

**Testimony of Mark Strand before the Select Committee on the Modernization of
Congress**

Collaboration and Civility

September 29, 2021

The theme of my testimony today is that “idle hands are the devil’s playground.” Meaning, legislators should legislate. Members who have no ability to influence the legislative process have no choice but to make their voices heard by obstructing legislation. The reality is that today, state, county, and town legislatures and councils have a more robust amendment process than the United States House of Representatives! Members who are able to influence the outcome of legislation have an incentive to be collegial and to work with their colleagues on both sides of the aisle. Yet both parties have made it more difficult for individual Members to legislate and then we act surprised when we see a lack of collegiality and collaboration.

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.ⁱ 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.

And so civility has declined as a result. If Members want to pass Floor amendments, they generally need bipartisan support. To accomplish bipartisan legislative achievements Members must work constructively with their colleagues or they will fail.

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.

When Members are unable to offer amendments to legislation it deprives them of their constitutional rights and leaves the wishes and desires of their constituency unrepresented.

So what can this Committee recommend to your colleagues?

1. Allow for privileged consideration of legislation that has 300 cosponsors.
2. Require a supermajority of 60% to have a closed special rule on authorization and appropriation bills.
3. Allow Floor managers to select a minimum number of amendments (e.g., five per side) for major legislation.

Most Members and most committee chairs are authorizers, but with a few exceptions, their committees are not authorizing. The most critical and routine oversight of the Executive Branch, the creation of new programs, and the elimination of bad or outdated ones takes place in the authorizing committees. In fact, it is the main source of the average Member's constitutional power over the Executive branch. But for way too long, the authorization process has been ignored across too many parts of the Government, resulting in a lack of oversight and therefore a lack of accountability of the legislature over the executive.

It certainly can work as we saw last week when the House considered the National Defense Authorization Act (NDAA). The defense bill is a good, but isolated, for example for FY 2021, the Congressional Budget Office found that Congress appropriated \$432 billion for expenses with expired authorizations. There is no reason a department as important as the State Department should go decades without a proper reauthorization. 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. Most committee work takes place without much public attention. And as we have all seen, the higher the interest in an issue, the lower the level of civility and collaboration. Why not restore the incentive to do the hard, but more bipartisan work, in the authorizing committees?

So what can you recommend to your colleagues? Basically, enforce the rules adopted at the beginning of each Congress and also incentive the authorization of appropriates by creating a rule or mechanism that limits how much an unauthorized appropriations bill can increase during the next session. If you restrict growth by, for example, 2 percent or 3 percent, programs will essentially be stymied. You could also suggest making each section of an omnibus appropriations subject to amendments on the Floor if it contains unauthorized appropriations. That would certainly incentivize the committees to focus more on getting their work done and give Members a reason to participate in the process.

If these suggestions require rules changes or even legislation to move forward, that gives this Committee a strong hand in helping your colleagues understand why these reforms are so important to returning the House to regular order and instituting processes that encourage collaboration and civility. It also paves the way to a Joint Committee on Congressional Reform, as has been done several times over the last century, would be a natural outgrowth of the great bipartisan work done by this Select Committee. This next Congress might be the ideal time for this Committee to gain a Senate counterpart.

ⁱ 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>.