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Article

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Abstract

This paper will explore the hypothesis that, as fewer amendments are being allowed on the House floor to major bills, the majority leadership is compensating by allowing for the consideration of more non-controversial bills, sponsored by more members, under the suspension of the rules procedure as a means of partially satisfying members= needs for reelection, public policy influence, and power in the House. Roughly three-fourths of the bills enacted in the last, full Congress (the 106th Congress) were initially considered in the House under the suspension of the rules process which allows for just 40 minutes of debate and no amendments, and requires a two-thirds vote for passage. The trend towards increased lawmaking by this process is especially significant given the general perception that Congress has become more partisan in recent years and, therefore, more prone to confrontation and gridlock than to cooperation and consensus. Bipartisan lawmaking under suspension of the rules is viewed here as complementary to, rather than contradictory of, the conditional party government theory that holds that when there is high intra-party homogeneity and inter-party polarization, members give their leaders greater power and leeway in fashioning legislative strategies and procedures. The suspension bridge allows leaders to fulfill their party maintenance responsibilities of satisfying members= needs while giving them greater latitude in carrying out their institutional maintenance responsibilities of building winning coalitions to pass legislation of national importance to the party. Finally, the paper discusses whether the growing reliance on the suspension process and restrictive rules tends to devalue the work of committees and the role deliberative lawmaking in Congress.

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Introduction: The Suspension Bridge

Under House Rule 15, clause 1, the Speaker may entertain motions to suspend the rules and pass legislation on Monday and Tuesday of each week. Measures considered under this procedure are debatable for 40 minutes (equally divided between proponents and opponents), are not subject to amendment (unless offered by the bill=s manager as part of the original motion). Contrary to the parliamentary rule that rejected measures may not be considered again in the same session, suspension measures that are defeated may be brought up again, but those that have not received at least a majority vote usually are not.

Roughly three-fourths of the laws enacted in the most recently completed 106th Congress (1999-2000) were initially considered in the House under suspension of the rules. Although the Speaker controls the scheduling of measures under suspension, the decision is usually based on bipartisan consultation and agreement. Moreover, both parties provide guidelines and safeguards in their caucus rules to prevent the abuse of the process and to ensure due regard for minority party rights and preferences.

While the suspension procedure is most often used for minor and relatively non-controversial bills, there is a parallel trend in the House towards a greater reliance on restrictive, special rules from the Rules Committee which limit what amendments can be offered on major legislation. Increasingly, modified closed rules that allow just one amendment—a minority party substitute—have become the favored procedure of the Republican majority (though not officially condoned by the minority leadership).

There are a number of explanations for these two developments toward more restrictive legislating ranging from the personal convenience of shorter work weeks to the political convenience of having to vote on fewer controversial matters. Both processes also provide near maximum protection for the legislative product of committee majorities. The minority party leadership is also empowered by both processes: it has veto power over suspensions and therefore bargaining leverage to schedule minority party members= measures under that process; and, under modified closed special rules, it is easier to hold party ranks together when the options are confined to a single minority substitute embodying the party=s preferences.

The latter development of modified closed rules reinforces the "conditional party government" theory which holds that when there is a high degree of intra-party homogeneity and cohesion on policy matters and inter-party polarization, members tend to delegate greater powers to their party leadership to develop legislative strategies and procedures to achieve their party=s national policy goals.[1] This includes delegating authority to the leadership to use the Rules Committee to limit the amendment process on major bills—usually a procedural bone of contention with the minority (regardless of party) because it limits opportunities for the party and individual members to test a committee majority=s product through debate and votes on alternative policy solutions.

The increased use of suspension lawmaking, on the other hand, points to an important counter-trend of bipartisan lawmaking that allows members of both parties to realize their personal political goals. Rather than contradicting the conditional party government theory, the increased reliance on suspension lawmaking can be seen as facilitating it by giving members alternative outlets for policymaking and constituency representation outside the normal amendment process on major bills.

The two processes are interdependent to the extent that the suspension process serves as a safety valve or outlet for pressures that would otherwise build for a more open amendment process on significant legislation. The processes operate in tandem to fulfill the dual responsibilities of party leaders for institutional maintenance and party maintenance. Institutional maintenance has been described as building winning coalitions to pass legislation of importance to the party=s national policy agenda, while party maintenance has been described as "keeping peace in the family."[2]

One of the ways in which leaders keep peace in the family is by assisting individual members with their goals of reelection, good public policy, and institutional power and respect.[3] Suspension bills aimed at particular constituencies, interests, or geographic areas help to reinforce a member=s concern for those matters important to their reelection. Other suspension bills may address discrete national policy areas that do not involve great cost or controversy. The suspension bridge is a convenient structure for leaders to achieve their party maintenance responsibilities. It allows leaders to re-route some members= reelection and policy needs away from major bills. This

in turn relieves the leaders of some of the congestion and pressures that swirl around their attempts to fashion strategies and procedures necessary to passing important legislation. Taken together, the two processes, suspensions and restrictive rules, serve the needs and goals of party members and leaders alike.

"The Suspense Calendar"

Back in the 1980s, Republican Congressman Bill Dannemeyer of California routinely referred to the suspension of the rules procedure as "the suspense calendar." He always did so with such straight-faced sincerity (undistorted by any hint of tongue-in-cheek) that anyone watching would be convinced he actually thought that=s what the procedure was called. Notwithstanding the fact that there is no such thing as a "suspension calendar," let alone a "suspense calendar," Mr. Dannemeyer=s malapropism still had a ring of truth to it: quite often members did not know until they walked onto the floor to vote *what* bills were being considered under suspension, let alone what was *in* the bills.

Usually, at the end of a week=s legislative business, the Majority Leader announces the legislative program for the following week to a near empty chamber as members scurry to catch planes back to their districts for the weekend. The program ordinarily includes a listing of bills to be considered under suspension of the rules on Monday and Tuesday. When members return to Washington late on a Monday (or Tuesday, if there was no Monday session), the first thing to greet them on the floor of the House around 6 p.m. is a series of postponed votes on suspension bills that have been debated earlier that day.

In the1970s the rules of the House and of the majority party caucus were tightened to make the suspension process more predictable and less open to abuse. With these additional safeguards and bipartisan cooperation in scheduling, the suspension process has become very popular with members and leaders of both parties. Whereas in the 98th Congress measures passed under suspension comprised roughly one-third of the public laws, in the most recent 106th Congress (1999-2000) they comprised three fourths of the bills eventually enacted into law.

Notwithstanding the fact that most laws now originate under the suspension procedure, the process is probably as mysterious and suspenseful to most of the public and media as it was to Congressman Dannemeyer two decades ago. Even political scientists who are fond of probing and

modeling members= floor votes take little notice of the process because it seldom produces actual roll call votes, and, when it does, they are usually overwhelmingly in favor and are of little consequence. And yet, ignoring the little fish for the larger fish might well miss some of the reasons behind the latter=s migration patterns and feeding habits.

Evolution of the Suspension Rule

According to the House Parliamentarian=s annotations to the *House Rules and Manual*, the suspension rule had its origins in a 1794 rule that stated that no rule could be rescinded without one day=s notice. The rule was further amended in 1822 to provide that no rule could be suspended except by a two-thirds vote. And, in 1828, the rule was again modified to provide that the order of business as established by House rules could not be altered except by a two-thirds vote. As the Parliamentarians observe of this latter change, "This provision marks the great purpose of the motion, which was to give a means of getting consideration for bills which could not get forward under the rule for the order of business."[4]

To understand the importance of a suspension motion one must first understand the operation of the order of business rule. The House adopted its first order of business rule in 1811. It provided first for the approval of the previous day=s Journal, followed by the receipt of petitions from citizens, then the receipt and consideration of measures from committees, and finally a return to the business of the previous day. Since it was not always practical or prudent to immediately consider bills from committees on the same day they were reported, the House would often make a particular measure an "order of the day" to be considered on a subsequent, specified date. However, this represented a departure from the order of business as prescribed by House Rules. The early method for establishing an "order of the day" and thereby circumventing the regular order of business was by unanimous consent. But this had the disadvantage that any member could block consideration by raising an objection.[5]

It was this problem that led to the 1828 rule that specifically allowed for the order of business to be postponed or changed by a vote of at least two-thirds of the members present. For most of the nineteenth century, the motion simply provided for the consideration of a bill at a specified date and time (and on each subsequent day until disposed of). It wasn't until 1868 that the rule was further transformed into a means for passing as well as considering a measure. The

change came not as a further amendment to the suspension rule, but as a parliamentary ruling. A motion was offered by Representative Elihu Washburne (R-Ill.) to suspend the rules and *adopt*, not just consider, a set of procedures for debating the impeachment of President Andrew Johnson. A point of order was raised against the motion on grounds that the House had a right to vote separately on the two propositions—suspending the rules and adopting the impeachment procedures. Speaker Schuyler Colfax (R-Ind.) overruled the point of order and thereby established the precedent for the dual purpose motion to suspend the rules and pass a measure by a single vote.[6]

