03/24/2022 第六週 線上教室

參考資料

立法修正案的多數控制與少數杯葛[legislative amemdments.pdf](https://ceiba.ntu.edu.tw/course/fb6b24/content/legislative%20amemdments.pdf)

本篇係「立法院議事規則相關適用疑義之檢討」公聽會本人所提意見，載立法院第 9 屆第 4 會期司法及法制委員會，106年 10 月 16 日，《立法院公報》，卷106：期80，頁395-397，426-427。

立法院司法及法制委員會「立法院議事規則相關適用疑義之檢討」公聽會紀錄見106 1016 hearing transcript.pdf

以上資料對眾院修正案主要程序(特別規則)有簡要說明，可自行參閱

眾院院會程序

國會兩院每週一至週五均為開會日，院會與委員會會議各自舉行，並未特別區隔開會時間。但事實上主要的立法工作均集中於週二至週四，週一通常僅為「形式性會期(pro forma session)」，院會會議時間通常僅僅數分鐘甚至數十秒而已即行結束，主要原因在憲法規定兩院休會超過三日時(含三日)必須兩院一致同意，週一簡短的形式性會期使休會時間僅限於週末兩日。此種每週會議日程的安排，使議員可以利用週末返回選區與選民接觸。

此種週二為起始工作日的習慣其實顯現在許多政治活動中，例如選舉日，無論為各州初選或十一月大選，幾乎都是週二，所以總統初選有所謂「超級星期二Super Tuesday」~許多州聯合在同一天辦理初選，雖然許多是小州，但因當日總開票結果對爭取提名者影響極大，所以超級星期二的初選結果，大致即可確定最後勝出者。

議院每日開會之後，首先進行若干例行事項。院會會議首先由眾院牧師領導議員祈禱，牧師是兩院皆有的正式職員，每屆眾院開議第一日，選出議長後，多數黨提出職員名單，少數黨對此名單會提出該黨版本的修正案，但牧師人選不會提修正。

The House has elected or appointed employees to carry out a wide variety of tasks throughout its history. Today, the elected House officers include the Clerk, Sergeant-at-Arms, Chaplain, and Chief Administrative Officer. Appointed officials include a Parliamentarian, Historian, General Counsel, and Inspector General.

選任的職員包括以上所述秘書長、警衛長、牧師、行政長。2021年1月3日117屆眾院選任職員見當日國會紀錄H9頁 (CONGRESSIONAL RECORD — HOUSE Vol. 167 No. 1 January 3, 2021 H9) CREC-2021-01-03-pt1-PgH9-5.pdf

祈禱後由兩黨議員輪流每日領導全院宣讀效忠國旗與國家的「忠誠誓詞(Pledge of Allegiance)」("I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.")，從祈禱與忠誠誓詞under God一語可知，美國事實上是一基督教國家。

議長隨之不經宣讀，直接宣布前一日院會議事錄(Journal)確定，此項議長的決定議員得提請記名表決議事錄確定問題。事實上，以確定議事錄問題提付表決的主要原因，並非議事錄內容本身，而在於有時出席人數偏低，藉此查證出席人數是否足法定人數(因確認議事錄的程序在開會不久之後)。之後為收到總統或參議院咨文的報告、議長各種宣布事項。以上例行公事完畢後在議長裁量許可下進行「一分鐘發言(one minute speech)」，議員可針對任何主題發言，但取得發言權者發言時間僅限一分鐘。如適逢週一或週二，眾議院院會可提前九十分鐘(週一)或一小時(週二)開會，進行所謂「晨間鐘點辯論(Morning Hour Debates)」，兩黨各分配三十分鐘(週一)或廿五分鐘(週二)時間，依據兩黨領導階層事前的安排，主席交叉承認兩黨議員發言，議員可針對任何主題發言，每人可享有五分鐘發言時間。

所謂Morning Hour的意義原是指國會於中午十二點開會，中午以前尚未正式開會，所以可以容許較鬆散的議員發言，無論one minute speech或Morning Hour Debates類似立法院的國是論壇，其實只是議員個人問政的表演舞台。

