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Complying with Legislative Procedural Rules: Why Legislatures Should Foster This Goal and How It Can Be Done

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Abstract: There are several reasons why lawmakers should adhere to procedural rules in the legislative process. First, doing so upholds the rule of law, ensuring that participants engage in lawmaking under established procedures. Second, following these rules protects participation and the expression of diverse viewpoints, thereby strengthening democratic representation. Third, respecting procedures promotes transparency by clarifying both the content and purpose of proposed legislation. Compliance depends on internal and external enforcement. Lawmakers may use points of order and internal remedies to uphold the rules. Additionally, legislatures should rely on impartial staff whose independent judgment helps deter violations. To resist political pressure, these officials must be protected by guarantees of free expression, both within and beyond the legislature. Finally, under appropriate constraints, courts should be open to reviewing procedural breaches—provided they act with deference, limit standing to qualified actors, and avoid overturning laws based solely on violations of infra-constitutional legislative rules.
Keywords: due process, fairness, legislative procedures, legislative process, participation, transparency

A. INTRODUCTION

In 1812, in his farewell speech, Joseph Story, then Speaker of the Massachusetts House of Representatives in the United States of America (US), urged his peers to stick to the rules that governed their legislative business. He did so in the following terms.[1]

> I have been able ... to appreciate the excellence of those established rules which invite liberal discussions, but define the boundary of right, and check the intemperance of debate. I have learned, that the rigid enforcement of these rules, while it enables the majority to mature their measures with wisdom and dignity, is the only barrier of the rights of the minority against the encroachments of power and ambition. If any

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[1] Joseph Story, 'Farewell Speech' (Massachusetts House of Representatives, 17 January 1812) <https://archives.lib.state.ma.us/bitstream/handle/2452/819790/ocm39986872-1812-HB-UN0002.pdf?sequence=1&isAllowed=y> accessed 4 October 2025.

> thing can restrain the impetuosity of triumph, or the vehemence of opposition ... it will be found in the protection with which these rules encircle and shield every member of the legislative body. Permit me, therefore, with the sincerity of a parting friend, earnestly to recommend to your attention a steady adherence to these venerable usages.

Joseph Story's words go to the heart of this article's concerns. A legislature brings together individuals with divergent views, reflecting the complexity of society within the boundaries defined by electoral laws. It also faces an ever-expanding range of issues, driven by the growing scope of governmental responsibilities. In this context, and to promote fairness, participation, and transparency, legislatures should function as structured institutions governed by binding rules. They should also rely on enforcement mechanisms—some administered by legislators themselves, others entrusted to third parties expected to remain neutral.

There are several reasons why lawmakers should comply with legislative procedural rules. First, this is a matter of the rule of law: participants in the lawmaking process have the right to carry out their legislative functions according to established procedures, much like the expectation of fairness in a well-regulated game.[2] Admittedly, legislative procedures allow for some flexibility, since negotiation and compromise are integral to politics.[3] In this context, enforcement may not appear as prominent as it does in judicial settings. Nonetheless, and second, adhering to procedural rules protects participation and ensures the flow of diverse opinions, thereby reinforcing democratic representation.[4] Third, compliance promotes transparency,[5] by shedding light on both the substance of a bill and its underlying motives.[6] It therefore follows that procedural violations in legislatures can undermine fairness, participation, and transparency.

These reasons are elaborated upon in the discussion in Part B of this article. It is important to note that these arguments support not only compliance with existing legislative procedural rules, but also the adoption of such rules in the first place. Accordingly, the analysis presumes a normative framework in which procedural provisions reflect principles akin to those articulated in

[2] Luís Otávio Barroso da Graça, 'Judicial Review of the Legislative Process in Brazil' (2018) 7 UCL Journal of Law and Jurisprudence 55, 58–61.
[3] William N Eskridge Jr, Abbe R Gluck, and Victoria F Nourse, *Statutes, Regulation, and Interpretation: Legislation and Administration in the Republic of Statutes* (West Academic Publishing 2014) 2, 11, 17; cf Susan Rose-Ackerman, Stefanie Egidy, and James Fowkes, *Due Process of Lawmaking: The United States, South Africa, Germany, and the European Union* (CUP 2015) 22.
[4] Graça (n 2) 61-64.
[5] ibid.
[6] see Luc J Wintgens, 'Legisprudence as a New Theory of Legislation' (2006) 19 Ratio Juris 1.

the Internal Rules of the Federal Senate of Brazil.[7] In summary, these principles are: a) equality among legislators; b) due process of lawmaking; c) respect for minority rights;[8] d) collective decision-making;[9] e) transparency;[10] and f) open and substantive deliberation. Provided that legislative procedures are grounded in such principles, adherence to them is expected to advance fairness, inclusive participation, and transparency, thereby strengthening the overall legitimacy of the legislative process.[11]

A case from Brazil illustrates the importance of these underlying principles.[12] In the late 1990s, the São Paulo City Council adopted a resolution allowing a majority of its members to designate certain bills for *en bloc* voting—without debate or the possibility of amendment—during floor proceedings.[13] At first glance, the resolution created an all-or-nothing mechanism: members who supported certain measures were compelled to accept others they might oppose. In practice, the situation was even more problematic. Since the majority had discretion to select which bills would be subject to this procedure, the outcome of the votes became a mere formality.[14] Predictably, minority councillors objected, arguing that the resolution infringed upon their rights to vote independently and to speak during deliberations.[15] Fortunately, the majority employed the mechanism only once, although they approved over twenty bills in a single session.[16] Recognizing the procedural unfairness it had introduced, the Council later repealed the resolution.[17]

These remarks are not intended to suggest that legislators may simply disregard procedural rules that fail to reflect the aforementioned principles. Even when faced with unreasonable or unfair rules, noncompliance should not become standard practice. This is because, firstly, the very reasonableness of a rule is often a matter of political and legal contention, and secondly, selective

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[7] Regimento Interno do Senado Federal (RISF), art 412 <https://www25.senado.leg.br/documents/12427/45868/RISF+2018+Volume+1.pdf/cd5769c8-46c5-4c8a-9af7-99be436b89c4> accessed 4 October 2025.
[8] Walter J Oleszek and others, *Congressional Procedures and the Policy Process* (11th edn, CQ Press 2020) 10–11.
[9] ibid 12.
[10] ibid.
[11] ibid; Oleszek and others (n 8) 9; Ittai Bar-Siman-Tov, 'Lawmakers as Lawbreakers' (2010) 52 William and Mary Law Review 805, 814–815.
[12] Instituto do Legislativo Paulista, 'Direito do Parlamentar ao Devido Processo Legislativo' (2 September 2021) [00:22:42-00:31:33] <https://www.youtube.com/watch?v=CktLj3HBi5I> accessed 4 October 2025.
[13] ibid.
[14] ibid.
[15] ibid.
[16] ibid.
[17] ibid.

disobedience might open the door to arbitrary decisions by powerful leaders or shifting majorities, thereby eroding confidence in the institutional framework. For these reasons, the only legitimate path to address inadequate legislative procedures is through formal mechanisms for legal or procedural reform.

Not only should compliance with procedural rules be supported by enforcement mechanisms under the control of legislators, but it should also be ensured by third-party oversight. Instruments such as points of order and internal appeals enable lawmakers to uphold the procedural norms that structure legislative activity. However, these internal mechanisms may be insufficient on their own. For this reason, external actors—such as judges or parliamentary officers with expertise in legislative procedure and who are not directly involved in partisan dynamics—should also play a role in safeguarding compliance. These institutional considerations, including the forms and conditions under which enforcement mechanisms should operate, are examined in Parts C and D of this article. The former addresses tools available to legislators themselves; the latter explores third-party oversight arrangements.

A final note on methodology: this article adopts a philosophical and normative approach, focusing on procedural principles and illustrative cases from the national legislatures of Brazil and the United States. Although grounded in these two jurisdictions, the analysis is likely to be of broader relevance in contexts where legislative institutions operate under a comparable structural logic.

B. WHY LEGISLATORS SHOULD ABIDE BY PROCEDURAL RULES

1. Fairness: Rule of Law, Legislative Due Process

Compliance with legislative procedures is essential because the rules themselves shape the outcomes of the lawmaking process.[18] It could be argued that the enactment of legislation depends solely on securing sufficient political support. From this perspective, the procedural route taken to pass a bill would be irrelevant, provided the final outcome reflects the will of the majority (or supermajority, as required in some cases). However, this assumption fails to account for the fact that alternative procedural paths can produce significantly different results. Consider, for instance,

[18] Bar-Siman-Tov (n 11) 809–810, 813, 841; Jonathan S Gould, 'Law Within Congress' (2020) 129 The Yale Law Journal 1946, 1950; Adrian Vermeule, 'The Constitutional Law of Congressional Procedure' (2004) 71 The University of Chicago Law Review 361, 362.

a bicameral legislature in which the passage of a bill requires an absolute majority (more than half of the members) in both its chambers (or houses; terms used interchangeably in this paper).[19] Imagine that: (a) one of the chambers has 50 members, all of whom support the bill; and (b) the other chamber has 100 members, of whom only 26 are in favour. While the total number of supporters across both chambers amounts to 76 out of 150 members—more than half—this support would not suffice under a bicameral system where majority approval is required in each chamber independently. Despite overwhelming support in one house, the bill would fail in the other. This example illustrates how procedural frameworks directly influence legislative outcomes. Just as differing rules on institutional structure "affect which bills pass",[20] so too does compliance—or lack thereof—with procedural requirements during the legislative process.