Originally the motion to suspend the rules was in order on any day, but in 1847 it was confined to Mondays of each week, and, in 1880, to the first and third Mondays of each month. The main reason for limiting the indiscriminate use of the motion was that any member could offer the motion to call up any bill of his choosing, whether reported from a committee or not. The Speaker had no discretion in recognizing Members who wished to offer the motion. As Stan Bach, formerly of the Congressional Research Service, describes the problem:

> . . . [W]hile suspension motions became useful devices to overcome the rigidities of the regular order of business, they also were used frequently by individual members of both parties for their own purposes—purposes that, from the perspective of the Speaker and his allies, distracted the House and disrupted the timely and orderly consideration of major legislation.[7]

Former House Parliamentarian Asher Hinds wrote that the procedure was "greatly abused" by members who would draft resolutions "of no practical standing in the House, sometimes so artfully worded as to be political traps, condemning many members to political dangers in their districts, whether they voted for or against them."[8]

To counter excessive and frivolous suspension motions, the House adopted an amendment to the rule in 1874 that allowed an opponent to demand a second on the motion--the equivalent of voting on whether to consider the motion. House Parliamentarian Asher Hinds noted in his precedents that the purpose of the rule was "to prevent 'buncombe' resolutions"—those designed primarily for home district consumption.[9] A second had to be supported by a majority of members on a non-recorded, teller vote in which members file down an aisle and are counted for or against

the pending proposition. By voting against the second, members could block consideration of a particular bill without having to go on record to do so.

Although the seconding provision was dropped from the rules in 1876, it was reinstated in the 1880 revision of House rules. This was probably because, for the first time, debate was allowed on suspension bills (30 minutes). At the beginning of the 96th Congress (1979-80), the rule was further changed to waive the demand for a second if copies of the measures to be considered under suspension had been available to members for at least one day. At the beginning of the 102nd Congress (1991-92), the requirement for a second was eliminated altogether from House rules.[10]

Speaker Samuel J. Randall (D-Pa.), who served as Speaker from 1876 to 1881, found another way to counter unwanted suspension motions. He simply refused to recognize members to offer the motion after learning from them what the subject bill of the motion was to be. In the instance cited in the precedents, on March 1, 1881, the House was operating under the provision of the rule that allowed suspension motions on any of the last six days of a session. In his ruling, Randall said, "The rule is not compulsory on the Chair, and never has been so construed in regard to motions to suspend the rules during the last six days of a session."[11]

The Speaker=s discretion in recognition was extended to all suspension motions (not just those offered during the last six days of a session) in rulings by the Speaker in 1894 and in 1900. In the latter instance, Speaker David Henderson (R-Iowa) put it quite bluntly: "The Chair must exercise his duty to this House and recognize members upon matters which the Chair thinks should be considered."[12]

Thanks to Randall=s initiative on discretionary recognition, and the expansion and extension of the principle by Republican Speakers like Thomas Brackett Reed (R-Maine) and Henderson, by the beginning of the 20th century Speakers came to exert effective control over what measures could be considered under suspension and it became a device for delivering prompt action on measures favored by the leader of the majority party.

Majority party control over the suspension process also paved the way for expanding the number of days on which suspension motions could be offered. In 1973, the House adopted an amendment to the suspension rule that eliminated the distinction between member and committee

suspension days and expanded the use of suspensions from two to four days a month—the first and third Mondays and the succeeding Tuesdays. And, at the beginning of the 95th Congress (1977), the rule was further amended to permit suspension motions every Monday and Tuesday.[13]

While the leadership gained effective control of the suspension process in the 1890s, it sometimes had difficulty in obtaining a two-thirds vote on legislation. That problem was taken care of by another procedural innovation institutionalized during that same decade—the special rule or order of business resolution. A special rule was a resolution reported from the Rules Committee that gave privileged status for the immediate consideration of legislation out of the regular order in which it appears on the calendar. In other words, it essentially served the same function as a suspension motion except that it could be adopted by a majority vote instead of a two-thirds vote. Moreover, it could be shaped according to the wishes of the leadership both in terms of the general debate time to be allowed and the type of amendment process to be followed.

The first such special rule was used in 1883 and masterminded and managed by a junior member of the Rules Committee, Republican Thomas Brackett Reed of Maine. It permitted the House to suspend the rules by a simple majority vote to take up a House tariff bill, disagree to the Senate amendments to it, and request a conference. Not long thereafter the Rules Committee eliminated this two-step procedure (special rule followed by a majority-vote suspension motion) by making the legislation in order upon adoption of the special rule. Shortly after Reed became Speaker and Rules Committee chairman in 1889, special rules literally became the order of the day.

Caucus Guidelines for Suspensions

In 1979, when the Democratic Caucus recommended a House rule change to limit the demand for a second on suspensions, it also amended its own caucus rules to impose certain guidelines on the Speaker in scheduling measures under suspension. The change came amidst complaints that the suspension process was sometimes being used to consider important, controversial, and costly legislation. In March of 1975, for instance, a House Republican Task Force on Reform issued its first report with a comprehensive list of 16 recommended changes in House rules and procedures. Item 7 on the task force agenda, "Reduced and controlled suspension of rules," concluded that, "the more the suspension procedure is used, the more it is abused, to the detriment of sound legislative practice and results." The task force went on to observe that "the

fact that numerous bills were defeated under suspension and that some were even cynically brought up under suspension for the very purpose of defeating them, is sufficient evidence that this procedure must be modified and restricted."[14]

The task force recommended that: (a) suspension days be limited to two (instead of four) a month; (b) suspension bills be cleared by the chairman and ranking minority member of the committee of jurisdiction; (c) a dollar cost ceiling be placed on bills that could be considered under suspension; (d) at least three calendar days notice (excluding weekends) be given of bills to be considered under suspension; and (e) prior to scheduling a bill under suspension, the majority leader should consult with the minority leader.[15]

In organizing for the 96th Congress (1979-80), the Democratic Caucus responded to complaints from members of both parties about the abuse of the suspension process by adopting a caucus rule along the lines recommended by the House Republican Reform Task Force. The new caucus rule required that requests for consideration of a bill or resolution under suspension be made in writing to the Speaker by the committee chairman of jurisdiction and include a cost estimate if the cost is estimated at more than $100 million for any fiscal year. The Speaker would be prohibited from scheduling under suspension any bill costing more than $100 million in any year unless the Democratic Steering and Policy Committee granted a waiver. If a waiver was granted, the measure could not be considered by the House until the fourth calendar day (excluding Saturdays, Sundays and legal holidays) after the waiver was voted. Other suspension bills could not be considered until the third calendar day (again excluding Saturdays, Sundays and legal holidays) after notice was made to the House of their being scheduled.[16]

Although Republicans had long favored a House rules change to codify their suspension restrictions, when they finally did gain control of the House in 1995 they instead followed the Democrats= lead of confining their suspension guidelines to their caucus rules. Under current Republican Conference rules, requests for the scheduling of measures under suspension must be made in writing to the Speaker and include a cost estimate. The rules goes on to add three conditions not contained in the Democratic Caucus rule: "The request should also state that the bill or resolution has been cleared by the ranking minority member and was not opposed by more than one-third of the committee members reporting the bill." The Speaker shall not schedule any bill

under suspension which fails to include a cost estimate, which exceeds $100 million in cost, has not been cleared by the minority, or was opposed by more than one-third of the committee members. Like the Democrats= rule, the Republican rule provides waiver authority by vote of the elected leadership of the Republican Conference.[17] However, the rule contains no prior notice requirement.

"Gag Rules"

The 1980s marked a major procedural change from past decades in House floor amending practice. Whereas previously most important bills had been considered under a relatively open amendment process (closed rules on tax bills being the exception), that began to change in the 1980s as the House became more partisan and some members saw the amendment process as one place to draw bright lines of distinction between the parties. This in turn led to a counteraction by those who resented the long hours spent considering amendments, not to mention the politically embarrassing votes they were being forced to cast.

In August 1979, Representative John LaFalce (D-N.Y.) and a group of over 40 Democrats signed a letter to Speaker Thomas P. O=Neill, Jr. (D-Mass.) and Rules Committee Chairman Richard Bolling (D-Mo.), urging them to consider more "modified open" rules which they described as "an approach permitting reasonable proposed amendments to bills on the floor but limiting the number of such amendments, and the time permitted for debate on the amendments." Anticipating a negative reaction by some to such an approach, they added:

> Some will cry out that the Leadership is trying to institute "gag rules" or worse, but in our judgment this issue is too important and we should tolerate the criticism for the good of the House, its Membership, and the country. For without relief of some kind, we won=t be able to do the jobs for which we were elected and the ultimate result will be inefficient Members in an inefficient institution. Neither is desirable; both are avoidable.[18]

The Speaker welcomed this initiative that empowered him to seek more restrictive rules from the Rules Committee. Over the next decade, the use of restrictive rules limiting the amendment process skyrocketed from 25 percent of all rules in the 96th Congress (1979-80), to 43 percent by the 99th Congress (1985-86), and to 70 percent by the 103rd Congress (1993-94). More tellingly, on major legislation (as designated by *Congressional Quarterly*) restrictive rules were

used just 32 percent of the time in the 97th Congress (1981-82) but 82 percent of the time by the 103rd Congress.[19]

As LaFalce and his colleagues had predicted, Republican protests over "gag rules" escalated with each succeeding Congress as the majority leadership came to rely increasingly on these procedural devices. By the 103rd Congress, the Republican Leadership appointed a Task Force on Deliberative Democracy in the House for the purpose of publicizing the majority=s procedural abuses of the minority. Heading the list were restrictive rules. When, on September 27, 1994, House Republicans launched a national campaign to retake the House, their platform, a ten-point legislative agenda called the Contract with America, also included eight reforms of the House that they promised to pass on the opening day of the 104th Congress.

