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Four Immediate Reforms to Change the Culture of Congress

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Summary. Immediately after the congressional elections of November 2, new Members and re-elected Members of both parties will gather to meet (caucus) and vote on new leaders and enact internal party rules. Long before the House adopts its formal rules in January, these internal party rules will determine the allocation of power within Congress between leadership, committee and subcommittee chairmen, and rank-and-file Members.

We recommend reforms of both parties' internal caucus rules in order to reverse the decades-long trend whereby House leaders have acquired enormous power at the expense of rank-and-file Members. We believe the reforms recommended here would enable rank-and-file Members to fulfill the responsibilities our Founders envisioned for them in the Constitution, consistent with the public demand for changing how Congress operates.

These reforms would democratize the process for selecting committee and subcommittee chairmen and for assigning Members to committees, jettisoning the current process, in which party leaders reign supreme, in favor of a more broadly based process that allows rank-and-file Members to play a meaningful role in these important decisions. Term limits for party leaders as well as for chairmen (and ranking members) of committees would also render decision making in the House more responsive to the caucus as a whole, and thereby to the public.

Replacing top-down governance with a process that is both more democratic and more responsive to the will of all Members will, we hope, sever the nexus between the current approach and the record levels of spending and excessive government control of the economy.

This paper deals solely with procedures of the U.S. House of Representatives.

Making Congress more responsive to the American people requires something more than just changing the players. Congress must first agree to change its internal rules of organization.

Reform requires quick post-election action at the political party level even before the new Congress convenes in January. Those party-level decisions are planned for the week of November 15—less than two weeks after Election Day.¹ At those meetings, each party creates a powerful internal management structure known as its steering committee, which then allocates positions of authority to govern the full body. This organizational system causes Members of Congress to surrender much of their independence to congressional party leaders before the new Congress even convenes.

Reforming how Congress operates requires changes in the party rules in addition to the rules of the entire House. The House rules will not be adopted until the new Congress convenes January 3, 2011; the majority party typically votes as a block

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to incorporate its decisions into those rules. Party rules are to be adopted the week of November 15, 2010. This paper makes specific recommendations for party-level reforms within the House of Representatives to bring that body closer to its constitutional design—to be governed broadly from the bottom up rather than concentrating power among a select group of leaders at the top.

The Constitution Is Designed to Empower Members of Congress, Not Party Leaders. Under the Constitution, both the House and Senate establish their own rules. (Article I, Section 5, “Each House may determine the Rules of its Proceedings”). In practice, the majority party in the House decides upon the rules and then votes as a bloc to enact them as the governing rules of the House.

Unlike the executive branch, which is headed by a single individual—the President—the legislative branch’s powers are vested in Congress as a whole and equally dispersed among the Members of the House and Senate. A Speaker of the House is mentioned in the Constitution,² as is a Senate President pro tempore.³ The Constitution recognizes the ability of each House to create other officers, but none of these are granted any authority by the Constitution. The Constitution, moreover, does not mention committees.

The Constitution envisions that the Senate and the House of Representatives adopt their own internal rules and organizational structures; by tradition, these decisions reside solely within the province of the majority party that controls each chamber.

Thus, the authority of congressional leaders is not intrinsic to their leadership positions. It flows from the Congress as a whole and from the majority party controlling Congress in particular rather than from any grant of constitutional power.

The rules and processes by which Congress operates should reflect the proper understanding of how the Constitution decentralizes and limits the

power of government in general and legislative power in particular. This requires rules and processes that best enable rank-and-file Members to participate fully in all the roles, most prominently legislative and oversight, that the House is asked to fulfill.

Even though the practices may have existed for decades and appear to be part of the fabric of how Washington operates, Members of Congress should from time to time take a fresh look at congressional practices and particularly at the structure of the House and their own party leadership. After all, neither the current structure of Congress nor how party leaders operate is mandated by the Constitution or set in stone by any principled criteria.

The Constitution limits the powers of government, and each Member of Congress has a constitutional obligation to abide by and uphold those limits. Members of Congress who appreciate this should evaluate all aspects of the structure and internal rules of the House through this prism. In ceding their power to party leaders, do they facilitate or impede their ability to limit the size and scope of the federal government?

The House was designed to be a broad-based legislative body, more representative of widespread public opinion and responsive to the people more than any other element of the federal government. This is why the House, with its finger on the pulse of the nation, is granted exclusive power to initiate revenue bills and take the country to war. However, over the last several decades, legislative branch authority has become overly concentrated into the hands of a few select leaders of the majority party—rather than the decentralized lawmaking body that is more consistent with its constitutional responsibilities.

This has been illustrated recently by how House Speaker Nancy Pelosi (D–CA) has exercised power, most especially on recent major legislative initiatives such as health care and cap and trade:

1. This paper focuses on the House rather than the Senate, which has a different constitutional design and different procedures.
2. Article I, Section 2: “The House of Representatives shall chuse their Speaker and other Officers.”
3. Article I, Section 3: “The Senate shall chuse their other Officers, and also a President pro tempore.”