The tax legislation enacted by the US Congress at the end of 2017, as compared to its Tax Reform Act of 1986,[21] provides a clear example of how different procedural paths can shape legislative outcomes. In the case of the 1986 Act, from the initial legislative hearings in June 1985 to President Reagan's signing of the bill in October 1986, the legislative process extended over approximately sixteen months.[22] The reform was passed with substantial bipartisan support in both chambers of Congress.[23] By contrast, the 2017 Act was enacted in less than two months, "without holding a single evidentiary hearing, through a parliamentary manoeuvre that dispensed with the need for any bipartisan support and the threat of a filibuster in the Senate".[24] Moreover, the final version of the bill was approved "with no meaningful deliberation".[25] As Gardbaum observes, "[f]or many critics, the flaws in the procedure and the reluctance to engage in deliberation or public consideration were directly related to—and an attempt to hide—its content, which vastly favours the rich at the expense of everyone else".[26] It may be argued that had Congress adhered to standard

[19] For the concepts of absolute majority and simple majority, see Adrian Vermeule, 'Absolute Majority Rules' (2007) 37 British Journal of Political Science 643.
[20] Gary W Cox, 'On the Effects of Legislative Rules' (2000) 25 Legislative Studies Quarterly 169, 170.
[21] Stephen Gardbaum, 'Due Process of Lawmaking Revisited' (2018) 21 University of Pennsylvania Journal of Constitutional Law 1, 6.
[22] David E Rosenbaum, 'The Tax Reform Act of 1986: How the Measure Came Together' *The New York Times* (New York City, 23 October 1986) D16.
[23] ibid.
[24] Gardbaum (n 21) 5.
[25] ibid 6.
[26] ibid.

deliberative procedures, the 2017 tax law might not have been enacted at all, or at the very least, its substantive provisions would have been significantly different.[27]

Compliance with legislative procedural rules may be conceptualised in terms of due process of lawmaking. The Fifth Amendment to the US Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law".[28] Similarly, section 1 of the Fourteenth Amendment stipulates that no state shall "deprive any person of life, liberty, or property, without due process of law".[29] One strand of interpretation views these clauses as imposing substantive limitations on legislation[30]—for example protecting individual rights such as privacy against governmental intrusion.[31] A second approach interprets due process as encompassing structural guarantees related to political representation. This understanding is famously associated with John Hart Ely's reading of Footnote Four in *US v Carolene Products Co*.[32] Under this view, procedural fairness in lawmaking—including the equality of voting power and access to deliberative participation—becomes a concern for the enactment of legislation.[33] A third perspective considers due process of lawmaking as requiring compliance with procedures in the legislative and executive branches to conform to foundational republican and democratic principles.[34]

This article adopts the third perspective outlined above, according to which the principle of due process of lawmaking requires adherence to procedural rules regardless of their normative source. From this standpoint, it is immaterial whether the applicable rule is constitutional or infra-constitutional, i.e., statutory or internal to the legislative body. While compliance may appear more straightforward in the case of constitutional or statutory provisions—given their perceived binding force[35]—the same obligation should apply to internal legislative rules unless a hierarchical conflict of norms arises.

[27] cf Gardbaum (n 21) 5–6, 17–18.
[28] US Const. amend. V.
[29] US Const. amend. XIV s 1.
[30] Gardbaum (n 21) 13.
[31] cf ibid.
[32] 304 US 144 (1398).
[33] John Hart Ely, *Democracy and Distrust* (Harvard University Press 1980) 73–104.
[34] Gardbaum (n 21) 14.
[35] Jacob E Gersen and Eric A Posner, 'Soft Law: Lessons from Congressional Practice' (2018) 61 Stanford Law Review 573, 577, 582; see also Michael B Miller, 'The Justiciability of Legislative Rules and the "Political" Political Question Doctrine' (1990) 78 California Law Review 1341.

Indeed, the distinction among different types of legal norms should relate only to their relative weight within the hierarchy of laws,[36] not to their enforceability in isolation. Thus, a rule contained in a legislative chamber's internal regulations must yield in the event of a conflict with a higher norm, such as a constitutional provision. In the absence of such a conflict, however, legislative authorities are not at liberty to disregard internal rules. Accordingly, the due process principle obliges competent authorities to carry out the legislative process in strict conformity with the established procedural framework—whatever its formal status—rather than on the basis of discretionary or extra-legal considerations.

Regardless of the hierarchical status of procedural norms—whether constitutional, statutory, or internal—legislative due process functions as a corollary of the rule of law in its liberal formulation.[37] As theorists such as Friedrich Hayek, Joseph Raz, and John Rawls have emphasised, adherence to the rule of law enables legal subjects to anticipate the consequences of their actions and to structure their conduct accordingly.[38] This principle of legal predictability applies equally to the legislative sphere.[39] Should rule-breaking become systematic, legislators would no longer be able to anticipate the normative effects of their conduct within the lawmaking process.[40] In such cases, the personal will of an individual or authority supplants the authority of the law, thereby undermining the very foundations of the rule of law.

Ultimately, the normative case for subjecting the legislative process to the rule of law rests on its implications for the citizenry. While the formal right to the due application of procedural rules belongs to legislators—who are institutionally empowered to participate in the production of legal norms[41]—those legislators, in a democracy, act as representatives of the population.[42] Admittedly, elected officials may pursue personal or partisan objectives, particularly when

[36] Hans Kelsen, *Introduction to the Problems of Legal Theory* (Bonnie Litschewski Paulson and Stanley L Paulson trs, OUP 1992) 54–75.
[37] Graça (n 2) 58–61.
[38] ibid. See also FA Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (Routledge 1982) 98, 102, 113; Joseph Raz, *The Authority of Law: Essays on Law and Morality* (OUP 1979) 222; John Rawls, *A Theory of Justice* (rev edn, Harvard University Press 1999) 207.
[39] Graça (n 2) 58–61.
[40] ibid.
[41] cf Richard A Arenberg and Robert B Dove, *Defending the Filibuster* (Indiana University Press 2014) xv.
[42] cf Kenneth A Shepsle, *Rule Breaking and Political Imagination* (The University of Chicago Press 2017) 83; Gardbaum (n 21) 1, 6; Jonathan S Gould, 'The Law of Legislative Representation' (2021) 107 Virginia Law Review 765, 776–783.

political negotiations involve compromises or campaign financing.[43] In some cases, representatives may even misuse their office to advance private business interests.[44] The legitimacy of such conduct varies: the latter is clearly objectionable, while the former depends on whether political trade-offs ultimately promote public objectives. Either way, legal frameworks attempt to constrain illegitimate behaviour through a range of mechanisms. Some focus on enforcing anti-corruption statutes and conflict-of-interest rules;[45] others aim to enhance the accountability of political actors; others still relate to procedural compliance in the legislature (which is the focus of this article). A legislature that adheres to fair procedural rules can reasonably be expected to provide space for the expression of societal demands and, within the limits of the electoral system, to reflect the relative weight of those demands. In this sense, legislators' fidelity to the rule of law in legislative proceedings serves to strengthen democratic representation in favour of the people.

2. Participation, Democratic Representativeness

A sceptic might reasonably ask how strict adherence to legislative procedures—regardless of their specific content—can foster democratic representativeness. The answer lies in the institutional function of a legislature: to provide elected representatives with a structured environment in which to carry out their lawmaking responsibilities.[46] Legislators come from diverse backgrounds and represent a plurality of interests.[47] Accordingly, the legislative process should be structured to be harmonious and productive,[48] organised in a manner that supports deliberation and facilitates the expression of differing viewpoints.[49] Admittedly, some citizens may be indifferent to procedural integrity or may even support procedural irregularities if such deviations produce outcomes that align with or benefit their preferences.[50] However, the individual who benefits from rule-breaking today may find themselves disadvantaged by the same practice

[43] cf Gould (n 43) 776–783.
[44] Gardbaum (n 21) 7.
[45] ibid 10–12.
[46] Jeremy Waldron, 'Principles of Legislation' in Richard W Bauman and Tsvi Kahana (eds), *The Least Examined Branch* (CUP 2006) 15, 23–24.
[47] ibid 25.
[48] cf Oleszek and others (n 8) 11–12.
[49] Waldron (n 47) 23, 27; Graça (n 2) 62 See also Jürgen Habermas, 'Constitutional Democracy: A Paradoxical Union of Contradictory Principles?' (2001) 29 Political Theory 766, 771.
[50] Bar-Siman-Tov (n 11) 833.

tomorrow.[51] In the long run, therefore, adherence to legislative procedure enhances fairness—understood here as the equal opportunity to influence political outcomes—by upholding the institutional integrity of representative democracy.

