

**Testimony before the Select Committee on the Modernization of Congress
United States House of Representatives**

C. Lawrence Evans

Newton Family Professor of Government, College of William & Mary

“House Procedure Reform”

December 5, 2019

Chair Kilmer, Vice Chair Graves, and Members of the Committee, thank you for inviting me to speak with you today about House committee and floor operations and the prospects for reform. I have taught and conducted research about congressional politics at the College of William & Mary for over 30 years, and during the early 1990s was privileged to serve as principal aide to Chairman Lee H. Hamilton on the Joint Committee on the Organization of Congress, which like your committee was charged with studying congressional operations and providing recommendations for reform. For nearly four decades, Lee Hamilton was a magisterial member of this body and anything useful I might say to you I likely learned from him.

Congressional procedure should strike a balance between the need to form majority coalitions to pass legislation, on the one hand, and ensuring participatory opportunities for rank-and-file lawmakers, especially members of the minority party, on the other. Over the past few decades, as the parties have become more polarized, the balance between the needs of the majority and the participatory rights of political and partisan minorities has shifted toward the former and away from the latter. According to the best research, this burgeoning polarization is rooted in changes in the broader political environment, such as voter realignment and sorting, the heightened importance of party activists and the respective partisan bases, and so on.¹ But changes that have occurred in the internal operations of the House have also helped fuel partisan polarization within Congress and the country as a whole.

¹ Nolan McCarty, *Polarization: What Everyone Needs to Know*, Oxford University Press, 2019; Sean J. Theriault, *Party Polarization in Congress*, Cambridge University Press, 2008.

On the House floor, there has been a marked shift from open amendment procedures to highly structured rules for the consideration of legislation. The consequence is sharp limits on floor participation by the minority party and also by members of the partisan majority who may diverge from the party position on a measure.

Also important are the linkages between procedural arrangements on the floor and the internal operations of House committees. Heightened restrictions on floor participation have raised the importance of participatory opportunities in committee. But the legislative role played by most authorizing committees has declined, with power shifting toward the appropriators (for a time) and to party leaders. These days, even when authorizing committees mark up legislation, key decisions often are being made outside of committee meeting rooms, and within the majority caucus or conference under the guidance of party leaders. Moreover, since the 1990s the appropriations process also has grown increasingly dysfunctional, with most or all of the annual spending measures failing enactment, and the major budgetary decisions of Congress being made via massive omnibus packages shaped at the leadership level. In short, as access to the House floor has been restricted, the opportunities for rank-and-file members to influence legislation during the committee stage also have declined, with significant consequences for the deliberative capacity of Congress.

What might be done to promote a better balance between majority party power and minority rights within the current House? How might congressional operations be altered to better engage the expertise and concerns of the membership as a whole? For what it is worth, my sense is that you should consider the following changes.

First, the primary prerogative of the partisan minority on the floor is the motion to recommit with instructions. The motion and associated amendatory instructions guarantee to the minority leader or his/her designee the opportunity to secure floor action of a substantive alternative of their choosing immediately before the motion on final passage. The motion to recommit dates to the first Congress, and since the 1930s has been viewed as a prerogative of the minority party and a check on the procedural advantages of the majority. Motions to recommit can take the form of a straight motion to return a measure to committee, effectively killing it. Or such

motions can be accompanied by legislative “instructions,” which if adopted effectively amend the legislation as instructed.

The motion to recommit with instructions creates significant challenges for House majorities. As a result of a past reform effort, in the early 1970s procedures were implemented for conducting recorded votes in the Committee of the Whole – the parliamentary device through which amendments are considered on the House floor. One unintended consequence was a dramatic increase in the number of amendments, which in turn made deliberations within the chamber less predictable and more politically risky for lawmakers. Increasingly, members were forced to take positions on controversial floor amendments that could damage them at home with constituents.

The consequence was considerable pressure within the majority caucus of the day to clamp down on amending opportunities, and the percentage of legislation considered under open procedures began to fall. Indeed, the proportion of open rules has plummeted from nearly 85 percent during the 1970s to 44 percent in the early 1990s to less than 10 percent in recent years. During 2017-18 (under Republican management) and so far in 2019 (with Democrats in the majority), roughly half of the special rules reported by the House Rules Committee were closed – effectively precluding amendments not proposed by the reporting committee – and about half were “structured” – limiting amendments to only those referenced in the rule or accompanying report.²

As the ability to offer amendments during the Committee of the Whole has been sharply restricted, the importance of the motion to recommit to House minorities has grown. Often, it is the minority party’s only guaranteed point of access into the floor decision making process.