While House Republicans did not promise a decrease in restrictive rules as part of their internal reform package, they did promise "to restore accountability to Congress. . . . [and] end its cycle of scandal and disgrace [most likely a reference to the House post office and bank scandals] to make us all proud again of the way free people govern themselves." Moreover, they promised to bring to the House Floor the legislation promised in the Contract—"each to be given full and open debate, [and] each to be given a clear and fair vote. . . ."[20]

The new chairman of the House Rules Committee, Representative Gerald B.H. Solomon (R-N.Y.) even went so far as to tell the press his goal was to reverse the Democrats= record on special rules by making 70 percent of the rules open instead of restrictive.[21] By the end of the 104th Congress, the Republicans fell far short of that goal, with just 58 percent of the rules open or modified open. But even then, that would prove to be the highpoint of open rules over the next three Congresses. By the August recess of the second session of the 107th Congress (2002), only 40 rules (42 percent) of the special rules reported were open or modified open. Of the 42 rules that restricted amendments, 23 (24 percent) were modified closed, allowing for just one minority party substitute, and another 14 (14 percent) were closed to any amendments (see Table 1 below).

Table 1. The Amendment Process Under Special Rules Reported By The House Rules Committee, 103rd-107th Congresses[22]

Rule Type	103rd Congress Number (%)	104th Congress Number (%)	105th Congress Number (%)	106th Congress Number (%)	107th Congress Number (%)
Open/Modified Open	46 (44%)	83 (58%)	74 (53%)	91 (51%)	40 (37%)
Structured/ Modified Closed	49 (47%)	40 (28%)	42 (30%)	49 (27%)	44 (41%)
Closed	9 (9%)	19 (14%)	24 (17%)	39 (22%)	23 (22%)
Totals	104 (100%)	142 (100%)	140 (100%)	179 (100%)	107 (100%)

This trend towards increasingly restrictive special rules, taken together with the huge upswing in suspensions as a percentage of bills passed and enacted, demonstrate a clear strategy by the majority leadership of minimizing conflict and uncertainty at a time when the majority has a thin margin of control in the House, declining from a high of 235 seats in the 104th Congress, to 227 in the 105th, 223 in the 106th, and 222 in the 107th.

Table 2, below, compares the increasing frequency of suspension bills passed as a percentage of all bills passed by the House in each Congress, to the frequency of open and restrictive rules adopted as a percentage of all rules adopted. The trend is clearly toward more restrictive special rules and, at the same time, towards an growing reliance on the suspension process to consider less substantive, and less controversial legislation. As members are increasingly being denied opportunities in special rules to offer amendments to more substantive bills on the floor, the leadership is providing alternative mechanisms to satisfy members= policy influence and reelection needs through the relatively non-controversial and bipartisan suspension process. Suspension measures now comprise roughly three fourths of all measures passed and all measures enacted (see Appendix A for a more detailed breakdown of the status of suspension measures).

Table 2. Open and Restrictive Rules as Percent of Total Rules, and Suspensions Passed as Percent of Total Measures Passed, 101st - 107th Congress[23]

	101st	102nd	103rd	104th	105th	106th	107th
Open Rules as Percent of Total	55%	50%	44%	58%	543%	51%	37%
Restrictive Rules as Percent of Total	45%	50%	56%	42%	47%	49%	63%
Suspensions Passed as Percent of Total Measures Passed	52%	55%	56%	56%	66%	73%	79%
Suspensions Enacted as Percent of All Enactments	43%	48%	49%	58%	66%	75%	68%

The growing restrictiveness of House floor amendment procedures is the product of a majority leadership that is determined to retain its majority status by minimizing political risks and legislative losses while maximizing opportunities for a respectable legislative record of achievements that members can take to the electorate. The next section will explore in greater depth just how the suspension process has changed in recent years to adapt to the needs and demands of this new political environment.

House Sponsors of Suspension Measures

If, as this paper posits, the suspension procedure is being relied on more frequently by the leadership to satisfy members= policy and reelection needs, then clear differences should appear between the last Democratic Congress, the 103rd (1993-94) and the most recently completed Congress, the 106th (1999-2000). One place where this should show up is in the number of individual members who have sponsored bills considered under suspension of the rules. One would expect that, if the suspension procedure is being used to help members assert policy influence and/or enhance their reelection prospects, the benefit would be allocated to a larger number of members. And, indeed, that is what has happened (see Table 3 below).

Table 3. Number of House Members Sponsoring One or More Suspension Bills, By Party, 103RD & 106TH Congresses

	103rd Congress	106th Congress
Democrats	118 (79%)	78 (33%)
Republicans	31 (21%)	158 (67%)
Totals	149 (100%)	236 (100%)

Whereas in the 103rd Congress only 149 individual members sponsored one or more bills considered under suspension, in the 106th Congress, 236 members were so blessed. This might seem a logical result of the increase in the number of bills considered under suspension in the most recent Congress. But the percentage increase in individual sponsors from the 103rd to 106th Congresses is considerably greater than the percentage increase in the number of measures considered: whereas the number of House sponsored suspension measures increased by 48 percent from the 103rd to 106th Congress (from 367 to 542), the number of *individual* sponsors of one or more bills considered under suspension increased by 58 percent (from 149 to 236). It seems clear that a deliberate effort is being made by the leadership of both parties to spread the wealth among a greater number of their members in the more recent of the two Congresses.

Another indication of whether the leadership is using the suspension process more strategically in recent Congresses to help members achieve their policy and reelection goals should be reflected in an increase in the percentages of more junior members being allowed to have bills they have introduced considered under suspension. Since first and second term members are usually considered the most vulnerable electorally, it might be expected that they would be given a disproportionate share of the suspensions. However, this is not the case as can be seen in Table 4 below. In both the 103rd and 106th Congresses, roughly one-fourth of sponsors of suspension measures were first and second termers. And, whereas third and fourth termers comprised just 16 percent of the suspension sponsors in the 103rd Congress and 39 percent in the 106th Congress, these percentages closely track the portion of total House membership that these classes represent combined, 18 percent and 34 percent, respectively. So, while it might seem dramatic that members

serving four or less terms in the 103rd Congress comprised just 40 percent of suspension sponsors compared to 62 percent in the 106th Congresses, those four classes constituted 54 percent of the House membership in the 103rd Congress and 60 percent in the 106th. If anything, the allocation of suspension measures in both Congresses seems to be fairly equitable by classes.

Table 4. House Suspension Sponsors by Terms of Service, 103rd & 106th Congresses[24]

Congressional Terms	103rd Congress		106th Congress	
	Members in House	Suspensions Sponsors	Members in House	Suspension Sponsors
1-2 terms	158 (36%)	36 (24%)	115 (26%)	54 (23%)
3-4 terms	77 (18%)	24 (16%)	148 (34%)	92 (39%)
5-6 terms	70 (16%)	28 (19%)	50 (11%)	25 (11%)
7-8 terms	53 (12%)	22 (15%)	35 (8%)	17 (7%)
9-10 terms	34 (8%)	17 (14%)	45 (10%)	23 (10%)
11 terms or more	48 (11%)	22 (15%)	47 (11%)	25 (11%)
Totals	440	149	440	236

This distribution might seem to argue against any significant change in the strategic use of the suspension process between the two Congresses. However, when one considers that 146 of the 263 sitting House members with four or fewer terms in the 106th (1999-2000) were sponsors of one or more suspension measures compared to just 149 members in the 103rd Congress, it becomes clear that the suspension device is being relied on more to satisfy more members= needs. As noted previously, the 236 members sponsoring suspension measures in the 106th Congress represents almost a 60 percent increase in individual sponsors from the 103rd Congress, but it also represents 54 percent of the entire House membership, compared to the roughly one-third of the membership sponsoring one or more suspension bills in the 103rd Congress.

Another way to look at suspensions is their allocation by party sponsorship. If both parties are more contentious and divided over policy matters of importance to them and their bases, requiring individual members to adhere to a stricter party line at the expense of having greater freedom in the amendment process on major bills, then there should be some offsetting benefit both parties can provide to their membership. The bipartisan and non-controversial suspension process affords just such an opportunity.

