

READING THE CONSTITUTION

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The Rules of Proceedings Clause

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The Rules of Proceedings Clause

Wisconsin Constitution, Article IV, Section 8

Each house may determine the rules of its own proceedings...

The Wisconsin Constitution provides, in part, that “Each house may determine the rules of its own proceedings...”¹ This provision is known as the Rules of Proceedings Clause. This clause is found not only in the Wisconsin Constitution but also in the U.S. Constitution, as well as in almost every other state constitution.² According to *Mason’s Manual of Legislative Procedure*, the only state that does not have this clause in its constitution is North Carolina.³ Wisconsin’s Rules of Proceedings Clause is entirely typical of the kind of provision found in constitutions throughout the United States.

Origin, Intention, and Scope

The Wisconsin Rules of Proceedings Clause mirrors the Rules of Proceedings Clause in the U.S. Constitution. Just as there was no discussion of the clause in the debates at the federal constitutional convention in Philadelphia in 1787,⁴ there was apparently no mention of it at the Wisconsin constitutional conventions in 1846 or 1847–48.⁵ The most likely reason was that

the legislature’s power to determine its rules of proceedings was a self-evident proposition and not worthy of debate. In 1833, Joseph Story, in his *Commentaries on the Constitution of the United States*, wrote that “No person can doubt the propriety of the provision authorizing each house to determine the rules of its own proceedings. If the power did not exist, it would be utterly impracticable to transact the business of the nation, either at all, or at least with decency, deliberation, and order.”⁶ Story’s contemporaneous account and defense of the Rules of Proceedings Clause offers the most persuasive reasons for its inclusion in the federal and early state constitutions. The Rules of Proceedings Clause embodied an essential legislative power. For early constitutional drafters, therefore, the desirability of a Rules of Proceedings Clause was simply taken for granted.

Another likely reason for the clause’s inclusion in the federal and early state constitutions, which underpins Story’s account, is that the power of a legislature to determine its rules of proceedings derives from the separation of powers doctrine. The separation of powers doctrine, a key feature of the American system of government, requires the division of political authority among the legislative, executive, and judicial branches of government. In theory, this division of power is for the purpose of combatting tyranny, which is more likely to occur when all political power is concentrated in one individual or a single branch of government, and for better ensuring the attainment of liberty. Under a separation of powers system, legislatures require a field of play in which they may conduct their activities free from the interference of the other branches of government. In Wisconsin, as in all

1. Wisconsin Constitution, article IV, section 8.

2. U.S. Constitution, article 1, section 5, clause 2, provides that “Each house may determine the Rules of its Proceedings...”

3. *Mason’s Manual of Legislative Procedure* (Denver, Co: National Conference of State Legislatures, 2010), section 3.1.

4. John C. Roberts, “Are Congressional Committees Constitutional?: Radical Textualism, Separation of Powers, and the Enactment Process,” 52 *Case Western Law Review* 489, at 529 (2001). Roberts writes: “There is no record of discussion in the Convention on the inherent powers of the house and Senate to control the details of the enactment process or on the need for an explicit Rulemaking Clause for the national legislature.”

5. See Milo M. Quaife, ed. *The Convention of 1846* (Madison, WI: State Historical Society of Wisconsin, 1919); *The Movement for Statehood, 1845–1846* (Madison, WI: State Historical Society of Wisconsin, 1918); *The Struggle Over Ratification, 1846–1847* (Madison,

WI: State Historical Society of Wisconsin, 1920); *The Attainment of Statehood* (Madison, WI: State Historical Society of Wisconsin, 1928).

6. Joseph Story, *Commentaries on the Constitution of the United States* (Clark, NJ: Lawbook Exchange (1833), 2005), Volume II, Section 835.

states, the separation of powers doctrine is “implicit in the division of governmental powers among the judicial, legislative and executive branches.”⁷ Even though in practice the different branches of government may share overlapping powers in some areas or constitutional domains, there is still within each branch “a core zone of exclusive authority into which the other branches may not intrude.”⁸ Located in the legislature’s core zone of exclusive authority is the power of each house of the legislature to determine its own rules of proceedings. In this regard, rules of proceedings are intertwined with the larger grant of the legislative power to a legislative body.

