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**SARAH BALDWIN:** From the Watson Institute at Brown University, this is *Trending Globally*. I'm Sarah Baldwin. Congress and broken, two words that go together. Maybe they always have. They certainly do today. To many voters, it feels like it'll never change. Rich Arenberg knows what makes Congress work and what gets in its way better than almost anyone. He spent 34 years on the hill as senior staff for senators George Mitchell, Carl Levin, and Paul Tsongas.

Today, he's a visiting professor in political science at Brown University. His new book, *Congressional Procedure*, explores one part of Congress that we often overlook-- the rules. Part history, part rulebook, and part manifesto, Arenberg's book makes clear how these rules are about more than just formality, especially when things start to go wrong.

**RICH ARENBERG:** There's kind of a collegial atmosphere to the Senate. And then suddenly, there's a battle. The gloves go flying in the air. And when that happens, it's the people who know the rules that have the advantage.

**SARAH BALDWIN:** I talked with Arenberg about why Congress's rules matter, where Congress is headed, and how it might save itself. Rich Arenberg, thank you so much for coming in to talk to us today.

**RICH ARENBERG:** Oh, my pleasure. Thanks for having me.

**SARAH BALDWIN:** I have to tell you, I think that, having read your book, I was made only more aware of how woefully uneducated I am about or was about how our democracy works, how our Congress works. And I have a huge and renewed and brand new, actually, appreciation for it. And I think that your book should be required reading for anyone who would like to vote.

**RICH ARENBERG:** Oh, thank you so much.

**SARAH BALDWIN:** I mean that.

**RICH ARENBERG:** That's very kind. I received an email just a day or two ago from a newly elected Republican congressman. I won't name him so that I don't embarrass him or anything. But I never knew him. And I got an email from him. And he said, he's read the book twice. He's bought a copy for every member of his staff. He required that they're reading it. And he'll give them an exam at the end of the week.

**SARAH BALDWIN:** I'm not surprised. I mean, how are people supposed to know this stuff. But here, they have a handbook. I mean, everyone in the Senate and the House should read this, not to mention to every high school student or college student.

**RICH ARENBERG:** Unfortunately, it is aimed at trying to make what can be a thorny subject for people accessible while, at the same time, being accurate. And so it's aimed at people who want to know more about how the Congress works. But you're quite right that my experience is that most members of both bodies don't know all that much about the rules of the body that they serve in. And those who do make a study of it tend to rise in influence and leadership.

**SARAH BALDWIN:** Well, let's stay with that notion of rules for a minute-- rules, procedure, precedent, tradition. Why are they so important to the functioning of Congress?

**RICH ARENBERG:** Well, the way I like to put it is you think of rules and procedures, precedents, inside of the Congress as being the inside form of the rule of law. And I think we all recognize the importance of that principle in a democratic system. And that, really, it's the framework within which the Congress operates. And it's what protects the interests of all members and assures that the decision making will go on in a way that is democratic.

**SARAH BALDWIN:** What made you write this book right now? Why this book? And why now?

**RICH ARENBERG:** One of the ways of getting back in the direction, hopefully, of the regular order is help people to understand what it is. For most people, Congress is a black box. They know what goes in on the conveyor belt. They watch that. They watch what comes out on the conveyor belt. These days, not much comes out, but when it does. But they have no idea what's going on in the black box. And this book is an effort to open up that black box, make it accessible to people.

And it's my hope-- and this applies to members of Congress as well. Because often, they don't know the rules. That if they do have more understanding and appreciation for them and what they are, in fact, designed to do, that maybe we'll have a better chance of moving back towards the regular order. Because what lies down that road if it just keeps rolling, really, is what we derisively call a banana republic.

**SARAH BALDWIN:** Wow. Was there a moment in particular when you became really fascinated or impelled to understand procedure?

