



**Reclamation of the U.S. Congress**

# **The Reclamation of the U.S. Congress**

**LBJ School of Public Affairs**

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### **From Professor Evans**

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# Executive Summary

This report is the result of a ten-month effort undertaken by sixteen graduate students enrolled in a course entitled “The Reclamation of the U.S. Congress.” The course was offered at the Lyndon Baines Johnson School of Public Affairs in the 2012–2013 academic year, and it had five primary objectives:

- 1) To provide recommendations to the Congress for ways to improve its governance and operations given the current congressional environment.
- 2) To create an integrated analysis of past formal congressional reform efforts, including the major reorganizations of the Congress in 1946, 1970, and 1994, as well as more recent attempts.
- 3) To investigate new and emerging challenges that place pressure on the operations of the Congress.
- 4) To teach students how to be engaged in, and contribute to, congressional deliberations through objective analyses.
- 5) To create a digital repository of research that focuses on congressional reforms for future use of congressional scholars, experts, and interested citizens.

The students conducted the research for this report, developed reform options, and analyzed each reform. They dedicated significant time, energy, and care to ensure their research and analysis was objective, analytic, and authoritative.

Unlike other recent formal calls for congressional reform that begin by indicting Members and the Congress as a whole, this report identifies the enduring tensions and forces intrinsic to the Congress, and attempts to mitigate these tensions through adjustments to institutional structures and processes.

The research and analysis presented in this report is limited to issues arising from the procedures and governance structures that make up the working environment of the Congress. While more current reforms have included proposals related to campaign financing, redistricting, and primary structures and processes, the research for this project focus on the institution and what Members encounter once elected.

## Methodology

From the start, the research effort focused on how best to assist the Congress should it decide to undertake a formal review of its operations and share that review publicly, as it did in 1946, 1970, and 1994 through the formal reports on the work resulting from specially established Joint Committees on the Organization of Congress. The goal was to find common concerns addressed by these committees, why these concerns persisted, what reforms the Congress accepted—what reforms were rejected, what outcomes these reforms effected, and how these past efforts inform modern attempts at reform.

## Limitations



Given the objectives of the research and the resource constraints under which the class worked, both in time and funding, the report has some noteworthy constraints.

- The focus of the analysis is on the U.S. Congress as an institution, thus the research and analysis focuses upon internal operations of the Congress and does not address campaign finance reform, redistricting, or other proposals that would affect how a Member arrives in Congress.
- While the class took a broad view of reform, the research is not exhaustive. The class limited its reform proposals to those that could be analyzed, supported by research and practice, and for which possible implications of the reform could be noted.
- The focus of the research and analysis is on areas deemed most likely to inform practical recommendations rather than theoretical solutions that did not seem feasible politically.
- The class overcame the understandable desire to offer “catchy” options that sound like viable ideas but whose consequences are difficult to analyze.

## **Organizational Framework**

After extensive historical review, the class chose four areas that would form the framework for both the historical analysis and the reform proposals. These are:

- Agenda setting
- Deliberations
- Budget and appropriations
- Staffing

## **Team Design**

In the fall 2012 semester, the class formed four teams, each with responsibility to research and prepare an historical analysis of one of the four areas of congressional reform. During the spring semester, students formed four new teams, ensuring that students worked in areas different from those to which they contributed in the fall. This allowed the students to integrate the knowledge and expertise they had gained in the fall and to better analyze systemic consequences of reform proposals on the whole of Congress.

Five students served as principal writers for the four areas of congressional operations.

## **Research Base**

The students located and examined a wide variety of authoritative sources as they conducted their research, formulated their proposals, and analyzed their consequences. These included:

- Literature review of past formal efforts undertaken by the U.S. Congress through the constitution of Joint Committees on the Organization of the U.S. Congress and their reports and legislative proposals: 1946, 1970, and 1994.
- Literature review of all scholarly research discussing the formal efforts of the Joint Committees of the Organization of the U.S. Congress.
- Literature review of efforts undertaken by special commissions or selected committees established between the convening of the Joint Committees to review a more limited selection congressional organizational issues.
- Literature review of research and popular press (books, association publications, blogs, etc.) focusing on congressional reform since 1994.
- In-person consultations with past congressional leaders, including two Speakers of the House, the Honorable Jim Wright and the Honorable Newt Gingrich.
- In-person consultations with past Members involved in reform efforts, including Senator John Glenn.
- Attendance in formal discussions on congressional reform led by Senators Tom Harkin and John Kerry.
- Interviews with congressional scholars.
- A one-day workshop in Austin, Texas, with former congressional staff leaders to review and critique the reforms selected by the class.