所有立法工作以外的例行活動均結束之後，眾議院院會開始處理每天的立法議案。如當日排有「停止規則動議」程序之案，首先進行此類議案的提出與討論，此類議案通常在停止規則動議提出討論之後便暫擱，然後接續由另一案以停止規則動議提出討論，表決時間通常在兩黨黨鞭每日電腦線上公告，大約均為傍晚時刻開始進行表決。如為大法案，首先由規則委員會某一多數黨委員提出特別規則案，該案應於一日前已先行提出報告。由於特別規則尚未通過，因此該特別規則決議案係依據眾議院的「一小時規則」進行討論，所謂「一小時規則」是指議員取得發言權之後，享有一小時發言時間。通常多數黨委員說明特別規則的內容之後，便讓與一半時間給規則委員會一少數黨委員。規則案的討論時間通常少於一小時，提案的多數黨委員在討論完畢後隨即對特別規則決議案提出「先決問題(Previous Question)」—停止討論並禁止修正案提出，先決問題通過之後，隨即表決特別規則案，特別規則通過之後便依據特別規則的規範，進行實體法案的討論。

所謂先決問題，是沿襲自英國國會的習慣，英國國會的先決問題是“shall the question be put?” 意即本案(the question)是否現在應呈現於議場進行討論，如表決結果反對者多數，此案即暫不討論，實質上類似暫時擱置。但此種慣例沿用到美國之後，參議院將其用法做了微調，變成“shall the question be now put?”加了一個字‘now’之後，意義完全不同，變成本案是否應現在即刻呈出表決 (put to vote) ? 換言之，也就是本案是否現在停止討論之意。

以「國事日程」中的法案為例，通常依特別規則的授權，議長即將院會轉換為全院委員會，並指定另一多數黨議員為全院委員會主席，然後開始進行該案的「廣泛討論(general debate)」。廣泛討論階段首先由兩黨的「法案管理人(bill managers)」進行開場陳詞(opening statements)，所謂法案管理人是指該法案原先提出報告的相關委員會主席與少數黨高階委員(minority ranking member)。

(此處應說明的是，每一議員依其所屬黨團~多數黨或少數黨黨團，所參加的每一委員會，均有1,2,3,4,5,6,…..的階級順序rank，原則上此rank是依年資排序，最高階的委員如為多數黨即為委員會主席，少數黨即為ranking member。)

兩人先後發言完畢後，即依據特別規則所分配的時間(通常兩黨各分配一半討論時間)，各自將發言權再分配給本黨議員，主席遂交叉承認兩黨議員發言、進行全案廣泛討論。

廣泛討論時間終了之後便進入修正案階段，依據特別規則所許可的範圍，修正案一一提出。修正案提出後依據「五分鐘規則(5 minutes rule)」進行辯論，所謂「五分鐘規則」是指修正案贊成與反對雙方可各有一人發言，每人發言時間五分鐘。但由於議員有時利用提出第二級修正案的方式(對原案所作修正為第一級修正案、對修正案所作修正為第二級修正案)，對待決的第一級修正案提出「形式性修正案(pro forma amendment)」-- 「我動議刪除最後字詞」或「我動議刪除必要數額的字詞」。此類修正對待決修正案並無實質影響，但因其為第二級修正案，議員可再多獲五分鐘以上的討論時間。

修正案的表決通常均係以記名表決(Recorded Vote)方式進行，在全院委員會階段，僅需25人要求(法定人數1/4~全院委員會法定人數僅需100人)，即應舉行記名表決，而院會階段請求記名表決須獲法定人數(218人)五分之一議員的支持，亦即44人的請求。

眾議院記名表決的主要方式係採用電子表決器投票(但議長選舉採人工唱名表決)，表決器設於眾議院議場各走道兩側的座位椅背上，表決器數量約有四十餘個，上有綠、紅、黃三個按鈕，分別為贊成、反對、出席(棄權)的選項，另有一藍色指示燈，燈亮表示表決器處於正常運作狀態。表決開始時議場及眾議院辦公大樓(眾議院議場南側有5座Office Buildings: Cannon, Longworth, Rayburn, Ford, O'Neill. 見講義Appendix: Map of Capital Hill )各處電鈴會響起(如同上課鈴響)，以通知議員進入議場投票，主席在宣布開始表決時會同時宣布表決時間，大約為十分鐘上下(如有數個表決將接續投票，第二次以後的表決時間會縮短~因為議員均已在議場附近)，議員進入議場後便選擇一座位後的表決器插入表決卡辨識身分後按鈕投票。投票紀錄隨即顯示在主席台後側上方的電子顯示版上，每一表決紀錄並單獨編號，在國會圖書館立法資料庫(congress.gov)專門的網頁上公布(Roll Call Votes：<https://www.congress.gov/roll-call-votes> )，線上可查閱的記名表決紀錄係依政黨區別，分別顯示贊成、反對、出席(棄權)、未投票(表決時缺席)四類人數與該議員姓氏(如有同一姓氏議員，姓氏之後會另加所屬州別以茲區分)。

