

Congressional Debate Legislation

Legislation is the heart of Congressional Debate. It is what competitors debate, spending hours on research and writing. The quality of legislation also greatly determines the quality of competition. If the legislation is interesting, the debate will be lively and debaters will want to participate; if the legislation is poorly written or the subject matter is boring, they will be uninterested and the session can stagnate. This chapter will explain how to write interesting, effective, and complete legislation. It will also explore how to analyze legislation for competition.

Types of Legislation

Congressional Debate involves three types of legislation: bills, resolutions, and amendments to the Constitution. The first two are the most popular and, so, are the most debated in competition. Each of these types of legislation does something distinctly different, thus understanding these differences is critical.

When to Use Each Type of Legislation

Bill	Use when proposing something that will become law and that is within the bounds of the powers given to Congress under the Constitution.
Resolution	Use when proposing something that will express Congress's opinion on passage but not carry any binding force. It need not be within Congress's designated powers.
Constitutional Amendment	Use when proposing something that will alter the text of the Constitution upon passage and ratification by the states.

Example of a Title for Each Type of Legislation

Bill	A Bill to Increase Federal Income Taxes for the Highest Tax Brackets
Resolution	A Resolution to Condemn the Government of Myanmar
Constitutional Amendment	A Resolution to Amend the Constitution to Mandate Equal Rights for Women

BILLS

The first type of legislation is a *bill*, or a proposed law. Bills operate under the authority granted Congress in the U.S. Constitution. Put simply, a bill does something that Congress has the power to do. It may impose a restriction, create a new government program or agency, or reallocate money in the federal budget from one program to another. Whatever the bill does, it must provide the appropriate enforcement or funding: if the bill imposes a restriction, it must include a punishment for a violation of that restriction and specify who is responsible for enforcement; if the bill creates a new federal program, it must fund that program and assign or create an agency of government to enact the new program. Writing a bill can be difficult (governing is, after all, a complicated process), but participants, rather than coaches or tournament officials, should write bills whenever possible. Bills provide the most substance for discussion and most meaningfully engage in the important issues they cover.

RESOLUTIONS

A resolution is an expression of Congress's opinion about a particular subject or issue. A resolution does not carry the force of law; unlike a bill, it does not produce tangible changes in the way government or citizens operate. Consequently, resolutions should be written only when the author wants to tackle an issue over which Congress has no authority. Resolutions allow a broader range of subjects for Congress to discuss, but, because they only express opinions and do not require a plan or implementation, they may not engender substantive debate. Because Congress lacks authority over most foreign policy issues,

resolutions most commonly consider the way the United States should tackle problems in other countries.

CONSTITUTIONAL AMENDMENTS

The final and least common form of legislation is an amendment to the Constitution. The name is self-explanatory: debaters write amendments when they wish to alter the text of the Constitution to achieve a particular policy goal. Constitutional amendments usually have one of two aims: to alter a constitutional restriction (for example, to lower the voting age to 16) or to make an action constitutional (for example, to give Congress the power to deploy troops) or unconstitutional (for example, to prevent corporations from spending money to influence elections).

Structure of a Bill

Each type of legislation has its own structure. The structure of a bill is the most complicated. The first line of every bill should read the same: “Be it enacted by the Student Congress here assembled that.” The next line should begin with “**SECTION 1.**” bolded and in caps, followed by the text of the bill that indicates the specific policy being proposed. For example, a bill to abolish the death penalty would begin:

SECTION 1. The death penalty, or capital punishment, shall never be assigned as a punishment for a federal crime.

This briefly outlines the main idea of the bill and identifies the central issue that will be debated. All subsequent sections will begin with the word “Section” and the section

number in bold (followed by a period, also in bold) and then the text that signifies what the bill does. Typically, the second section of a bill defines terms or clarifies the meaning of the first section. The subsequent sections identify the source of funding for the legislation (if necessary) and the bureaucratic agency responsible for the enforcement of the legislation. Another section ought to include the date that the law will begin to take effect. Finally, the last section of every bill is the *null and void clause*. It reads: "All laws in conflict with this legislation are hereby declared null and void." Here is a template to use when writing bills.¹

A Bill to Do X

BE IT ENACTED BY THE CONGRESS HERE ASSEMBLED
THAT:

SECTION 1. State the new policy in a brief declarative sentence or in as few sentences as possible.

SECTION 2. Define any ambiguous terms in the first section.

SECTION 3. Name the government agency that will oversee the enforcement of the bill along with the specific enforcement mechanism.

A. Go into further details, if necessary.

B. Go into still further details, if necessary.

SECTION 4. Explain the funding mechanism for the bill, if necessary.

1. All templates provided by Adam Jacobi of the National Forensic League.

SECTION 5. List the date when the bill will take effect.

SECTION 6. All laws in conflict with this legislation are hereby declared null and void.