One of the core concerns in democratic theory relates to the right to participate in political decision-making—what Waldron has termed "the right of rights".[52] In complex societies, diversity is a defining feature: individuals differ in origin, background, identity, and preference. As a result, achieving consensus on collective problems is often difficult. Nevertheless, the demands of governance require that decisions be made, even when the resulting policies may be unsatisfactory to certain segments of the population. The challenge, then, is to create a normative structure in which disagreement does not undermine legitimacy. This is most plausibly achieved through participatory mechanisms in which citizens are not only entitled to vote, but also to contribute to public deliberation—to speak, to be heard, and to influence the process. The ultimate aim of such procedural safeguards is to prevent "the arbitrariness and insult that unequal or disproportionate treatment involves".[53]

In a representative democracy, the right of citizens to participate in political life is undermined if their elected legislators are unable to perform their functions effectively within legislative bodies.[54] The political system may be defective if legislatures do not transform the demands they receive into well-built policies or legislation. Just as any individual may count on the right to participate in the broad political arena, so too must their representatives in legislative bodies. Procedural violations can deny certain legislators the ability to debate legislative proposals. More gravely, such breaches may prevent them from voting, thereby silencing the voices of the constituents they represent. In such instances, the political system fails to avoid "the arbitrariness and insult" to which Waldron refers.[55]

Jeremy Bentham's reflections on the British Parliament's three readings rule offer a classical illustration of how legislative procedures can enhance the right to participate in

[51] Gould (n 18) 1958.
[52] Jeremy Waldron, *Law and Disagreement* (OUP 2004) 232–254. The rest of the paragraph flows from the same reference.
[53] Waldron (n 53) 238.
[54] cf Bar-Siman-Tov (n 11) 814.
[55] Waldron (n 53) 238.

lawmaking.[56] Describing the practice, he notes that "every bill shall be debated three times upon different days, and these days oftentimes distant from each other".[57] Bentham argues that this structure promotes "[m]aturity in the deliberations, arising from the opportunities given to a great number of persons of speaking upon different days, after they have profited by the information which discussion has elicited".[58] Relatedly, he notices that the procedure protects "the minority of the assembly, by securing to it different periods at which to state its opinions."[59] He further observes that the rule enables "the public to make itself heard".[60] Compliance with procedures of this kind strengthens the deliberative function of legislative institutions. By ensuring that representatives are given the institutional support to participate meaningfully in lawmaking, such rules reduce the risk that citizens' political engagement—mediated through their elected officials—will fail to result in appropriate legal responses.

3. Transparency and Justification

Another normative basis for compliance with legislative procedure lies in the demand for justification in lawmaking.[61] This is what "legisprudence" demands.[62] If the enactment of law entails the restriction of individual liberty, then those responsible for imposing such limitations must offer transparent and reasoned explanations for their necessity. In this context, lawmakers bear the burden of demonstrating that the legal constraints they propose are "an alternative for [allegedly] failing social interaction"—within the framework of possibilities available at a given historical moment.[63] As Wintgens puts it, "[t]he justification of legislation is marked as a process of weighing and balancing the moral and the political limitations of freedom ... Justification is part of the process of legitimation".[64]

[56] Jeremy Bentham, *Political Tactics* (Michael James, Cyprian Blamires and Catherine Pease-Watkin eds, OUP 1999) 129–131.
[57] ibid 129.
[58] ibid.
[59] ibid.
[60] ibid.
[61] Bar-Siman-Tov (n 11) 814. cf William N Eskridge, Jr, Philip P Frickey and Elizabeth Garrett, *Legislation and Statutory Interpretation* (2d edn, Foundation Press 2006) 81–83.
[62] "The duty of justification is what legisprudence is about. Legisprudence is defined as a rational theory of legislation. It consists of an elaboration of the idea of freedom as *principium*". Wintgens (n 6) 10.
[63] Wintgens (n 6) 10, 13–14.
[64] ibid 10.

It must be acknowledged that explanatory materials or public statements may, in some cases, obscure rather than illuminate the true motives behind a legislative proposal.[65] For example, a bill aimed at granting tax exemptions to certain economic sectors may be framed as promoting general welfare, while in reality serving to benefit businesses aligned with a political party's supporters. This concern was raised in relation to the 2017 US tax reform, which was allegedly "a pay-off to the tiny class of billionaire Republican donors".[66] By contrast, procedural scrutiny can serve to clarify—or at least raise doubts about—the underlying motivations of a proposed law. In this context, adherence to legislative procedures that guarantee lawmakers the opportunity to properly examine and debate proposals becomes critical. Indeed, those opposing a bill may be able to uncover and publicise concealed intentions. Even where the majority holds sufficient votes to ensure passage, following the appropriate procedural steps serves the broader function of justification. For the sake of transparency and public trust, the legislative process must adhere to due procedural standards.

Transparency in the legislative process is also reinforced through procedural rules that promote access to information. While exceptions may exist—such as protecting sensitive data or shielding legislators from undue external pressure in specific contexts—secrecy must remain the exception, not the rule or pattern.[67] In democratic regimes, although private political negotiations may occur, the expectation is that formal discussions and voting sessions will take place in public and that the time, location, and agenda of such sessions will be announced in advance. Physical access to legislative chambers or observation galleries may be limited due to security or logistical constraints. Nonetheless, where feasible, live broadcasting should be employed to ensure broad public access to proceedings. Generally, procedural rules should guarantee public access to relevant documents—such as bills, proposed amendments, reports, and supporting materials—prior to legislative deliberation and voting. Once decisions are made, the outcomes should be promptly and publicly disclosed.

That said, not all documents require disclosure. For example, legislators may draft multiple versions of a bill or report for internal evaluation. Likewise, advisory opinions prepared by technical staff may be intended solely for internal guidance, warning lawmakers about potential

[65] cf Eskridge, Jr, Frickey and Garrett (n 62) 76.
[66] Gardbaum (n 21) 5–6.
[67] Bentham (n 57) 39.

problems or offering policy options. It remains the responsibility of the elected representatives—those entrusted with a democratic mandate—to determine whether such internal inputs are integrated into the legislative debate. In short, procedural rules that ensure access to information serve to institutionalise a level of transparency through which the public can examine and evaluate the justifications underlying legislative action.

Finally, it is important to delineate the scope of the duty of justification. While legislators are expected to articulate the reasons underlying the enactment of a law, this obligation does not extend to providing detailed explanations for every individual provision. The duty to offer justification is addressed primarily to the citizenry, enabling them to monitor the conduct of their representatives and to "act from knowledge".[68] Given that legislative activity involves complex and voluminous subject matter, it would be neither feasible nor desirable to demand justification for every article, section, or clause of a statute. Excessive attention to minor technicalities could obscure the broader objectives of a legislative measure and overwhelm the public's capacity for meaningful scrutiny. As Bauerschmidt notes in the context of European Union law, "Union legislation is not required to go into every relevant point of fact and law".[69] He further explains that, "for acts of general application it suffices to disclose the essential objective pursued by the Union legislature and it would be excessive to require a specific statement of reasons for all the various technical choices made".[70] This reasoning is equally applicable to national legislatures. The greater the volume, complexity, and breadth of issues addressed by a legislative body, the less viable it becomes to justify every procedural or technical detail individually. Compliance with procedural rules that promote transparency, participation, and deliberation can serve to identify and foreground the most relevant aspects of proposed legislation.

C. SELF-ENFORCEMENT

Ideally, legislators should take primary responsibility for ensuring compliance with their own procedural rules.[71] As discussed in the previous part, adherence to established procedures tends to make legislative processes fairer and more predictable. Moreover, relying on external

[68] ibid 33.
[69] Jonathan Bauerschmidt, 'The Basic Principles of the European Union's Ordinary Legislative Procedure' (2021) 22 ERA Forum 211, 227.
[70] ibid.
[71] cf Joshua A Chafetz, *Congress's Constitution* (Yale University Press 2017) 290.

bodies such as the judiciary to resolve procedural disputes can raise complex questions concerning the separation of powers. Given these considerations, this part examines the internal arrangements through which legislators themselves seek to maintain procedural order and uphold the integrity of the lawmaking process.

1. Internal Compliance Mechanisms Applied by Lawmakers

Legislative bodies possess internal mechanisms—administered by their own members—for overseeing compliance with procedural rules. This section outlines how such mechanisms operate in both the Brazilian and US Congresses. First, the enforcement of procedural norms is the responsibility of institutional actors such as presiding officers and committee chairs. Second, individual legislators are empowered to invoke specific procedural tools. When a dispute or uncertainty arises regarding the application of a rule, a member may raise a point of order. [72] The resolution of such a point is typically entrusted to the presiding officer of the chamber or the relevant committee chair, depending on the context.[73] Should the author of the point of order disagree with the ruling, they may file an appeal, which is then submitted to a higher deliberative body—generally the full chamber—for a final decision.[74]

The presiding officer of a legislative chamber is not necessarily required to be a member of that body, although this is typically the case in both the Brazilian and US Congresses. In Brazil, the possibility of a non-member presiding over the Chamber of Deputies or the Federal Senate is contemplated neither in legislation nor in conventional practice. Each house elects one of its own members to serve as President for a term of two years.[75] In the United States, the Vice President of the Republic serves *ex officio* as President of the Senate,[76] though this function is rarely exercised in practice.[77] Day-to-day presiding duties are usually performed by the President pro

[72] Bar-Siman-Tov (n 11) 818.
[73] ibid.
[74] ibid.
[75] Constitution of the Federative Republic of Brazil (CF 88) art 57 para 4 (for an English translation, see Federal Supreme Court, *Constitution of the Federative Republic of Brazil* (2022) <https://www.stf.jus.br/arquivo/cms/legislacaoConstituicao/anexo/Brazil_Federal_Constitution_EC_125.pdf> accessed 5 October 2025; Regimento Interno da Câmara dos Deputados (RICD) arts 5 and 6 para 1 <https://www2.camara.leg.br/atividade-legislativa/legislacao/regimento-interno-da-camara-dos-deputados/> accessed 5 October 2025; RISF arts 59 and 60 para 1(I).
[76] US Const. art I s 3 cl 5.
[77] Roger H Davidson and others, *Congress and Its Members* (18th edn, CQ Press 2022) 159.

tempore, who is a senator selected by their colleagues.[78] In the House of Representatives, the presiding officer is the Speaker.[79] Although, in principle, the Speaker is not required to be a sitting member, in practice, every individual elected to the office has been one.[80]

Presiding officers are expected to apply the procedural rules that regulate the legislative process and shape the adoption of new laws. In the Brazilian Federal Senate, for example, an internal rule explicitly provides that decisions resulting from leadership agreements or full-chamber discussions may not override standing procedural norms—except in cases where there is a unanimous roll-call vote, with a quorum of at least three-fifths of the members.[81] The rationale behind such a guideline seems to relate to the legal, and thus binding, nature of procedural rules—even when they do not enjoy constitutional or statutory status.[82] Therefore, compliance is required not only from the majority and party leaders but also from the presiding officer. For Bentham, the latter should not "possess any power, the effect of which would be to give him a control in any degree over the will of the assembly".[83] Admittedly, speakers or presidents may act politically and may exercise discretion in the interpretation and application of procedural rules.[84] However, this discretionary authority cannot serve as a license for arbitrary procedural deviations, which would risk undermining the fairness and legitimacy of the legislative process.

