

112TH CONGRESS  
1ST SESSION

# S. 1248

To prohibit the consideration of any bill by Congress unless the authority provided by the Constitution of the United States for the legislation can be determined and is clearly specified.

---

## IN THE SENATE OF THE UNITED STATES

JUNE 22, 2011

Mr. COBURN (for himself, Mr. PAUL, Mr. BARRASSO, Mr. BLUNT, Mr. BURR, Mr. CORKER, Mr. CRAPO, Mr. DEMINT, Mr. ENZI, Mr. GRAHAM, Mr. GRASSLEY, Mr. HATCH, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON of Wisconsin, Mr. KYL, Mr. LEE, Mr. MCCAIN, Mr. RISCH, Mr. RUBIO, Mr. SESSIONS, Mr. THUNE, Mr. VITTER, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

---

## A BILL

To prohibit the consideration of any bill by Congress unless the authority provided by the Constitution of the United States for the legislation can be determined and is clearly specified.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enumerated Powers  
5 Act”.

1 **SEC. 2. CONSTITUTIONAL AUTHORITY CLAUSE.**

2 (a) IN GENERAL.—Chapter 2 of title 1, United  
3 States Code, is amended by inserting after section 102 the  
4 following:

5 **“§ 102a. Constitutional authority clause**

6 “(a) IN GENERAL.—Each Act of Congress, bill, and  
7 resolution, or conference report thereon or amendment  
8 thereto, shall contain a concise explanation of the specific  
9 authority in the Constitution of the United States relied  
10 upon as the basis for enacting each portion of the meas-  
11 ure.

12 “(b) FEDERAL ACTIVITIES.—To the extent that any  
13 Act of Congress, bill or resolution, or conference report  
14 thereon or amendment thereto, limits or abolishes any  
15 Federal activity, spending, or power overall, a statement  
16 of constitutionality may cite the 9th Amendment or the  
17 10th Amendment to the Constitution of the United States.

18 “(c) ENUMERATED SPENDING CLAUSE.—Invoking a  
19 clause included in the enumerated spending clause under  
20 clause 1 of section 8 of article I of the Constitution of  
21 the United States, such as the common defense clause,  
22 the general welfare clause, or the necessary and proper  
23 clause, in a statement of constitutionality is not sufficient  
24 to satisfy the requirement of subsection (a).

25 “(d) COMMERCE CLAUSE.—Invoking the commerce  
26 clause of section 8 of article I of the Constitution of the

1 United States in a statement of constitutionality for any  
2 purpose other than the regulation of the buying and sell-  
3 ing of goods or services, or the transporting for those pur-  
4 poses, across boundaries with foreign nations, across State  
5 lines, or with the Indian tribes is not sufficient to satisfy  
6 the requirement of subsection (a).

7 “(e) FAILURE TO COMPLY.—

8 “(1) IN GENERAL.—A failure to comply with  
9 subsection (a) shall give rise to a point of order in  
10 either House of Congress, which may be raised by  
11 any Senator during consideration in the Senate or  
12 any Member of the House of Representatives during  
13 consideration in the House of Representatives.

14 “(2) NONEXCLUSIVITY.—The availability of a  
15 point of order under this section shall not affect the  
16 availability of any other point of order.

17 “(f) DISPOSITION OF POINT OF ORDER IN THE SEN-  
18 ATE.—

19 “(1) IN GENERAL.—Any Senator may raise a  
20 point of order that any matter is not in order under  
21 subsection (a).

22 “(2) WAIVER.—

23 “(A) IN GENERAL.—Any Senator may  
24 move to waive a point of order raised under

1 paragraph (1) by an affirmative vote of two-  
 2 thirds of the Senators duly chosen and sworn.

3 “(B) PROCEDURES.—For a motion to  
 4 waive a point of order under subparagraph (A)  
 5 as to a matter—

6 “(i) a motion to table the point of  
 7 order shall not be in order;

8 “(ii) all motions to waive one or more  
 9 points of order under this section as to the  
 10 matter shall be debatable for a total of not  
 11 more than 3 hours, equally divided between  
 12 the Senator raising the point of order and  
 13 the Senator moving to waive the point of  
 14 order or their designees; and

15 “(iii) a motion to waive the point of  
 16 order shall not be amendable.

17 “(g) DISPOSITION OF POINT OF ORDER IN THE  
 18 HOUSE OF REPRESENTATIVES.—

19 “(1) IN GENERAL.—If a Member of the House  
 20 of Representatives makes a point of order under this  
 21 section, the Chair shall put the question of consider-  
 22 ation with respect to the proposition of whether any  
 23 statement of constitutionality made under subsection  
 24 (a) was adequate or, in the absence of such a state-

1       ment, whether a statement is required under sub-  
2       section (a).

3           “(2) CONSIDERATION.—For a point of order  
4       under this section made in the House of Representa-  
5       tives—

6           “(A) the question of consideration shall be  
7       debatable for 10 minutes, equally divided and  
8       controlled by the Member making the point of  
9       order and by an opponent, but shall otherwise  
10      be decided without intervening motion except  
11      one that the House of Representatives adjourn  
12      or that the Committee of the Whole rise, as the  
13      case may be;

14          “(B) in selecting the opponent, the Speak-  
15      er of the House of Representatives should first  
16      recognize an opponent from the opposing party;  
17      and

18          “(C) the disposition of the question of con-  
19      sideration with respect to a measure shall be  
20      considered also to determine the question of  
21      consideration under this section with respect to  
22      an amendment made in order as original text.”.

23          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
24      The table of sections for chapter 2 of title 1, United States

1 Code, is amended by inserting after the item relating to  
2 section 102 the following:

“102a. Constitutional authority clause.”.

3 **SEC. 3. EXPLANATION OF CONSTITUTIONAL AUTHORITY.**

4 This Act is enacted pursuant to the power granted  
5 to each House of Congress to determine the rules of its  
6 proceedings under article I, section 5, clause 2 of the Con-  
7 stitution of the United States.

○