



The Key to Improving Relationships and Civility in Congress Is More Legislating

Mark Strand

President, The Congressional Institute

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Thank you for inviting me to testify before you today. We all agree that Congress needs major reforms. The answer to legislative dysfunction is simple: Legislate more. Before I share

ideas on how you can fix Congress, I'd like to lay out why I think the legislative process has fallen apart. This will illustrate why legislating more is the route to reform.

A Lackluster Legislature

All signs point towards a decline in serious legislative work in Congress today, and this can be seen across numerous parts of the legislative process, from the Floor to Member offices.

Let's start in your personal offices, where there is both subtle and blatant evidence of the decline of legislating. In early 2020, shortly before the outbreak of the pandemic, the Congressional Institute sponsored a study *Modernizing Congressional Communications*, conducted by Patrick Ruffini and Kelsey Patten of Echelon Insights, one of the country's premier digital strategy firms. You will find plenty of data and recommendations relevant to your reform work, but I would like to highlight a couple of the most important that point to a diminution in the quality of the legislative process. One, it found that even though the average Member office has two fewer staffers than it did a decade ago, *communications* staffers have increased as a percentage of the staff roles in an office.¹ Additionally, while offices reported that communicating about the Member's legislative accomplishments was a top goal, Ruffini and Patten nonetheless found "an increasing reluctance on Capitol Hill generally to communicate about specific policies and legislation."² One interviewee noted that Members were increasingly communicating about casework rather than legislation and policy. This parallels a wider trend of constituent casework consuming an increasing share staffers' time and efforts.³

As we move from the Member offices to committee rooms, we see other signs of the decline in the legislative process. For way too long, the authorization process has been ignored across too many parts of the Government. Congress does a remarkable job with the National Defense Authorization Act (NDAA), and that needs to be replicated across the full scope of the government's activities. There is no reason a department as important as the State Department should go decades without a proper reauthorization. The authorization process is the way Congress exercises oversight over the Executive Branch and sets the country's policies, so the Legislative Branch's institutional power depends on it. Additionally, committee rooms are natural places for Republicans and Democrats to work together on commonsense solutions for the American people; they are places where we can overcome rampant partisanship and polarization. For the health of Congress, the House's committees need to rededicate themselves to regular bipartisan authorization work.

But what good is committee work if committees are themselves ignored? All too often, party leaders simply bypass the committees and bring legislation to the Floor without hearings and markups. And the Floor itself is where we can see most starkly how the House no longer legislates as it should. On the Floor, we notice that Members are no longer free to offer amendments as they once were: Special rules are too often completely closed to amendment or overly restrictive. According to the House Rules Committee's *Survey of Activities* for the

116th Congress, there were no open or modified open rules for the entire Congress.⁴ Such restrictions reduce Members' abilities to proactively participate in crafting legislation and represent their constituents. Of course, some Members like not having to take votes on controversial amendments. But Congress is the big leagues. Members who fight hard to represent their constituents here should not run and hide behind the Speaker and the Rules Committee to avoid making tough votes. Additionally, waivers of the House rules mean that Members may no longer hold their colleagues accountable for legislation that does not conform to the rules of the House. Spontaneity, creativity, and representation on the Floor have declined.

Practically speaking, the limitations on Floor debate benefit the House majority leadership at the expense of the rank-and-file. Leaders of both the majority and minority parties play important roles in the House and they need powers commensurate to these functions, but not more. As a matter of principle, the rank-and-file, down to the newest freshman, need to be able to participate in debate on the Floor since each Member acts as a Representative of constituents who are equals even though some Representatives have amassed greater power and influence due to their tenure and position in the House. A Speaker's or Chairman's constituents deserve no more access to the benefits of representation than those of Members who just took the oath of office. At all times, Members must be able to represent their constituents.