When a potential violation of procedural rules occurs, a legislator may typically submit a parliamentary inquiry or raise a point of order.[85] These mechanisms operate in broadly similar ways in both the US Congress and the Brazilian National Congress. A parliamentary inquiry is a

[78] US Const. art I s 3 cl 5; Standing Rules of the Senate (S Doc No 113-18, 2013) (SRS) r I cl 1 <https://www.rules.senate.gov/imo/media/doc/CDOC-113sdoc18.pdf> accessed 5 October 2025.
[79] US Const. art I s 2 cl 5.
[80] Davidson and others (n 78) 146.
[81] RISF art 412(III).
[82] Luís Otávio Barroso da Graça, 'The Legal Nature of the Legislative Process' (JSD thesis, University of California, Berkeley 2024) 1–56.
[83] Bentham (n 57) 67.
[84] Valerie Heitshusen, *The Speaker of the House: House Officer, Party Leader, and Representative* (Congressional Research Service Report No 97-780, 16 May 2017) 4 <https://crsreports.congress.gov/product/pdf/RL/97-780> accessed 5 October 2025.
[85] Regimento Comum do Congresso Nacional (RCCN) art 131 <https://www25.senado.leg.br/documents/59501/97171143/RCCN.pdf/> accessed 5 October 2025; RICD art 95; RISF arts 403 and 408; Charles W Johnson, John V Sullivan and Thomas Wickham, Jr, *House Practice: A Guide to the Rules, Precedents and Procedures of the House* (US Government Publishing Office 2017) 679 (ch 37 s 1); Floyd M Riddick and Alan S Frumin, *Riddick's Senate Procedure: Precedents and Practices* (Alan S Frumin ed, revised edn, S Doc No 101-28, US Government Publishing Office 1992) 987.

request for clarification addressed to the presiding officer[86]—such as the Speaker, the President of the chamber, or another official responsible for conducting the session at that time. The response to such an inquiry is generally explanatory rather than adjudicative in nature.[87] As it does not constitute a formal ruling, it is not subject to appeal,[88] and carries limited authority as a procedural precedent. By contrast, a point of order typically elicits a decision with binding force for the ongoing proceedings, and it may establish a precedent depending on its content and context.[89]

A point of order is a more specific and consequential mechanism than a parliamentary inquiry. It is typically raised in response to a concrete and immediate procedural issue that arises during legislative proceedings.[90] Accordingly, the member must formulate the point objectively, clearly identifying the controversy or doubt and specifying the relevant rules, or precedents.[91] To be admissible, the point of order must also be raised in a timely manner**.** Failure to do so generally results in forfeiture of the right to challenge the issue. As explained in the context of US congressional procedure, "[o]n the demand for the 'regular order,'... the [m]ember must either make his or her point of order at that time or lose the opportunity to do so".[92]

The authority to decide on a point of order lies primarily with the presiding officer of the chamber. However, such decisions are generally subject to appeal, allowing the matter to be submitted to the full house.[93] The purpose is to circumvent equivocal or arbitrary positions from just one person.[94] Usually, not only the one who raised the question may challenge the chair's ruling but any member may do so.[95] That is so because, on the one hand, the original author or a

[86] RISF art 14(X)(a); Valerie Heitshusen, *Points of Order, Rulings, and Appeals in the Senate* (Congressional Research Service Report No 98-306, 29 August 2018) 3 <https://crsreports.congress.gov/product/pdf/RS/98-306> accessed 5 October 2025; Valerie Heitshusen, *Points of Order, Rulings, and Appeals in the House of Representatives* (Congressional Research Service Report No 98-307*,* 12 December 2018) 3 <https://crsreports.congress.gov/product/pdf/RS/98-307> accessed 5 October 2025.
[87] Heitshusen, *Points of Order in the Senate* (n 87) 3; Heitshusen, *Points of Order in the House* (n 87) 3.
[88] Heitshusen, *Points of Order in the Senate* (n 87) 3; Heitshusen, *Points of Order in the House* (n 87) 3; Johnson, Sullivan, and Wickham, Jr (n 86) 67 (ch 3 s 3).
[89] Heitshusen, *Points of Order in the Senate* (n 87) 3; Heitshusen, *Points of Order in the House* (n 87) 3.
[90] RCCN art 131; RICD art 95; RISF arts 403 and 408; Johnson, Sullivan, and Wickham, Jr (n 86) 679 (ch 37 s 1); Riddick and Frumin (n 86) 987.
[91] RCCN art 131; RICD art 95 para 4; RISF art 404; Heitshusen, *Points of Order in the Senate* (n 87) 1–2; Heitshusen, *Points of Order in the House* (n 87) 1; Johnson, Sullivan, and Wickham, Jr (n 86) 680 (ch 37 s 1).
[92] Heitshusen, *Points of Order in the House* (n 87) 1. See also Bar-Siman-Tov (n 11) 818.
[93] RCCN art 132; RICD art 17(I)(n); RISF art 48(XIII); Rules of the House of Representatives (118th Congress, 2023) (RHR-118th) r I cl 5 <https://www.govinfo.gov/content/pkg/HMAN-118/pdf/HMAN-118.pdf> accessed 5 October 2025; SRS r XX cl 1; Bar-Siman-Tov (n 11) 818.
[94] cf Johnson, Sullivan, and Wickham, Jr (n 86) 65 (ch 3 s 1).
[95] RICD art 95 para 8; RHR-118th r I cl 5; Heitshusen, *Points of Order in the Senate* (n 87) 2.

peer with the same interest may resist a denial; on the other hand, any other congressperson may disagree with the granting of a point of order.

Decisions on points of order may also establish procedural precedents.[96] In the United States, both the House of Representatives and the Senate regularly apply previous rulings to analogous situations as precedents, reflecting a practice similar to the *stare decisis* doctrine in judicial proceedings.[97] Decisions rendered by the full chamber generally carry greater authoritative weight than those issued solely by the presiding officer.[98] A comparable dynamic exists in the Brazilian Congress, though in that context, procedural precedents tend to serve as guidance rather than binding authority, irrespective of whether they originate from the plenary or the chair.[99]

To summarise, legislatures possess internal mechanisms designed to oversee and enforce compliance with procedural norms. First, presiding officers are expected to administer the legislative process in accordance with applicable rules—whether constitutional, statutory, or internal. Second, when lawmakers identify procedural irregularities, they may raise a point of order (or a comparable motion) to request a procedural correction. The responsibility for ruling on such matters generally falls to the presiding officer. Third, any dissatisfied member may appeal the decision, seeking a determination by the full chamber. In theory, this internal oversight framework appears institutionally sound. Nevertheless, its effectiveness in practice may be limited.

2. Waiving Tools and Circumvention of Due Procedures

Despite their formal existence, internal mechanisms such as points of order and appeals may prove ineffective in practice within the federal legislatures of Brazil and the United States. Presiding officers or majority coalitions may disregard procedural objections or appeals, as no enforceable internal obligation compels them to act on such challenges. Remarkably, chambers' rules may offer broad opportunities for waiving procedural enforcement tools, and the majority may even questionably use points of order to circumvent supermajority requirements.

[96] RCCN art 132 para 2; RICD art 95 para 10; RISF art 406; Heitshusen, *Points of Order in the Senate* (n 87) 3; Heitshusen, *Points of Order in the House* (n 87) 2; Johnson, Sullivan, and Wickham, Jr (n 86) 683 (ch 37 s 2); Riddick and Frumin (n 86) 987.
[97] Johnson, Sullivan, and Wickham, Jr (n 86) 683 (ch 37 s 2); Gould (n 18) 1956.
[98] Heitshusen, *Points of Order in the Senate* (n 87) 3.
[99] RCCN art 132 para 2; RICD art 95 para 10; RISF art 406; Luciano Henrique da Silva Oliveira, *Comentários ao Regimento Interno do Senado Federal: Regras e práticas regimentais da Câmara Alta da República* vol 2 (Senado Federal 2021) 580.