所有修正案均表決完畢之後，全院委員會階段即行結束，再度恢復為院會，形式上全院委員會向院會提出報告，院會隨即對先前全院委員會通過的修正案正式表決確認，此時議長會詢問是否有人希望對先前全院委員會通過的某一修正案單獨表決? 如無人要求分割處理，院會遂直接將所有全院委員會通過的修正案包裹通過。

全案最後表決之前，特別規則通常允許由少數黨提出「再付委動議」(recommittal motion)，意即將全案再交付原先提出報告的常設委員會，但少數黨所提再付委動議通常為「付加訓令(with instructions)」的形式，也就是由院會訓令該委員會將原案全文刪除，並以再付委動議中所附錄的內容(少數黨對該法案的替代案)取代原案，並立即以此項變更後的內容向院會報告。此種方式的再付委動議如果通過，原案等於直接被修正為少數黨的政策版本，此種方式提供少數黨顯示其政策主張的機會，雖然再付委動議不可能通過，但此種程序的確使少數黨的意見有一發抒的管道。當再付委動議表決完畢後，院會隨即進行全案表決。

眾議院的再付委動議

眾議院所有的修正案都必須與本題相關，今日的眾院少數黨也沒有辦法以程序延遲進行議事杯葛。但眾議院的再付委動議(motion to recommit )，同樣成為少數黨最後的權利保障。1891年眾議院准許在議案進行三讀後，提出「附加訓令委員會立即報告一替代案的再付委動議(a motion to recommit with instructions “to reportback forthwith” with a substitute bill)」，所謂「附加訓令(with instructions)」實質上即為原案的大幅修正，此一形式的「再付委動議」如表決通過，事實上並未將議案移轉至委員會，其效果僅係使原案立即被修正為另一版本。1909年眾議院進一步確定了再付委動議的兩項特性：禁止規則委員會提報的特別規則中排除再付委動議、此項再付委動議應由少數黨或反對原案的議員提出。

1995年共和黨成為眾議院多數黨之後，在眾議院規則中明文規定，少數黨領袖或其指定者有權利提出附加訓令的再付委動議。由於少數黨常將其政策主張以附加訓令的形式呈現於再付委動議中，再付委動議也被清楚的辨識為少數黨的政策立場，因此表決時落敗為常態，但再付委動議賦予少數黨重塑議案的機會，也的的確確保障了少數黨的權利。

以歐巴馬(Barack Obama)總統及民主黨人強力推動的平價醫療法(H.R.3962Affordable Health Care for America Act/ ObamaCare)為例，2009年11月7日在眾議院院會全案表決前，共和黨即由黨鞭侃特(Eric Cantor)提出了附加訓令的再付委動議，表決結果以187比247落敗，但共和黨也清楚的顯示出反對此項醫療保險法的立場。

<http://clerk.house.gov/evs/2009/roll886.xml>

國會紀錄此項再付委 <https://www.congress.gov/111/crec/2009/11/07/CREC-2009-11-07-pt1-PgH12623-3.pdf> 見HR12963~HR12967

美國國會參眾兩院所有記名表決紀錄均依國會屆別、年度，各自統一編號，並公布於兩院及國會圖書館表決紀錄網頁，每一記名表決均列出表決編號、表決日期、議題(Issue)[指哪一法案]、問題(Question)[指表決的動議為何?程序性動議或實質修正案…]、表決結果、標題或簡述(Title/Description)等，點選表決編號後，即可查閱所有議員投票或缺席未到的表決紀錄。雖然每一議題的立法過程中，各種問題(例如修正案、付委、停止討論、擱置、再付委、全案表決甚至申訴主席程序性決定、散會等各項動議)都可進行記名表決，但其中最重要的不外乎最後的全案表決，以及包含再付委動議在內的某些重要修正案。就美國國會兩院而言，這些主要問題必定是以記名表決方式宣示議員的投票責任。