Procedures such as the motion to recommit also should be considered through the lens of party campaigning. Due to innovations in communications technology, the rough parity that now exists in the electoral strength of the two parties, and the tribal nature of recent party conflict, disagreements within the House have increasingly taken the form of “message politics,” where legislative work is fused with party campaigning and the emphasis is on energizing the party

² Donald R. Wolfensberger, “House Rules Data,” Bipartisan Policy Center, October 1, 2019. <https://bipartisanpolicy.org/report/115th-congress-house-rules-data/>

base and using symbolic appeals to demonize the opposition, rather than to forge cross-partisan agreements on major issues.³ The pervasiveness of message politics is hard to quantify, but we know it when we see it. While the staff resources allocated to House committees – traditionally the legislative workhorses of the chamber – have atrophied over the past several decades, the number of party leadership aides has grown substantially. At both the committee and leadership levels, the proportion of staff focusing on “communications” rather than the substance of legislation likewise has increased markedly. From press releases to tweets, the volume of overtly partisan, campaign-oriented communications has gone up and up.

Not surprisingly, the amendatory instructions that House minorities offer as part of the motion to recommit often strike members of the majority as mostly symbolic and oriented toward forcing them to cast politically embarrassing roll calls. Indeed, the motion to recommit with instructions is particularly conducive to the gamesmanship of message politics. Essentially, it is a substantive amending opportunity in the guise of a procedural motion, typically offered without much advance warning. Procedural votes generally are highly partisan in the House and the expectations for party loyalty are strong. Since the votes cast on such motions are likely to evoke reflexive partisanship anyway, for the minority the incentive is to focus on narrowly drawn, “gotcha” style amendatory instructions. And on the majority side of the aisle, the temptation is to take steps to restrict the motion to recommit.⁴

The problem, of course, is that the House cannot be a fully deliberative body unless the partisan minority is able to offer substantive alternatives to the majority position at some point during deliberations on the floor. Ideally, such opportunities should occur during the regular amending process in the Committee of the Whole, and not as last-ditch instructions attached to what is primarily a procedural motion. The time may be ripe to modify House rules so that only straight motions to recommit – that is, without accompanying amendatory instructions – are permissible

³ Evans, C. Lawrence, “Committees, Leaders, and Message Politics,” in *Congress Reconsidered*, ed. L. Dodd and B. Oppenheimer, CQ Press, 2001, pp. 217-43; Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign*, University of Chicago Press 2016.

⁴ In the late 1980s and early 1990s, Democratic majorities occasionally denied the minority the opportunity to offer amendatory instructions via special rules. Formalizing the minority’s right to offer instructions was included among the recommendations of the 1993 Joint Committee on the Organization of Congress and placed in House rules at the beginning of the 104th Congress.

on the House floor – while guaranteeing to the minority leader or his/her designee the right to offer a fully protected substitute during the regular amendment process. Messaging amendments are also offered in the Committee of the Whole, but shifting the minority’s participatory guarantee from the motion to recommit to the regular amendment process might promote floor deliberations that focus more on serious substantive disagreements between the parties, rather than the corrosiveness of message politics.

A second reform area that may merit attention concerns the internal operations of the chamber’s standing committees. Over the past few decades, the great authorizing committees of the House have atrophied. Often, authorizations bills simply fail to pass and funding is provided through appropriations alone. According to a recent CBO report, the level of unauthorized spending now exceeds \$300 billion annually, a tenfold increase relative to the 1980s.⁵ When committees do act, more and more of the key early decisions about the contents of legislation are not made in open markups, with members of both parties present. Instead, such decisions increasingly are made in separate party working groups under the guidance of party leaders. In other words, markups still occur, but the real locus of decision making has shifted from the committee arena toward party caucuses. And when committees meet, deliberations often appear scripted and straight party votes are commonplace even within panels that historically have featured cross-partisan accommodation.