- Selecting supportive committee chairmen and bending them to her will when that worked for her;
- Bypassing committees entirely and writing major bills in the Speaker's office or via the Rules Committee;
- Creating and funding parallel quasi-committees (such as the "Select Committee on Energy Independence and Global Warming"⁴) to outflank regular committee chairmen who might refuse to follow the Speaker's lead;
- Using the powers described below to exert pressure on rank-and-file Members to support her agenda or to lower the volume of their opposition; and
- Preventing opponents from offering their own proposals or amendments during consideration of bills on the House floor.

The result of these tactics is a top-down House of Representatives rather than a bottom-up system. Whether it involves negotiations with the White House, with lobbyists, or with other interest groups, media reports frequently describe how congressional leaders "reach an agreement"—but then must "sell" their caucus on it. Presidents and lobbyists often need only sway those at the top of the congressional pyramid, rather than a majority of the body.

Congressional leaders should not use their acquired power to coerce votes from reluctant Members or engage in the notorious practices of buying votes with special provisions, earmarks, favors, or rewards of special campaign assistance.

Recent Historical Background. Historically, allocation of internal congressional power has varied. The ability to control the parties' steering committees⁵ gradually became an essential ingredient to controlling the operations of Congress via control of

the committee system. Steering committees determine who serve as chairmen of standing committees as well as who will serve on those committees. Efforts have been made to organize competing groups within the House, but those groups lack any official role in the legislative process.

The post-Watergate reforms in 1974 and 1975 focused on limiting the power of seniority by granting more power to congressional leaders. As noted in one leading congressional history, these reforms "virtually ended the absolute rule of seniority. Committee assignment power was transferred from Democrats on the Ways and Means Committee to the steering committee and thereby brought under the leadership's direct influence."⁶

When Republicans gained the majority after the 1994 elections, party leaders further consolidated their power by eliminating the resources available to sustain competing centers of power, known then as Legislative Service Organizations (LSOs). Although there may have been other reasons to curtail these entities, including a desire to reduce legislative branch spending, congressional scholars suggested that eliminating LSOs was also consistent with Speaker Newt Gingrich's objective to centralize control over the committee system in general. As one scholar argued, "eliminating LSOs removed one institutional impediment to achieving a more hierarchical congressional structure in which party leaders and conferences assume an enhanced political importance."⁷

The impact was bipartisan, affecting groups such as the Congressional Black Caucus and the Republican Study Committee. The Congressional Research Service described one example:

More than 150 members of the Democratic Study Group, which had 18 full-time employees and a \$1.6 million budget in 1993, signed

4. As noted on its Web site (<http://globalwarming.house.gov>), "This unique committee was established by Speaker Nancy Pelosi in early 2007 to add urgency and resources to the commitment of this Congress to address the challenges of America's oil dependence and the threat of global warming."
5. Described below.
6. Patricia Ann O'Connor, ed., *Congress and the Nation*, vol. IV, 1973–1976 (Washington, D.C.: Congressional Quarterly, Inc., 1977), p. 768.
7. Robert Jay Dilger, "Congressional Member Organizations: Their Purpose and Activities, History, and Formation," Congressional Research Service *Report for Congress*, July 1, 2009.

a letter in December 1994 to then-incoming Speaker Gingrich opposing the group's prohibition as "an effort to censor opposing views, and to deny the primary source of information to the minority party as we embark upon a furious legislative schedule."⁸

Gradually, the LSOs were replaced by the emergence of Congressional Membership Organizations. But in order for these new entities to serve the interests of their members, they had to devise creative ways to share office staffs and other resources. The largest of these groups, first known as the Conservative Action Team and later the House Republican Study Committee (RSC), is perhaps the best example of this. It now boasts that a majority of GOP House Members belong to it—but the RSC is not provided the extra staff and resources that leadership offices possess.

Current System: How Members Yield Their Constitutional Authority to Congressional Leaders.

Under a top-down system, congressional leaders and, ultimately, rank-and-file Members invariably lose touch with the public, no matter how well-intentioned their motives may be. In fact, the emergence of the tea party movement owes much to the widespread sense by many citizens that their voices no longer mattered in Washington.⁹

This top-down model is not ordained by the U.S. Constitution. It is created in part by the internal rules which the House adopts on the first day of a new Congress; but most importantly that system is created by the internal rules of the two political parties—namely the Republican Conference and the Democrat Caucus. Those party rules will be adopted the week of November 15 when incumbents and newly elected Members gather in Wash-

ington for their closed-door meetings, which also include election of leaders.

Typically, freshman Members use that time to jockey for key committee assignments and decide whom to elect to leadership positions, such as Speaker, Majority Leader, Minority Leader, party whips, chairmen, etc. All but ignored are the internal rules that allocate power between congressional leaders and the rest of the body.¹⁰

Times of change in the majority party offer the clearest opportunities—and sometimes the only ones—to revisit and revise the internal rules that govern the Congress.

