



Statement before the House Select Committee on the Modernization of Congress  
On “What’s the Big Idea? Innovative Approaches to Fixing Congress”

# **The Excessive Complexity of House of Representatives Rules on Legislative Procedure**

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Select Committee on the Modernization of Congress  
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Thank you, Chairman Kilmer, Vice-Chairman Timmons, and members of the Select Committee for holding this hearing and receiving my testimony.

I am a senior fellow at the American Enterprise Institute, and have been studying congressional reform since 2014. From 2003 to 2014 I worked at the Congressional Research Service, which provided me with a close-up view of Congress at work.

I am delighted to be with you again. I was invited here to discuss the rules of the House of Representatives. In particular, the committee noted that I had written a column for the *Hill* wherein I decried the excessive complexity of the rules for enacting legislation.<sup>1</sup>

I should say at the onset that I am not an expert on the arcana of the House's legislative process rules. There is no well-worn copy of *Deschler's Precedents* on my bookshelf. Instead, I arrive as a long-time student and observer of Congress who worries that the House of Representatives' thicket of rules are not well serving legislators or our country.

But should the committee desire to discuss the particulars of any rules and their histories, I can recommend to it individuals who have devoted their lives to studying House rules.

### **The Complexity of House Rules**

To be sure, there is nothing inherently wrong with complex rules. One need only think of the complex protocols of etiquette that have evolved over the centuries, including the recent emergence of the use of pronouns in interpersonal addresses.

Yet, ultimately, the rules governing any human actions need to serve the ultimate objectives of the institution, embody shared values, and be readily understandable by participants in the enterprise.

By these standards, I believe we see signs that the House's rules have grown overly complex. The Committee previously has conducted a deep dive on the budget process, which is rife with arcana: PAYGO, 302(b) allocations, et cetera.<sup>2</sup> So I will let that matter lay and instead turn to the standing rules of the House—particularly those relating to legislative procedure.

Suffice to say, they are prolix. They begin on page 345 of the *House Rules and Manual* and conclude some 700 pages later.<sup>3</sup> To be sure, various chunks are devoted to non-procedural matters, such as broadcasting in the House and media in the galleries. Make no mistake, though: The *Manual* holds a lot of rules and explications thereof. Approximately 130 pages are devoted to committee procedures, 56 address motions and amendments, 86 pages relate to budget

process, and so forth.

Matters become more complex when one considers that nearly all legislation is passed through special rules created by the House Rules Committee. For example, in 2019 the House passed an increase to the debt limit through a special rule. The Senate sent over debt-raising legislation (titled as a physical fitness enhancement bill), and the Rules Committee wrote a rule that bundled the rules of debate on three other bills along with a statement declaring that the debt limit shall be deemed enacted.<sup>4</sup>

These special rules are nuanced and change to meet the exigencies of the moment. For example, some years ago the Rules Committee created a King of the Hill rules then later created Queen of the Hill rules.<sup>5</sup>

Often these special rules waive or set aside various standing House rules. Don Wolfensberger of the Bipartisan Policy Center recently explained to me that Congress in 2021 adopted a standing rule that “prohibits consideration of an unreported bill pursuant to a special rule unless it’s an appropriations bill or has an emergency designation pursuant to the budget act.”<sup>6</sup> Yet, he noted, “The Rules Committee gets around this every time by waiving all points of order against consideration of every bill it makes in order.”

The use of special rules to move legislation has become sufficiently complex to necessitate study by scholars. The Congressional Research Service, for example, published a piece on four recent innovations in special rules, such as the use of single engrossment for multiple legislative measures.<sup>7</sup>

If this all sounds quite complex, it is, and there are signs that this complexity is impairing House members’ participation in the legislative process. First, there is anecdotal evidence that many House members themselves do not understand the rules. Close watchers of the House often see legislators tweet or say something inaccurate about legislative process. Second, we have more substantive evidence of incomplete understanding among legislative staff, on whom members rely to help navigate the legislative process. A survey I helped conduct in 2017 indicated a not-particularly high knowledge of a selection of the House’s basic rules.<sup>8</sup>

### **Why So Much Complexity?**

The bane of excessively complex processes is not unique to the House of Representatives, nor even to government. It afflicts all sorts of organizations.

New and amended rules are adaptations—efforts to create or alter general operating procedures in response to changing circumstances or stakeholder demands. The House has changed its rules for many reasons to achieve various goals, such as efficiency, and to embed particular values, such as transparency and fairness. And, most obviously, the majority party changes rules to enhance its ability to better achieve its goals, be they passing bills or dodging difficult votes. Factors such as political polarization on high-salience issues and the demand for increased transparency have spurred the adoption of new rules.