*Introduced by
Senator John Smith
X High School*

Any bill can be written using this template (the numbers indicate lines). For example:

A Bill to Increase Federal Funding of Education

1 BE IT ENACTED BY THE STUDENT CONGRESS HERE
2 ASSEMBLED THAT:

3 **SECTION 1.** The United States federal government shall
4 increase funding to the states for education
5 by \$100 billion annually.

6 **SECTION 2.** Funding shall be allocated based on the pop-
7 ulation of each state, as determined by the
8 United States Census Bureau.

9 **SECTION 3.** The Department of Education is responsible
10 for the enforcement of this legislation.

11 **SECTION 4.** Funding for this legislation will come from
12 a .5% income tax increase on those making
13 above \$1 million annually.

14 **SECTION 5.** This legislation shall take effect at the begin-
15 ning of the fiscal year 2013.

16 SECTION 6. All laws in conflict with this legislation are
17 hereby declared null and void.

*Introduced by
Senator Ben Berkman
Northwestern University*

Structure of a Resolution

Because a resolution is merely an expression of opinion, it does not require the specifics that a bill does. A resolution has two basic elements: “whereas” clauses and “resolved” clauses. Whereas clauses give reasons for the resolution’s existence. For example, if there were a resolution condemning the Chinese government, a whereas clause might read, “**WHEREAS**, the Chinese government has committed numerous human rights violations against its citizens.” Each whereas clause is followed by a semicolon, and the word “and.” So, the above whereas clause would read: “**WHEREAS**, the Chinese government has committed numerous human rights violations against its citizens; and.” This leads into the next whereas clause. Each resolution should have at least three whereas clauses before moving into the resolved clauses. The resolved clause states the precise opinion that Congress is expressing. In the China example, the resolved clause might read, “**RESOLVED**, by the Congress here assembled that the Chinese government be condemned.”

If the author wishes to express more than one opinion in the same resolution, she can add an additional resolved clause by writing, on a new line, “**FURTHER RESOLVED**,

that (insert additional language here).” Note that the final whereas clause before the resolved clauses ends differently. Instead of the “and” at the end of the whereas clause, the author writes “now, therefore, be it” and then moves into the first resolved clause on the next line.

A Resolution to Do X

WHEREAS, State the current problem (one brief sentence); and

WHEREAS, Describe the scope of the problem cited in the first whereas clause (this clause needs to flow logically from the first) and the inherent need for a solution; and

WHEREAS, Explain the impact of and harms perpetuated by the current problem (once again, the clause needs to flow in a logical sequence); and

WHEREAS, Use additional “whereas” clauses to elaborate the rationale for the solution to the problem; now, therefore, be it

RESOLVED, That the Student Congress here assembled make the following recommendation for solution (a call to action); and, be it

FURTHER RESOLVED, that (this is an optional additional recommendation; if not used, end the previous “resolved” clause with a period.

*Introduced by
Senator John Smith
X High School*

Here is an example of a resolution using this format (the numbers indicate lines):

A Resolution to Condemn the Chinese Government

1 **WHEREAS**, the Chinese government has committed
2 numerous human rights violations; and
3 **WHEREAS**, thousands of Uighurs have had their voices
4 silenced by the authoritarian Communist
5 Party in China; and
6 **WHEREAS**, such human rights violations are anti-
7 thetical to the freedom that the United States
8 espouses; and
9 **WHEREAS**, the U.S. has a moral obligation to help peo-
10 ple around the world become free when their
11 government oppresses them; now, therefore,
12 be it
13 **RESOLVED**, that the Student Congress here assembled
14 condemn the Chinese government.

*Introduced by
Senator Jeffrey Hannan
University of Florida*

Structure of a Constitutional Amendment

The final type of legislation is a resolution to amend the Constitution. It looks like a regular resolution until the

final lines. The whereas clauses of an amendment operate in the exact same way as in a normal resolution; it is the resolved clause that is different. The text of an amendment's resolved clause always begins with:

By two-thirds of the Congress here assembled, that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission by the Congress:

On the next lines, the author writes the article that she wishes to add to the Constitution. For example:

A Resolution to Amend the Constitution to Eliminate Corporate Personhood

1 **WHEREAS,** corporate personhood allows companies to
2 unfairly influence elections in the United
3 States; and
4 **WHEREAS,** the Supreme Court's decision in the *Citizens*
5 *United* case made corporate personhood a
6 Constitutional reality; and
7 **WHEREAS,** corporations are donating millions of dollars
8 to political campaigns, ensuring that elected
9 officials represent their will and not the will
10 of the people; and

11 **WHEREAS**, this represents a major threat to democracy
12 in the United States; now, therefore, be it
13 **RESOLVED**, by two-thirds of the Congress here assem-
14 bled, that the following article is proposed
15 as an amendment to the Constitution of
16 the United States, which shall be valid to
17 all intents and purposes as part of the Con-
18 stitution when ratified by the legislatures
19 of three-fourths of the several states within
20 seven years from the date of its submission
21 by the Congress:
22 **ARTICLE—**
23 **SECTION 1:** Rights granted to persons or
24 people in the Constitution are not granted
25 to corporations or collections of individuals.
26 **SECTION 2:** Congress shall have the power to
27 enforce this article by appropriate legislation.