(i) Waiving Tools

Waiving instruments may be used to work around points of order. In the US House of Representatives, members can adopt an expeditious route by suspending regular procedures,[100] save specified ones.[101] A single voting process is necessary for both suspension and passing, but the threshold amounts to two-thirds of those "present and voting, a quorum being present".[102] Together with debate and amendment limitations,[103] such a fast-track course precludes points of order related to the bill under consideration.[104] Another possibility involves the adoption of a "special order of business reported from the Committee on Rules".[105] Such a special rule, adopted by a majority in the House of Representatives,[106] may temporarily set aside current procedures "for the consideration of a particular bill".[107] Like suspension, a special rule may waive points of order,[108] except where constraints limit the committee's authority to issue such waivers.[109] Finally, in both the US House of Representatives and Senate, unanimous consent, provided that a quorum is present, may also provisionally suspend standing rules and bar points of order in relation to a particular legislative action.[110]

Waiving the regular process is also possible in the Brazilian Congress. In the Senate, unanimous consent regarding a specific matter may set aside the internal rules provided three-fifths of the senators are present.[111] Additionally, both chambers make use of motions which, if

[100] Johnson, Sullivan, and Wickham, Jr (n 86) 898 (ch 53 s 2); Elizabeth Rybicki, *Suspension of the Rules in the House: Principal Features* (Congressional Research Service Report No 98-314, 1 June 2025) 1 <https://crsreports.congress.gov/product/pdf/RS/98-314> accessed 5 October 2025.
[101] Johnson, Sullivan, and Wickham, Jr (n 86) 899 (ch 53 s 3).
[102] Rybicki (n 101) 1. See also RHR-118th r XV cl 1; Johnson, Sullivan, and Wickham, Jr (n 86) 897 (ch 53 s 1).
[103] Rybicki (n 101) 1.
[104] Johnson, Sullivan, and Wickham, Jr (n 86) 897, 899 (ch 53 ss 1 and 2); Rybicki (n 101) 1.
[105] Johnson, Sullivan, and Wickham, Jr (n 86) 855 (ch 50 s 4). For the competence of the House Committee on Rules, see RHR-118th r X cl 1(o). See also Walter J Oleszek, *The 'Regular Order': A Perspective* (Congressional Research Service Report No R46597, 6 November 2020) 31–33 <https://crsreports.congress.gov/product/pdf/R/R46597> accessed 5 October 2025.
[106] Johnson, Sullivan, and Wickham, Jr (n 86) 892 (ch 52 s 5).
[107] ibid 855 (ch 50 s 4).
[108] ibid.
[109] ibid 888 (ch 52 s 1).
[110] SRS r V cl 1 and r XII cl 4; Valerie Heitshusen, *Constitutional Points of Order in the Senate* (Congressional Research Service Report No R40948, 24 April 2017) 1 <https://crsreports.congress.gov/product/pdf/R/R40948> accessed 5 October 2025; Johnson, Sullivan, and Wickham, Jr (n 86) 855, 907 (ch 50 s 4 and ch 54 s 1); Walter J Oleszek, *The Rise of Senate Unanimous Consent Agreements* (Congressional Research Service Report No RL33939, 14 March 2008) 1, 4 <https://crsreports.congress.gov/product/pdf/RL/RL33939> accessed 5 October 2025.
[111] RISF art 412(III).

approved by a majority (a simple majority, in most cases[112]), may instigate expedited procedures. These procedures typically involve shortening deadlines, bypassing committee review, limiting debate, and restricting the opportunity to propose amendments.[113] Finally, regardless of a request, an automatic waiver applies for matters or situations specified in the procedural rules,[114] such as the authorisation to "the president of the Republic to declare war" or the approval of "a state of defense".[115] While unanimous consent or expedited procedures are in place, points of order referring to ordinary legislative procedures are not admissible. Yet, any member may still raise an objection if the rules governing the use of these waiving mechanisms are themselves misapplied.[116]

The overall purpose of such waivers of legislative procedures' is to accelerate the lawmaking process. In some cases, proposed measures do not generate significant opposition because they do not involve substantial legal or policy changes. In others, there may be broad consensus surrounding the matter at hand. Under such circumstances, subjecting a bill to the full sequence of ordinary legislative steps may be procedurally unnecessary or pointless.[117] Therefore, waiving the standard procedures and their corresponding points of order may be reasonable in some situations. This conclusion holds especially when the waiver is not imposed unilaterally by a presiding officer or majority faction but instead derives its legitimacy from rules that expressly authorise such procedural flexibility. In other words, as long as constitutional, statutory, or internal regulation on the waiving tools are themselves embedded in the legal framework, their use may be theoretically justifiable. That said, the potential for abuse remains, especially when the rules allow a simple majority to authorise waivers.[118] In such cases, it becomes legitimate to question whether legislative bodies should have such broad discretion to circumvent standard procedures, especially as this neutralises the points of order that ordinarily serve as the primary instrument of procedural oversight in legislatures.[119]

[112] For the distinction between the concepts of absolute and simple majorities for voting purposes, see Vermeule (n 19).
[113] RICD arts 152–155; RISF arts 336–337.
[114] CF 88 arts 64 and 223 para 1; RICD art 151(I) read with art 159 para 2; RISF art 353.
[115] CF 88 art 49(II) and (IV).
[116] RCCN art 131; RICD art 95; RISF arts 403 and 408.
[117] Johnson, Sullivan, and Wickham, Jr (n 86) 898, 907–908 (ch 53 s 2 and ch 54 s 1); Oleszek (n 111) 1.
[118] cf Bryan W Marshall, *Rules for War: Procedural Choice in the US House of Representatives* (Routledge 2005) 5.
[119] cf Bar-Siman-Tov (n 11) 819.

A reported episode in the 59th US Congress (1905-1907) illustrates how a procedural waiver may be deemed inappropriate, at least from the perspective of dissatisfied legislators.[120] The case involved authorisations in an appropriation bill in breach of Rule XXI of the House of Representatives. Specifically, members of the House of Representatives sought to insert provisions authorising salary increases for certain federal employees and the creation of new positions, despite the fact that the bill's formal purpose was limited to appropriating government funds.[121] To facilitate this outcome, a special rule from the Committee on Rules was used, which "contained a waiver for Rule XXI that would prohibit members from bringing points of order to strike provisions contained in the bill that had not been previously authorized".[122] In response, "several members complained that the waiver protecting unauthorized provisions unfairly advantaged the Committee on Appropriation at the expense of the rest of the House".[123] Today, special rules, including those suspending the standing regulations, have become a reliable tool for the majority in the US House of Representatives.[124]

(ii) Circumvention of Due Procedures

Although points of order and appeals are designed to uphold procedural integrity, they may also be repurposed to circumvent the formal requirements of the legislative process.[125] Such an outcome may follow when the pressure to approve a measure is high, but the procedures impose barriers that stand in the way. A clear example arises in the US Senate, where a two-thirds vote is required to close debates (cloture) on a proposal to amend the standing rules. Given this high threshold, passing new internal rules is often impractical. Nevertheless, an alternative, unorthodox strategy has occasionally been employed: "First, a senator makes a point of order, knowing that the point of order will fail under current rules. Next, the point of order fails, as expected. Finally, the senator appeals to the full Senate and a simple majority reverses the decision of the chair, thereby creating a new precedent".[126] This manoeuvre is typically feasible when the appeal itself

[120] Marshall (n 119) 105–106.
[121] ibid.
[122] ibid.
[123] ibid.
[124] ibid 105–115; Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress* (5th edn, CQ Press 2017) 152–155.
[125] Gould (n 18) 1976–1977.
[126] ibid.

is non-debatable,[127] otherwise, the motion would be subject to the same supermajority cloture requirement that blocked the original proposal.[128] In short, through procedural mechanisms originally intended to enforce the rules, a simple majority may bypass the very same rules and achieve its objective.

Some cases illustrate the issue. A notable situation occurred in 1975, when the Senate modified the cloture rule to reduce the supermajority requirement from two-thirds to three-fifths, while still maintaining the higher threshold for proposals to amend the Senate's standing rules—consistent with the scenario outlined in the previous paragraph.[129] In 2013, "the Senate reinterpreted the cloture rule to lower the threshold for invoking clotures for all nominations *except* to the Supreme Court".[130] Then in 2017, this procedural reinterpretation was further extended to include nominations to the Supreme Court itself.[131] In both situations, the change meant that a simple majority would henceforth suffice to invoke cloture and proceed to a vote on nominees.[132] As one account of the 1975 episode concludes, "[t]he filibuster was modified, but only because the rules were broken".[133] It seems such a statement also applies to the nomination examples.[134] Although such nontraditional—arguably unlawful—procedural manoeuvres may serve to overcome short-term political deadlock, they raise serious concerns about the legitimacy of the legislative business over time.[135]

Legislatures' internal enforcement mechanisms—administered by their own members—may prove insufficient to ensure compliance with the rule of law in legislative procedure. On the one hand, due to political commitments or any other motive, those deciding the issues may opt for breaching the norms to facilitate a bill's approval.[136] On the other hand, the same procedural tool

[127] Richard S Beth, *Procedures for Considering Changes in Senate Rules* (Congressional Research Service Report No R42929, 22 January 2013) 12 <https://crsreports.congress.gov/product/pdf/R/R42929> accessed 5 October 2025; Christopher M Davis, *Eight Mechanisms to Enact Procedural Change in the U.S. Senate* (Congressional Research Service Report No IN10875, 2 December 2020) <https://crsreports.congress.gov/product/pdf/IN/IN10875> accessed 5 October 2025.
[128] Beth (n 128) 12; Davis (n 128) 2.
[129] Shepsle (n 43) 51–53.
[130] Valerie Heitshusen, *Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief* (Congressional Research Service Report No R44819, 14 April 2017) 1 <https://crsreports.congress.gov/product/pdf/R/R44819> accessed 5 October 2025 (emphasis in original).
[131] ibid.
[132] ibid.
[133] Shepsle (n 43) 53.
[134] ibid 53–54.
[135] ibid 54.
[136] Bar-Siman-Tov (n 11) 866.

may be used to circumvent the strategies of minority factions.[137] Accordingly, one might conclude that reliance on legislators alone may be inadequate for safeguarding procedural integrity in lawmaking.