Table 5 below shows that a substantially larger number of House-sponsored measures were considered under suspension in the 106th Congress than in the 103rd Congress (542 v. 368). Moreover, the Republican majority appears to be more magnanimous in allocating a greater share of total suspension slots to the minority Democrats in the 106th Congress than majority Democrats were inclined to do for minority Republicans in the 103rd (24% v. 10%). One reason is that in 1997 the Democrats forced the allocation issue by threatening to defeat Republican suspensions.[25]

Table 5. House Suspension Bills Considered and Enacted By Party Sponsorship, 103RD & 106TH Congresses

	103rd Congress		106th Congress	
	Considered	**Enacted**	**Considered**	**Enacted**
Democrats	333 (90%)	176 (89%)	129 (24%)	92 (28%)
Republicans	35 (10%)	22 (11%)	413 (76%)	233 (72%)
Totals	368 (100%)	198 (100%)	542 (100%)	325 (100%)

Additionally, even though the Republicans controlled both the House and the Senate in the 106th Congress, the Democratic sponsors of suspension measures fared slightly better in terms of their bills being enacted into law. Whereas the Democratic majority enjoyed 89 percent of the suspension enactments in the 103rd Congress, the Republican majority reaped only 72 percent of the enactments in the 106th Congress, while their minority counterparts, the Democrats, were responsible for 28 percent of the laws. Of course, these figures closely track the fact that Republicans had given Democrats a larger share of the bills considered under suspension in the 106th Congress.

Looked at another way, however, Democrats have a much higher success rate in having their suspension measures enacted in the Republican-controlled 106th Congress, with 70 percent of their sponsored measures becoming law (92 of 130), while Republicans had only a 56 percent success rate in enacting their suspensions (232 laws out of 412 measures considered). Of course, Democrats also had the benefit of a President of their own party in the White House during both Congresses being compared here. But since suspension bills are not considered tests of party

strength or success rates, the majority leadership can be more generous in allowing its members to engage in "credit claiming" for bills that will likely pass the House, but may have trouble being considered in the Senate or enacted into law.[26]

Subject Matter of Suspension Measures

Another indication of whether anything significantly different is happening in the suspension process is the diversity of measures being considered. Presumably, if a greater number of measures covering a larger variety of subject matters is being considered, then members are being given greater leeway in indulging their interest in having some national policy influence. On the other hand, even if the increases in suspensions only show that more measures are devoted to parochial concerns of Members= districts and states, this can still be viewed as contributing to their reelection chances. In comparing the 103rd to the 106th Congresses and the types of measures being considered under suspension of the rules, some 42 subject matters were identified (See Appendix B).

Both for the sake of simplicity and greater clarity, suspension measures were examined on a bill-by-bill basis for the 103rd and 106th Congresses and divided into two categories, local and national. Local matters deal with such matters as naming buildings after important people (courthouses, post offices, and Federal buildings); Federal lands measures relating to national parks, land conveyances to state or local governments; trails, rivers, and historic sites; Indian tribal specific measures, and local public works studies and projects. Federal building designations and Federal land measures comprise by far the largest items considered under suspension in both Congresses. Table 6 below shows the breakdown in measures considered under suspension and enacted in these two broad categories of national and local policy.

Table 6. House-Sponsored Suspension Measures Considered and Enacted By National and Local Subject Matter, 103rd and 106th Congresses

Suspension Category	103rd Congress		106th Congress	
	Considered	Enacted	Considered	Enacted
National	251 (68%)	123 (62%)	317 (58%)	162 (50%)
Local	117 (32%)	75 (38%)	225 (42%)	163 (50%)
Totals	368 (100%)	198 (100%)	542 (100%)	325 (100%)

As can be seen, although national policy matters out-numbered local measures considered under suspension in the 103rd Congress by roughly 68 percent to 32 percent, and comprised 62 percent of the enactments, in the 106th Congress as more measures were considered and more members participated, national measures considered still outweighed local measures, but by a smaller percentage, 58 percent to 42 percent. However, the two categories were now equal in terms of total suspensions enactedB50 percent of the total from each category.

Not surprisingly, perhaps, the Committee on Natural Resources (renamed the Committee on Resources in the 104th Congress), with jurisdiction over all Federal lands bills, had the highest number of suspension measures considered and enacted in each Congress (78 considered and 48 enacted in the 103rd; and 209 considered and 82 enacted in the 106th). The Public Works and Post Office Committees (the latter of which was abolished in the 104th Congress and its jurisdiction transferred to the Government Reform Committee) in the 103rd also scored near the top of committees with the most suspensions considered and enacted because they were in charge of bills naming Federal buildings and post offices, respectively. Judiciary and Energy and Commerce (the latter renamed the Commerce Committee in the 104th scored high as well with national policy related suspensions (see Appendix C for committee distributions of suspensions considered and enacted).

One factor not segregated in the above data on national versus local legislation is the increasing number of Senate passed bills considered under suspension with each Congress. As Table 7 below illustrates, whereas in the 101st Congress Senate sponsored measures comprised just 13 percent of all suspension measures considered in the House and 22 percent of all that were subsequently enacted, by the 106th Congress they comprised 21 percent of suspension measures considered and 31 percent of those enacted.

Table 7. Senate Measures Considered Under Suspension of the Rules in the House of Representatives, 103rd & 106th Congresses

Senate Measures	101st	102nd	103rd	104th	105th	106th
Number Considered	68	75	53	30	95	142
Percent of All Suspensions	13%	14%	12%	8%	20%	21%
Number Enacted	62	65	48	21	87	136
Percent of All Suspensions Enacted	22%	23%	21%	11%	34%	31%

A cursory examination of the suspension measures considered and enacted in the 106th Congress reveals that Senators are just as prone now as House members to name courthouses and post offices. Tip O=Neill=s aphorism that "all politics is local" is not confined to the "people=s House." It has spread to the "upper body" of national statesmen who are, nevertheless, not above looking out for state and local interests—especially as elections approach for one-third of its members every two years.

Non-Statutory Suspensions

While the central focus of this paper has been the bills and joint resolutions considered under suspension of the rules that have the potential for being enacted into law, some mention should at least be made of the other types of measures considered under suspension—either simple House resolutions (H. Res.) and House and Senate concurrent resolutions (H. Con. Res., S. Con. Res.). Though hortatory in nature, they do provide a means for each body to express the "sense of the House" or "sense of Congress" on particular subjects or issues. As Table 8 below indicates, these non-statutory measures have grown both in number and as a percentage of all measures considered under suspension, from just 64 in the 101st Congress (11 percent of all suspension measures considered), to 218 in the 106th Congress (23 percent of all suspension measures considered). One possible reason for the increase in non-statutory suspensions is the need of the leadership to provide legislative filler at the beginning of the week to justify getting members back to Washington on a Monday or Tuesday for potential votes after 6 p.m., and thereby insure that committees will have a quorum to do business the next morning. For instance, on Tuesday, June 11, 2002, the House considered 12 measures under suspension of the rules, five of which were simple or concurrent resolutions, including one simple House resolution calling for "improving health through fitness the reduction of obesity."[27]

Table 8. Number of Non-Statutory Resolutions Considered Under Suspension of the Rules in the House and as Percent of All Suspension Measures Considered, 101st-106th Congresses

	101ST Cong. (1989-90)	102nd Cong. (1991-92)	103rd Cong. (1993-94)	104th Cong. (1995-96)	105th Cong. (1997-98)	106th Cong. (1999-2000)
Considered	64 (11%)	83 (14%)	126 (23%)	50 (12%)	140 (23%)	218 (23%)

Another reason for the increase in the numbers of non-statutory suspensions in recent Congresses is the use of such resolutions to circumvent the House rule that prohibits the introduction or consideration of time-specific commemoratives such as "National Clown Week" or "National Dairy Goat Milk Awareness Month." The ban on commemoratives was imposed at the beginning of the 104th Congress. Prior to the Republican takeover of the House in 1995, commemoratives were embodied in *joint* resolutions (that are sent to the President for signature or veto). They were considered in the House by unanimous consent if a majority of members had signed on as cosponsors (a rule of the former Post Office and Civil Service Committee that had jurisdiction over commemoratives).

Table 9 below shows the extent to which such joint, commemoration resolutions, became a large share of a statutory enactments prior to the 104th Congress. The largest number of commemoratives (227) was enacted in the 99th Congress (1985-86), comprising a record high 34 percent of all public laws enacted. By the 103rd Congress commemoratives had dropped back to their 97th Congress level of 81 enactments or 17% of total enactments.