全案表決通常均以記名表決為之，議長在宣布表決通過時會同時宣布「復議動議被擱置(motion to reconsider lay on the table)」，

此項宣布使表決的效力可以完全確定，有效阻止復議動議的提出

法案經眾議院通過後，尚須經由參議院通過，然後才可送請總統簽署，因參眾兩院結構上的差異，參議院的程序與眾議院完全不同。

參議院的程序特徵

參議院結構與議事運作上與眾議院最大的差異，在其保障少數權利的特性。由於參議院代表各州，無論人口多寡，每一州均分配兩席參議員，小州與大州在參議院的代表權平等無二，因此參議院中大多數參議員所代表的僅為聯邦人口中的少數，此種強調少數代表權的結構特性，具體顯現在個別參議員掌握的議事杯葛特權上。

參議員所享有的議事杯葛權可以劃分為冗長發言(filibuster)、扣案(hold)、無關修正案(non-germane amendment)三種主要的方式。

冗長發言為參議院院會最著名的特色，由於參議院一般性的規則中並無發言時間限制，任一參議員取得發言權後均可以無時間限制的暢所欲言，由於議案仍在進行辯論中，遂無法進行表決，除非多數黨能取得60票「超級多數(super majority)」的支持，通過停止討論動議(cloture motion)，否則只能任憑少數黨運用冗長發言權持續議事杯葛。

Filibuster是參議院最著名的特色，以下播放2009, 2010相關的新聞片。  
CNN字幕如下：

20091029 Filibusters through time \*\* 3:01 politics/2009/10/29/levs.famous.filibusters.cnn\_576x324\_dl.flv

( CNN's Josh Levs reports on famous filibusters, including one lasting weeks and a senator who recited pot likker recipes. )

TONY HARRIS, CNN ANCHOR:

One of the questions hanging over the future of health care reform, will Republicans in the Senate filibuster? It is a tactic that has been used in some very high-profile debates. Josh Levs is here with some of the most famous filibusters of the past.

Josh.

JOSH LEVS, CNN CORRESPONDENT: Yes, Tony, I'm going to tell you a little bit about this. It's interesting, just what I've been learning, too.

You know, in the early days of Congress, there was actually unlimited debate. They could talk for as long as they wanted. But then as the House grew, new rules limited debate in that chamber. And then in the Senate, there was this big change in 1917 when it adopted what's known as "cloture." We talk about that. Two-thirds of the Senate could vote to end that debate, and that was later changed to three-fifth. So 60 senators can make that decision.

We have video here. Check this out. This is the first time the Senate ever invoked cloture. And this is from 1919, Tony. The Senate cut off debate on the Treaty of Versailles, which it ended World War I.

Now here is one of the most famous filibusters ever. Huey Long. He used it to fight bills that he thought favored the rich. He recited Shakespeare, Tony, and he used to give recipes for pot liquor.

And the filibusters was used successful in this case. This was 1968 against the judicial nominee. Republicans used it to block Ab Fortess (ph) to be chief justice of the Supreme Court. And the longest individual filibuster ever, Strom Thurmond, 1957, he talked -- he, just him, he talked for 24 hours and 18 minutes against the Civil Rights Act of 1957.

And, Tony, the longest filibuster ever, when you put everybody together, was against the Civil Rights Act of 1964. Guess how long that was? Guess how long it lasted?

HARRIS: I, you know, I have no idea and I wanted to Google it. You told me not to.

LEVS: I told you not to. Fifty-seven days.

HARRIS: Fifty-seven days.

LEVS: It was filibustered for 57 days. We have video of it here of it ultimately being signed. Take a look at this. But before it could be signed by President Johnson, it was filibustered for 57 days, Tony. That's how long they took to get to that.

And I think you're also about to see a shot of some -- yes, they you go. There you go. Of the sitting on cots. Those are the cots that some senators were sleeping in when they were filibustering.

And, finally, I can't talk to you about filibusters without tossing in the greatest fictional filibuster of all time. Take a look.

HARRIS: Let's see it.

(BEGIN VIDEO CLIP)

JAMES STEWART, ACTOR, "MR. SMITH GOES TO WASHINGTON": And I was ready to say so. I was ready to tell you that a certain man in my state, a Mr. James Taylor, wanted to put through this dam (ph) for his own profit. A man who controls a political . . .