D. NEUTRAL PLAYERS

> No man is allowed to be a judge in his own case, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judge and parties at the same time ... .[138]

Strengthening the role of neutral actors may provide a means of counteracting partisan distortions of procedural norms. In this context, neutrality does not imply personal detachment or apathy but rather a formally institutionalised position of impartiality—analogous to that of a referee in sport. The same rationale applies to judges in courts or to any situation where disputes arise, including procedural legislative struggles.

Even when nonpartisan chairing is unfeasible, other neutral actors may help ensure compliance with procedural rules. In particular, a legislative chamber's staff may play a critical role. Specialised personnel can enhance the legislative branch's autonomy and reinforce its institutional stability.[139] Nonpartisan professionals with strong educational backgrounds and familiarity with legislative procedures are likely to provide more reliable guidance. Even when their advice is not binding, well-reasoned arguments may persuade political actors to refrain from procedural deviations. Whether this outcome materialises depends largely on how protected these professionals feel from external or internal pressure.[140] Fixed terms or tenure and sufficient work autonomy are essential safeguards. Additionally, the legislators' freedom of speech should extend to chambers' nonpartisan staff in charge of delivering professional advice or opinions about legislative procedures.[141] While this privilege protects elected officials from "action in the courts

[137] ibid 865.
[138] James Madison, 'The Federalist No 10' in Isaac Kramnick (ed), *The Federalist Papers* (Penguin 1987) 124.
[139] cf Chafetz (n 72) 290–295.
[140] cf Frederick Schauer, 'Legislatures as Rule-Followers' in Richard W Bauman and Tsvi Kahana (eds), *The Least Examined Branch* (CUP 2006) 477.
[141] On the legislator's freedom of speech, cf Bill of Rights 1689 art 9 (England and Wales); CF 88 art 53; US Const. art I s 6 cl 1.

or any place outside of Parliament",[142] its rationale should also shield staff—not only externally,[143] but also within the legislative houses themselves. Such protection would enable advisors to speak with confidence, thereby contributing to the prevention of improper procedural manoeuvrers.

1. The US House of Representatives Office of Congressional Ethics as a Benchmark

The US Office of Congressional Ethics (OCE) provides a valuable benchmark for the potential role of neutral actors within legislatures. The office is tasked with "assisting the House in carrying out its responsibilities" with respect to disciplinary matters.[144] Established in 2008, the OCE emerged in response to widespread concerns about the effectiveness of entrusting representatives with the responsibility of policing their own conduct. Critics of such self-judgment processes highlight the risks of "conflict of interest"[145] and "partisan abuse of the process",[146] which have contributed to "[d]oubts about the fairness of the proceedings and public distrust".[147] Although the OCE's mandate is limited,[148] its activities appear to mitigate some of these concerns.[149] This effect is attributed to the office's structural design. Its board consists of "six 'outsiders'",[150] with half appointed "by the Speaker subject to the concurrence of the minority leader", and the other half "by the minority leader subject to the concurrence of the Speaker".[151] Board members serve "a four-year term",[152] and they can only "be removed from office for cause", through a joint decision by the appointing authorities.[153] Although decision-making power relating to misconduct remains with representatives,[154] the OCE contributes to the process through

[142] Oonagh Gay and Hugh Tomlinson, 'Privilege and Freedom of Speech' in Alexander Horne, Gavin Drewry and Dawn Oliver (eds), *Parliament and the Law* (Hart Publishing 2013).
[143] ibid 44. See also 'Freedom of Speech in Debate, Paragraph 13.2' in David Natzler and others (eds), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (25th edn, LexisNexis 2019) <https://erskinemay.parliament.uk/section/4581/freedom-of-speech-in-debate/> accessed 5 October 2025.
[144] House of Representatives Resolution (HRes) 895, 110th Congress, s 1(a) (2008) (enacted).
[145] Dennis F Thompson, 'Both Judge and Party: Why Congressional Ethics Committees Are Unethical' (1995) 13 The Brookings Review 44.
[146] Denis Saint-Martin, 'Gradual Institutional Change in Congressional Ethics: Endogenous Pressures toward Third-Party Enforcement' (2014) 28 Studies in American Political Development 161, 161.
[147] Thompson (n 146).
[148] cf Saint-Martin (n 147) 162.
[149] cf Chafetz (n 72) 263.
[150] Saint-Martin (n 147) 161.
[151] HRes 895, 110th Congress, s 1(b)(1) (2008) (enacted).
[152] Jacob R Straus, *House Office of Congressional Ethics: History, Authority, and Procedures* (Congressional Research Service Report No R40760, 5 August 2025) <https://crsreports.congress.gov/product/pdf/R/R40760> accessed 5 October 2025. See also HRes 895, 110th Congress s 1(b)(6)(A) (2008) (enacted).
[153] HRes 895, 110th Congress s 1(b)(6)(C) (2008) (enacted).
[154] Chafetz (n 72) 263; Saint-Martin (n 147) 162.

"preliminary investigations and ... referrals and recommendations to the House Ethics Committee".[155] The arrangement allegedly enhances the legitimacy of disciplinary procedures.[156] This conclusion would follow, not from OCE professionals' character, but from the fact that they would not be acting, theoretically at least, "on their own cause".[157]

While the OCE is not directly involved in overseeing the legislative process, it nonetheless offers meaningful insights into how compliance with internal rules might be promoted. The challenges that generate public distrust in systems of mutual oversight among politicians—especially regarding adherence to ethical standards—are similarly present in the context of lawmaking. Few would seriously dispute that "conflict of interest"[158] and "partisan abuse of the process"[159] may also arise during the passage of legislation. Indeed, in 2009, a member of the House of Representatives (Ron Paul) introduced a proposal intended "to ensure that Members have a reasonable amount of time to read legislation that will be voted upon."[160] Although the proposal concerned procedural safeguards in the lawmaking process, it notably sought to assign to the OCE the authority to investigate "allegations that a [House of Representatives] Member voted for any measure that violated" the proposed rule.[161] The author of that initiative thus appears to have viewed disregard for the prescribed time-lapse as a form of serious misconduct, and the OCE as an appropriate institutional body to address such procedural breaches.

2. US Congress Parliamentarians

The role of the parliamentarians[162] in the US House of Representatives and Senate also warrants close attention. Each chamber appoints one such official, "appointed by the majority party leadership".[163] Despite that, they are seen as "nonpartisan quasi-judicial figures".[164] That is so

[155] Saint-Martin (n 147) 161.
[156] cf ibid 171.
[157] Thompson (n 146).
[158] ibid.
[159] Saint-Martin (n 147) 161.
[160] HRes 216, 111th Congress (2009).
[161] ibid.
[162] Notice that, in the context of US Congress, the term "parliamentarian" refers not to a member of Parliament, as in other contexts, but to an official in charge of advising representatives and senators about legislative procedures.
[163] Gould (n 18) 1950.
[164] Gould (n 18) ibid.

because they are neither a representative nor a senator, and the appointment process is "in practice" a matter of "succession", filling the position with aides of previous parliamentarians.[165]

The parliamentarians' primary function is to provide "expert advice and assistance on questions relating to the meaning and application" of internal legislative rules[166]—particularly to the presiding officer during floor proceedings.[167] In addition, parliamentarians are responsible for recommending the appropriate committee referrals for legislative proposals.[168] Their role becomes especially prominent in the Senate during the budget reconciliation process,[169] in which senators modify legislation to meet budget constraints.[170] Since reconciliation is not subject to filibustering,[171] there is often pressure to insert provisions unrelated to budget matters. In such instances, it falls to the parliamentarian to determine "which provisions are extraneous, and which are not".[172] Ultimately, the House of Representatives and Senate parliamentarians, supported by professional staff, function as "procedural referees" whose guidance helps preserve the integrity of legislative procedure.[173]

3. The Limitations of the OCE and Parliamentarians

Both the US House of Representatives' OCE and the House of Representatives and Senate parliamentarians serve as examples of neutral actors that support compliance with legislative rules. Nonetheless, their institutional designs may fall short of what would be required for a more robust role. For instance, majorities can replace parliamentarians when their opinions are seen as obstructing legislative objectives—as occurred "several times between 1981 and 2001" in the US Senate.[174] As for the OCE, legal scholarship has proposed reforms aimed at reinforcing the office's role.[175] Notably, one suggested improvement involves attributing the office a more perennial status by establishing it through statute, rather than by a House of Representatives resolution (as is

[165] ibid 1950–1951.
[166] Heitshusen (n 165)
[167] ibid; Gould (n 18) 1965.
[168] Heitshusen (n 165) 1; Gould (n 18) 1969–1971.
[169] Oleszek and others (n 8) 76; Gould (n 18) 1971–1973.
[170] Oleszek and others (n 8) 71.
[171] ibid 74; Gould (n 18) 1975.
[172] Oleszek and others (n 8) 76.
[173] Gould (n 18) 1951.
[174] Gould (n 18) 1976; see also Anthony J Madonna, Michael S Lynch and Ryan D Williamson, 'Questions of Order in the U.S. Senate: Procedural Uncertainty and the Role of the Parliamentarian' (2019) 100 Social Science Quarterly 1343, 1355.
[175] Chafetz (n 72) 263–264; Straus (n 153) 25; Saint-Martin (n 147) 162.

currently the case).[176] More fundamentally, both the OCE and congressional parliamentarians face structural limitations in that their findings and opinions are not binding.[177] Formal decision-making power remains exclusively in the hands of elected representatives and senators, which is also the case in Brazil, as the next section will elaborate.