**RICH ARENBERG:** Well, it really was very early on for me. And part of it was my background in political science having been a graduate student, a doctoral candidate. I was a participant observer to some extent really from the beginning. And observing senators like Robert Byrd, and Richard Russell before him, these were the people who really understood the rules and who it made them very effective and, in fact, feared by their colleagues. I mean, other senators were afraid of Robert Byrd.

**SARAH BALDWIN:** So knowledge of procedure is power.

**RICH ARENBERG:** Yeah. Oh, absolutely. Because I always think of the Senate kind of like a hockey game. If you're a fan of hockey, then you know that, when there's going to be a fight between two players, the signal for that is the gloves go flying up into the air because you're on ice and you're wearing thick gloves and you can't fight very effectively unless-- you can't get rid of the skates. So you get rid of the gloves.

The Senate is kind of like that. Most of the time, it's skating around. Stuff goes on by unanimous consent. Rules sometimes don't even get enforced. There's kind of a collegial atmosphere to the Senate. And then suddenly, there's a battle over whatever it may be, whatever the principle is--

**SARAH BALDWIN:** And the gloves go flying.

**RICH ARENBERG:** The gloves go flying in the air. And when that happens, it's the people who know the rules that have the advantage.

**SARAH BALDWIN:** And speaking of that, you write that democracy is something more than majority rule. It also involves the protection of the rights of the minority. I actually didn't know that before I read your book. I hadn't thought about it. And I found that fascinating. And so I wonder-- you've written that filibuster, for example, is the soul of the Senate for precisely that reason. Could you explain that a little bit?

**RICH ARENBERG:** Well, I think what has made the Senate the unique body that it is is that it guarantees the minority in the Senate two very fundamental things. One is the right to offer amendments. And the other is the right to debate. And if you think about it, those are the heart of legislative protection. There's no guarantee that they can get their amendments approved or anything like that. But that, in the Senate, they'll have the opportunity to offer amendments and to speak, generally speaking.

This is very different than the House of Representatives, which is a majoritarian body, where the party that has the majority controls the House. And in fact, most of the time, most members of the minority in the House have very little leverage. In a sense, they really don't matter in the legislative process as it goes forward in that body.

**SARAH BALDWIN:** And why is it important that the minority be heard?

**RICH ARENBERG:** There's an expression that I like. And that is that democracy is something more than two wolves and a sheep deciding what to have for dinner.

**SARAH BALDWIN:** That's great. That's a really important way to think about it.

**RICH ARENBERG:** Yeah. And the Senate is the only place in our government that provides that opportunity. And the heart of that has been what we call the filibuster. Really, what it is is the guarantee that, once a member of the Senate is recognized and on his feet, he can't be taken off of his feet. The popular notion of the filibuster-- I think all most people know about the filibuster is they saw Jimmy Stewart in *Mr. Smith Goes to Washington*.

And so they think about that sort of long-winded filibuster. And that's a form of doing it. But actually, really, it could be a number of actions taken to slow down the body and keep the Senate from very quickly going to a vote to resolve the matter.

**SARAH BALDWIN:** Right. So it's a consensus encouraging consensus building.

**RICH ARENBERG:** Absolutely. Right. And it's played that role. And so I often say to my students, the Senate is very frequently the cradle of compromise. So if you watch how compromise is developed, they often begin in the Senate. And in fact, we just saw a compromise appropriations bill passed to end the government shutdown after 35 days.

And typically, that compromise, that decision, initially came out of a head to head meeting between Chuck Schumer and majority leader, Mitch McConnell. So it's the leaders of the two parties getting together and saying, how can we move forward? I talk about, in the closing chapter of this book, *Congressional Procedure*, I talk about what I call the weaponization of procedure.

**SARAH BALDWIN:** What do you mean by that?

**RICH ARENBERG:** Well, what I mean by that is that normal procedures, what we call in the Senate regular order--

**SARAH BALDWIN:** Did John McCain coin that phrase?

**RICH ARENBERG:** No, he didn't coin it. But he invoked it. And that was, really, his last great speech in the Senate when he voted against repealing Obamacare, you'll remember that, his famous thumbs-down situation. But McCain, he made a speech to his fellow senators-- and virtually, all of them were there as a show of respect for who he was. And McCain was opposed to the Affordable Care Act. He didn't like Obamacare. He was all for repealing it.