(END VIDEO CLIP)

LEVS: "Mr. Smith Goes to Washington." The little guy against the giant government. That moment that captivated so many millions of Americans, Tony. What it said to people. And, you know, not too many stars like him anymore.

HARRIS: No.

LEVS: (INAUDIBLE). Let me just tell everybody. There's some more info about it. I'll show the graphic. This is where I posted it. I'm posting at the blog, also FaceBook and Twitter, JoshLevsCNN, cnn.com/Josh. Learn all you want about the history of filibusters and along the way some fun, old video.

Tony.

HARRIS: Good stuff, Josh. Thank you.

LEVS: Thanks.

<https://transcripts.cnn.com/show/cnr/date/2009-10-29/segment/04>

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

20100304 Is the filibuster busted? 2:57 politics/2010/03/04/am.acosta.filibusted.cnn\_576x324\_dl.flv

( CNN's Jim Acosta explains why filibustering may not be effective anymore. )

JIM ACOSTA, CNN CORRESPONDENT: OK, you know, correspondents have been accused of filibustering from time to time. Not you or I, of course, but the truth is, the filibuster's not what it used to be. The rules, or lack thereof, make it easy for any senator to hold up legislation without much effort. To most people the word filibuster means to talk something to death, but you know what, in the senate, that's not how things work anymore.

(BEGIN VIDEOTAPE)

ACOSTA (voice-over): When it comes to the filibuster, times have changed.

JIMMY STEWART: Wild horses are not going to drag me off this floor until those people have heard everything I have got to say, even if it takes all winter.

ACOSTA: In the 1939 film classic, Mr. Smith goes to Washington, Jimmy Stewart puts on a filibuster that lasts 23 hours. Segregationist Strom Thurman set the record in 1957 filibustering for more than 24 hours against civil rights legislation. In those days, senators had to sleep on cots to wait it out.

ALFONSE D'AMATO (D), FORMER SENATOR FOR NEW YORK: We did not have a plan that was deep down in the heart of Texas.

ACOSTA: There have even been singing filibusters. But these days senators are no longer required to speak for hours on end, to hold things up.

UNIDENTIFIED MALE: You won't find the words filibuster in the rules of the senate.

ACOSTA: And because there are no rules, senate historian, Don Richie says a filibuster is in the eye of the beholder. A senator can talk for days or simply object over and over to a vote on legislation as Jim Bunning did this week.

UNIDENTIFIED FEMALE: Is there objection?

JIM BUNNING: There is. I object. And let me --

UNIDENTIFIED FEMALE: Objection is heard.

ACOSTA: And then slip down a senator's-only elevator. Unless the majority can come up with 60 votes to end the debate, a procedure known as cloture, the filibuster is on. The filibuster has gotten so easy the cots are rarely dragged out. More and more senators have private unmarked hideaways inside the capitol. Filibuster is all about the power of one.

DON RITCHIE, U.S. SENATE HISTORIAN: That means that every individual senator is a very powerful player and does not have to be here for decades to accrue seniority to have an influence.

ACOSTA (voice-over): But a few democrats are pushing to change this old senate tradition.

SEN. MICHAEL BENNET, (D) COLORADO: During this session of congress, the right to filibuster has been abused.

ACOSTA: Even some republicans admit, they were wincing during Bunning's filibuster on unemployment benefits.

SEN. OLYMPIA SNOWE, (R) MAINE: So you really have to exercise judgment in that sense and who you are hurting at the moment in time. And I think that was what was so difficult about this.

ACOSTA: Olympia Snowe blames both parties for my way or the highway attitude, that was out of control.

ACOSTA (on camera): And you would agree with the feeling out there that the government is broken, that the congress is -

SNOWE: Absolutely, I hear my constituents at home, I see it, I feel it.

(END VIDEOTAPE)

ACOSTA: There is no way to track the number of filibusters, just the number of cloture motions, those votes to cut off debate, and the current Congress could break the record number of cloture motions. The record was set in the last congress two years ago with 112 cloture votes.

And Kate, we looked into this, a long time, Senator Robert Byrd said we should go back to the old way of having senators talk for hours on end in and old-fashioned filibuster. But the majority leader's office says they've looked into this, and the rules simply don't make it possible for them to require senators to talk for hours on end.

<https://transcripts.cnn.com/show/ltm/date/2010-03-04/segment/03>

參議院其他部分下週繼續介紹。