”

Don Stewart, deputy chief of staff to Majority Leader Mitch McConnell, R-Ky., said the Senate is “fortunate” to have MacDonough's guidance.

“The parliamentarian is a brilliant lawyer, a thorough and fair referee, and a walking encyclopedia of Senate precedent and procedure,” Stewart said.

The coming AHCA fight

But the health care debate into which MacDonough is about to step could challenge even her fair reputation.

A budget reconciliation bill needs just a simple majority in the Senate to be approved — not the 60 votes typically required to overcome a filibuster. That permits Republicans to pass their health care legislation with just 50 of their 52 members, with tie-breaking help from Vice President Mike Pence.

But strings are attached, and MacDonough is the one who can pull them. Each piece of such a bill must be directly related to federal spending, such as a tax or expenditure. Repealing certain parts of the ACA, such as its taxes, for example, fits easily under this standard. But other parts, such as rolling back the law's insurance regulations, don't necessarily qualify.

MacDonough's primary task over the next few weeks will be to rule on whether the AHCA qualifies as a budget reconciliation bill. If she finds that individual parts of the bill wouldn't have a direct budgetary impact through a process known as a “Byrd bath,” those parts would be stripped out. That doesn't mean, however, that the House would have to vote again on its measure — just that lawmakers could consider only a pared-back version.

Most health care experts think MacDonough will strip some parts of the House health care bill — indeed, many House Republicans are holding their breath regarding some of the AHCA's riskier elements.

The parts most vulnerable to rejection include waivers for states to opt out of protections for people with pre-existing conditions, or its provision raising the ratio for how much insurers can charge older people relative to younger ones. Those elements are insurer regulations not directly related to federal spending, but some Republicans have argued an indirect link by noting that premiums would be affected and therefore the amount of subsidies the government must pay out.

Another questionable part of the House bill is its language banning federally subsidized insurance plans from covering abortions. Abortion opponents insisted that such a ban must be included, even though that, too, might raise MacDonough's eyebrows.

Republicans already have a sense of how MacDonough might rule. A year and a half ago, she and her deputies analyzed a measure aimed at repealing some of the ACA but not replacing it. Although Obama ultimately vetoed that bill, House and Senate Republicans passed it partly as a readiness exercise should they eventually win the White House.

Staffers writing that 2015 House measure didn't attempt to repeal large parts of the ACA, fearing a challenge by MacDonough. But under pressure from conservatives, the Senate added provisions to eliminate the insurance subsidies, Medicaid expansion and small-business tax credits. Notably, MacDonough went along with those changes.

Heartening conservatives, MacDonough ruled that a section in that measure banning Planned Parenthood from receiving Medicaid reimbursements could remain. The measure said Medicaid money couldn't go to certain abortion providers, without explicitly mentioning the group.

But MacDonough didn't give the 2015 legislation an entirely free pass.

Under her guidance, the Senate was forced to tweak language repealing the individual and employer mandates, technically leaving the requirements in place but eliminating the penalties.

There are those preparing pre-emptive plans should MacDonough disappoint them.

A few of the more conservative senators — including Ted Cruz, R-Texas — have suggested McConnell could replace MacDonough if she rules against them — or at least allow the Senate president to overrule her.

But that lack of support isn't widespread. Those who know MacDonough say they're not surprised she doesn't give interviews or speak publicly because she takes her job as an unbiased adjudicator seriously.

Even some outside conservatives who argue for a more expansive interpretation of budget rules say they are not worried about MacDonough judging health care.

"I have complete confidence in her ability to interpret Senate rules," said Michael Cannon, a health-policy expert at the Libertarian Cato Institute.

Cannon has argued extensively that virtually every part of the ACA is closely tied to government spending.

Cannon used to live in MacDonough's neighborhood, and he says they'd run into each other while walking their dogs. They also visited the same dentist — once during an appointment, he saw her photo displayed on the office wall as a testament to great teeth.

“She’s got such a great smile, (the dentist) put her picture up in his office,” Cannon said.