Rules of proceedings are found in legislative rules; legislative custom, usage, and the unwritten practices of each house of the legislature; general parliamentary law; rulings of legislative presiding officers; and even in the statutes.⁹ Although legal questions about rules of proceedings typically arise within the context of the legislature’s exercise of its lawmaking power, legislatures do more than make laws. Legislatures oversee and check the executive branch of government, control the spending and taxing power, conduct hearings and investigations, confirm and remove public officials from office, and provide a host of constituent and other ombudsmen services. And for each of these core legislative functions, American legislatures have adopted procedures and processes in their rules, statutes, or practices for governing their internal operations and conduct. The result, according to *Mason’s Legislative Manual*, is that a Rules of Proceedings Clause “is not restricted to the proceedings of the body in ordinary legislative matters, but extends to determination of propriety and effect of any action taken by the body in the exercise of any power, in the transaction of any business or performance of any duty conferred upon it by the constitution.”¹⁰ All of these procedures and

processes are encompassed within a Rules of Proceedings Clause.

The General Rule

The power of the legislature to determine its rules of proceedings protects the legislature from executive and judicial branch interference. In this way, the legislature is not hindered by the other branches of government in its internal organization, affairs, and actions. The earliest U.S. Supreme Court case on the Rules of Proceedings Clause, *United States v. Ballin*,¹¹ focused on the issue of how the Speaker of the U.S. House of Representatives determined whether a quorum was present for the purpose of conducting legislative business, which in this instance involved passing a bill. In this case, the court laid out the standard view of judicial interpretation of that clause: courts were to refrain from considering or enforcing compliance with such rules. The court explained:

The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations, all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.¹²

In *Ballin*, the U.S. Supreme Court acknowledged the power of the legislature to conduct its internal af-

7. *State ex rel. Friedrich v. Dane County Circuit Court*, 192 Wis. 2d 1, 13, 531 N.W.2d 32 (1995).

8. *Matter of Complaint Against Grady*, 118 Wis. 2d 762, 776 (1984).

9. For a summary of the sources of rules of proceedings, see *Des Moines Register & Tribune v. Dwyer*, 542 N.W.2d 491, 498 (Iowa 1996).

10. *Mason’s Manual of Legislative Procedure*, Section 3.4. A very expansive reading of the Rules of Proceedings Clause can be found in *Witherspoon v. State ex rel. West*, 103 So. 134, 138 (Miss.

1925), where the court asserted that “words in which the grant of power...to adopt rules of procedure is couched are about as broad and comprehensive as the English language contains...”

11. 144 U.S. 1 (1892).

12. 144 U.S. 1, 5 (1892).

fairs according to its own rules of proceedings. The court would not involve itself in any legislative matter pertaining to these rules unless there was a constitutional violation or a person's fundamental rights were affected. Significantly, the court would not require the legislature to follow its own rules of proceedings if the legislature chose to adopt another method or procedure. The legislature could change its mind, as it were. Internal legislative matters were matters for the legislature alone.¹³

The rule identified in *Ballin* is that once a legislative matter has been identified as a rule of proceeding, assuming no constitutional violations, the courts may not require compliance with the rule, punish noncompliance with the rule, or void any action taken in dereliction of the rule. This is the general rule. Wisconsin has followed the general rule for more than 120 years. In fact, Wisconsin's adoption of the general rule predated *Ballin*. In *McDonald v. State*, the Wisconsin Supreme Court in 1891 looked at the issue of whether the legislature must follow its own rules of procedure in enacting statutes.¹⁴ At issue was the recording of roll call votes in the senate and assembly journals. The rules for recording these votes were not prescribed in the state constitution, but were left to the legislature's discretion. In its decision, the court refused to consider the process by which the legislature enacted laws, asserting "We think no court has ever declared an act of the legislature void for noncompliance with the rules of procedure made by itself, or the respective branches thereof, and which it or they may change or suspend at will. If there are any such adjudications, we decline to follow them."¹⁵ Under *McDonald*, the legislature's rules of proceedings are for the legislature to determine within its core zone of legislative power.