What he was objecting to was that the Congress was going around the regular order to get it done. And in fact, we see this. That's what I mean by the weaponization, is that, often, rules are used in a way that I would describe as abusive because they're used as weapons to take advantage of an advantage that the majority may have or, in some cases, the minority might have. The overuse of the filibuster is an example of that.

When I first came to the Senate, which was in 1978, every member of the Senate understood that it was restraint in the use of many of these rules that protected them for the times when you really needed them. And that explains why filibusters, although they were possible, as I said, going back to the origins of the Senate, were rarely used and, in fact, almost never used on a judicial nomination, which we'll come to when we talk about the nuclear option.

So restraint was an important part of this. And the kind of hyperpartisan polarization that we see right now in our political environment reflected in the Congress, reflected in the Senate, has caused both parties to use whatever procedures they can get their hands on for advantage.

And it just creates-- when I talk about polarization, there's no video element of our conversation here. So nobody can see me cranking my arm. But my students would laugh at me if they could see it because, whenever I talk about polarization, I do that. Because I think it's an action and reaction. It's almost a perpetual motion machine. And that's why it's gotten worse and worse and worse.

**SARAH BALDWIN:** This notion of perpetual motion machine is disturbing to me because it makes me wonder, do you believe that, at some point, there is a point of no return and that something will break? Or do you still have faith in the resiliency of the Congress, which you so revere?

**RICH ARENBERG:** I do have faith in the resiliency of the institution. But frankly, I'm very concerned about that. I see this-- as I say, as things get more and more polarized, the abuse of the rules is a slippery

slope that each time-- going back to the example of the nuclear option, the fact that they used it in November of 2013 made it very easy four years later, or five years later I guess it was, for Mitch McConnell and the now Republican majority to extend it to the Supreme Court.

**SARAH BALDWIN:** This might answer my next question, which is that approval ratings for Congress are traditionally quite low--

**RICH ARENBERG:** Forever. In Congress-- I mean, Will Rogers said that there is no professional criminal class in America, except for Congress. The problem the Congress has in that regard is there is 535 of them. They don't speak with one voice. And so they're an easy target for those who can, namely the president very often. We talk about the president having the bully pulpit. And he can use that.

And it's very hard when the Congress goes up against him kind of in the world of public opinion, often, the deck is stacked against them simply because there's always multiple voices. And there's a majority. And there is a minority. And there's--

**SARAH BALDWIN:** And depending on where you sit, someone's going to look like the obstructionist. And someone else is going to look like the one who's really trying to get things done I guess.

**RICH ARENBERG:** Exactly. You almost exactly quoted Mandela who said, "where you sit is where you stand."

**SARAH BALDWIN:** What do you see as a way forward for the Senate?

**RICH ARENBERG:** Well, that's a difficult question. I'm asked that a lot. And I'm an optimist by nature. I write a lot of op eds. I'm always trying to promote some idea or another that helps to try to maybe turn back the clock on one of these rules. And of course, you can tell from our conversation that I'm very focused on what the nuclear option did to the filibuster rule.

And in that regard, I've suggested, for example, that any time we're in a period prior to a congressional election when it's not clear which side is going to be the majority and which side is going to be the minority in the next Congress. And with the Senate, that's most elections. There's usually a credible chance that the minority is going to become the majority.

And it's occurred to me that, if the leadership of both parties, which is kind of a point of special committee or something like that to examine and revise the Senate's rules that doing it in that period would help to solve one of the biggest problems, which is the majority always likes the prerogative of the majority and the minority always likes the prerogatives of the minority.

