

To: Members of the Select Committee on the Modernization of Congress  
From: Molly Reynolds, Senior Fellow, Governance Studies, The Brookings Institution  
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Chair Kilmer, Vice Chair Timmons, members of the Committee, and staff: thank you for the opportunity to provide input to you all as you begin your work in the 117<sup>th</sup> Congress. While my own research has explored a range of issues of interest to the Committee and I have shared information with you about some of these issues before (including the history of congressional reform efforts, congressional staff capacity, and the budget and appropriations process), my remarks today will focus on two principal areas: floor procedure and committee processes.

## **Floor procedure**

In the Committee's final report from the 116<sup>th</sup> Congress, members identified two possible areas of change related to floor procedure for consideration by future Congresses: one related to opening up the amendment process and one related to reforming the motion to recommit. In both cases, the contemporary House is faced with a persistent tension; as my Brookings colleague Sarah Binder has described it in a historical context, "minority exploitation of inherited rules has a substantial impact on change in minority rights, as majority parties realize a partisan need for changing the rules of the game."<sup>1</sup> If amendment opportunities, for example, are used primarily as signaling devices meant to draw distinctions between the parties and to force members from potentially vulnerable districts to cast what they feel are "tough votes," then there is little incentive for the majority party to allow for procedures that continue to put their members in difficult spots. Indeed, House Democrats made a change to the motion to recommit for the 117<sup>th</sup> Congress explicitly designed to reduce its ability to change the underlying bill.

This use of amendments, the motion to recommit, and other dilatory motions (like the motion to adjourn) to create politically difficult circumstances occurs because members believe it is in their interest to do so. Creating a process where more members are able to participate substantively, then, requires changing the incentives members face. Changing the rules often simply displaces the goal-seeking behavior from one tactic to another. That said, one proposal I would encourage the Committee to continue to explore is prohibiting roll call votes on amendments in the Committee of the Whole, but allowing members to call a roll call on anything adopted in the COW after the bill is reported back to the floor. This practice was used in the House prior to 1971 and has the potential to disincentivize members from offering purely "gotcha" amendments.

In addition, I would urge you to support efforts to ensure that existing, bipartisan processes are preserved. In weeks recent to this writing, the suspension of the rules process has faced threats to its functioning, as some members have called for recorded votes rather than allowing measures to be dispensed with using voice votes.<sup>2</sup> Members are consistently seeking opportunities to claim credit for accomplishments they have accrued in Congress, and the suspension process is a key component of ensuring that members are able to accomplish their legislative goals. Data from the Congressional Research Service from the 115<sup>th</sup> Congress (2017-18) indicates that nearly two-thirds of the legislative measures considered on the House floor were initially considered under suspension of the rules, including 77 percent of all minority party-sponsored measures that saw floor time.<sup>3</sup>

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<sup>1</sup> Sarah A. Binder, "The Partisan Basis of Procedural Choice: Allocating Parliamentary Rights in the House, 1789-1990," *American Political Science Review* 90.1 (March 1996): 8-20, p. 18.

<sup>2</sup> Lindsey McPherson, "[House Fast-Track Process for Bipartisan Bills Threatened](#)," *Roll Call* March 9, 2021.

<sup>3</sup> Jane Hudiberg, "Suspension of the Rules: House Practice in the 115<sup>th</sup> Congress (2017-2018)," *Congressional Research Service* May 19, 2020.

Finally, as you consider other potential reforms to floor procedure, I would encourage you to be guided by the principle of making the process work as best as it possibly can *given the current political realities of the moment*. As fellow political scientist Jim Curry testified before this Committee in February 2020, “proposals to turn back the clock, in a way, to the way things used to be done—to the “regular order”—are appealing because they imply returning to the less partisan and tumultuous times of the past. But our rosy remembrances of the past are not always what they seem.”<sup>4</sup>

### Committee processes

Just as floor procedures face a tradeoff between the goal of open deliberation and the realities of the current political environment in Congress, the House’s approach to its committees needs to balance the strengths of congressional committees with the fact that the legislative process relies heavily on a few omnibus measures each year, including a typical year-end spending deal and the National Defense Authorization Act. Floor procedure is restricted to the point that, in the contemporary House, much more deliberation occurs in committee than on the floor—despite the fact that more power rests in the hands of party leaders than it did in earlier eras.<sup>5</sup>

Recognizing that recommending changes to committee operations—especially to committee jurisdictions—can be something of a third rail in congressional reform conversations, I would offer a few general operating principles to guide your thinking in this area. First, scholars of Congress often consider committees to be especially useful to the legislative process because they allow members to specialize in particular legislative areas, devoting sustained effort and building relationships and expertise in areas that are important to individual legislators. Second, as mentioned above, members have particular legislative goals and want to be able to point to concrete evidence from the legislative process that they were able to achieve them. Third, current political realities often require the construction of large legislative packages that cross committee jurisdictions—but that those measures can still take advantage of committee expertise.

Key to incentivizing meaningful legislative activity in committee, then, is a belief on the part of members that they will be rewarded for putting in the work. The resumption of targeted, transparent congressionally directed spending is one important step in this process, and I would encourage the Committee to consider other recommendations regarding committee practices. Providing more opportunities for members to explicitly claim credit for specific provisions they added to legislation worked on in committee, for example, could increase members’ feelings of efficacy in the legislative process. In situations where the entire text of a standalone bill—or even large portions of such a measure—are inserted into the text of omnibus legislation, finding ways to more clearly identify the sponsors and co-sponsors of the component bills could also help achieve this goal.

Finally, I would encourage the Committee to evaluate systematically what adaptations made during the COVID-19 pandemic should be kept and/or expanded. The rules package for the 117<sup>th</sup> Congress authorized the electronic filing of reports and electronic signatures; there may be similar practices from which committees could benefit. In addition, the ability of witnesses to appear remotely may have allowed individuals who not otherwise be able to travel to Washington to participate in a hearing to do so. Importantly, however, these practices should not take on a partisan valence, and any effort to maintain or expand them cannot be seen as only being used by one party.

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<sup>4</sup> James M. Curry, “[Testimony before the Select Committee on the Modernization of Congress, United States House of Representatives](#),” February 5, 2020.

<sup>5</sup> Christopher M. Davis, “[Statement before the Select Committee on the Modernization of Congress, United States House of Representatives](#),” December 5, 2019.