For example, it is via party rules that the Republican leader is given sole authority (subject to almost-automatic ratification by the rank-and-file) to:

- Select the chairman and the GOP members of the Rules Committee, the entity that controls which legislation and which amendments can be considered on the House floor¹¹;
- Select the chairman and the GOP members of the Administration Committee, which controls the day-to-day operations of the House, including its budget¹²; and
- Select which Republicans will be appointed to all "joint, select, and ad hoc committees as shall be created by the House." These include the Joint Committee on Taxation, the Joint Economic Committee, the Intelligence Committee, and more.¹³

There is more. The November 15 party caucuses will adopt the rules governing the selection of committee chairmen and committee members. Those assignments determine which Congressmen will chair or sit on the most powerful committees, such

8. *Ibid.*

9. See Scott Rasmussen and Doug Schoen, *Mad As Hell: How the Tea Party Movement Is Fundamentally Remaking Our Two-Party System* (New York: HarperCollins Publishers, September 2010).

10. The freshman class is typically given a seat on the steering committee, but its influence there is outweighed by the larger votes wielded by others.

11. House Republican Rule 12. The Rules Committee's own Web site (http://rules.house.gov/110/comm_history.html) describes how its rule "since the mid-1970's" has been to function "as an 'arm of the leadership' and 'legislative gatekeeper.'" The majority party's two-to-one advantage on the committee helps assure its ability to carry out leadership's desires.

12. House Republican Rule 12.

13. House Republican Rule 13.

as Appropriations, Ways and Means, and Energy and Commerce, thus magnifying their authority.

Both the Republicans and Democrats use a party “steering committee” to make those committee decisions. This steering committee is organized according to a special resolution adopted in the party caucuses. The makeup of the steering committee is heavily weighted to give controlling votes to party leaders and to those who owe their positions to party leaders.¹⁴ For example, in addition to the influence the Republican leader has over most members of the steering committee, he is additionally granted five personal votes on that committee.¹⁵ On the Democratic side, Speaker Pelosi exercises even more sway over the Democratic steering committee. As party leader, she has indirect sway over many of the others on that committee, *plus* there are 14 “Members appointed by Democrat leader” according to the Democrat rules.¹⁶

And although House Republicans have limited the terms of their committee chairmen and ranking members, they have not uniformly applied term limits to all other leadership positions, most notably to the Speaker.

Another noteworthy structural problem is the size of committees. When a committee grows too large, a savvy chairman can wield undue influence on the House floor through committee bloc voting. Currently, the two largest House committees each comprise over one-sixth of the entire 435-Member House. The Committee on Transportation and Infrastructure has 74 members (44 Democrats and 30 Republicans), and the Committee on Financial Services has 71 members (42 Democrats and 29 Republicans). The next largest, the Committee on Armed Services, has 62 members (37 Democrats and 25 Republicans).

Recommended Reforms. The following reforms can be enacted at the party caucus level. Additional reforms can be adopted via House rule changes when the new Congress convenes in January.

To balance the power between congressional leaders and non-leadership—and encourage greater responsiveness to the American people—rank-and-file Representatives should stop surrendering so much power to party leaders. This can be accomplished as follows:

- The steering committee, rather than party leaders, should select *all* committee chairmen and members (including Rules, Administration, “select,” and “joint” committees).
- Party leaders should no longer dominate or control the steering committee. In practice, this would dispense with the allotment of multiple steering committee slots to party leaders and would allow rank-and-file Representatives to nominate and elect the controlling votes on each steering committee.
- Term limits should apply to *all* House and party leaders, including the Speaker, as well as to committee chairmen and ranking members.
- A cap should be placed on the overall size of each committee—such as a 50-member maximum—to avoid scenarios where committees wield a disproportionate amount of influence over the House.¹⁷

A Solid First Step. We recommend these reforms for both political parties. They are prerequisites to further reforms that could be accomplished via the House rules, which are not covered in this paper.

An extra benefit from these reforms might be a less partisan Congress. Reducing the leverage held by party leaders could increase the ability of all Members to work across the aisle to seek solutions.

14. Judy Schneider, “House Standing Committee Chairs and Ranking Minority Members: Rules Governing Selection Procedures,” Congressional Research Service *Report for Congress*, December 23, 2008, at http://assets.opencrs.com/rpts/RS21165_20081223.pdf (October 20, 2010).

15. *Ibid.*

16. *Ibid.*

17. Although the official committee sizes are established by the full House, they are in practice governed by how many seats on each committee are awarded by the majority party to its own Members. Effectively, the size of each committee is therefore determined during the party organizing process.

The fact that persons in the House's operating structure are heavily beholden to congressional leaders implies that these committees and particular committee slots exist solely to serve as "an arm of the leadership"—just as the Rules Committee acknowledges it now operates. Under the reforms recommended here, the Rules Committee would reflect the broader interests of the entire House, or at least of the majority party as a whole.

There are varied ways to implement these reforms. Adoption of these reforms by the political party caucuses during their mid-November internal meetings would be a solid first step toward the con-

stitutional vision of the House of Representatives. This would improve the ability to enact further, additional reforms through the rules of the House itself, which should be prepared and enacted when the new Congress convenes the first week of January 2011.

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