



Written by [Thomas R. Eddlem](#) on August 4, 2011

## Is the new “Super Congress” Constitutional?

Former New Jersey Superior Court Judge Andrew Napolitano [told](#) Fox News August 1 that he thinks the law may be unconstitutional:



"Members of the Senate and members of the House have the opportunity under the Constitution to debate items that are sent to them and to modify items that are sent to them. To force them to vote just yes or no with no debate, not to follow the rules of the House, which permits amendments, not to follow the rules of the Senate, which permits a filibuster, is such a substantial removal of the authority the Constitution gave them that this legislation is treading in waters that might not be constitutional."

One might agree with Napolitano that these points make the Super Congress unwise without agreeing that these particular points may make the Super Congress unconstitutional as well. After all, the U.S. Constitution provides that "Each House [of Congress] may determine the Rules of its Proceedings" ([Art. I, Sec. 5](#)) and choose its own officers ([Art. I, Sec. 2 and 3](#)). These powers of Congress in the U.S. Constitution are plenary; there are no limitations on them. And Congress has long chosen to fast-track (allow no amendments) most treaties and trade agreements that have been negotiated over many months, in order to avoid sending negotiators abroad again to renegotiate the agreements.

However, Napolitano raised another — and unassailable — objection to the legislation. Napolitano [noted](#): "This is this Congress binding itself and all future Congresses to a simple up-or-down vote." In that sense, the new "Super Congress" joint committee is truly revolutionary, and unquestionably unconstitutional. Under the Constitution, no Congress can bind a subsequent Congress with rules of procedure, which is why one of the first acts of every new Congress after an election is for the House and Senate to separately approve new rules. One of the new rules the post-Tea Party Republican House adopted in January (and broken with adoption of the debt deal) included a rule [pledging](#) to post the full text of bills on-line at least 72 hours before a floor vote.

Back on Ron Paul's presidential website, the self-styled "Southern Avenger" Jack Hunter quipped that the "Super Congress' is not super. It's not even Congress." He [quoted](#) a disgusted Ron Paul saying that it is "nothing more than a way to disenfranchise the majority of Congress by denying them the chance for meaningful participation."

With the great leap of power assumed by this Congress over all future Congresses, it's hard to disagree with them.

*Photo: Judge Napolitano on Fox News*



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