McDonald is both a Rules of Proceedings Clause case and a separation of powers case, in which the court's refusal to involve itself in the internal affairs of the legislature is founded on principles of comity and respect for the integrity of the legislature's core zone of power. Almost 80 years later in *Outagamie County v.*

Smith,¹⁶ the court affirmed the principle underpinning *McDonald*, asserting that "one branch of the government has no authority to compel a co-ordinate branch to perform functions of judgment and discretion that are lawfully delegated to it by the constitution."¹⁷ The court held in the strongest language:

This court will not interfere with the conduct of legislative affairs in the absence of a constitutional mandate to do so or unless either its procedure or end result constitutes a deprivation of constitutionally guaranteed rights. Short of such deprivations which give this court jurisdiction, recourse against legislative errors, nonfeasance, or questionable procedure is by political action only.¹⁸

Recent Judicial Interpretation

Rules of proceedings jurisprudence is relatively rare at the federal level, but has been more prevalent in Wisconsin case law in recent years. Sometimes Wisconsin courts focus specifically on the Rules of Proceedings Clause, while at other times the courts deal with legislative internal procedures in the general context of the separation of powers doctrine. It is not clear why courts choose one path over the other in a given case. Both approaches nonetheless contain important lessons for understanding the power of the legislature to set and determine its own internal procedures free from the involvement of the other branches of government.

There are many reasons for a heightened focus on rules of proceedings issues in Wisconsin, but three seem most important. First, there is a tendency in recent litigation for plaintiffs to challenge legislative enactments not just on the substance of the enactments, but also on the process used to enact laws. In this way, there is a substantive and a procedural challenge to laws enacted by the legislature. Second, many of Wisconsin's rules of proceedings are found not just in legislative rules but also in the statutes. For different reasons, past legislatures enacted legislation that

13. For an affirmation and restatement of *Ballin*, see *United States v. Smith*, 286 U.S. 6 (1932).

14. 80 Wis. 407, 50 N.W. 185 (1891).

15. 80 Wis. 407, 412.

16. 38 Wis. 2d 24, 155 N.W.2d 639 (1968).

17. 38 Wis. 2d 24, 39.

18. 38 Wis. 2d 24, 41.

contained rules of proceedings, which were then incorporated into the statutes, instead of limiting rules of proceedings to the assembly rules, senate rules, and joint rules. If the legislature chooses not to follow a rule of proceeding in the statutes, an issue is raised as to whether the legislature may contravene the law even if it is a rule of proceeding. Finally, the legislature has shown an increased willingness in recent years to defend its practices and procedures on the basis of the Rules of Proceedings Clause. If nothing else, this represents an increased awareness of the constitutional issues at stake when the court is asked to intervene in internal legislative matters.

In *State ex rel. La Follette v. Stitt*,¹⁹ the court considered whether a law authorizing the issuance of operating notes by the state was invalid because the legislature had not followed a statutory procedure in enacting the law. The statutes required that bills relating to public debt or revenue obligations be referred to the Joint Survey Committee on Debt Management. The bill had not been referred to that committee. The court affirmed the general rule put forth in *McDonald* and held that the legislature need not comply with statutes that require the referral of bills to legislative committees. The court acknowledged that legislative procedural rules assume various forms, even in the guise of statutory text, but the effect is the same — these rules cannot be enforced by the courts. The court held: “If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid.”²⁰ This was the general rule put forth in *McDonald*. The legislature is free to follow or not to follow its own procedures or rules of proceedings. In the enactment of legislation, the court concluded, “We hold that we will not invalidate a legislative action unless the legislative procedures or statute itself constitutes a deprivation of constitutionally guaranteed rights.”²¹

Stitt stands for the proposition that the courts will not invalidate legislative actions unless the actions vio-

late constitutional rights or provisions. This is a modern restatement of *Ballin* and *McDonald*. If the legislature chooses to enact procedural rules in the statutes and then elects for whatever reason not to follow the statutory procedures, the court will not invalidate legislative actions that contravene the procedures unless there is also a constitutional violation. It follows from this general principle that the same result is true if the legislature violates its own legislative rules relating to procedural matters other than the enactment process. What is key, therefore, to understanding the expanse of the Rules of Proceedings Clause is determining what matters the court will identify as procedural and thus protected by the clause from judicial intervention.