## **Findings**

The report is divided into two main sections. The first provides a historical analysis of formal proceedings conducted by the Congress to affect organizational and governance changes, and scholarly assessments of these changes. Emerging from this analysis are common themes addressed in these efforts. The second part of the report offers reform proposals, and analyzes the feasibility of each proposal.

### **Part One: Historical Analysis**

The research for this report revealed that the Congress grappled with issues and concerns during the formulation and operation of the various Joint Committees on the Organization of Congress that persisted across the years spanned by these committees. This report presents these concerns as recurring themes associated with each of the four main areas of congressional operations. A summary of these follows.

#### **Agenda Setting**

##### ***Theme One: Increased Control of the Agenda by Majority Party Leadership***

One central challenge in setting the agenda is ensuring efficiency while balancing the objectives of Members who represent diverse constituencies. The Congress has trended toward using a more centralized approach to setting the agenda; however, this approach is less participatory.

Control of the congressional agenda has been increasingly centralized in the majority party leadership and committee chairs, thus limiting full participation of the minority and

general membership in initiating action on key policy areas for congressional deliberations.

### ***Theme Two: Internal and External Pressures That Influence the Agenda***

The agenda is sensitive to the tension between the need for Members of Congress to represent their constituents and to work collaboratively to achieve compromise. Members of Congress have become increasingly sensitive to internal and external pressures that limit their ability to collaborate and compromise when advancing their legislative objectives.

The political parties often succumb to internal and external pressures that block compromise, thus resulting in stalled or failed execution of each party's legislative agenda.

### ***Theme Three: Use of the Oversight Function***

The Congress has repeatedly recognized the need to increase congressional review of executive activities, and introduced reforms to strengthen the oversight function.

The Congress has a responsibility to ensure effective implementation and outcomes of policies. Traditionally, the Congress has assigned this review to its oversight functions. The Congress has not consistently used these functions, resulting in periodic lapses in the formal review of programs and policies.

## **Budget and Appropriations**

### ***Theme One: Balancing Executive and Legislative Control of the Budget and Appropriations Processes***

Congress has made efforts to improve its capacity to engage in budget negotiations with the executive branch, however, the budget process remains highly sensitive to the President's approach to budgeting, and the size of the President's party in Congress.

### ***Theme Two: Centralized versus Decentralized Congressional Budget and Appropriations Processes***

Congress has made efforts to centralize the budget and appropriations processes to improve coordination and increase transparency of spending. However, the Congress has been reluctant to implement congressionally endorsed reforms to centralize the budget and appropriations process, leading to confusion and inefficiencies in these processes.

### ***Theme Three: Controlling Growth in Mandatory Spending and Federal Deficits***

The budget and appropriations processes are not designed to facilitate directly the reduction of the federal deficit and control of overall government spending, but the Congress has increasingly relied on the budget and appropriations mechanisms to achieve these two objectives.

## **Deliberations**

### ***Theme One: Balancing Efficiency in the Deliberative Process and Minority Participation***

Congress has struggled to balance the tension between facilitating an efficient deliberative process and ensuring minority participation.

Congress has recognized the need to resolve the tension associated with facilitating an efficient deliberative process and the need for contributions from both minority and majority parties.

### ***Theme Two: The Decline of Deliberations by Committees***

Congress has attempted to strengthen committee structures and processes so that committees serve as the central force for deliberation of policy by experts, but despite these reform efforts, deliberations by committees have declined.

Congress has noted that insufficient deliberation by committees results in fewer viable policy options. However, attempts to reform committee structure and governance have not been successful in transforming them into an open forum for thorough deliberation and development of legislative options.

### ***Theme Three: Growing Demands and Members' Schedules***

Congress has attempted to introduce reforms to alleviate the growing demands on Members' schedules, and ensure sufficient time for deliberations.

Members of Congress have increasingly spent a significant amount of time off Capitol Hill or out of Washington, which lessens their participation in deliberative activities.

## **Staffing**

### ***Theme One: The Expansion of Congressional Staff and Support Agencies***

In response to the expectation that Members develop policy expertise on complex issues, and serve larger numbers of constituents, Congress has expanded its staff and support agencies.

The increase in demands on Congress in both the informing and legislative functions has created expectations beyond the capacities of individual Members.

### ***Theme Two: Staff Management and the Resource Pooling***

There is a need to balance Members' discretion on staffing their offices and gain the efficiencies of pooling resources.

## **Part Two: Reforms**

We offer these reforms in a constructive spirit. We hope to promote changes that will ease the tensions faced by Members of Congress and improve the settings and processes that foster legislative deliberations.