*Introduced by
Senator Chad Meadows
Western Kentucky University*

Formatting

Although the structures of the three types of legislation differ, all legislation prepared for tournaments is presented in the same format. All legislation should be typed in 12-point font, double-spaced, and should not exceed one

page. All lines of legislation except the title should be numbered; this allows speakers to easily reference different parts of the legislation during speeches. Legislation should be written in formal, professional language. The title of the legislation should indicate exactly what the legislation does. For example, if a bill legalizes marijuana, the title of the bill should be “A Bill to Legalize Marijuana”; a resolution that rebukes Iran should be titled “A Resolution to Rebuke Iran.” Debaters should avoid vague titles, such as “The Drug Law Reformation Act” or “A Resolution Concerning Iran.” These sorts of titles do not indicate what the legislation does; because some tournaments only release the titles of legislation, students will not be able to adequately prepare for or research these topics, and debate will be poor. All legislation should include, at the bottom of the page, an identification of the author; this usually takes the form of “Respectfully submitted by” followed by a new line containing either the author’s name or the author’s school, or, in some cases, both.

Topic Selection

An excellent rule of thumb when you are thinking about possible legislation is that if you have ever seen it before, do not submit it again. Debating a diverse array of topics is much more interesting and educational than debating the same topics at every tournament. Topics for legislation should meet three criteria:

1. **Legislation must be debatable.** Legislation must deal with an interesting or controversial political, social, or economic issue, and must do so in a way that provokes

debate. When writing legislation, debaters can use a few techniques to ensure that the result is interesting and debatable. One way is to think of or research at least seven distinct arguments that could be made on each side of the bill or resolution. If those arguments exist, then the legislation is likely to produce good debate; if they don't, the debater should return to the drawing board. Another measure of interest or debatability is topic literature; debaters should make sure that sources are available on the topic. Adequate information is required to make a debate educational and interesting. If topic literature is sparse or lacking, then write legislation on a different topic.

2. **Legislation must be unique.** Certain topics have been debated ad nauseum in almost every league and region. The legalization of marijuana, the death penalty, and same-sex marriage are a few of the more over-debated topics. Although these issues are interesting and highly contentious, most debaters have probably exhausted the supply of cogent arguments they can make about them. Debaters should explore topics that have not been previously addressed in their league or region. That said, old issues can be tackled in compelling and new ways. Legislation proposing universal health care has been debated over and over again, but that does not mean that a debater should not write a bill on health care; it merely means that he should try to propose a unique solution. Exploring new topics is still advisable, but speakers can write fresh and interesting legislation on even the most debated topic areas.
3. **Legislation should be timely.** Debates will be more exciting if they involve the most current events. For

example, as of June 2012, a bill concerning immigration reform, a major issue in the news, would be better suited for a debate than a bill about Iraq, which has not been in the news for some time. Debaters should also ensure that their bills and resolutions are not redundant. For example, writing a resolution encouraging the United States to pull all troops out of Iraq would make little sense, given that this has already occurred.

Constitutionality, Funding, and Enforcement

Competitors must ensure that the bills they write not only present unique solutions to problems, but also that those solutions are tenable. It is difficult to debate bills that are full of holes that would make them unfeasible, regardless of the novelty of the bills' overarching ideas. Bill writers ought to consider three elements of feasibility when they write legislation: whether or not their bill is constitutional, how they plan to fund the bill, and how they plan to enforce the bill. Doing so will ensure that the core issues involved in the bill are actually debated, as the chamber will be less likely to become bogged down on technical questions about the legislation.

CONSTITUTIONALITY

When writing a bill (not a resolution), competitors must consider whether or not the Supreme Court has already ruled on the constitutionality of its proposal. The U.S. Congress has passed thousands of laws, and the Supreme Court has declared many of them unconstitutional. Hence, determining whether or not the courts have ruled on the bill's

idea is important. For example, if a competitor wanted to propose a bill to ban firearms within 100 feet of schools, he would find that Congress had already passed such a bill and that the Supreme Court declared it unconstitutional in *United States v. Lopez* (1995). This would render such a bill unconstitutional and would make debate on the issue extremely one-sided.