Table 9. Commemoratives Measures as Percent of Public Laws, 96th-103rd Congresses[28]

	96th	97th	98th	99th	100th	101st	102nd	103rd
Total Laws	613	473	623	664	713	650	590	465
Commemorative Laws	40	81	157	227	202	195	147	81
Commems. as percent of total	7%	17%	25%	34%	28%	30%	25%	17%

The ban on commemoratives is today being skirted by placing the time period of the commemoration in the preamble (the "whereas" clauses) of a *concurrent* resolution, rather than in its operative or "resolving" clause. These commemorative, concurrent resolutions are now considered under suspension of the rules rather than by unanimous consent. For example, Monday, July 15, 2002, the House was scheduled to consider 14 suspension measures, two of which were commemorative in nature: H. Con. Res. 413, "Honoring the invention of modern air-conditioning by Willis H. Carrier on the occasion of its 100th anniversary"; and, H. Con. Res. 395, "Celebrating the 50th Anniversary of the Constitution of the Commonwealth of Puerto Rico."[29]

Although this paper has focused primarily on suspension measures of a statutory nature, one cannot dismiss out-of-hand the sometimes symbolic and, thus, the political importance of non-statutory suspension measures. The resolutions may satisfy or honor a particular interest group or individuals, or shine the spotlight on some matter of interest to a members local constituencies. While it is doubtful that the adoption of such resolutions form the centerpiece of a members reelection campaign as being major, legislative achievements, the fact that they may make small groups of individuals happy and grateful at the time can have a compound interest effect. A framed copy of the resolution or of the Congressional Record debate on it presented to a local group is highly cherished and often prominently displayed.

Measures Defeated Under Suspension

Returning to our discussion of statutory suspensions, it should not be assumed that all is clear sailing when a measure is scheduled under suspension. Some suspension measures still lose, though they comprise a very small percentage of total measures considered under the process. Moreover, even some of the measures that fail to garner the requisite two-thirds vote for passage are later passed either under a special rule, or on a second try under suspension. Table 10 below indicates the number of suspensions and the percentage of total suspensions defeated in the 101st through 106th Congresses.

One wonders why any suspension measures are defeated if they are the product of a consensual, bipartisan process. One simple reason is miscalculation on the part of the majority leadership in scheduling measures under suspension. Objections unforseen at the time of scheduling may crop-up from members not in the consultative loop. This was the case in the first of two measures rejected during the same week in the 107th Congress. On July 16, 2002, a measure to expand the aviation capacity in the Chicago area failed under suspension of the rules, 247 to 143, 14 votes shy of the two-thirds vote necessary for passage.[30]

Table 10. Suspension Measures Defeated, 101st-106th Congresses

	101st Cong. (1989-90)	102nd Cong. (1991-92)	103rd Cong. (1993-94)	104th Cong. (1995-96)	105th Cong. (1997-98)	106th Cong. (1999-2000)
Considered	507	530	427	358	482	687
Defeated	8	14	11	10	17	16
Defeated as Percent Considered	2%	3%	3%	3%	4%	2%
Defeated/ later passed	2	5	5	2	6	4

The bill had been introduced by Representative William Lipinski (D-Ill.), a senior member of the powerful, 75-member Committee on Transportation and Infrastructure that had reported the bill by unanimous, voice vote. The measure was managed by another Illinois member of the committee, Representative Mark Kirk (R-Ill.) What the leadership had not counted on was a spirited opposition from a third Illinois member, Representative Jesse Jackson, Jr. (D-Ill.), not a member of the committee. As an opponent of the measure, he claimed half the debate time (20 minutes) as guaranteed by the suspension rule. This in turn obliged Representative Kirk, as a matter of courtesy, to give half his 20 minutes to the bill=s sponsor, Representative Lipinski. In his opening statement Congressman Jackson sharply criticized using the suspension process to consider the bill:

> Votes on the suspension calendar are supposed to be, by definition, noncontroversial. But to argue that H.R. 3479 is noncontroversial is like arguing that the elimination of estate taxes, gun control legislation, a patients' bill of rights, and prescription drug benefits for seniors should all be put on the suspension calendar. H.R. 3479 is the most controversial of bills to come before the House this year. It has been extremely controversial in Chicago, in the northwest suburbs, in Illinois generally, in the Illinois congressional delegation where our two U.S. Senators are divided over it, in all House and Senate committees, in the full Senate, and if a full debate were held here on the House floor today, the Nation would actually see just how controversial this bill is.[31]

Jackson weighed in with all manner of supporting documents and constitutional arguments. Moreover, he was joined in opposition to the bill by two powerful Illinois Republicans, Representatives Henry Hyde and Phil Crane. Hyde called on his inimitable debating style to say

that his "disdain for this legislation is in reverse ratio to my admiration for the chief sponsors, the gentlemen from Illinois (Mr. Lipinski), (Mr. Kirk), who are splendid legislators. They are just wrong on this bill."[32] Other Illinois members weighing in on the debate were Representatives Jerry Weller (R-Ill.) in opposition, and Representatives Don Manzullo (R-Ill.) and Bobby Rush (D-(Ill.) in support. When the smoke cleared, after debate time was extended by unanimous consent, the measure fell on a bipartisan vote, with 96 Republicans and 46 Democrats voting against suspending the rules and passing the measure.[33]

A week later, the majority leadership compensated for its miscalculation by again scheduling the bill under suspension, without change. While other votes were changed, Representative Hyde remained steadfastly opposed, again drawing on his humor (and the Dannemeyer Asuspense@ theme):

> I do not know about others, but I love a mystery; and this bill is as mysterious as anything Agatha Christie ever wrote. First of all, why is such a controversial bill being brought under suspension? What a mystery. Why are the bill's proponents, and I almost said perpetrators, allergic to debate and amendments?[34]

Nevertheless, this time the bill easily passed, 343-87, with only 51 Republicans and 35 Democrats in opposition.[35] The leadership and Transportation Committee had done their work.

The other bill failing under suspension that same week as the airport bill was an innocuous sounding measure "to make technical amendments to the Higher Education Act of 1965 incorporating the results of the Fed Up Initiative."[36] Indeed, even those who opposed considering the bill under suspension admitted that they supported its provisions. The problem was, it did not go far enough for them, and it had not been properly considered or reported by the Education and the Workforce Committee.

Committee Chairman John Boehner managed the bill under suspension and said it was necessary to maintain budget neutrality for the bill to be acceptable to the Administration. Moreover, those wishing to offer further amendments to the Higher Education Act would have a chance to do so next year when the Act was up for extension. However, this did not mollify the committee=s ranking minority member, Representative George Miller of California, who excoriated the process:

> . . . [T]his is really about an important part of this institution and that is whether or not the minority will be given an opportunity to affect and change hopefully bills that come through this House or whether or not we will be disenfranchised by the manner in which the process is run. . . . We are not allowed to offer amendments if we can win those amendments. We are not allowed those amendments if it means the Republicans must take a tough vote, if they disagree with it. . . .One would think this was a politburo. One would not think this was the people=s House where theoretically each and every Member should be given an opportunity to voice his or her concern as legislation moves through the House of Representatives. . . .[37]

On this occasion the vote was nearly along party-lines, 246 to 177, 36 votes short of two-thirds, with only 27 Democrats voting for the bill and no Republicans voting against.[38]

Sometimes the majority schedules measures under suspension of the rules to make a political or partisan point, fully knowing they are unlikely to pass. On February 6, 2002, the leadership scheduled a non-statutory, concurrent resolution under suspension that expressed the "sense of the House of Representatives that the scheduled tax relief provided for by the Economic Growth and Tax Relief Reconciliation Act of 2001 passed by a bipartisan majority in Congress should not be suspended or repealed."[39]

The measure, introduced by Representative Spencer Bachus (R-Alabama) the day before it was considered, was apparently in response to suggestions from some Democrats that President Bush=s tax cuts of the previous year were responsible for the re-emerging deficits. The measure fell 43 votes short of the two-thirds vote necessary, 235 to 181, but managed to peel off 26 Democrats in support while losing just one Republican.[40] The Republicans had made their point, driven a wedge in Democratic ranks, and avoided any possibility of confusing amendments.

In the 106th Congress, when a controversy arose in the courts over the Boy Scouts prohibition on homosexual scout masters, Representative Lynn Woolsey (D-Calif.) introduced a bill "to repeal the Federal charter of the Boy Scouts of America."[41] The Republican Leadership obliged her by scheduling the measure under suspension, even though she had not requested it. Not surprisingly, the measure was overwhelmingly rejected, 12 to 362, with 51 voting present.[42] Even the Democratic leadership deserted Woolsey en masse by voting against the measure.

