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Dan Tillman, Mortgage Client Advocate, Real Estate, CitiMortgage

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Health Care Arena

An ongoing discussion on the health care debate

Mar. 16, 2010

Driving the Conversation:

Arena Ref: [Fred Barbash](#)

Will House Dems use parliamentary tricks to pass health care?

Is this any different from how House Republicans conducted business when they were in charge?

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David Boaz

Executive VP, Cato Institute :

I'm the first in my family not to be a lawyer. But Mike McConnell's article seems compelling to me. As he notes, Article I, Section 7, of the Constitution requires that a bill must pass both houses of Congress to become a law. Duh. And for those who have trouble with that concept, he goes on: "As the Supreme Court wrote in *Clinton v. City of New York* (1998), a bill containing the 'exact text' must be approved by one house; the other house must approve 'precisely the same text.'"

So the "deemed passed" rule doesn't seem to be constitutional. Then the interesting question is, Will the Supreme Court strike down a major piece of welfare-state legislation just because Congress didn't dot all the i's and cross all the t's. After all, some of us think the Supreme Court has failed to strike down legislation whose substance violates the Constitution. Would it be more forthright on a procedural issue? Would it dare to tell the political branches that they can't have the health-care program they worked on for 14 months, negotiating careful and complicated compromises in both houses?

But then, the reason that Democrats are contemplating such an audacious scheme is precisely that they can't find a bill that a majority of the House will vote for. So this wouldn't be like the Supreme Court striking down Franklin Roosevelt's Agricultural Adjustment Act, which passed Congress quickly and overwhelmingly in May 1933. It would not involve the Supreme Court standing up to the unified political branches. Rather, it would only require the Court to tell Congress that they have to actually pass bills before they become law, which apparently a majority of the House is not prepared to do.

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