



U.S. Representatives Hakeem Jeffries (D-NY) and Doug Collins (R-GA), sponsors of the bipartisan *First Step Act*.

Photo Credit: Politico

How to Write and Pass a Bill in Congress: *A Primer on Bipartisan Negotiations*

In recent years, the number of laws passed by Congress has decreased, while partisan rhetoric and rancor have increased. Yet the American people expect their representatives to address their most pressing needs. This policy brief outlines key ways that Congressional staff can help break the partisan logjam, engage in productive negotiations, and write and pass laws that tackle the biggest challenges facing our nation. The brief outlines both the *what* – practical steps for drafting legislation – and the *how* – productively working with the other party.

Why Bipartisan Negotiation is Important

Members of Congress want to make a positive difference in the lives of their constituents. The same is true for their staff members. Passing legislation that addresses an important local, state, or national concern is the primary way Congress can impact citizens. Unfortunately, few Congressional staff are explicitly taught how to draft, let alone pass legislation that becomes law. This document provides a basic introduction to crafting bipartisan federal legislation and negotiating with members of the other party to ensure that it becomes law.

Over the last few decades, control of Congress and the White House has regularly switched between parties, making genuine compromise an essential requirement to effective governing. While the current

“Should partisan plays be substituted for a bipartisan approach to key issues, the consequences could be disastrous to our position of peace leadership in the free world and to economic and social progress at home.”

– the late **Sen. Jacob Javits (R-NY)**

climate in Washington may not reward bipartisanship, constituents expect their elected officials to “get things done,” and that requires bipartisan cooperation.

If a Member of Congress wants to deliver a win for her or his constituents, it’s going to take nitty gritty negotiating.

How to Negotiate a Bill

Outlined below are basic steps for Congressional staff to follow when developing and promoting new legislation. Although the order and timeline can and should be amended on a case-by-case basis, the following process has been used successfully over decades by Congressional staff from both parties, several of whom graciously reviewed and contributed to this document.

STEP 1

Identify priority problem(s) to be addressed and agree on key goals

Put your talking points and campaign promises aside and pull out a blank piece of paper. Write down the big challenge(s) your boss wants to tackle, and refine them down to the top one or two. Then brainstorm a list of goals – general ways federal legislation can address those challenges. Be as detailed as possible, without getting locked into specific solutions at this point.

Example: Many children in foster care receive subpar services that don't improve their lives or help them successfully exit the system. Congressional staff came together to draft the **Family First Prevention Services Act** with a goal of seeing whether federal law could help increase the quality of services provided to children in foster care, or could create incentives for states to improve quality. The law allowed states to invest federal funds in evidence-based prevention services that were more likely to improve outcomes for children in foster care, and could potentially reduce the need for foster care in the first place.

You can use committee hearings to identify these issues and to help focus the attention of the media, the public and other lawmakers on the need to address them.

STEP 2

Identify Members of Congress (and staff) who may share your views on the challenge and possible goals you've identified

Here is where building relationships matters. Get to know other staff – in your state delegation, in bipartisan caucuses, in bipartisan staff retreats, or even at social events – before you ever draft a bill so you have a go-to list of people with whom you might be able to partner. Find out which Members your boss has close relationships with, which Members have spoken at length on particular issues at hearings, and which Members have a key stakeholder as a constituent. You might even do a simple online search to find out who already cares about the topic. Don't get too hung up on a person's partisan reputation; even polar opposites find common ground on certain bills.

Then meet with one or more of your counterparts from the other side of the aisle to talk informally about the challenges and goals you've brainstormed. Find ways to build your relationship with them so that later negotiations progress more smoothly, including sharing information or discussing articles to identify as much common ground as possible. Consider having your boss and your counterpart's boss meet early in the process (if possible) to discuss key goals and potential solutions.