In the 105th Congress, the Republican leadership came under heavy attack from Republican and Democratic supporters of the bipartisan Shays-Meehan campaign finance reform bill for

scheduling four campaign bills under suspension of the rules—none of which allowed a stand-alone, direct vote on the bipartisan version. Two of the measures were relatively non-controversial and passed easily under suspension—one barring non-citizens from contributing to campaigns and the other strengthening campaign reporting and disclosure requirements.[43] The more comprehensive measure, which included the soft-money ban of Shays-Meehan, but also some poison pill amendments that made it objectionable to the reformers, was overwhelmingly defeated, 74 to 337, with even the Republican leadership abandoning its own committee-reported version.[44]

Republican Representative Asa Hutchinson of Arkansas said the process "reflects the dark side of this institution, and both sides of the aisle have contributed to this darkness." It sends a message to the American people, he went on, "that we are afraid of reform, and that we will undermine it at any price." Representative Matt Salmon (R-Ariz.) said he was "ashamed to see how this is coming up tonight, that it is in the same manner as that of the leadership who ran the House for 40 years under the Democrats. It=s wrong." And Representative Meehan drew on a Woody Allen line from the movie, 'Bananas,' calling the process "a travesty of a mockery of a sham."[45] The backlash from the procedural ploy was strong enough to give the Shays-Meehan proponents the momentum to jump start a discharge petition and eventually force the leadership to schedule the bipartisan measure as one of 11 substitutes to a bipartisan freshman campaign finance bill, along with dozens of amendments. Notwithstanding the complex and protracted amendment process that stretched on and off from May into early August, the Shays-Meehan substitute eventually prevailed. On August 3 the Shays-Meehan substitute was adopted, 237 to 186, and, on August 6 the bill as amended passed, 252 to 179.[46] The measure died in the Senate, however, where it fell eight votes short of the 60 needed to invoke cloture on September 10.

Implications for Deliberation

The increasing use of both restrictive special rules and the suspension process for considering most legislation reflects a more abbreviated lawmaking process with less emphasis on open debate, deliberation, and compromise. However, one should not equate the quality of floor consideration of legislation with the quality of deliberation in the House. As Woodrow Wilson observed in his 1885 treatise on *Congressional Government*, "Congress in session is Congress on

public exhibition, whilst Congress in its committee rooms is Congress at work."[47] Committees are where the real deliberation takes place, where members reason together about the nature of a problem and its solution by gathering information and considering alternative solutions through arguments and persuasion.[48]

Thus, the existence of committee reports that explain and justify the legislation being recommended contribute substantially to the quality of legislative deliberation. If one looks at the number and percentage of bills passed by the House that are accompanied by committee reports, it is clear that the level of reported measures has remained fairly consistent as a share of total measures passed. The percentages were lower in the 101st and 102nd Congress mainly because so many unreported commemorative joint resolutions were passed (see Table 9). As already noted, this trend had begun to decline in the 103rd Congress, and, by the 104th Congress statutory commemoratives had been banned. As Table 11 below shows, reported measures as a percentage of measures passed in the in the 105th and 106th Congresses are about the same as in the 103rd Congress roughly 72 percent of the total

Table 11. Public Measures Reported and Passed, 101st-106th Congresses[49]

	101st Cong.	**102nd Cong.**	**103rd Cong.**	**104th Cong.**	**105th Cong.**	**106th Cong.**
Total measures passed	1023	935	757	611	710	917
Total measures reported	641	588	544	518	511	654
Reported as percent of passed	63%	63%	72%	85%	72%	71%

As might be expected, suspension measures, as a subcategory of the total number of measures passed, have a slightly lower percentage of reports than the overall universe of legislation. In table 12 (below) there is a clear decline in committee reports on legislation considered under suspension, dropping from a high of around three quarters of all measures in the 101st through 104th congresses, to a low of just 50 percent in the 106th Congress. This decline in reported suspensions is a function of the great increase in the numbers of suspensions considered in the 105th and 106th Congresses. Committees have been reporting a relatively constant number of

bills that are considered under suspension of the rules in the last six congresses, averaging around 325, but the number being passed has gone from a low of 343 in the 104th Congress to 669 in the 106th Congress.

Table 12. Public Suspension Measures Reported and Passed, 101st-106th Congresses

	101st Cong. (1989-90)	102nd Cong. (1991-92)	103rd Cong. (1993-94)	104th Cong. (1995-96)	105th Cong. (1997-98)	106th Cong. (1999-2000)
Suspensions passed	500	516	420	343	461	669
Suspensions reported	379	387	313	258	273	344
Reported as percent of passed	76%	74%	75%	77%	59%	51%

This should not automatically be equated with a decline in deliberation since many of the measures truly are non-controversial and self-explanatory without a report. But the inclination of the leadership to schedule more measures under suspension on short notice often leaves committees with insufficient time to prepare and file reports, even if the bill has been ordered reported.

The more disturbing trend affecting deliberation is the move to more modified closed rules and away from modified open and structured rules. During the debate on the higher education suspension mentioned earlier, Representative George Miller drew a parallel to considering the bill under suspension to the restrictive manner in which more important legislation was considered by the House in recent times:

> Why the disenfranchisement of the Democratic members? I think it is simply because they choose not to have us be able to articulate policy differences that we have with them. This was true on the welfare bill where simple amendments were not allowed. We were allowed a substitute. We all know that legislative gimmick. There are enough things in a substitute that everybody can justify a no vote or a yes vote but with amendments. The same was true on pensions. The same was true on the securities legislation where we just limited access to the Democrats to offer this kind of legislation.[50]

Another way in which deliberation can be analyzed is by looking at how committees handle expiring programs and agencies that require reauthorization legislation. One might expect that the suspension procedure would be an increasingly attractive way to extend the life of a program or agency with minimal attention or objection, and that this might account for part of the great increase in suspensions in the 106th Congress compared to the 103rd Congress. Two aspects that reflect on deliberation are whether there was a committee report on the proposed reauthorization and whether any significant amendments were made to the underlying statute (besides changes in expiration dates and authorization amounts).

One cannot assume that a straight reauthorization reflects a lack of committee oversight and deliberation—it may well be that the program or agency was found to be working just fine after being subjected to oversight hearings. Moreover, the lack of a report may not indicate that the committee did not gather sufficient information or deliberate adequately on the matter since quite often a committee votes to order a measure reported and it is then scheduled under suspension before a report can be filed (rules prohibit reports from being filed after a measure is considered).

With those caveats it is nevertheless worth looking at how the two Congresses dealt with reauthorizations under suspension. Table 13 below has some surprising results, most notably that only about half as many reauthorization measures were considered under suspension in the 106th Congress as the 103rd, even thought the overall number of measures considered under suspension in the more recent Congress was nearly 50 percent greater.

Table 13. Reauthorization Bills Considered Under Suspension, 103rd & 106th Congresses

	103rd Congress	106th Congress
Total reauthorization bills considered under suspension	40	22
Those with no reports	13 (32%)	7 (32%)
Those with no amendments	14 (35%)	6 (27%)
Those with no reports or amendments	9 (22%)	3 (14%)
Number Enacted	16 (40%)	15 (68%)

In both congresses the number of reauthorization bills actually enacted was roughly the same, 16 and 15, respectively. The number of measures with no reports represented roughly a third of the total measures considered in each Congress, while those with no substantive amendments to the underlying law were 35 percent of the total considered in the 103rd Congress and 27 percent in the 106th.

Why were fewer reauthorization bills considered under suspension in the 106th Congress? One cannot assume that they were instead considered under special rules. It may be that committees just weren't trying as hard to renew expiring authorizations, knowing that they would receive appropriations anyway. Moreover, the Senate tends to ignore many of the reauthorization bills sent to them by the House. The Congressional Budget Office (CBO) confirms that fewer expiring authorizations are being renewed in more recent years. CBO=s annual reports on "Unauthorized Appropriations and Expiring Authorizations," shows a larger number of unauthorized laws for which much higher appropriations amounts were provided in the 106th Congress than in the 103rd, summarized in Table 14 below:

Table 14. Expired Authorization Laws for Which Appropriations Were Provided in the 103rd and 106th Congresses.[51]

	103rd Congress		106th Congress	
	FY 1994	**FY 1995**	**FY 2000**	**FY 2001**
Number of Unauthorized Laws	103	103	137	112
Amounts Appropriated (in billions)	$57.8	$94	$120.9	$112.3

What is most noticeable in going through the individual bills considered under suspension in both Congresses is the number of new legislative initiatives, most of which are narrow in their scope and reach. Some of these measures are committee-originated, which is discernible from their sponsorship by the committee and subcommittee chairman of jurisdiction. But many other bills are the work of members who are not on the committee of jurisdiction. The trend is most reminiscent of the micro-policy initiatives pioneered by President Bill Clinton on the advice of his informal political consultant, Dick Morris (midnight basketball, kiddie car seats, etc). Members of Congress are increasingly acting as independent, policy entrepreneurs, and the suspension process has been a convenient and compatible showcase for these talents. Even if such initiatives are less

likely to be considered by the Senate, let alone enacted, members can still claim political credit on their initial passage by the House.

Conclusions

The suspension of the rules procedure in the House of Representatives has assumed growing importance for party leaders and members alike as the process for considering major bills becomes increasingly restrictive and partisan. The availability of a convenient outlet for members to call up non-controversial legislation having strong bipartisan support serves as a safety valve and trade-off for leaders in retaining party loyalty in support of restrictive, special rules for more important, controversial, and partisan legislation.