4. Drafters in the Brazilian Congress

In the Brazilian Congress, the responsibility for overseeing legislative procedures primarily rests with elected legislators. However, neutral actors also contribute to this function. Among them are specialised groups of nonpartisan civil servants, who are tasked with drafting legislation in accordance with their respective areas of expertise and providing technical advice to any legislator regarding the substantive matters under deliberation. Moreover, these professionals may also offer nonbinding guidance on procedural questions.[178] In this capacity, their institutional role seems to differ from that of parliamentarians in the US Congress. The involvement of Brazilian legislative drafters in procedural matters tends to be more decentralised, with less frequent interaction with the presiding officer. Nevertheless, their technical opinions—particularly when issued on politically sensitive matters—may provoke dissatisfaction among legislators. Notably, most of these civil servants enjoy protections of tenure,[179] and therefore cannot be easily dismissed for offering unwelcome advice. However, they may still face institutional or political pressures, including, at least in theory, unfounded legal actions or internal disciplinary proceedings, depending on the context.

Enhanced institutional safeguards for legislative drafters in the Brazilian Congress could build upon the United Kingdom (UK) and US models concerning the speech and debate clauses. In the UK, "the freedom of speech and debates or proceedings"[180] in Parliament applies not only to members but also "to officers of Parliament and non-members who participate in proceedings in Parliament".[181] Similarly, in the United States, "[a]n aide of a Senator or Representative is ... protected [under the speech and debate clause][182] when performing legislative acts which would

[176] Straus (n 153) 25; Saint-Martin (n 147) 162.
[177] Heitshusen (n 165) 1; Straus (n 153); Gould (n 18) 1979; Saint-Martin (n 147) 162.
[178] RICD art 262 sole para (IV and V); Regulamento Administrativo do Senado Federal (RASF) arts 29 and 30 <https://www12.senado.leg.br/transparencia/leg/rasf/view> accessed 5 October 2025.
[179] Lei 8112/1990 arts 21 and 22; RICD art 262 sole para (IV and V); RASF arts 5, 6(I), and 9.
[180] Bill of Rights 1689 art 9.
[181] Gay and Tomlinson (n 143) 44.
[182] US Const. art I s 6 cl 1.

be protected by the Member himself".[183] These guarantees function, at least in part, to shield legislative staff from judicial liability. A notable example is a case in which both members and staff of the US House of Representatives were held immune from a suit after publicising students' private information in a committee report.[184] A comparable approach in Brazil would require extending the national version of the speech and debate clause to include nonpartisan congressional drafters.[185] Nevertheless, this move would not suffice to immunise them from internal (or administrative) charges.

To prevent undue internal pressures and to strengthen their institutional standing, the same constitutional guarantees that shield legislative drafters from external judicial liability should also apply within the legislature. Given their professional responsibilities, these civil servants may be called upon to provide technical opinions amid intense political disputes, thereby displeasing one or more factions involved. A revealing example took place at the end of 2021, in the context of allegations that amendments to the federal budget law were being used as a form of comprehensive logrolling. In response to legal challenges brought by political parties, the Federal Supreme Court ordered the National Congress to disclose information concerning the matter, invoking the constitutional principle of publicity of official acts.[186] In reaction, the boards of the Chamber of Deputies and the Federal Senate jointly argued that compliance with the order was impracticable. They claimed that the budget mechanism in question was not formally institutionalised and that relevant documentation was dispersed across various sources.[187] However, in response to a request from a senator seeking technical clarification, a drafter issued an opinion that contradicted the official position of the legislative boards.[188] While it is beyond the scope of this discussion to determine which view was substantively correct, the episode illustrates the sensitivity of the

[183] William McKay and Charles W Johnson, *Parliament and Congress: Representation and Scrutiny in the Twenty-First Century* (OUP 2010) 491.
[184] *Doe v McMillan* 412 US 306 (1973).
[185] CF 88 art 53 (on legislators' guarantees).
[186] Supremo Tribunal Federal (STF), *Ação de Descumprimento de Preceito Fundamental (ADPF) 854* (Precautionary measure, endorsement, rapporteur Rosa Weber J, full court, 11 November 2021) DJe 225 (16 November 2021) 35 <https://www.stf.jus.br/arquivo/djEletronico/DJE_20211112_225.pdf> accessed 5 October 2025.
[187] *Ato Conjunto das Mesas da Câmara dos Deputados e do Senado Federal* (ACM) 1/2021 <https://www25.senado.leg.br/documents/59501/119895056/Ato+Conjunto+das+Mesas+1+de+2021/28e48918-667e-4d76-a9aa-43ab53f376a7> accessed 5 October 2025.
[188] Fernando Moutinho Ramalho Bittencourt, *Consultoria de Orçamentos, Fiscalização e Controle, Nota Técnica 152/2021, PRN 4/2021 e Ato Anexo - Compatibilidade com Decisão do STF na ADPF 854* (Senado Federal 2021) <https://static.poder360.com.br/2021/11/nota-tecnica-senado-rp9.pdf> accessed 5 October 2025.

drafter's position—situated at the intersection of political conflict over federal budget transparency and institutional tension between the legislative and judicial branches.[189] Regardless of any institutional embarrassment caused by the drafter's position, it is critical to note that the opinion was rendered at the formal request of a legislator, in connection with an issue under active parliamentary discussion. As such, granting professional staff immunity from potential internal disciplinary or political retaliation for offering technical advice—particularly when requested by members—is essential to safeguarding the deliberative function of legislators themselves.

In conclusion, there are institutional pathways through which legislatures may strengthen their adherence to procedural norms. Nonpartisan chairing, expert advice, and impartial dispute resolution emerge as important internal mechanisms, particularly when attributed to nonpartisan actors shielded by tenured positions or fixed mandates, and freedom of speech. Notwithstanding, the legislative branch's capacity may still be insufficient for protecting fairness within the lawmaking process.

5. The Role of the Judiciary

The judicial branch may, under certain circumstances, exercise an oversight function while a legislature is examining a bill.[190] In doing so, courts must avoid undue interference in the political domain. This may be achieved through a framework of measured deference, whereby the judiciary takes as its reference point the procedural norms set out in legislation—including the internal regulations of the legislative chambers themselves.

In my view, judicial intervention in procedural disputes within legislatures should be approached with caution. There is an undeniable risk that courts may become entangled in partisan political conflicts. Yet this risk can be mitigated. First, courts should confine their analysis to the established procedural rules, including those adopted by the legislative body itself. Examining such norms does not amount to a political intrusion. On the contrary, it is a core function of judicial review under the rule of law—analogous to cases involving civil procedure. Second, judicial

[189] Julia Lindner and Bruno Góes, 'Orçamento Secreto: Consultoria Do Senado Diz Que é Possível Divulgar Responsáveis Pelas Emendas de Relator' (*O Globo*, 29 November 2021) <https://oglobo.globo.com/politica/orcamento-secreto-consultoria-do-senado-diz-que-possivel-divulgar-responsaveis-pelas-emendas-de-relator-25297890> accessed 5 October 2025; Daniel Weterman and Breno Pires, 'Consultoria do Senado Contradiz Lira e Pacheco e Alega Ser Viável Revelar Nomes do Orçamento Secreto' (*Estadão*, 29 November 2021) <https://www.estadao.com.br/politica/consultoria-do-senado-contradiz-lira-e-pacheco-e-alega-ser-viavel-revelar-nomes-do-orcamento-secreto/> accessed 5 October 2025.

[190] cf CF 88 art 5(XXXV).

deference may be operationalised in two ways: through doctrinal standards or through institutional supermajority decision-making rules.[191] Under the doctrinal approach,[192] courts would intervene only when a legislature's procedural solution clearly amounts to "rule breaking."[193] Under the institutional approach, judges in collegiate settings could adopt supermajority voting thresholds as a prerequisite for overturning a legislature's interpretation of its own procedural rules.[194] In conclusion, a combination of adherence to legislative rules and interpretational deference offers a way for courts to adjudicate procedural challenges while minimizing the appearance of partisanship.

Judicial adjudication grounded in the specific rules governing legislative procedure may serve as an effective strategy for avoiding questionable incursions into the political domain. This approach stands in contrast to forms of judicial scrutiny that rely primarily on broad constitutional principles, such as the protection of rights or the notion of democracy.[195] When courts invoke such expansive concepts without anchoring them in procedural norms, they risk exercising a level of discretion more appropriately reserved for legislators. By contrast, assuming that lawmaking rules are designed to promote fairness, participation, and transparency, courts can advance these values indirectly and institutionally by applying the regulatory framework enacted by the legislature itself. In doing so, the judiciary would remain within its traditional jurisdictional boundaries, resolving disputes concerning the lawmaking process by enforcing specific provisions adopted by lawmakers.[196] Should this rule-based approach still raise concerns about judicial overreach, the principle of deference offers an additional safeguard.