Representing constituents by offering amendments and making points of order assume that Members show up in the first place. Over the last year, we have seen one of the most unfortunate signs of the decline of the legislative process in Congress' history: the adoption of proxy voting on the Floor of the House. The House agreed to permit proxy voting and remote committee participation at the beginning of the coronavirus pandemic as temporary, emergency measure. Today, we have some Members opening the door to discussions on continuing the practice even as the end is near for the pandemic. For instance, according to *The Hill*, Majority Leader Steny Hoyer (D-MD) recently said, "There is really, you know, no magic in being in a particular room when you vote."⁵ With all due respect to the esteemed Majority Leader, there *is* something magic when the Members gather together in-person and mix it up with their colleagues. There is no venue like the Floor for Members to develop relationships with their colleagues of both parties. Such relationships are essential to a healthy legislative process, and with relationships challenged now more than ever, Members need to spend more time together, not less.

How to Progress on the Process

With these signs of legislative decay laid out, I would like to offer several ways in which the House can strengthen its capacity for debate.

Proxy Voting

Let's start with the Floor. As I indicated above, some Members are looking at making proxy

voting permanent in some form or another. Such efforts should be opposed completely. When the House first adopted proxy voting in the spring of 2020, I warned that “temporary” proxy voting would become a fixture in the House.⁶ And now some are talking about making it permanent, but with some conditions. How long would it be before such conditions are removed and it be used whenever a Member wishes? Proper reform of proxy voting is not to search for some safeguards or identify rare situations in which it might be used. Abolish proxy voting—that’s the real reform.

Floor Procedure Reforms: Open Rules and Waivers of Rules

First, strengthen Members’ rights to offer amendments by limiting closed rules. The House can do this by adopting a rule that requires a 2/3 or 3/5 supermajority to adopt special rules that prohibit amendments. Of course, a supermajority for a closed rule gives the minority party significant leverage over the process, but if we are to curtail the right to offer amendments, minority input in the process is appropriate.

Second, restrict the House’s ability to waive its own rules. As with limitations on the amendment process, this can be done by supermajority requirements. Doing this could impede legislation, so perhaps not all rules should be subject to a supermajority requirement for a waiver. But some rules, such as those providing for budget enforcement or requiring that appropriations be authorized, are so important that they should require a supermajority to be waived.

The Authorization and Budget Process

Authorization bills are at the heart of legislating, and the House’s heart needs a pacemaker. One way the House can jumpstart the process is by simply not waiving its rules prohibiting unauthorized appropriations and legislation on appropriations. Let offending provisions fall to points of order. But that is an incomplete solution. Another way to stimulate the authorization process is by adopting the concepts enshrined in the Unauthorized Spending Accountability Act (H.R. 2505, 116th Congress), which establishes a schedule of authorizations and sequesters funds from programs that Congress fails to authorize on time. Though it is a blunt instrument, failure to reauthorize government activities is so critical that it merits such a measure.

In addition to reforms to encourage reauthorization, Congress must address reforms to how it passes its annual budget. In fact, Congress should not adopt an annual budget: It should agree to a biennial budget instead. Members of Congress in both parties have long supported biennial budgeting in some form or another, and through the various bipartisan budget agreements over the years, it has effectively moved to a biennial budget process anyways. It’s high time to make biennial budgeting official, while still keeping appropriations on an annual cycle. Parallel to biennial budgeting, Congress should shift the fiscal year to the calendar year to provide more time for it to complete its appropriations work. Congress so often completes its appropriations just before it leaves town for the holidays, so they might as well make that official too.

Those reforms to the budget process will also help reinforce the authorization process. Agreeing to a biennial budget in one year would free up Congress' legislative energies for authorizing in the next year. Likewise, aligning the fiscal year with the calendar year would lead to a more rational, orderly appropriations process which would, in turn, allow for a more robust authorization process.

Another important reform is the restoration of congressionally directed spending, more commonly called earmarks. I would like to commend the Select Committee for recommending the creation of the Community Focused Grant Program (CFGP). Congress ought to go a step further and adopt your proposal. Earmarks are one of the most important ways Congress can maintain its constitutional power of the purse. As a way to stimulate the authorization process, earmarks should be fully authorized before they can be appropriated. Additionally, I would ensure that Members may raise any valid point of order against them or offer amendments to strike them (i.e., do not shield them by waiving the House rules or prohibit amendments). Let each earmark be fully debated both in the committee and on the Floor. Members might not like seeing their priorities challenged on the Floor, but those whose proposals survive the meat grinder of the legislative process will have an incentive to support the final product and bipartisan coalitions will emerge on issues so important to so many Americans. In a word, earmarks will help Congress heal.