As the party majority=s edge has become smaller, so too has the amount of maneuvering room for bringing major bills to the floor. The majority party must usually count on carrying its bills with little or no minority party support, meaning it cannot allow for a wide open amendment process that would introduce a range of uncertainties into the outcome. Thus far, at least, there has not been a significant minority party revolt against modified closed rules that allow the minority to offer just one substitute amendment for a vote. Nor has there been a serious, ongoing threat of bipartisan coalitions undermining leadership agenda and process setting prerogatives (the discharge petitions forcing consideration of the bipartisan campaign finance reform bills in the 106th and 107th Congresses being the rare exceptions).

In return for retaining agenda and process control, the leadership has been more generous in giving members opportunities under suspension to offer minor bills of importance to them. The allocation of such opportunities to the minority has grown considerably since the 103rd Congress, though it still represents only a quarter of all measures considered under suspension. While members continue to have interest in influencing national policies, this is done primarily through their committee work, in party caucuses, and in informal member caucuses. It has not become a major thrust in the increase number of suspension bills and individual member sponsors of them though, as previously noted, micro-policy initiatives of a national character, introduced by individual policy entrepreneurs, have increased. Nevertheless, local concerns that might enhance reelection chances continue to be highly favored subjects of suspension measures and now comprise half of the suspensions enacted into law.

Suspension bills now make-up roughly three-fourths of public laws enacted by Congress—up from less than a half just a decade ago. While most suspension measures do not have significant national policy consequences, they do provide a convenient mechanism for members to score points with their local constituencies and supportive interest groups, and, on occasion, to make small contributions to solving problems of national interest. As such, the suspension mechanism is an important element in retaining some sense of bipartisanship and incumbent advancement in an otherwise often bitter partisan body. Former Speaker Joseph Cannon perhaps best explained this anomaly of bipartisan lawmaking in the midst of fierce, party warfare, by drawing on a Civil War maxim: "In legislation we all do a lot of ›swapping tobacco across the lines'."[52]

APPENDIX A.
BILLS AND JOINT RESOLUTIONS CONSIDERED UNDER SUSPENSION OF THE RULES BY THE HOUSE OF REPRESENTATIVES, 101ST-106TH CONGRESSES*

	101st Cong. (1989-90)	102nd Cong. (1991-92)	103rd Cong. (1993-94)	104th Cong. (1995-96)	105th Cong. (1997-98)	106th Cong. (1999-2000)
Considered	507	530	427	358	482	687
Reported	379	387	313	258	273	344
Reported as Percent of considered	75%	65%	73%	72%	57%	50%
Reported as Percent of all bills reported	60%	56%	58%	50%	53%	53%
Unreported	128	143	114	100	209	343
Passed under susp.	500	522	420	345	461	674
Percent of all bills passed	50%	54%	56%	56%	66%	73%
Defeated	8	14	11	10	17	16
Percent of all defeated	67%	54%	73%	63%	55%	60%
Defeated/ later passed	2	5	5	2	6	4
Enacted into law	282	285	227	194	258	437
Percent of all public laws	43%	48%	49%	58%	65%	75%

Sources: THOMAS.loc.gov; Resumes of Activity, Daily Digest, Congressional Record.
***Bills and joint resolutions referred to in this table are measures that could become law (e.g, H.R. 1, H.J. Res. 1, S. 1, and S.J. Res. 1), and do not include simple or concurrent resolutions that are not presented to the President and simply express the "sense of the House" or the "sense of Congress" (e.g., H. Res. 1, H. Con. Res. 1, and S. Con. Res. 1). Elsewhere, the term "bills" is meant to refer to both bills and joint resolutions.**

Note: Row #10, "Defeated/later passed," isolates those bills that failed to get the requisite two-thirds vote under suspension, but were later considered under a special rule, by unanimous consent, or again under suspension, and were passed the second time around.

APPENDIX B.
TYPES OF SUSPENSION MEASURES CONSIDERED AND ENACTED IN THE 103RD AND 106TH CONGRESSES

Subject of Measure	103rd Congress		106th Congress	
	Considered	Enacted	Considered	Enacted
Agency Study/Data	6	4	16	11
Agriculture	3	2	6	4
Banking	6	4	3	1
Board Appointments	5	5	2	2
Civil Rights/Liberties	5	5	2	0
Commemoratives/Coins	8	7	37	26
Communications	6	1	15	8
Consumer Protection	5	2	11	7
Crime	18	5	21	7
Defense	4	1	3	2
District of Columbia	2	2	5	3
Education	10	7	10	2
Energy	1	1	2	2
Environment	17	7	17	11
Federal Buildings	48	40	94	79
Federal Lands	49	34	102	86
Federal Workers	13	7	13	6
Fish & Fisheries	10	0	8	5
Foreign Affairs	19	14	28	13
General Government	23	12	36	13
Health	15	8	15	11
Housing	3	1	5	1
Immigration	1	1	14	13

Subject of Measure	103rd Congress		106th Congress	
	Considered	Enacted	Considered	Enacted
Indians	18	11	28	17
Labor	6	3	7	3
Memorials & Museums	19	11	10	7
Miscellaneous	13	9	36	29
Merchant Marine	4	1	0	0
Older Americans/Soc. Sec.	3	3	7	3
Public Works	11	6	19	12
Science	6	4	4	3
SEC	7	4	1	0
Small Business	6	1	13	6
State Relations	2	1	30	25
Taxes, IRS	0	0	9	3
Trade	0	0	5	4
Territories	0	0	6	3
Transportation	11	8	6	2
Urban Affairs	1	0	2	2
U.S. Code Change	2	2	9	5
Veterans' Affairs	21	9	10	7
Welfare & Children	4	2	4	2

APPENDIX C.
MEASURES CONSIDERED UNDER SUSPENSION OF THE RULES IN THE HOUSE BY PRINCIPAL COMMITTEES OF REFERRAL, 103RD & 106TH CONGRESSES

Committee	103rd Congress		106th Congress	
	Considered	Enacted	Considered	Enacted
Agriculture	7	4	12	7
Armed Services	6	3	5	4
Banking, Finance & Urban Affairs/ Banking and Financial Services	14	8	28	18
District of Columbia (Abolished in 104th Congress)	3	3	NA	NA
Education & Labor/ Education and the Workforce	15	10	18	7
Energy & Commerce/ Commerce	39	18	36	23
Foreign Affairs/ International Relations	17	12	35	16
Government Operations/ Government Reform	8	4	87	69
House Administration	11	10	8	8
Judiciary	43	23	91	49
Merchant Marine & Fisheries (Abolished in 104th Congress)	35	8	NA	NA
Natural Resources/ Resources	78	49	209	82
Post Office & Civil Service (Abolished in 104th Congress)	38	28	NA	NA
Public Works & Transportation/ Transportation & Infrastructure	42	29	58	36
Rules	0	0	1	1
Select Committee on Intelligence	1	1	1	1
Science, Space & Technology/ Science	5	2	12	6
Small Business	5	1	13	7
Veterans' Affairs	21	9	14	10
Ways & Means	6	5	19	6

Notes

1. David W. Rohde, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991), 31-34.

2. Barbara Sinclair, *Legislators, Leaders, and Lawmaking: The U.S. House of Representatives in the Postreform Era* (Baltimore: The Johns Hopkins University Press, 1995), chapter 1.

3. Richard F. Fenno, Jr., *Home Style: House Members in Their Districts* (Boston: Little Brown, 1973), chapter 1.

4. *House Rules and Manual, One Hundred Seventh Congress* (Washington, D.C.: Government Printing Office, 2001), House Document 106-320, sec. 885 (p. 631).

5. Stanley Bach, "Suspension of the Rules, The Order of Business, and the Development of Congressional Procedure," *Legislative Studies Quarterly* 15:1 (1990); 50-51.

6. Ibid, 51.

7. Ibid, 52.

8. Ibid.

9. Asher C. Hinds, *Hinds' Precedents of the House of Representatives* (Washington, D.C.: Governing Printing Office, 1909), Vol. 5, sec. 6797 (p. 906). The term "buncombe" is shorthand for speaking or acting to please the folks back home, derived from the tendency of one Member to direct his remarks to the interests and opinions of his constituents in Buncombe County, North Carolina, e.g., "he's speaking for Buncombe," later shortened to, "he's talking bunk," meaning irrelevant nonsense.

10. *House Rules and Manual*, sec. 889 (pp. 634-35).

11. Bach, 56.

12. *Hinds' Precedents*, Vol. 5, sec. 6792 (pp. 904-05).

13. *House Rules and Manual*, sec. 885 (p. 631), and sec. 888 (p. 634).

14. "The Struggle for Comprehensive Reform Is Just Beginning," House Republican Task Force on Reform, First Report, 94th Congress, in John J. Rhodes, *The Futile System: How to Unchain Congress and Make the System Work Again* (McLean, Va.: EPM Publications, 1976), Appendix V, 132, 141.

15. Ibid.

16. "Preamble and Rules Adopted by the Democratic Caucus," 96th Congress (Revised 5/2/79),

7. Originally adopted as M[for Manual]-XII, "Guidelines Governing Suspensions," in the 103rd Congress (1993-94), the last Congress in which the Democrats were in the majority, it was virtually identical in wording, but was now Caucus Rule 40—"Guidelines on Suspensions of House Rules."

