



Federal Legislative History

Purpose of Legislative Histories

When Congress passes an act and it is signed into law, the language of the text may be ambiguous. There may be multiple ways to read the text and apply it to specific situations. As these circumstances arise, judges must seek to interpret the law so that it makes sense. One method of statutory construction is to look to the exact language of the statute, and apply it as best as possible. Many judges look to the legislative history, which is the path the law took to enactment and the documents that were created along the way, as a way of discerning the intent of Congress in passing the act.

The Basic Legislative Process

The path a bill takes in Congress can vary with the politics surrounding a legislative initiative. The basic path is for a bill to be introduced in one chamber, where it is assigned to one or more committees for review. The committee can review the legislation, change the text, or effectively ignore it. If a bill is not enacted into law by the end of a congress, then it must be reintroduced in a later congress for further consideration. If a bill is reported to the chamber floor, then a vote is normally scheduled. If the bill passes the first chamber, it is transmitted to the second chamber for similar consideration. If the bill passes with identical language in both houses, it is sent to the President for signature or veto. If signed, the bill becomes law and is assigned a Public Law (P.L.) number and codified in the U.S. Code. If vetoed, the bill must receive a two-thirds majority of each house to override the President's veto and become law without the President's signature.

If a bill passes both chambers of Congress with differing texts, the language must be reconciled and both chambers must re-vote on a single text. This can happen when bills are introduced in both chambers simultaneously without having identical text, and the respective chambers pass both bills. Another set of circumstances that can arise is when bills are subject to differing amendments in each chamber. The resolution to this problem is for each chamber to appoint members to a conference committee that is charged with creating uniform language for a piece of legislation. Once that takes place, the legislation is sent to each chamber for an up or down vote without the possibility for amendment.

There is a fairly standard set of documents produced in the course of passing legislation. The typical legislative history will include bills as introduced, the text of competing bills for the same subject, and the text of amendments offered in committee or on a chamber floor; committee reports, including those of several committees that may review the language of a bill (including the conference committee); hearings (if any) held by reviewing committees; debate on the floor of the House and Senate; and messages by the President upon signature. These documents may span multiple congresses. While its true that legislation that is not passed dies at the end of a congress, significant legislation is reintroduced and the committee work continues. Previous work on legislation can impact on a bill as enacted into law several congresses later.



These various documents have different impact on a court. As a general rule, reports usually have the most weight as they represent the most detailed and documented statement on the measure. Hearings have less weight, as the statements made by witnesses are the opinions of those witnesses rather than statements of rationale by lawmakers. Debates carry weight depending on who is making the statement. Statements from sponsors, the authors of the legislation, the floor managers, and others closely connected with the legislation have more weight than lawmakers who merely support or oppose the measure. Competing and/or failed bills may also give some insight as to what Congress meant by analyzing what they didn't enact. However, there are usually political reasons behind what is enacted, which is not necessarily a statement of the intent of Congress.

What follows is a more detailed examination of these items, and sources for them.

Bills

Bills are introduced in each congress and designated by the chamber of origin. HR 1014 and S 596 are examples of the numerical designation. Bills are normally numbered consecutively in the order in which they are introduced. However, the leadership may hold numbers for specific legislation. This usually happens for symbolic purposes, such as holding bill number 1 for centerpiece legislation. If a bill is not passed into law in the congress in which it was introduced, it dies and must be re-introduced in the next congress to be considered again. Not every piece of legislation introduced is considered. Approximately 90% of all bills die without any significant action by congress.

The full text of bills and amendments are available on Thomas (<http://thomas.loc.gov>) for the 109th through 101st congress (approximately back to 1989). Bill summary and status are on Thomas back to the 93rd congress (approximately 1973). The Congressional Research Service publishes the Digest of Public General Bills and Resolutions, which contain synopses of bills in numerical order for a particular congress. Most libraries have archives of bills for past congresses on microfilm.

Reports

Congress has organized itself into committees with different subject areas of jurisdiction. When a bill is introduced, it is usually referred to one or more committees with jurisdiction over the subject of the proposed legislation. In general, the committee chair calls legislation for committee consideration, by considering the bill as it was introduced, with amendments, and in some cases, substituting entirely different text. This is referred to as the mark-up process. Once the committee finishes with the bill, it writes a report and the bill awaits action on the floor of the particular chamber.