Example: Because U.S. Rep. Paul Ryan (R-WI) and U.S. Sen. Patty Murray (D-WA) were able to strike a high-profile budget deal in 2013, they and their staff had developed enough trust to begin working on legislation to help federal agencies use government data to improve their impact. Their first bill created a Commission to study the issue and make recommendations, which laid the groundwork for the **Foundations of Evidence-Based Policymaking Act**. The Evidence Act was signed into law in early 2019. This history and overlapping interest of Rep. Ryan and Sen. Murray made them natural allies on the issue.

STEP 3 Create a framework for negotiating

Smart staff create a framework for discussions before drafting specific legislative language. Think of it as basic project management. The end goal is a piece of legislation, but you need to manage the project of getting there. Start by creating a schedule for discussions with your counterpart, including how often you will meet, where, and when. Identify the major tasks everyone will complete each week. Then create an outline of the legislation by dividing it into manageable chunks. (For reauthorization bills, that usually means dividing the bill into titles. For new legislation, that means dividing the bill into its potential titles or main topics.) Once the timeline and outline are set, work with your counterpart to develop a process for soliciting input from key stakeholders, including Committee leaders, other Members who care about the issue, Congressional caucuses or other affinity groups in Congress, and organizations outside Congress with expertise and clout. If possible, get input before negotiations start and, when needed, as negotiations progress.

Example: A process such as the following was used to develop major bipartisan legislation such as the *Every Student Succeeds Act* of 2015 and the *Juvenile Justice Reform Act* of 2018: Staff will meet 3-4 times per week for 2 hours in the Majority offices, with the goal of completing a draft in 4 months. Week 1: Agree on key goals and framework. Week 2: Create outline of bill and begin soliciting input from Members and outside groups. Weeks 3-4: Work to find agreement on the least controversial issues and continue seeking input, check in with Members throughout. Weeks 5-8: Work on more challenging issues. Weeks 9-12: Focus on the most challenging issues, check-in with Members on these issues. Weeks 13-16: Share draft language with key stakeholders (Members, Committee, leaders, outside groups, etc), polish language, prepare for Committee markup.

STEP 4 Create an outline of your bill and then work through it in order

Once the negotiations begin, move from the general and agreed-upon topics to those that are more specific and on which there is greater disagree-



Former House Speaker Paul Ryan (R-WI) and Senator Patty Murray (D-WA), sponsors of the Foundations of Evidence-Based Policymaking Act.

Photo Credit: Getty Images

ment. That is, agree upon the goals, then agree on an outline of the bill (referenced above), then create an order for working through the divisions in the outline.

Start with the easiest issues and least controversial parts of the bill. Gain experience finding common ground on less challenging topics, and then slowly work toward the issues with the sharpest dis-

agreement. This may seem simple and obvious, but many staff make the mistake of moving too quickly to solve contentious issues without first developing their joint problem solving muscles.

Example: The outline below shows divisions and topics to be addressed, moving from easier to more difficult issues as time goes on.

The "ABC Act" – Outline and Order		
Divisions	Major Issues	Order
Title I: Purposes and Definitions	<ul style="list-style-type: none"> • Key goals and outcomes • New concepts that need defining 	Week 1
Title III: Eligible Recipients, Applications for Grants, Grant Reports, Evaluation	<ul style="list-style-type: none"> • Eligible recipients are states, local governments, nonprofits, or others? • Data collection/analysis or other information that grantees or feds must complete • Evaluation of outcomes to determine impact and promote improvement 	Weeks 2-3
Title II: Authorized Activities, Grant Programs, Required and Optional Grant Activities	<ul style="list-style-type: none"> • Activities backed by data and evidence • Activities recipients have been avoiding or doing well • Proper role of federal government in relating to grantees • What activities should be required versus allowed or encouraged? 	Weeks 4-6
Title IV: Transparency and Accountability	<ul style="list-style-type: none"> • Information grantees or feds must share with the public • Consequences for not following federal guidelines 	Weeks 7-8
Title V: Funding	<ul style="list-style-type: none"> • Authorization levels • Mandatory funding eligibility 	Week 9

STEP 5 Be willing to give and take during negotiations

The most effective approach to negotiating is to send written proposals ahead of time and then meet in-person to talk through them. Before each meeting, create a private list of your priorities for that meeting (must-have, nice-to-have, and flexible) and then work through them methodically with the other side.