Judicial deference brings the US *Chevron* ruling into the discussion.[197] The case concerned the interpretation of statutory provisions regulating air pollution from "major stationary sources".[198] At issue was whether the Environmental Protection Agency (EPA) could lawfully adopt a "plantwide definition" of such sources—treating "all of the pollution-emitting devices

[191] *Chevron USA Inc v Natural Resources Defense Council, Inc* 467 US 837 (1984) (*Chevron*); Jacob E Gersen and Adrian Vermeule, 'Chevron as a Voting Rule' (2007) 116 The Yale Law Journal 676.
[192] *Chevron* (n 193).
[193] Shepsle (n 43).
[194] Gersen and Vermeule (n 193).
[195] Rose-Ackerman, Egidy and Fowkes (n 3) 103, 178.
[196] Graça (n 2) 70–71, 80–81.
[197] *Chevron* (n 193).
[198] Clean Air Act Amendments of 1977, Pub L No 95-95, s 129(b), ss 172–173, 91 Stat 685, 745–748 (1977).

within the same industrial grouping ... [as] encased within a single 'bubble'".[199] A narrower reading of the statute would have required each individual pollution-emitting device to comply with environmental standards independently.[200] To resolve the dispute, the Supreme Court articulated a two-step framework. First, courts should ask "whether Congress has directly spoken to the precise question at issue".[201] If so, the clear legislative command must prevail.[202] "Rather [and second], if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute".[203] Applying this framework, the Court deferred to the EPA's interpretation.[204] A comparable logic could inform the judicial scrutiny of legislatures' procedural disputes, where constitutional, statutory, or internal legislative rules dictate how a procedural matter should be resolved.[205]

Alternatively, judicial deference may also be implemented through decision-making rules.[206] Admittedly, the *Chevron* model might leave excessive room for uncertainty.[207] For instance, how can one be certain whether a legislative body has straightforwardly tackled an issue? Or how broad is the range of permissible readings of a given rule?[208] In practice, it may prove more difficult to resolve such uncertainties than to proceed in the manner courts traditionally do: weigh competing interpretations and adopt the one deemed most persuasive in the eyes of the judges.[209] To address this tension, an alternative approach proposes preserving standard judicial reasoning while introducing supermajority voting thresholds in collegiate courts. Rather than adding new interpretive burdens to individual judges, this model fosters deference by requiring a qualified

[199] *Chevron* (n 193) 839.
[200] ibid.
[201] ibid 842.
[202] ibid 842-843.
[203] ibid 843.
[204] ibid 865.
[205] Gersen and Vermeule (n 193) 679, 692–693. Note that *Chevron* was overruled by the US Supreme Court, noting that "… *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty." *Loper Bright Enterprises v Raimondo* 144 S Ct 2244, 2272 (2024). Nevertheless, that does not affect the argument in this paper. An interpreter may think *Chevron*'s rationale should apply to no context and may prefer the alternative approach herein offered. Alternatively, another interpreter may think *Chevron*'s principles would still work well in the case of legislative procedures, a context that ultimately does not involve agency power.
[206] Gersen and Vermeule (n 193) 679, 692–693.
[207] ibid 680.
[208] ibid 690–692.
[209] ibid.

majority to override an agency's interpretation. For instance, in an eleven-member body, such as the Brazilian Federal Supreme Court, a number ranging from seven to eleven judges, depending on the institutional arrangement, would be necessary to overcome the challenged interpretation. Applied to legislative procedural disputes, such a proposal could enhance judicial deference to legislatures in cases regarding their procedural disputes.[210]

Finally, judicial oversight of legislative procedure should also be sensitive to the timing of its application. Legislators should be entitled to seek judicial intervention while the legislative process is still ongoing. Once the process has concluded and a bill has entered into force as law, however, the admissibility of judicial review depends on the legal nature of the procedural norm allegedly violated. Specifically, if the challenged procedural rule holds constitutional status, and if the jurisdiction recognises some form of constitutional review, post-enactment judicial scrutiny may be appropriate. In such cases, the review could be initiated by legislators or other constitutionally authorised actors, depending on the legal framework. Conversely, no statute should be invalidated solely on the grounds of an alleged breach of infra-constitutional procedural rules. In this case, the right to challenge the legislative process would be precluded. To allow such challenges would be to elevate those rules to constitutional rank,[211] a move that would not only raise profound legal controversies but would also jeopardise legal certainty by subjecting a wide range of laws to procedural invalidation. Accordingly, as a matter of prudence, judicial review of legislation already in force should be limited to alleged violations of procedural norms with constitutional authority. Infra-constitutional procedural rules should not form the basis for post-enactment annulment.

This consideration points to an additional constraint on judicial involvement in the legislative process: the question of standing. Prior to the enactment of a bill, the right to bring a procedural challenge before the courts should be limited to those actors who are institutionally entitled to raise comparable objections within the legislature itself. For example, if under parliamentary rules only sitting senators may raise points of order in the Senate, then only those senators should be allowed

[210] For a discussion on judicial supermajority decision-making, Mauro Arturo Rivera León, *Supermajorities in Constitutional Courts* (Routledge 2024). Although the book focuses on "constitutional adjudication when deciding on the constitutionality of statutes" (ibid 5), it might offer interesting insights for those concerned with the debate proposed in this article.

[211] José Alcione Bernardes Júnior, *O Controle Judicial Do Processo Legislativo* (Fórum 2009) 84–96; Cristiane Branco Macedo, 'A Legitimidade e a Extensão do Controle Judicial sobre o Processo Legislativo no Estado Democrático de Direito' (Master of Laws thesis, University of Brasilia 2007) 70.

to initiate judicial proceedings based on the same alleged procedural breach. The same logic applies to representatives in the Chamber of Deputies (House of Representatives). In other words, while the legislative process is ongoing, only lawmakers directly affected by a potential procedural irregularity should be admitted as plaintiffs in related judicial actions. This scenario is categorically distinct from constitutional challenges to statutes after enactment, where the relevant constitutional framework may authorise a broader range of plaintiffs to contest the constitutionality of a law on procedural or substantive grounds. By contrast, when the legislative process is still in progress—regardless of whether the challenged procedural rule is constitutional, statutory, or internal—the initiative to trigger judicial review should lie solely with legislators. If lawmakers, whether explicitly or implicitly, choose not to pursue judicial recourse in such instances, the scope for judicial intervention in parliamentary procedure is further limited.

E. CONCLUSION

> The first essential of deliberative assemblies is a system of parliamentary practice. In countries where the sense of political order is weak and self-control is wanting, popular government is exposed to the greatest dangers.[212]

Historical calls for orderly legislative procedures are even more urgent today, as contemporary democracies grapple with intensifying political conflict and the increasing complexity of state regulation. The overarching objective is to sustain a legislative environment in which fairness, transparency, and broad participation are not only valued in principle but operationalised through regulation and practice, thereby enhancing the legitimacy of enacted laws. Legislators should therefore design internal procedural rules with these normative aims in mind. Yet, the mere existence of such rules is not sufficient. Their effectiveness depends on sustained compliance.

In the face of growing social complexity and persistent disagreement across a wide range of issues, achieving consensus might only be feasible through aggregate decision-making mechanisms. Yet the legitimacy of their outcomes depends on whether the decision-making forum safeguards lawmakers' rights to fair participation and voting. Moreover, adherence to procedural rules contributes to the transparency of the legislative process. This is achieved through public access to debates and documents, as well as the structured organisation of communication flows

[212] MP Follett, *The Speaker of the House of Representatives* (Longmans, Green, and Co 1896) 1.

within the legislature. As institutions of representation, adherence to legislative due process (an expression of the rule of law) ultimately enhances democratic ideals.

Under such a reasoning, rule breaking cannot be admitted even under the majorities' acquiescence. In an ideal scenario, each legislator's commitment to institutional norms would be sufficient to prevent procedural deviations. However, amid intense political disputes, the incentives to bypass procedural safeguards to achieve short-term objectives may prove irresistible. For this reason, enforcement mechanisms are indispensable.

Legislatures are equipped with internal oversight instruments designed to keep procedural activity in alignment with applicable legal norms. Typically, presiding officers are empowered to direct legislative proceedings in accordance with these rules. However, such authority is not absolute: their conduct may be challenged by colleagues through points of order or similar motions. If the presiding officer's decision is deemed unsatisfactory, members can often appeal to the full chamber.

Yet these internal safeguards are not without vulnerabilities. On one hand, inertia, political pressures, or the strategic abuse of procedural waivers may weaken their effectiveness. On the other hand, points of order and appeals themselves may be misused, serving as tools to circumvent procedural constraints—such as supermajority requirements—rather than uphold them. These limitations reveal a deeper institutional concern: the reliance on procedural referees who are themselves politically invested in the controversies at stake. Considering this conflict of interest, additional external or neutral checks are necessary to preserve the integrity of the legislative process.

Neutral actors—agents without direct partisan affiliation—should play a meaningful role in the oversight of legislative procedures. Generally, legislatures may be supported by nonpartisan officers whose responsibilities include issuing technical opinions or offering advisory input in cases of procedural uncertainty or conflict. While such guidance may lack formal binding force, it can nonetheless constrain actors inclined to circumvent established rules, particularly when grounded in professional expertise and institutional credibility. To perform this function effectively, these officers should be protected from external and internal pressures. Accordingly, they should benefit from institutional guarantees such as fixed mandates, tenure, and freedom of expression. Crucially, their right to articulate procedural positions should be safeguarded by protections equivalent to those afforded to legislators under parliamentary privilege. Moreover,

such protection should extend not only beyond the legislature, shielding them from judicial reprisal, but also within it, preventing politically motivated disciplinary actions that could compromise their independence.

Finally, the judiciary should remain accessible to legislators who seek to challenge undue procedural manoeuvres. However, to preserve its legitimacy and avoid accusations of partisanship, judicial intervention should be guided in this regard by a set of institutional safeguards. First, courts should base their rulings not on broad constitutional principles, but on the specific procedural rules at issue, including those found in internal legislative regulations. Second, a degree of judicial deference should be observed—whether grounded in doctrinal standards or implemented through supermajority voting thresholds within collegiate courts. Third, challenges aimed at invalidating legislation post-enactment should be barred if based solely on violations of infra-constitutional procedural norms. Fourth and finally, standing to raise procedural claims during an ongoing legislative process should be limited to actors who are institutionally authorised to challenge such rules within the legislature itself.