Another type of report is the conference report. When both houses of congress pass legislation where the language is not identical, there is usually a conference held to work out the differences between the chambers. Members from the House and Senate are appointed to a conference committee that attempts to negotiate common language for the act. It is then sent back to the floor of the House and Senate for an up or down vote. No amendments may be made at this point. The conference committee will issue a conference report. This report will be printed as either a house or senate report, and does not have any special numbering that identifies it as a



conference report.

Reports are issued by each chamber and designated by congress and then a consecutive number. For example, House Report 105-179 is the 179th report issued by a house committee in the 105th congress. Reports are issued individually as individual paper volumes. Later, they are compiled into the Serial Set, which collects all house and senate reports, documents and miscellaneous documents in numerical order. The serial set extends back to the early 1800's. Most libraries that have a significant government document collection will have the serial set in paper (most current issues) and in microform. The collection of Congressional documents that precedes the Serial Set is known as American State Papers.

Committee reports are on Thomas and GPO Access (<http://www.access.gpo.gov>) back to the 104th congress (approximately 1995) in PDF and plain text formats. Reports usually contain a section-by-section analysis of the text, along with views of the majority and minority committee members. Reports may also contain as appendices reproductions of items that are relevant to the consideration of the legislation.

Selected edited committee reports are in the United States Code, Congressional and Administrative News (USCCAN) for most public laws since 1941. This compilation is available on Westlaw back to that date. Full text for selected material is available in Congressional Universe and on Lexis. Westlaw also has a legislative history database for selected acts of congress.

The Serial Set Index from CIS indexes the Serial Set from its beginning through 1969. Coverage past that point is taken over by the CIS Annual Volumes in paper and Congressional Universe online.

Hearings

Committees may hold hearings on legislation. Witnesses appear before the committees and offer written and oral testimony on the particular subject of the hearing. Hearings are published as single items and are not compiled beyond the first paper issue. Committees may or may not publish the transcripts of hearings they hold. Hearings may or may not be numbered. Their dates, their subject, their committee, and their witnesses are the usual access points for hearings in the various indexes and online services.

Published hearings are online at Thomas and GPO Access back to the 104th congress. The various web sites established by the committees may also contain the raw text of a recent hearing that has not yet been officially published. These web sites are available as links from Thomas, GPO Access, and home pages for the House (<http://www.house.gov>) and the Senate (<http://www.senate.gov>), among other places. Of all congressional publications, libraries do not necessarily collect paper copies of hearings consistently. Check the catalog or government document holdings lists to see if a specific hearing is in the collection.

The CIS Hearings Index indexes all published hearings of Congress through 1969. The CIS Annual Volumes pick up coverage from that point.



Debates of Congress – The Congressional Record

The Congressional Record contains the verbatim transcript for the House and Senate. Members are allowed to “extend” their remarks and add material that has not actually been said on the floor of each chamber, and the printed text includes these extensions. The bound set of the Record is divided into volumes that each corresponds to a session of congress. These volumes may consist of more than 20 parts with a bound index. The index is organized by subject and includes references to speeches or discussion by members of congress. It also includes a history of bills of each house with references to the text.

The Record appears in two editions: the Daily Edition and the Permanent Edition. Although both are compiled by date, the Daily Edition (which is divided into House and Senate sections) is recompiled with extended remarks and repaginated for the Permanent Edition. There is no table that gives corresponding references between pages in the two editions. As the Permanent Edition is usually five years behind the Daily Edition, it is common to find citations in cases, law review articles, and other current commentary to the Daily Edition. Once the Permanent Edition appears, however, the Daily Edition is discarded. This is problematic for finding a new citation in the Permanent Edition. One strategy for locating material that is unknown is to use the index for each congress. Another technique for converting citations is to search unique phrases and dates on Lexis or Westlaw to get the corresponding page reference from the search result. The Record has an index that covers names, subjects, and bill numbers. This only works for material from 1985 to the present.

Occasionally, the text of bills, and sometimes, reports, appear in the Record. This is the exception rather than the rule.

The Record is on Thomas and GPO Access from 1994 to the present. The text is also on Lexis and Westlaw from approximately 1985 to the present.