If you reach an impasse, set the issue aside or agree to come back to it at the next meeting. Any time you arrive at a disagreement, be prepared to discuss the merits of your case, but also be ready to present an alternative or develop an alternative to discuss at the next meeting. Remember there

are more options than thumbs up (totally agree) or thumbs down (totally disagree). Consider using a tool like “[gradients of agreement](#)” to hear each other out and work toward a solution.

And always assume positive intentions of your counterpart, even when you strenuously disagree. Argue on the merits of the case rather than assigning blame or malevolence, which will only bog you down. Over time you may learn the other side has a point or insight you hadn’t considered that actually strengthens your own views.

Example: The first chart below is an example of a public proposal that can be sent to the other side ahead of time. The second chart is a private, prioritized list to guide your negotiations.

The “ABC Act” – Proposal for Title I Goals (public)		
Divisions	Major Issue within division	Legislative Proposals
Title I: Purposes and Definitions	<ul style="list-style-type: none"> Key goals and outcomes 	<ul style="list-style-type: none"> Reduce number of children ages 18-22 who need foster care services Reduce cost of federally funded services by improving prevention strategies Increase transparency of which states do a better job of transitioning older youth out of the foster care system

The “ABC Act” – Negotiating List (private)			
Major Issue	Must-Have	Nice-to Have	Flexible
Key goals and outcomes	<ul style="list-style-type: none"> Ensure states provide essential services Transparency on eligibility policies Evaluate impact of state services 	<ul style="list-style-type: none"> Option 1: Require states to expand eligibility for older youth Option 2: Incentivize states to expand eligibility or extend services 	<ul style="list-style-type: none"> Reduce service cost New grants to pilot innovative approaches Increase funding

STEP 6

Engage Members and senior staff at pivotal times

Members of Congress generally do not have the time to engage in detailed negotiations or drafting, but they should guide negotiations and be kept informed as they proceed.

Ideally, as mentioned above, the lead sponsors of a bill and their staff will meet early in the process to discuss goals, high-level issues, timing, and process (if possible or required for major legislation). For bills written by Committee staff, they should reach out to Leadership early to give notice, but wait until the bill nears completion to discuss it in-depth, solicit support, troubleshoot challenges, and discuss timing for action. Non-Committee staff who draft bills should engage Committee staff early to give them a heads up that the

bill is coming, and then as the bill nears completion, re-engage Committee staff for the same purposes that Leadership staff is engaged.

During the thick of negotiations, staff should work to find solutions at the lowest level possible. Leave unresolvable or big-ticket items for Member-level discussions, which saves them time and keeps them out of controversial decision-making. This allows Members to preserve their relationships across the aisle. Staff should, however, use their regular meetings with Members to apprise them of progress and to ensure they are on the right track.

Example: Discuss funding levels or program elimination at the staff level, but wait to finalize the decisions about levels and what gets eliminated until getting input from Members.

Tips from a Professional Negotiator

The points below are adapted from an [op-ed](#) by Joshua Javits, a neutral mediator and arbitrator, a member of the National Academy of Arbitrators, and past chairman and member of the National Mediation Board.

Do not exercise leverage unilaterally before bargaining has run its course. Ultimatums at the outset of bargaining are no way to reach agreement.

Do not take “final” positions at the start of a negotiation. Throwing down a gauntlet and declaring “it’s my way or the highway” at the outset of negotiations is counterproductive.

Do not go backwards. Resolution is reached by closing the gap between the sides, not creating an even greater distance from the other side.

Ignore the extremists. Critics who insist from the sidelines that their principal take an extreme position may be expected to throw bombs, but if an agreement is to be reached, they must be disregarded.

Expand the pie. Adding elements (or sweeteners) to the debate allows for tradeoffs that make face-saving possible when negotiations break down.

Seek incremental change. Patience is a virtue. Getting a “foot in the door” is better than nothing, because it establishes a base on which to build in the future.