There are many concrete indicators of the decline of the House committee process, from the rise of reflexive party voting in committee to the demise of conference committees, where the Congress traditionally relied on members of the committees of jurisdiction to craft bicameral compromises. Perhaps most important, the staff expertise that committee members can draw on has fallen over time. Relative to high points in the early 1990s, the number of committee aides in the House is down nearly fifty percent, while the percentage of committee staffers playing overtly communications roles has grown.⁶ In the 1990s, reformers sought to streamline House operations and reduce the congressional bureaucracy. Rather than cut individual office staffs,

⁵ Congressional Budget Office, “Expired and Expiring Authorizations of Appropriations: Fiscal Year 2019,” March 2019. <https://www.cbo.gov/system/files/2019-03/55015-EEAA.pdf>

⁶ Molly Reynolds, Vital Statistics on Congress, Table 5.5, 2019. <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>

where aides perform work closely related to a lawmaker's reelection, they chose to slash committee staffs and the congressional support agencies. As a result, the independent expertise that committee members can rely on has shrunk precipitously. The critical information necessary to legislative work increasingly is provided by lobbyists, the executive branch, or by no one at all.

Procedural reforms at the committee stage are worth considering, to be sure, but rule changes aimed at invigorating the committee legislative process cannot be of much consequence if members lack the independent base of substantive expertise they need to legislate. The Select Committee could consider proposing that committee staff resources be expanded across-the-board within the House, to be phased in over time via the annual committee funding resolutions.

Along those lines, if the committee staffs can be revitalized, it is worth considering staffing arrangements that would encourage cooperation across party lines. The House Armed Services Committee, for example, traditionally has relied on a centralized cadre of staff who work for both the majority and the minority. Even panels that have been more partisan in their internal operations might benefit from having a core group of staff experts hired jointly by the chair and ranking minority member, and charged with serving the needs of members on both sides of the aisle.

There also has been discussion, I know, of opening up committee agenda setting more to rank-and-file members. For example, committee rules might be adopted where, if a measure is cosponsored by some super-majority of committee members, that legislation must be the subject of a formal markup within some specified period. If the vast majority of a committee support markup action on a piece of legislation, there will be considerable pressure anyway for the relevant chair to place it on the agenda. Still, chairs receive substantial deference about what to schedule and when, and on major bills they generally set markup agendas in consultation with the majority leadership. Committee rules could include a requirement for marking up legislation that has crossed some threshold of bipartisan support, which in turn might encourage members to work together across party lines during the critical early stages of the legislative process.

One potential problem is that the number of legislative initiatives capable of achieving such thresholds may exceed the time available for conducting markups, and thereby impede the ability of the chair to effectively manage the committee agenda. A solution might be to take the basic concept behind the newly adopted “consensus calendar” and apply it to the committee stage. In other words, provide for a day of markups within each committee every month where legislation referred to the panel that has the backing of some supermajority of members must receive formal consideration. If there are multiple measures that meet the threshold, the chair could set priorities in consultation with the ranking minority member. Such reforms would encourage bipartisan participation by rank-and-file members without undermining the legitimate agenda-setting prerogatives of the chairs.

The bottom line? The House has become increasingly partisan over the past few decades, and much of that conflict is about message and partisan campaigning, rather than the constructive production of legislation. The ability of members to consider major substantive alternatives has been hampered by increasingly restrictive procedures on the floor and the decline of the committee system. To some extent, the recent procedural evolution of the House reflects the rise of partisan polarization, communications innovations, and other features of the broader political environment. But procedure and process also fuel the gamesmanship and tribalism of message politics. Certain modest changes to the rules could help nudge the chamber in a more productive direction.

C. Lawrence Evans: Professional Background

A member of the William & Mary faculty since 1987, Larry Evans is a specialist in American national politics. In addition to three dozen journal articles and chapters in edited volumes, he is the author of three books: *The Whips: Building Party Coalitions in Congress* (University of Michigan Press, 2018), *Congress Under Fire: Reform Politics and the Republican Majority* (with Walter Oleszek, Houghton Mifflin, 1997), and *Leadership in Committee: A Comparative Analysis of Leadership Behavior in the U.S. Senate* (University of Michigan Press, 1991, 2001). During 1991-93, Evans served as the staff associate for Chairman Lee H. Hamilton on the Joint Committee on the Organization of Congress. In 2003-07, he was co-editor of the *Legislative Studies Quarterly*, the premier scholarly journal focusing on

legislatures. And in 2011-13, he chaired the Legislative Studies Section of the American Political Science Association. He earned a B.A. in economics from Kenyon College, an M.A. in economics from the University of Virginia, and a Ph.D. in political science from the University of Rochester.