In *Custodian of Records v. State*,²² the scope of the Rules of Proceedings Clause was directly at issue. The case centered on whether a subpoena issued to a legislative service agency — the Legislative Technology Services Bureau — for electronic data could be enforced. Plaintiffs had filed a lawsuit to quash the subpoena, arguing in part that the statutory provisions establishing and governing the Legislative Technology Services Bureau were a rule of proceeding, with the result that the subpoena’s enforceability was a nonjusticiable political question. Although the court ultimately quashed the subpoena on Fourth Amendment grounds, under the circumstances it refused to find that the Rules of Proceedings Clause would prevent the enforcement of a lawful subpoena against a legislative service agency. The court held that compliance with the subpoena would not affect the legislature’s power to determine its rules of proceedings, concluding that the “subpoena is not attempting to change the way in which the legislature functions, but rather attempting to gather information to investigate the commission of a crime.”²³

Custodian of Records flows from and builds on *Stitt* in some respects. It reads *Stitt* for the core principle that “Courts generally are unwilling to decide whether the legislature adhered to its own rules governing how it operates.”²⁴ In other words, the Rules of Proceedings Clause potentially applies to all legislative internal

19. 114 Wis. 2d 358, 338 N.W.2d 684 (1983).

20. 114 Wis. 2d 358, 365.

21. 114 Wis. 2d 358, 369.

22. 272 Wis. 2d 208, 680 N.W.2d 792 (2004).

23. 272 Wis. 2d 208, 227.

24. 272 Wis. 2d 208, 228.

conduct and operations. But the court then characterizes the issue in *Custodian of Records* as one that “has nothing to do with the process the legislature uses to propose or pass legislation or how it determines the qualifications of its members.”²⁵ The court’s language in this instance seemingly narrows the scope of the clause to those procedures involving the lawmaking process and qualification of legislators. This is unusual in rules of proceedings jurisprudence. For example, the U.S. Supreme Court, in *Yellin v. United States*²⁶ and *Nixon v. United States*,²⁷ found that the federal Rules of Proceedings Clause applied, respectively, to processes used in a congressional committee investigation and to the delegation of fact-finding powers to a committee for purposes of conducting impeachment proceedings — neither of which procedures involved the lawmaking process.

In *State v. Chvala*,²⁸ the Wisconsin Supreme Court affirmed in a one-page decision without any legal analysis a Wisconsin Court of Appeals decision which held that legislative documents governing the Wisconsin Senate’s internal operations could be used for purposes of determining whether a state senator had engaged in criminal misconduct. Specifically, the court of appeals looked at whether violations of Senate internal procedural manuals could be used to identify a legislative duty in order to determine whether a state senator had violated a dereliction of duty criminal statute. The documents at issue were the *Senate Policy Manual and Wisconsin State Senate Guidelines for Incumbents*.

Senator Chvala argued that only the legislature, and not the other branches of government, could punish violations of rules of proceedings found in these legislative internal documents. The court of appeals conceded that these documents did contain “the Senate’s internal rules,” but the court did not agree with how Chvala framed the question. Instead, the court of appeals justified its actions on the grounds that it was not enforcing “legislative rules governing the enactment of legislation. Rather, the court is being asked to enforce

a penal statute that relates to the duties of a legislator and [these documents] are relevant insofar as it gives affected persons notice of those duties.”²⁹ In other words, the court was considering whether Senate rules of proceedings established “duties” that could be used in a criminal prosecution for violations of laws, in this case felony misconduct in public office, that are not rules of proceedings. The court of appeals held:

We conclude that examination of the Senate Policy Manual and the Guidelines to determine whether Chvala violated his duty as a legislator does not intrude into the legislature’s authority to establish its own rules of conduct and to discipline members for any violation thereof. Chvala is not facing prosecution for violating the Senate’s internal rules but for having committed criminal misconduct in office.³⁰

Custodian of Records and *Chvala* appear to narrow the legislature’s exclusive jurisdiction over its rules of proceedings. *Custodian of Records* does this by conceding the state’s authority to delve into and gather information that is essential to the internal operations and affairs of the legislature. *Chvala* does this by holding that the state may effectively prosecute a legislator for violations of rules that govern internal legislative affairs, to the extent that these rules present evidence of a duty imposed on legislators. To be sure, in neither case are the issues presented in so stark a manner, but this is the practical result. One way in which these cases may be distinguished from *Stitt*, however, is that both cases involved the criminal prosecution of legislators and one can well understand the reluctance of the court to halt or intercede in the criminal prosecution of a legislator on the basis of the Rules of Proceedings Clause.