Find common ground and build from there. Return to the common goals agreed upon at the beginning, and keep brainstorming to identify fixes that achieve those goals. Be open to a synthesis of reasonable ideas or plain common sense.

Original source: Joshua Javits,
[“I’ve Mediated My Share of Disputes. Here’s How to End the Shutdown,”](#)
Roll Call, January 19, 2019.

STEP 7

Get feedback and prepare to introduce your bill

You will need to work with either the U.S. House or U.S. Senate Legislative Counsel's ("Leg Counsel") office to draft your official bill language. Once the first draft is complete, share it with appropriate stakeholders to get their feedback. You may have made a drafting error or not thought of a potential problem that a legislative lawyer will spot right away. Stakeholders may include other Congressional staff, experts in the field, or organizations that care about the issue. Begin developing support from key groups that will validate your bill with a letter or statement of support. Update your language with Leg Counsel. Consider sharing portions of the bill with Members and their staff who care about those specific portions, or with Committee staff who oversee the issue. Troubleshoot as many possible problems ahead of time. Then, when you introduce your bill you have buy-in and can highlight the many people who endorse the legislation in your press statement.

STEP 8

Prepare for action on your bill, and be ready to fight for it

Bills are introduced, then considered in committee, and then taken to the U.S. House or Senate floor for consideration and ultimate passage. Once your bill is introduced or ready to be introduced, contact the committee of jurisdiction or Leadership (if you are a committee staffer) to discuss what must happen to merit committee and floor action. The bill may need to be folded into a larger reauthorization bill or may need to gain additional support before being considered.

However, once significant policy agreement is reached – even if you had to compromise on something – stick to your guns and maintain your commitment to your negotiating partner. For example, Leadership or outside groups may push back on thorny issues or want a major amendment that would sink

the bill. But you have already shaken hands with the other side. Keep your word and fight for the compromise you brokered. You may need to develop supporting evidence for your bill such as a cost-benefit analysis, potential impact on states or Congressional districts, or a list of important supporters including constituents. Do it.

Once the draft is in the polishing stage (not open to major rewrites) reach back out to external stakeholders or even the media to promote your bill as the result of tough, but fair negotiation that will ultimately be a win-win for everyone involved. Of course, if you keep hitting roadblocks on certain provisions, you and your negotiating partners might need to revisit them and compromise with the outside partners. But do so together in good-faith and then approach your critics with a joint counter-proposal.

Example: If a Committee Chair from your own party is opposed to a key provision in your bill, give her or his staff a heads-up once the bill is complete. Be ready to make a respectful case for it and organize a letter from a broad set of outside groups to show support for your proposal.

How Smart Negotiating Led to Passing Significant Bipartisan Legislation

Bipartisan negotiation was absolutely key to getting major federal legislation across the finish line in recent years, whether it was addressing the opioid crisis, creating a cancer moonshot, reforming the criminal justice system, or modernizing national security policy in America. The following bipartisan bills have been widely praised as significant policy achievements that earned broad support even in a sharply divided Congress:

The First Step Act. The most far-reaching overhaul of the criminal justice system in a generation, this bipartisan law reduces the “three strikes” penalty for drug felonies from life behind bars to 25 years and retroactively limits the disparity in prison sentences for crack and powder cocaine offenses. It also ends the shackling of incarcerated pregnant women and new mothers, requires that prisoners be moved to facilities closer to their families, and helps inmates earn reduced sentences if they demonstrate good behavior. The bill’s House sponsors, U.S. Representatives Hakeem Jeffries (D-NY) and Doug Collins (R-GA), worked as a team to overcome opposition to the bill from the right and the left, and carefully negotiated changes with other lawmakers and the White House that allowed the bill to be passed with broad majorities in the House and the Senate and signed into law. House Majority Leader Kevin McCarthy (R-CA) commended the pair, noting that “Together they were relentless to get this important reform on the floor.”

“We can come together and the partnership that developed, it literally shows you can change things up here.”