The reforms are analyzed in the context of problems faced by the Congress in four set activities (agenda setting, budget and appropriations, deliberations, and staffing) and thus, should be assessed by how they help to mitigate these problems.

### **Agenda Setting**

***Problem One: Control of the congressional agenda has been increasingly centralized in the majority party leadership and committee chairs, thus limiting full participation of the minority and general membership in initiating action on key policy areas for congressional deliberations.***

#### First Reform Option

Set aside two days per month to allow the minority the opportunity to hold hearings.

#### Second Reform Option

Require that the parties and major caucuses publish their legislative policy agendas at the beginning of each Congress, and ensure that the agendas are available to the public.

***Problem Two: The Congress has responsibility to ensure effective implementation and outcomes of policies. Traditionally, the Congress has assigned this review to its oversight functions. The Congress has not consistently used these functions, resulting in periodic lapses in the formal review of programs and policies.***

#### First Reform Option

Institute a “sunset” review protocol of all executive and legislative agencies, including discretion to review agencies more frequently as needed.

#### Second Reform Option

Establish specific period(s) in the legislative calendar when committees conduct oversight.

#### Third Reform Option

Encourage more oversight of policy implementation through congressional field hearings.

### **Budget and Appropriations**

***Problem One: Fiscal policies specifically focused on deficit reduction have impeded the ability of the Congress to complete the annual budget and appropriations processes. (Congress has increasingly tried to use the Budget and Appropriations Committees procedures and institutions to reduce the federal deficit. The following two reform ideas create external mechanisms and oversight to address the balance of spending and revenue.)***

#### First Reform Option

Enact legislation that requires a strict budget neutrality requirement for all new or reauthorized tax and mandatory spending legislation.

#### Second Reform Option

Create an independent commission to conduct regular comprehensive reviews of all tax and mandatory spending legislation according to a defined timeline.

***Problem Two: Congress has made efforts to centralize the budget and appropriations processes to improve coordination and increase transparency of spending. However, Congress has been reluctant to implement congressionally endorsed reforms to centralize the budget and appropriations process, leading to an inability to pass an annual budget resolution and timely appropriations.***

#### First Reform Option

Reduce membership on the House and Senate budget committees to seven, including: the majority and minority chairs of the appropriations committees, majority and minority chairs of the revenue committees, majority and minority whips, and the Senate majority leader and Speaker of the House.

#### Second Reform Option

Following similar rules and procedures to the budget resolution, appropriations bills should go to the floor for an up or down vote after they are voted out of committee.

### **Deliberations**

***Problem One: The filibuster has gained increasing importance as a legislative procedure that both Democrats and Republicans use to delay or effectively terminate legislation in the Senate. This is inconsistent with the intended purpose of the filibuster, which is to ensure sufficient debate. While not a problem in itself, the supermajority requirement to close a filibuster has created a bottleneck to bills and nominations in the Senate, slowing the deliberations of Congress.***

#### First Reform Option

Introduce a graduated plan to reduce the threshold of votes needed to invoke cloture.

#### Second Reform Option

Mandate that a continuous floor presence be required to maintain a filibuster.

#### Third Reform Option

Abolish the filibuster practice and limit debate to 30 hours.

***Problem Two: Congress has noted that insufficient deliberation by committees results in fewer viable policy options. However, attempts to reform committee structure and***

*governance have not been successful in transforming them into an open forum for thorough deliberation and development of legislative options.*

#### Reform Option

Allow committees to hold closed debrief sessions after hearings to allow Members additional opportunities to ask questions.

***Problem Three: Members of Congress spend a significant amount of time off Capitol Hill or away from Washington, D.C., which limits their participation in deliberative activities.***

#### Reform Option

Adopt a congressional workweek schedule that allows Members to spend more time in Washington, D.C., for example, a five-day workweek for three weeks, with one week off for work in their home states/districts.

***Problem Four: The House leaderships' role in developing and conducting the work of committees varies depending on individual leaders, at times causing tension between the leadership and the chairs. This tension may have consequences for achieving effective deliberations.***

#### Reform Option

Change procedure for electing committee leadership to allow the entire committee or subcommittee membership to vote for their chair and ranking member.

***Problem Five: Congress has recognized the need to resolve the tension associated with facilitating an efficient deliberative process, and the need for contributions from both minority and majority parties.***

#### Reform Option

The House of Representatives should enhance the use of the open rule and restrict the use of the closed rule.

### **Staffing**

***Problem One: The increase in demands on Congress in both the informing and legislative functions have created expectations beyond the capacities of individual Members. There is a need to balance Members' discretion in staffing their offices with the efficiencies of pooling resources.***

#### First Reform Option

Pool technical support to provide objective policy information to the public, and allow Members to customize the way this information is presented on their websites. Consider housing this new function within existing systems or agencies.