Committees and Civility

At the end of the day, the committees themselves bear the responsibility for reporting authorization legislation. To improve their record, the standing committees ought to adopt this Select Committee's civil and bipartisan approach to legislating. As the former staff director of the Small Business Committee, I know first-hand that committees do not need to be places of all-out partisan warfare. You know it, too, since your committee has demonstrated how Members can come together to solve difficult issues in a thoughtful and friendly manner. There is no reason that other committees cannot do the same. In some ways, this is one of the most difficult reforms to achieve, since it relies less on changes to the rules and more on the individual good will of Members. Nonetheless, nothing can replace civility and bipartisanship as the way to strengthen Congress.

Conclusion

I hope that the ideas I have offered here help you recommend solutions to the House's legislative decay. The House was created to legislate and legislating will reverse its decline. I look forward to seeing you lead the House to greater legislative effectiveness in the future.

Further Reading

General Congressional Reform

“If It Can Get Its Act Together: A Case For Strengthening Congress”

<https://www.congressionalinstitute.org/2020/04/17/if-it-can-get-its-act-together-a-case-for-strengthening-congress/>

Floor Procedures

“Open House: How the House Can Reinvigorate the Amendment Process”

<https://www.congressionalinstitute.org/2016/07/19/open-house-how-the-house-can-reinvigorate-the-amendment-process/>

“Should the House Follow Its Own Rules”

<https://www.congressionalinstitute.org/2016/10/26/house-rules-waivers/>

“Voting Present by Proxy Is an Unconstitutional Oxymoron”

<https://www.congressionalinstitute.org/2020/05/06/voting-present-by-proxy-is-an-unconstitutional-oxymoron/>

“The Quorum, the Constitutional Convention, and the Coronavirus: Some Questions”

<https://www.congressionalinstitute.org/2020/05/13/the-quorum-the-constitutional-convention-and-the-coronavirus-some-questions/>

Budget, Appropriations and Authorizations

“Fixing the Authorization Process: Restoring Checks and Balances”

<https://www.congressionalinstitute.org/2017/10/19/fixing-the-authorization-process-restoring-checks-and-balances/>

“Everyone Seems to Want It, So What Is the Hold-Up on the Biennial Budget?”

<https://www.congressionalinstitute.org/2016/10/11/everyone-seems-to-want-it-so-what-is-the-hold-up-on-the-biennial-budget/>

“How Congress Can Make the Earmark Process Work”

<https://law.stanford.edu/publications/congress-can-make-earmark-process-work/>

“The Case for Earmarks: Were They Really That Bad?”

<https://www.congressionalinstitute.org/2016/09/15/the-case-for-earmarks-were-they-really-that-bad/>

“Happy New Year: The Fiscal Year Should Start on January 1st”

<https://www.congressionalinstitute.org/2016/09/15/happy-new-year-the-fiscal-year-should-start-on-january-1st/>

¹ *Modernizing Congressional Communications*, p. 24. Available at: <https://www.congressionalinstitute.org/wp-content/uploads/2020/02/Modernizing-Congressional-Communications-Final.pdf>.

² *Ibid*, p. 12.

³ See, for example, “Legislative staff are spending an increasing amount of time on constituent services,” Alexander C. Furnas, LegBranch.org, April 11, 2018. <https://www.legbranch.org/2018-4-11-legislative-staff-are-spending-an-increasing-amount-of-time-on-constituent-services/>.

⁴ House Rules Committee, *Survey of Activities of the House Committee on Rules for the 116th Congress*, H.Rept. 116-722, p. 76. Available at: <https://www.govinfo.gov/content/pkg/CRPT-116hrpt722/pdf/CRPT-116hrpt722.pdf>.

⁵ Cristina Marcos, “House Democrats open to making proxy voting the ‘new normal,’” *The Hill*, March 12, 2021. Available at: <https://thehill.com/homenews/house/542862-house-democrats-open-to-making-proxy-voting-the-new-normal>.

⁶ See “Remote voting would further undermine civility,” *The Hill*, March 17, 2020. Available at: <https://thehill.com/blogs/congress-blog/politics/493280-remote-voting-would-further-undermine-civility>.