– **Rep. Doug Collins (R-GA)**

“There are some who have suggested that Doug Collins and I have engaged in a bipartisan bromance. At the end of the day, he’s a good man who has a good heart.”

– **Rep. Hakeem Jeffries (D-NY)**

Upon final passage of 21st Century Cures, **Senate Majority Leader Mitch McConnell (R-KY)** called it “*the most significant legislation passed by this Congress.*” Then **President Barack Obama (D)** said, “*...The bipartisan passage of the 21st Century Cures Act is an example of the progress we can make when people from both parties work together to improve the health of our families, friends, and neighbors.*”

The 21st Century Cures Act. Passed with overwhelming bipartisan support in 2016, the *21st Century Cures Act* boosted funding for medical research, eased the development and approval of experimental treatments, made sweeping regulatory changes to remake the medical research system, and reformed federal policy on mental health care. In exchange for increased funding for the National Institutes of Health, important to Democrats, Republicans won a regulatory change at the Food and Drug Administration (FDA) designed to speed approval of drugs and medical devices. For three years, Rep. Diana DeGette (D-CO) and Rep. Fred Upton (R-MI) traveled the country to solicit feedback on the need for biomedical research reform and to discuss ideas with stakeholders. Once they drafted the bill, they held an extensive markup process resulting in further amendments. DeGette, Upton and Vice President Joe Biden, who helped negotiate the bill’s provisions, were all recognized with the 2017 Javits Prize for Bipartisan Leadership for their legislative partnership.

The National Defense Authorization Act. The late Sen. John McCain (R-AZ), Chairman of the Armed Services Committee, and Sen. Jack Reed (D-RI), the Committee's Ranking Member, worked very closely with each other to resolve disputes and pass a defense authorization bill every year. The bill sets budget and policy priorities for the nation's military. Known for his humor and candor, Sen. McCain relished engaging in feisty debates, but also made a point of defending the patriotism of his political opponents. Sen. Reed is known for his strong work ethic, humility, and ability to develop working relationships across party lines. For their decades of bipartisan work, both Senators were honored with the 2018 Javits Prize for Bipartisan Leadership.



The late Senator John McCain (R-AZ) and Senator Jack Reed (D-RI), sponsors of the National Defense Authorization Act.

Photo Credit: The Heritage Foundation

"We've been spinning our wheels on too many important issues because we keep trying to find a way to win without help from across the aisle.... What have we to lose by trying to work together to find those solutions?"

– the late **Sen. John McCain (R-AZ)**, recipient of the 2018 Javits Prize for Bipartisan Leadership

"Even though we found ourselves on opposite ends of many debates, I always admired Senator McCain for his courage, candor, and commitment to serving the public, not just narrow interests....He understood the importance of working together – and that by moving forward together we can achieve lasting progress."

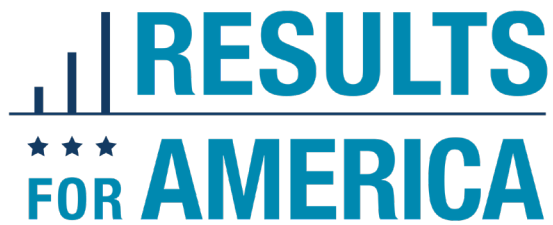
– **Sen. Jack Reed (D-RI)**, recipient of the 2018 Javits Prize for Bipartisan Leadership

Conclusion

With hyper-partisanship on the rise, Congress faces a daunting challenge in addressing our nation's biggest challenges and passing laws that improve the lives of the American people. But joint problem solving and good-faith negotiation are possible when both sides set aside partisan rhetoric and work together to advance solutions that benefit the country. We hope this primer helps provide some basic knowledge and skills on how, practically, to work across the aisle. And we hope it helps smooth the way for bipartisan victories yet to come.

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they find to get better results. We accomplish this goal by developing standards of excellence which highlight the government infrastructure necessary to be able to invest in what works, supporting policymakers committed to investing in what works, and enlisting champions committed to investing in what works.

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