17. "Republican Conference Rules, 107th Congress," Rule 28 —"Guidelines on Suspension of House Rules," 30.

18. Steven S. Smith, *Call To Order: Floor Politics in the House and Senate* (Washington, D.C.: The Brookings Institution, 1989), 40-41.

19. Data on restrictive rules compiled by this author as staff member of House Rules Committee; published in Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress* (Washington, D.C.: CQ Press, 2000, second edition), 97 (Table 6.4).

20. *Contract With America: The Bold Plan by Rep. Newt Gingrich, Rep. Dick Armey and the House Republicans to Change the Nation*, Ed Gillespie and Bob Schellhas, editors (New York: Times Books, 1994), 7-9.

21. The 70 percent restrictive rule figure included what are called modified open rules that either require pre-printing of amendments in the Congressional Record, place a time cap on the amendment process, or both. When Republicans took over Congress in the 104th Congress, they began counting modified open rules along with open rules, hence the discrepancy in Table 1 which shows only 56 percent of the rules as structured, modified closed, or closed.

22. Sources: Committee on Rules Tables for 103rd & 104th Congresses; House Calendars, and examination of texts of and reports on special rules reported by the House Rules Committee, from the THOMAS and Rules Committee web sites for 105th, 106th, and 107th Congresses: <http://www.house.gov/rules/welcome.htm>. Data for the 107th Congress is complete for the entire Congress. The table applies only to special rules providing for the initial consideration of bills, joint resolutions and budget resolutions for amendment. It does not apply to privileged resolutions considered in the House, to subsequent rules for the same measure, to conference reports, or to special rules that only waives points of order against appropriations bills but do not provide for consideration in the Committee of the Whole. Rules making in order more than one bill are counted *once* for each different type of rule, e.g., a rule making in order one measure under an open process, and two bills under a closed process = O/C. An open rule is one which permits any Member to offer an amendment otherwise germane in the Committee of the Whole under the five-minute rule. A modified open rule is one which either requires the pre-printing of amendments in the Congressional Record, sets an overall time-cap on the amendment process, or both. A modified closed rule or structured rule is one which limits the amendments that can be offered to those specified in the special rule and/or report on the rule. A closed rule is one which permits the offering of no amendments (except those recommended by the reporting committee(s).

23. Source: THOMAS web site, "Legislation: Bill Summary and Status" file at: <http://thomas.loc.gov/bss/d107query.html>. Data for the 107th Congress is complete for the entire Congress. For the purposes of this table, restrictive rules are derived by combining the percent of structured and modified closed rules with closed rules, compared to open rules which include both totally open rules and modified open rules which have either a requirement that amendments be pre-printed in the Congressional Record, and/or a time cap on the overall amendment process for a bill. By the end of the 107th Congress, 464 measures had passed under suspension of the rules, while 587 measures had passed the House overall, meaning that 79 percent of the measures passed were considered under suspension. Suspensions also comprise 255 of the 377 (68%) bills and joint resolutions enacted by the end of the 107th.

24. The total number of House members here includes the four delegates and resident commissioner since they are also included as sponsors of suspension bills. The sources used for this data on classes were the *Congressional Directory* for the 103rd and 106th Congresses, "Congresses in Which Representatives Have Served, With Beginning of Present Service."

25. On October 1, 1997, Democrats sent a message to the Republican majority by defeating six suspensions in a row, forcing the majority to postpone votes on the remaining 10 measures several times. According to one source in the Speaker's office, the protest was in part over the unfair allocation of suspension measures to minority Democrats (they had insisted on 25%). But the defeat of the suspension measures also came in the midst of Democratic parliamentary protests relating to the irresolution of the Dornan-Sanchez (Calif.) election contest.

26. A Congressional Research Service study of House sponsored suspension measures, both statutory and non-statutory, broken down by party sponsorship, reveals almost identical results, even though covering the larger universe of suspensions, with majority Democratic sponsored measures accounting for 88 percent of the total suspensions considered in the 103rd Congress, and Republican sponsored measures accounting for 77 percent of the measures considered in the 106th Congress: Thomas P. Carr, "Suspension of Rules in the House: Measure Sponsorship by Party," CRS Report for Congress, 97-901 GOV (Updated January 7, 2002), Table 1, "Motions to Suspend the Rules in the House, by Party of Sponsor, 1987-2001," p. CRS-2.

27. The complete list of suspensions for Tuesday, June 11, 2002, is as follows: (1) H. Res. 438, Improving Health Through Fitness and Reduction of Obesity; (2) H. Res. 269, Honoring the Life and Achievements of Italian-American Inventor Antonio Meucci, and his work in the Invention of the Telephone; (3) H. Res. 406, Commemorating the Sacrifices of Law Enforcement Officers Who Were Killed or Disabled; (4) H.R. 3738, Herbert Arlene Post Office, Philadelphia, Pennsylvania; (5) H.R. 3739, Rev. Leon Sullivan Post Office, Philadelphia, Pennsylvania; (6) H.R. 3740, William V. Cibotti Post Office, Philadelphia, Pennsylvania; (7) H. Con. Res. 394, 2002 World Cup and Co-hosts Republic of Korea and Japan; (8) H. Con. Res. 213, Concerning North Korean Refugees Detained in China; (9) H.R. 2068, Public Buildings, Property, and Works Amendments; (10) H.R. 3297, Mychal Judge Police and Fire Chaplains Public Safety Officers' Benefit Act; (11) H.R. 2054, Congressional

Consent to Compact between Utah and Nevada Regarding Boundary Change; and (12) H.R. 2621, Consumer Product Protection Act. The obesity fighting resolution was adopted by roll call vote of 400 to 2. Two other measures passed by similar lopsided roll calls, and the other nine measures were adopted by voice vote.

28. The data for this table was compiled by the author while a member of the House Rules Committee staff by examining the final House Calendars for each Congress under the sections marked "House [and Senate] Joint Resolutions Which Have Become Public Laws," and separating those which designated a specific time period to honor a person or event.

29. Whereas in the 106th Congress there were 18 commemorative concurrent resolutions considered under suspension, by mid-July of the second session of the 107th Congress, 26 commemoratives had already been considered under suspension.

30. H.R. 3479, 107th Congress.

31. Remarks of Representative Jesse Jackson, Jr., *Congressional Record*, July 15, 2002, H 4612.

32. Remarks of Representative Henry Hyde, *Congressional Record*, July 15, 2002, H 4651.

33. Roll Call 298, July 15, 2002, failing the two-thirds vote necessary for passage, 247-143.

34. Remarks of Representative Henry Hyde, *Congressional Record*, July 23, 2002, H 5122.

35. Roll Call 327, July 23, 2002, passing, 343-87.

36. H.R. 4866, 107th Congress.

37. Remarks of Representative George Miller, *Congressional Record*, July 16, 2002, H 4702.

38. Roll Call 303, July 23, 2002, failing two-thirds, 246-177.

39. H. Con. Res. 312, 107th Congress.

40. Roll Call 10, February 6, 2002, failing two-thirds, 235-181.

41. H.R. 4892, 106th Congress.

42. Roll Call 48, September 13, 2000.

43. H.R. 34, 106th Congress, barring non-citizen campaign contributions, passed 369 to 43 (Roll Call 82); and H.R. 3582, strengthening campaign reporting and disclosure requirements, passed 405 to 6 (Roll Call 84), both on March 30, 1998.

44. H.R. 3581, 106th Congress, failing two-thirds under suspension, 74 to 337 (Roll Call 81), March 30, 1998.

45. "GOP Leaders Maneuver to Block Democrats' Bill," *CQ Almanac, 1998* (Washington: CQ Press, Inc., 1999), 18-6.

46. H.R. 2183, Roll Calls 379 and 405, August 3 and 6, 1998.

47. Woodrow Wilson, *Congressional Government* (Baltimore: Johns Hopkins University Press, 1885; 1981 paperback edition), 69.

48. This combines definitions of deliberation by Steven S. Smith, "Call to Order," op. cit., 239; and Joseph M. Bessette, *The Mild Voice of Reason: Deliberative Democracy and American National Government* (Chicago: University of Chicago Press, 1994), 46-49.

49. The data is drawn from the "Resumes of Congressional Activity," the index for which can be found at <http://thomas.loc.gov/home/resume/resume.html >. The measures counted are House and Senate bills and joint resolutions reported by House committees and passed by the House, 101st- 106th Congresses.

50. Remarks of Representative George Miller, *Congressional Record*, July 16, 2002, H 4702.

51. Congressional Budget Office, "Unauthorized Appropriations and Expiring Authorizations," Fiscal Years 1994, 1995, 2000, and 2001.

52. Representative Joseph G. Cannon, quoted in a tribute to Cannon on his retirement in *Respectfully Quoted: A Dictionary of Quotations Requested from the Congressional Research Service* (Washington: Government Printing Office, 1989), 54 (Quotation No. 260).