We talked about Nelson Mandela. Where you stand depends on where you sit. It's particularly true when it comes to those kind of rule reforms. But the idea is very similar to the trick that virtually every parent knows. And that is, if you've got two kids and a cookie and you want to divide it fairly, you say to one kid, you cut the cookie, and the other one, you get to choose. And you get the most exquisitely divided cookie of all time.

And that's the idea behind this, that, if neither party knows who's likely to be in the majority or the minority, then there's no standard to go by except to what's good for the Senate.

**SARAH BALDWIN:** Right. Just to change tack for a second, College Hill is quite a ways from Capitol Hill. And you're teaching here at Brown. And you have been for, I believe, 10 years now. What do you think you bring to teaching? And what do you get out of it?

**RICH ARENBERG:** Well, it's very interesting. When I first began talking to people about retiring from the Senate staff and I started thinking-- I was on Capitol Hill for 34 years. And what do you do with that kind of expertise? Now, I always tell my students, most of my colleagues did what we called going downtown, namely they went to work, became a lobbyist. And I like to point out that most of them are millionaires. And I'm here teaching students. But I say that in jest.

**SARAH BALDWIN:** But you can sleep at night.

**RICH ARENBERG:** Oh, yeah because that wasn't why I went to Washington. And that wasn't what I wanted to spend my time doing. And to me, the dream would be, if a university somewhere would give me a room full of engaged bright students who wanted to go out in the world and do something, that that would be very fulfilling for me.

I began to talk to colleagues about it, particularly friends that I had that were in academia, they would say to me-- virtually, all of them said, oh, you don't want to do that. You're used to being a big shot on Capitol Hill. And you go somewhere as an adjunct. And they probably won't take you all that seriously.

**SARAH BALDWIN:** I hope that hasn't been your experience.

**RICH ARENBERG:** That's where I'm leading. When Brown offered me the opportunity, it was very sudden. It was around Thanksgiving of '08. And they wanted me to come and teach in January. So I had to make the decision very quickly. I hadn't planned to be deciding that at that point. But I grew up in southeastern Connecticut. I knew Brown. I knew what it represented. And I thought, a better

place for me is never going to come along.

And I'm so thankful that I made that decision. I miss Capitol Hill every single day. And the worse things get up there, the more my juices start flowing and I want to be back in the mix. But I don't regret that decision. Brown has been wonderful to me. The students are fantastic.

**SARAH BALDWIN:** Have some of them gone onto work in public policy and government.

**RICH ARENBERG:** Yeah. In fact, there are a number of my former students on Capitol Hill.

**SARAH BALDWIN:** So there's hope.

**RICH ARENBERG:** I like to call them the Arenberg caucus.

**SARAH BALDWIN:** What is one takeaway for any reader of your book, student or senator or staffer? What's one takeaway that you would want someone to have from this book?

**RICH ARENBERG:** Well, clearly, I would want them to understand that procedure matters. But even more broadly than that, I hope that they would take away from the things that I've written in this book and the prior book about the filibuster an appreciation for the Senate as an institution and how valuable it is to our democracy.

And that's my day 1 speech in all of my classes to all of my students, is, I know you come into this room like most Americans with a pretty minimal respect for the Congress. I hope, if nothing else, by the end of the semester, you'll come out of it with at least respect for the institution.

**SARAH BALDWIN:** Well, I would like to make this assigned reading for all *Trending Globally* listeners, *Congressional Procedure* by Richard Arenberg. And thank you so much, Rich, for coming in to talk to us today.

**RICH ARENBERG:** Well, thank you for having me. It's been a great pleasure.

**SARAH BALDWIN:** This episode of *Trending Globally* was produced by Dan Richards, Babette Thomas, and John Maza. Our theme music is by Henry Bloomfield. I'm Sarah Baldwin. You can find us on iTunes, Stitcher, or your favorite podcast app. If you like what you hear, leave us a rating and review on iTunes. It really helps others find the show. For more information about this and other shows, go to [watson.brown.edu](http://watson.brown.edu). Thanks for listening. And tune in next week for another episode of *Trending Globally*.