Whatever the motivation or objective, the adoption of new rules by the House is rarely accompanied by the deletion of an equivalent number of rules, or a larger effort to harmonize the whole of the rules governing legislative procedure. Hence, over time, adaptations and exceptions to the rules pile up and over the decades create a complex thicket. There are budget procedures, authorizations procedures, expedited procedures, and more.

Adding to the complexity is that some standing rules have little formal effect on the legislative process. Calendar Wednesday, for example, “allows each committee in turn to call up bills not otherwise privileged that have been reported but have not reached the House floor through a more conventional route.”<sup>9</sup> No committee chairman has invoked the procedure in decades, presumably due to concern about upsetting House leadership, which determines the agenda for considering legislation. Other procedures, such as the discharge petition, are seldom invoked but occasionally are leveraged by legislators in the bargaining process.

To add further confusion, there are instances in which the plain meaning of words used in the legislative process diverges from what is actually occurring. As noted above, members of the House may be asked to vote on a “rule” that is not merely a rule but also deems a bill enacted—making it a bill in effect.

### **The Costs of Complexity**

Just as it is difficult to measure the complexity of rules and procedures, it also is difficult to assess their costs—especially when they are so frequently waived. Yet, anyone who watches the House for a while will see clear signs of the costs of excessively complex procedures. Indeed, the fact that the standard procedures are waived so frequently might be taken as evidence of their onerousness, or at least their inadequacy for guiding today’s legislative politics toward productive legislative action.

As a general proposition, as the complexity of an organization’s rules increases, the number of participants who can competently navigate them decreases. This corollary to the “iron law of oligarchy”<sup>10</sup> means that in the House of Representatives most legislators find themselves little able to participate in decisions regarding chamber agenda setting and decision-making on procedural options.<sup>11</sup> This is especially true for legislators who are new to the chamber and may contribute to the tension between younger and older legislators that periodically flare in the chamber.

A baroque and often rule-waived legislative process also makes it difficult for the individual legislator to perform a central duty for which he was elected: legislating on behalf of constituents. As one astute observer of the House remarked to me,

There is no conveyor belt or pathway that a legislator can follow to move a bill along. He can’t invoke a procedure to move it forward. He has to invoke a powerful person in the House to get it through.<sup>12</sup>

Regular order, and the cognizable and predictable routine it provided, is lost in today’s House.

Exceedingly complex legislative procedures also mean that the House can obscure what it is doing to dodge accountability. The aforementioned use of a Rules Committee resolution—purporting to “provide for the publication by the Secretary of Health and Human Services of physical activity recommendations for Americans; and for other purposes”—to raise the debt limit by \$480 billion exemplifies the sort of deception made possible by baroque legislative procedures.<sup>13</sup> Even with Congress.gov making legislative information more available to the public than ever, voters nonetheless will struggle to find the legislation that raised the debt limit.

Oppositely, complex legislative procedures can be used to set up legislators of an opposing party to take tough and meaningless votes. Many years ago, the chamber’s standing rule, the “motion to recommit with instructions,” could be used to force votes on “gotcha amendments”—so named because they force the majority to take a stand on an issue they would rather avoid. This is no longer the case, as the majority has greatly curbed the use of the rule.

## **Two Paths to Reform**

Present-day House rules are the product of a partisan process—for it is the majority that decides their content each new Congress. Central to the renewal of rules is the majority wish to prevent the minority from thwarting its legislative efforts. Partisan advantage is inherent to the process.

What is not inherent to the process is the protection of other important values and objectives, such as fairness, deliberation, transparency, bipartisanship, and the like. Nor does the process inherently aim at making the rules clearer and more cognizable. Unsurprisingly, over time House rules increasingly become more complex, more partisan, and more unmoored from the shared values that sustain the institution.

There are at least two pathways for reform.

First, Congress could establish a select committee to modernize the House’s legislative procedures. This committee might begin with a blank slate, asking, “How should a bill become a law, and what values should the procedure for adoption uphold?” For certain, the committee will face difficult questions, such as whether in polarized times with television cameras on it is desirable to have open debate on the floor of the House, or whether debate should be relegated to committee conventions. The committee might also benefit from reviewing states’ legislative procedures for best practices.

Second, legislators could demand that the Rules Committee itself be directed to review the standing rules and revise them to make them simpler and to better comport with particular values, such as transparency and deliberation. They also might demand the Rules Committee foreswear certain types of special rules, such as those that force legislators to vote on en bloc amendments that bundle dozens of amendments.<sup>14</sup> (These votes can be particularly difficult for members to explain to constituents.)

