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House Rule XII, one year later: New report by Constituting America finds many **congressmen skirting rule's** true intent

Can Congress require us to wear football helmets? Does Congress have the authority to establish a "Department of Peace?"

One year after Congress amended House Rule XII to require that all newly proposed legislation cite as specifically as possible the constitutional authority granted to enact the bill, a new report finds that many U.S. congressmen are skirting the rule's true intent.

Published by the non-profit foundation Constituting America, the report – titled *Constitutional Authority Statements: In Defense of House Rule XII* and available online at <http://www.constitutingamerica.org/docs/WhitePaper.pdf> – finds that while some congressmen have taken pains to follow the rule, most are offering little more than lip service through overly broad statements that demonstrate little understanding of the Constitution itself.

"After a year, it's all too clear why the Rule has become necessary, and that some (House) members should become more acquainted with the Constitution they have sworn to uphold," said Horace Cooper, who co-authored the report with Nathaniel Stewart.

The Constituting America report begins by offering examples of thoughtful, well-reasoned authority statements submitted by congressmen on both sides of the political aisle, and spells out the benefits of having such a rule.

"House Rule XII is a stark reminder to Congress that the U.S. Constitution has meaning and should be respected," said Janine Turner, founder and co-chair of Constituting America. "It also reinforces the fact that under the Constitution, Congress has limited, enumerated powers."

Yet an analysis by the Republican Study Committee found that of the 3,865 Constitutional Authority Statements submitted during the rule's first year, 660 of them merely referenced

Article I, Section 8, Clause 1 of the Constitution – the broad section outlining Congress’s taxing power and its authority to promote the “general welfare” and “common defense.”

Even more troubling, the report’s authors contend, were the 732 bills submitted that cited Article I, Section 8, Clause 3 – the so-called “Commerce Clause” – as their constitutional justification. Among them: H.R. 1127, a bill proposed by Rep. Bill Pascrell (D-NJ) “to encourage and ensure the use of safe football helmets...”

“The so-called ‘Commerce Clause’ has lived up to its reputation as Congress’s ‘Hey-you-can-do-whatever-you-feel-like’ clause,” Cooper explained. “...To be sure, concussions and head injuries sustained during football season are serious concerns. But it is not at all clear how helmet safety qualifies as a ‘channel of interstate or foreign commerce....’

“Rule XII helps highlight just how divorced Congress’s pretense to be regulating ‘commerce’ is from any actual regulation of interstate commerce,” the report continues.

Even more egregious, the report’s authors write, are those Authority Statements that reference only the Constitution’s Preamble as justification for their legislation – including H.R. 808, a bill proposed by Rep. Dennis Kucinich (D-OH) to establish a “Department of Peace.” The bill’s Constitutional Authority Statement reads, “The Preamble to the Constitution has the following injunction ‘...to promote domestic tranquility...’ This is the purpose of this bill.”

Such reasoning, Cooper and Stewart write, demonstrates a fundamental lack of understanding about the Constitution that lawmakers are sworn to uphold. “The Preamble itself neither grants nor limits any power or authority – it merely describes the purpose for which the Constitution was adopted,” the report states. “Nothing in the Preamble authorizes Congress to establish a Peace Department or anything else.”

The report concludes by offering four specific recommendations for strengthening the enforcement of House Rule XII:

- Allow the Clerk to indicate if an Authority Statement does not satisfy the Rule’s specificity requirement
- Require each Statement to be accompanied by a short description of the bill’s purpose
- Require that at each step in the legislative process, the bill and its Authority Statement be attached and immediately available to House members; and
- Address the problem of attempts to amend an existing law that a House member believes to have been enacted without constitutional authority

“The new and improved House Rule XII is not a wonder drug for all that ails Washington, nor will it alone cure Congress’ penchant for over-exerting itself,” Cooper and Stewart write. “But in our view, the Rule is a great first step in the right direction, and deserves more commendation than it has received.”

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Constituting America is a non-profit, non-partisan organization whose mission is to reach, educate and inform America's citizens and youth about the importance of the U.S. Constitution and the foundation it sets forth regarding our freedoms and rights through new and innovative ways. In addition to sponsoring the annual "We the People 9*17 Contest" for students from kindergarten through law school, the foundation hosts an annual 90-day online forum whereby more than two dozen constitutional scholars, historians, authors and legal experts read, analyze and discuss the Constitution with citizens from across the nation on the foundation website (www.constitutingamerica.org). The Constituting America website also offers links to complete copies of the Constitution, Declaration of Independence, the Federalist Papers and a variety of other educational resources.