But *Custodian of Records* and *Chvala* point to another problem with judicial interpretation of the Rules of Proceedings Clause: courts narrow or expand the clause depending on the issues in the case at hand. This is true for most constitutional adjudication. The result is that there is no consistent, bright line that the courts will impose to establish definitively the scope of the

25. 272 Wis. 2d 208, 228.

26. 374 U.S. 109 (1963).

27. 506 U.S. 224 (1993).

28. 279 Wis. 2d 216, 693 N.W.2d 747, affirming 271 Wis. 2d 115, 678 N.W.2d 880 (2005).

29. 271 Wis. 2d 115, 149, 678 N.W.2d 880 (2004).

30. 271 Wis. 2d 115, 149.

Rules of Proceedings Clause. A dissenting opinion in *Milwaukee Journal Sentinel v. Wisconsin Department of Administration*,³¹ a case involving the procedures the legislature used to consider and approve collective bargaining agreements, highlights the problem: “Courts and litigants have difficulty in some instances in distinguishing between a rule of proceeding and a rule governing a substantive matter. There is no magic line always easily discernible between procedural rules and rules governing non-procedural matters.”³² The practical boundaries of the Rules of Proceedings Clause, in every way, seem to form and shift according to the legislative procedures and internal rules subject to legal challenge.

By far the most controversial and contentious case in Wisconsin judicial history involving the Rules of Proceedings Clause is *State ex rel. Ozanne v. Fitzgerald*.³³ This case involved the constitutionality of the procedures the legislature used in enacting legislation to curtail state and local government collective bargaining rights, legislation that came to be generally known as Act 10. In an unusual action, the Dane County circuit court had enjoined the publication of the legislation on the grounds that the legislature had not provided, under the Open Meetings Law, sufficient notice of a conference committee that was convened to report out an amended version of the legislation for consideration by the two houses of the legislature. By enjoining publication, the court prevented the enactment of the law.

The Supreme Court commenced its opinion by asserting that “one of the courts that we are charged with supervising has usurped the legislative power which the Wisconsin Constitution grants exclusively to the legislature.”³⁴ The court made clear that no court could halt publication of an enactment of the legislature and, affirming *Stitt*, that no court could impose its own interpretation of rules of proceedings over that of the legislature. As the court said, “In the posting of notice that was done, the legislature relied on its interpreta-

tion of its own rules of proceeding. The court declines to review the validity of the procedure used to give notice to the joint committee on conference.”³⁵ The court concluded that the legislature had not used an unconstitutional process in enacting the legislation.

For understanding the Rules of Proceedings Clause, *Ozanne* serves several purposes. First, even though the committee actions dealt with in *Ozanne* involved the lawmaking process, the Open Meetings Law at issue in *Ozanne* was a general law that applied to all legislative committee meetings, not just those held for the purpose of conducting hearings and executive sessions on legislation. If the legislature can interpret its own internal procedural rules for the purpose of determining whether committee meetings are lawfully conducted under the Open Meetings Law, as *Ozanne* held, then the legislature may interpret without judicial intervention its internal rules for all committee meetings, not just those conducted as part of the lawmaking process. Hence, under the reasoning in *Ozanne*, the Rules of Proceedings Clause is broader than the lawmaking process, a holding which affirms the expansive scope of the clause put forth in *McDonald* and *Stitt*.

Second, *Ozanne* seems to have carved an exclusive and nonjusticiable role for the legislature in interpreting its own rules of proceedings. The legislature has created its rules, issued authoritative interpretations of these rules, established its practices and customs, developed the tenets of parliamentary law, and administered and applied these rules on an ongoing basis. Court involvement in interpreting and applying these rules presents problems in that it calls into question legislative competency at interpreting the legislature’s own rules of proceedings. The concurring opinion in *Ozanne* underscored the fundamental problem with courts interpreting rules of proceedings as opposed to the legislature:

The circuit court second-guessed not only four legislative leaders but also the Senate Chief Clerk... when it determined that no senate or assembly rule...governed the notice requirements of the special session conference committee. The circuit

31. 319 Wis. 2d 439, 768 N.W.2d 700 (2009).