The predecessor publications to the Record (1873-present) are the Congressional Globe (1833-1873), the Register of Debates (1824-1837) and the Annals of Congress (1789-1823). Most libraries have copies of these, as well as early issues of the Record, on microform.

Congressional Information Service (CIS)

CIS is now a subsidiary of Lexis. It appears in both print and online forms with the latter known as Congressional Universe. Since 1969, CIS has tracked every bill and document issued by congress. Volumes are compiled yearly. One year’s set should have an index volume, and abstract volume, and a legislative history volume. The earliest volumes in the set combine the legislative history volume with the abstract volumes.

The CIS organizational scheme is to divide each house of congress into committees and assign a CIS number to the committee. H141, for example, is the House Select Committee on Aging. All documents issued by that committee are indexed consecutively under that number. H141-9 from the 1988 volume is the hearing “Nursing Home Insurance: Exploiting Fear for Profit?” held on August 8, 1987. A reference to H141-9.1 corresponds to pages 29-48 and the testimony of the first 6 witnesses according to the abstract volume. A reference in the index to one of the witnesses will pinpoint the document and exact location in the document as detailed in the



abstract volume.

CIS uses these individual numbers as access points for fiche where the full document is reproduced. All access points in the CIS indexes and tables will refer to CIS document numbers and cross-reference to other tracking numbers. These include references to subjects, members of congress, witnesses, document numbers (reports, hearings, bill numbers, public laws), Sudoc numbers (cataloging scheme devised by the Superintendent of Documents for government documents and used by many libraries to organize documents), and any other tracking numbers.

The abstract volumes compile all tracking numbers in order with bibliographic information about the document, as well as a short thumbnail sketch of the document contents. Once a document is referenced from the index to the abstract volume, the cross referencing to bibliographic information and numbers there is useful to finding hard copy in a library, or electronic versions in public and commercial web sites.

The legislative history volume compiles a complete legislative history for all public laws, including activity in prior congress, reports, hearings, debates, related legislation, and any other miscellaneous documents that shed light on the legislation as congress considered it. This is probably the best source for all legislative histories since 1969. There are no comparable products from any other vendor that reproduces the editorial work, accuracy, and the quality of CIS.

The online version is called Congressional Universe. Keyword search on most access points is available. Links to full text appear when the related documents are available online. Report content is back to 1990, and hearing abstract and selected full text appears back to 1988. Legislative histories are searchable by public law number, keyword, act name, bill number, and a host of other options. Note that the online and print versions are identical in content. Some database subscribers (such as DePaul University) include the electronic indexes that extend references to Congressional back to 1789. This part of the database is also known as Congressional Masterfile 1, which is the name given to this electronic collection when it was distributed on CD-ROM. Congressional Masterfile 1 does not compile legislative histories.

CCH Congressional Index

Commerce Clearing House (CCH) publishes the Congressional Index. It appears in two volumes, one for the Senate and one for the House. The main purpose of the set is to provide bill status. It contains lists of bills introduced, status, and organizational information. There are no significant references to reports, hearings, or other documents. The set is updated weekly.

Congressional Quarterly

CQ is a weekly publication that gives a magazine style overview to the current congressional activities. Aside from articles of interest, the publication offers breakdowns of votes on the past week's most significant legislation. Every year most of this information is recompiled into a bound volume called the Congressional Quarterly Almanac.



Other sources for Legislative Histories

There are several compilers working with reprint publishing houses to create compiled legislative histories. These individuals collect all the documents related to a piece of legislation and reprint them in several volumes. Sometimes these sets can be voluminous depending on the legislation. The legislative history for certain tax acts has exceeded 90 large volumes. The best way to locate these materials is to search for them in a library card catalog or through WorldCat. These volumes usually contain a table of contents detailing the documents contained in these volumes. However, they are rarely indexed.

Using Lexis or Westlaw to locate strategic materials

One way to use Lexis or Westlaw is to search for the name of an act within the same paragraph as the words “legislative history.” It is entirely possible that a court may have already researched the history of an act, published citations to relevant portions, and commented on the viability of what the court found. The fact that a court has accepted or rejected materials in the legislative record is a significant part of the analysis.