A particularly important constitutional issue is states' rights. The 10th Amendment to the Constitution stipulates that all powers not explicitly granted to the federal government are reserved for the states or to the people. Often, competitors will make the argument that bills are unconstitutional because the Constitution does not explicitly grant Congress the power to create such legislation—thus, it is a right of the states. This does not necessarily end the debate on an issue, but students should ensure that their bills conform to the constitutional limits on federal power. They can do this by reading the topic-specific Supreme Court precedent and making sure that the policy they are proposing has not been explicitly ruled unconstitutional by the Court as an undue extension of federal power.

Bill authors can use Congress's power to tax and spend to circumvent some Constitutional issues concerning federal authority. Article I, Section 8 of the Constitution grants Congress the power of the purse. Accordingly, Congress controls all of the federal government's spending. This allows the Congress to force the states to take specific actions by threatening to withhold funding for particular programs. Bills written in this manner circumvent 10th Amendment issues as they don't mandate that the states do anything; they merely attach conditions to federal funding, which is well within Congress's power.

For example, the 2001 No Child Left Behind Act makes the states meet certain federal education requirements by threatening to cut federal education funding if they fail to comply.

Legislation written for Congressional Debate can often function in much the same way. For example, if a student wanted to write a bill mandating that states update their highway infrastructure, she could include a clause that read, “States that fail to comply with this legislation will forfeit 25 percent of their federal highway funding for the year after which they fail to comply.” This bill would be more fully in the realm of congressional power because it would not force the states to take an action. Rather, it outlines a specific penalty for noncompliant states that explicitly falls within Congress’s authority. The direct coercion that would make the bill potentially unconstitutional does not exist. Congress is merely using its power of the purse to achieve a desired outcome.

Debaters should consider various questions of constitutionality when writing legislation, but should also remember that constitutionality is a constantly changing idea. There are very legitimate disputes about what the Congress has the power to do (see any split Supreme Court decision for evidence of this), and so competitors should not shy away from an idea just because it may be unconstitutional. While it is not wise to propose a bill that the Court has explicitly ruled unconstitutional, that does not mean competitors should completely avoid all bills that might fall into a constitutional grey area.

FUNDING

Bills that require funding will need some mechanism for obtaining that funding. This can be achieved in one of

two ways: taxes and budget cuts. Authors in Congressional Debate generally use two types of taxes: excise taxes and income taxes. Excise taxes are taxes imposed on the purchase of particular products, while income taxes are taxes on the amount of money a person earns either via her job (a standard income tax) or from investments (a capital gains tax). A particular type of excise tax called a “sin tax” is especially popular. Sin taxes entail an excise tax on an item (typically cigarettes, alcohol, and firearms). Authors often include these in bills because they think the tax will be uncontroversial. Any of the above funding mechanisms, and many more funding options, are acceptable; students should just be sure to include some sort of funding if the bill requires it.

ENFORCEMENT

Bills require a mechanism to ensure that they have their desired effect. Accordingly, sufficient penalties must be established and the correct enforcement agencies need to be selected. If Congress passes a bill but gives actors no incentive to comply with that bill, then it is unlikely that the bill will have any tangible effect. Hence, bills must contain those incentives.

Penalties for noncompliance with the provisions of a bill ought to be harsh enough to act as a deterrent but not so harsh as to be disproportionate. As a general rule, the punishment should fit the crime, and it should be enough to ensure that people do not commit the crime. For example, if Congress passed a bill preventing corporations from polluting the environment, it would be too harsh to punish all violators, regardless of the severity of the offense, by fining them 100 percent of their total income. On the other hand, if the fine were only \$1,000

regardless of the violation, that would not deter a company from polluting; a balance is needed between deterrence and proportionality.

When writing bills, competitors must also choose an enforcement agency to mandate compliance. They must research which current government agencies oversee the general area that their bill involves, then they must pick the agency that appears to be the most likely to enforce such legislation. This can often be tricky, especially when several government agencies have similar functions. Alcohol restrictions, for example, would not be enforced by the Food and Drug Administration, as one might expect. Rather, they would be enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives, a subsidiary of the Department of the Treasury. If no agency currently exists to enforce the legislation an author is proposing, she may create and fund a new agency in the bill for the purposes of enforcement. The agency should have a name, a clear purpose, and a way to fund its activity.

KEY CONCEPTS

- There are three types of legislation: bills, resolutions, and amendments to the Constitution.
- Bills are legislation that might become law.
- Resolutions are legislation that will, on passage, express the opinion of Congress.

- Amendments to the Constitution will change the text of the U.S. Constitution once the ratification process is complete.
- Bills and amendments to the Constitution need to provide comprehensive text about what will happen on passage.
- Resolutions must contain whereas clauses, which provide reasons why the resolution should be passed, and a resolved clause, which establishes the exact opinion Congress is expressing.
- Topics selected for legislation should be debatable, unique, and timely.
- Legislation should contain the appropriate enforcement and funding mechanisms to ensure that it will have the desired effect.