In both instances, such reforms may have the best chances of succeeding during the weeks immediately preceding the start of a new Congress, when the majority must select its speaker and draft a resolution to revise the House’s rules.

What seems inadvisable is for the House to continue to triage the rules every two years, with little effort being made to address the state of the rules as a whole.

I thank the committee for permitting me to appear before it, and I am happy to respond to any questions it has now or for the record.

## Notes

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<sup>1</sup> Kevin Kosar, “Fixing Congress Requires Fixing How It Legislates,” *Hill*, October 19, 2021, <https://thehill.com/opinion/white-house/577363-fixing-congress-requires-fixing-how-it-legislates/>.

<sup>2</sup> US House of Representatives, Select Committee on the Modernization of Congress, “Recommendations for Improving the Budget and Appropriations Process: A Look at the Work of the Joint Select Committee,” September 19, 2019, <https://modernizecongress.house.gov/committee-activity/hearings/recommendations-improving-budget-and-appropriations-process-look-work>.

<sup>3</sup> As a point of comparison, the guidebook for legislators in the Ohio House is 200 pages. Ohio Legislative Service Commission, *A Guidebook for Ohio Legislators: 134th General Assembly*, 2021, <https://www.lsc.ohio.gov/documents/reference/current/guidebook/17/Guidebook.pdf>.

<sup>4</sup> H. Res. 716, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-resolution/716>.

<sup>5</sup> Anonymous, *Queen-of-the-Hill Rules in the House of Representatives*, Congressional Research Service, September 24, 2015,

[https://www.everycrsreport.com/files/20150924\\_RS20313\\_700b7e8475e55bd6b1fcb3298094a639eb4864d1.pdf](https://www.everycrsreport.com/files/20150924_RS20313_700b7e8475e55bd6b1fcb3298094a639eb4864d1.pdf).

<sup>6</sup> See Rule XXI, Clause 12 as amended by H. Res. 8, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-resolution/8>.

<sup>7</sup> Megan S. Lynch and Mark J. Oleszek, “Recent Innovation in Special Rules in the House of Representatives,” in US Senate, Committee on Rules and Administration, *The Evolving Congress* (Washington, DC: US Government Printing Office, 2014), 245–57, <https://www.govinfo.gov/content/pkg/CPRT-113SPRT89394/pdf/CPRT-113SPRT89394.pdf>.

<sup>8</sup> Timothy LaPira et al., “Congressional Capacity Survey,” 2017, <https://dataverse.harvard.edu/dataverse/congressionalcapacity/>. For an analysis of the survey, see Kristina Miler, “What Do Congressional Staff Actually Know?” in *Congress Overwhelmed: Congressional Capacity and Prospects for Reform*, ed. Timothy M. LaPira, Lee Drutman, and Kevin R. Kosar (Chicago: University of Chicago Press, 2020).

<sup>9</sup> Anonymous, “How Measures Are Brought to the House Floor: A Brief Introduction,” Congressional Research Service, September 16, 2015, 3,

[https://www.everycrsreport.com/files/20150916\\_RS20067\\_9467c7fb686bb40579c819999b7bcd7f21b9001f.pdf](https://www.everycrsreport.com/files/20150916_RS20067_9467c7fb686bb40579c819999b7bcd7f21b9001f.pdf).

<sup>10</sup> This sociological theory contends that “all organizations, including those committed to democratic ideals and practices, will inevitably succumb to rule by an elite few.” This effect flows from the imperatives of running an organization, the zeal of some to lead and the specialized skills they possess, and from the desire of members for clarity in understanding their duties and workflow. Jeff Sluyter-Beltrão, “Iron Law of Oligarchy,” *Britannica.com*, September 14, 2017, <https://www.britannica.com/topic/iron-law-of-oligarchy>.

<sup>11</sup> On leadership leveraging of knowledge and information asymmetries, see James M. Curry, *Legislating in the Dark: Information and Power in the House of Representatives* (Chicago: University of Chicago Press, 2015).

<sup>12</sup> Due to this individual’s position on the Hill, he/she is unnamed.

<sup>13</sup> H. Res. 716.

<sup>14</sup> Last week, the House began consideration of a minibus appropriations bill with en bloc voting for dozens of amendments at a time. James E. Clyburn, “Whip Recap,” July 19, 2022, <https://majoritywhipforms.house.gov/news/email/show.aspx?ID=TZZLC5KWVU26QKPOYKVE3BLK4Y>.