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HOW THE MINORITY PARTY CAN IMPACT LEGISLATION IN TODAY'S CONGRESS

February 2019

BACKGROUND

The House of Representatives is fundamentally a majoritarian institution. That is, any coalition or party with the majority of votes can largely dominate the chamber's agenda, scheduling, procedure and outcomes. In effect, this means that the modern House is run by the majority party.

Such an institutional set-up, however, does not render the minority party completely powerless. The minority—or technically any coalition of members—has procedural opportunities to affect what legislation is considered on the House floor and how that legislation is considered.

The two most common parliamentary procedures used for bill consideration are: 1) Suspension of the Rules and 2) the introduction of special rules issued by the Rules Committee. Of course, both pathways are under the control and discretion of the Speaker of the House and majority party leadership. But, each of these procedures allow opportunities for the minority party to impact legislation.

SUSPENSION OF THE RULES

Under House Rule XV, clause 1, the House may suspend its own rules and regular procedures. This parliamentary tactic—known as **SUSPENSION OF THE RULES**—allows the body to more quickly consider and vote on legislation that has broad support within the chamber. Consideration under suspension is in order on Monday, Tuesday and Wednesday, during the final six days of a session or through unanimous consent. If the motion to suspend the rules is adopted, the underlying measure is adopted simultaneously.

Among other features, bills brought up under suspension are limited to 40 minutes of debate, equally divided between proponents and opponents of the measure. They also prohibit points of order and floor amendments, and require a two-thirds majority for passage. Because of this higher threshold, legislation considered under suspension is typically relatively minor or uncontroversial, such as bills that honor a sports team's championship or express support for a nation recently affected by a natural disaster. Indeed, the vast majority of laws enacted (78 percent in the 114th Congress) are considered through Suspension of the Rules. Notably, however, major bipartisan legislation is periodically brought up in this manner to ensure no amendments are offered that would force members to vote down the bill.

Requests for suspension bills are generally made by committees to majority leaders with the understanding that, if brought up, the legislation will pass with the required two-thirds vote. Committee chairs have typically given some amount of deference to minority members as to what non-controversial bills should be suggested for consideration. Importantly, however, the Speaker has full discretion over what bills are to be considered under Suspension.

Despite such control, given the two-thirds requirement, the majority party still needs some minority support for passage of suspension bills. If the minority party feels they have not been given an adequate number of suspension measures, they can agree to vote down suspension bills offered by the majority. In recent congresses, the minority party has received about 30 percent of bills considered under Suspension. If the proportion falls below that recent threshold, the minority party can agree to vote "no" on all suspension bills. This assures their defeat and slows down House business until the minority receives assurances from majority leadership that a more historically reasonable number of minority suspension bills receive consideration on the floor.

SPECIAL ORDERS AND THE MOTION TO RECOMMIT

Typically for more substantive legislation not guaranteed to reach the two-thirds vote threshold required for Suspension, the second common avenue for floor consideration is the issuance of a special rule, by the Rules Committee, that specifies an underlying bill for consideration by the chamber. The rule is a simple House resolution and is used to structure the terms for the underlying bill's consideration, including how long it is to be debated; what, if any, amendments will be in order; and if points of order are to be waived.

Every special rule also provides a **MOTION TO RECOMMIT (MTR)**. This privileged motion is also known as the “minority’s motion” because it serves as the minority party’s last chance to affect the substance of the bill prior to final passage. MTRs are available following the adoption of the rule, general debate and any amendment activity that was deemed in order by the special rule.

MTRs can be offered with or without instructions. Those without instructions—or “straight” MTRs—effectively kill the legislation by sending it back to its reporting committee. Those with instructions, which serve as specified changes or amendments to the underlying bill offered by the minority party, propose a direct amendment to the bill text and if adopted, the amendment is executed in real time on the floor (there is no actual recommittal to the reporting committee).

The degree of proposed changes within the instructions can range from modest changes to the majority’s bill to a complete substitute proposal by the minority. Of course, moderate changes, particularly aimed at sympathetic majority members, are more likely to solicit enough support to be adopted within the bill text. In practice, MTRs are in control of the minority party leadership and have been increasingly used to offer a complete minority alternative within the instructions to obtain a tough recorded vote for the majority party, particularly for more vulnerable members.

Unsurprisingly, Motions to Recommit are generally seen as procedural matters that result in party-line votes with the majority expected to oppose their adoption. As a consequence, the vast majority are not adopted. But, they offer the minority a guaranteed opportunity to force a substantive vote on their proposed changes and serve as one of the best avenues for the minority to affect the substance of a bill within the House.

CONCLUSION

Because of the majoritarian structure and rules of the House of Representatives, the minority party has limited means to affect the legislation considered by the full chamber or to amend the substance of bills under consideration. The two best opportunities for minority impact on legislation, then, is through offering bipartisan, non-controversial bills under Suspension of the Rules procedures, and through Motions to Recommit with instructions guaranteed within special rules issued by the Rules Committee. The former will grant the minority about 30 percent of bills considered under Suspension and the latter offers the minority an opportunity to amend the bill text or at least to receive a recorded vote on their offered alternative.

CONTACT US

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