32. 319 Wis. 2d 439, 491.

33. 334 Wis. 2d 70, 798 N.W.2d 436 (2011).

34. 334 Wis. 2d 70, 75.

35. 334 Wis. 2d 70, 78.

court, in effect, told the Senate Chief Clerk that he did not know what the Senate rule meant.³⁶

Finally, if *Ozanne* is read broadly as prohibiting judicial involvement in the interpretation of the legislature's rules of proceedings, then the reasoning of *Chvala* is problematic and is called into question. *Chvala* involved the criminal prosecution of a legislator, with the court putting itself into the position of having to interpret the *Senate Policy Manual* and the *Wisconsin State Senate Guidelines for Incumbents* to determine whether Chvala had violated a duty of office. There was no legislative finding or determination that Senator Chvala, who was the senate majority leader at the time, had violated any of the provisions in these legislative internal documents, nor was there a legislative interpretation that the provisions identified by the court were in fact duties of legislative office. In *Chvala*, the court was therefore providing, on its own, a judicial interpretation of senate internal procedures, which interpretation was essential for the criminal prosecution of a legislator. This clearly was at odds or in tension with the general rule in *Ballin* and *McDonald* that courts will not question or consider legislative rules of proceedings unless constitutional violations are at risk. Thus, after *Ozanne*, absent violations of constitutional rights or provisions, judicial involvement in the interpretation and enforcement of rules of proceedings may well be prohibited. Instead, it is up to the legislature alone to interpret the meaning and application of its rules of proceedings, not the courts.

Going Forward

The Rules of Proceedings Clause is alive and well in Wisconsin and we may expect further adjudication and court consideration of this clause. The Wisconsin legislature and its enactments are subject to frequent litigation and sometimes the internal procedures of the legislature are called into question. For many plaintiffs, there is utility in both substantive and procedural challenges to legislative actions. The Rules of Proceedings Clause extends beyond the lawmaking process and broadly encompasses other internal operations of

the legislature. The *Senate Policy Manual*, for example, contains various sections on employment, job benefits, open records, use of telephones, and a host of other administrative matters. If this manual and its many provisions are considered rules of proceedings, as was the case in *Chvala*, then there potentially could be a wide field of internal legislative affairs subject only to legislative control and interpretation, assuming no constitutional violations. The legislature is a large institution, with five legislative service agencies, and hundreds of employees. Its internal operations span the gamut of administrative and operations matters. If these operations are all covered by the Rules of Proceedings Clause, then the legislature has unfettered control over these operations, subject to the constitution.

It is also clear from rules of proceedings cases that courts should not involve themselves in the interpretation and enforcement of rules of proceedings unless constitutional rights are called into question. *Ozanne* involved the state's Open Meetings Law and the exemption under that law for legislative committees convened pursuant to senate and assembly rules. If the senate and assembly are the sole and final arbiters of the meaning of their legislative rules, then they control through their rules the application of the Open Meetings Law to their committees. There are many other rules of proceedings currently found in the statutes, enacted by past legislatures but which apply to the current legislature, that the courts have yet to consider in terms of their enforcement in the legislature. Recall that in *Stitt* the legislature had chosen not to follow a statute setting out a rule of proceeding. Future legislatures may choose to adopt a similar course on other statutory rules of proceedings that could impede the operations of the legislature. Courts will need to determine whether specific statutory provisions affecting the internal operations and procedures of the legislature are nonjusticiable under the Rules of Proceedings Clause.

Thus, from *McDonald* to *Ozanne*, with twists and turns along the way, the court has recognized and affirmed the vitality of the Rules of Proceedings Clause. As this clause becomes more the focus of litigation, the courts will carve out more precisely the boundaries of this clause and realize the importance of this clause in

36. 334 Wis. 2d 70, 93.

maintaining a system of government characterized by the separation of powers. Contained in the legislature's core zone of exclusive authority is the power of each house of the legislature to determine its rules of proceedings. Without such power, as Joseph Story realized almost 185 years ago, the legislature could simply not function. ■