#### Second Reform Option

Integrate the Congressional Research Service, Government Accountability Office, and Congressional Budget Office under one umbrella agency to increase the efficiency of the support agencies.

***Problem Two: Congress has difficulty accumulating and retaining pooled expertise and institutional knowledge among committee staff members.***

#### Reform Option

Establish a core of permanent professional committee staff to provide internal expertise to committees, and help committees retain institutional knowledge through leadership transitions.

## **Conclusion**

Extraordinary challenges rest in the arms of the Congress. The ability of Members to gather together, assess information, develop ideas, and consider implications of those ideas are fundamental to maintaining a vibrant republic. Reform is needed in both the governance structure of the Congress and the internal decision-making processes that control participatory deliberations.

The pressures and tensions that have challenged the Congress over the years are inherent to the democratic process. Understanding them and working to mitigate their effects offer insights on the value of reforms and settings in which they are considered.

The Congress, if it maintains a thorough and rigorous dedication to improve alongside a focus on examining suggestions for reform, can begin the process of restoring confidence in the institution. There is much at stake, not only for the Members serving in the Congress, but also for the American people at large.

The researchers hope that this report offers ideas and insights that will assist the Congress to initiate a formal self-examination with the goal of restoring confidence in the institution and its Members.



# Introduction

Conditions in Congress today parallel the circumstances that have led Congress to assess and reform its internal organization and operations in the past. In recent years, lawmakers have expressed their frustration with the legislative process, and the public has become increasingly dissatisfied with the Congress's inability to achieve closure on important issues. The most widely publicized manifestations of the tense deadlock within Congress include the debt ceiling and budget deficit negotiations; however, these are only the most recent representations of the internal strains on the congressional process. Over the last decade, the Congress has also struggled to pass legislation regarding immigration and cybersecurity, despite the urgent need for a legislative mandate on these critical issues. Instead, Congress has increasingly deferred to the executive, resulting in the extension of executive influence into decisions that should be resolved by the Congress.

Deadlock within Congress and widespread frustration with the legislative process present an opportunity for the Congress to assess itself as an institution, and consider options to improve the way that it conducts business. The Congress has implemented numerous reform efforts to address its internal organization and processes, including three times in the twentieth century when the Congress formed Joint Committees on the Organization of Congress to assess congressional operations. Using these historical efforts to evaluate and reform itself as a guide, Congress could consider ways to adopt its internal structures and processes to meet the modern challenges that the institution faces today.

This report reviews how the legislative branch has reformed itself in the past, and recommends institutional reforms that the current Congress may consider to regain leadership in initiating policy, ensure robust deliberations, and restore public confidence in the Congress's ability to make informed policy decisions. The analysis is the product of a yearlong policy research project, *The Reclamation of the U.S. Congress*, sponsored by the Lyndon B. Johnson School of Public Affairs (LBJ School) at the University of Texas at Austin. During the 2012–2013 school year, a group of students led by Professor Angela Evans, former Deputy Director of the Congressional Research Service, conducted an institutional review of Congress and analyzed reform proposals for the current Congress. The students met with former Members of Congress, and held a workshop to collect feedback from current and former congressional staff. The final product of this yearlong study is this report, which serves to inform discussions of how today's Congress could begin to address institutional barriers that limit the Congress's ability to fulfill its mandate.

The LBJ School embarked on this project in response to growing recognition by the Congress, congressional scholars, and the public that the Congress needs to assess its operations and processes and consider reform options. Although the project builds upon the work of other academics who study the Congress, this analysis expands upon the current discussion by including a historical perspective on the efforts of the Congress to

reform itself.<sup>1</sup> Using this historical perspective, the project aims to provide a broader context for understanding the challenges the Congress faces today. In addition, the scope of the analysis is limited to the institutional structures and processes within Congress. The report addresses external pressures, including campaign finance, redistricting, the influences of special interest groups and lobbyists, and the expansion of media coverage only in the context of analyzing the impact of these pressures on the agenda-setting process.

This report begins by providing background on the work of the three previous Joint Committees on the Organization of Congress to demonstrate the similarities between the historical circumstances that led to previous reform efforts, and the conditions in today's Congress. The next section provides an in-depth historical analysis of recurrent institutional reform themes identified by the Congress during previous reform efforts, with a focus on four key areas: agenda setting, the budget and appropriations process, deliberations, and staffing. Using this analysis of the recurrent challenges Congress has struggled to address and analysis of the issues relevant for today's Congress, the final section recommends reform proposals that the Congress may consider adopting, including an in-depth analysis of the benefits and limitations of each.

## **Historical Background: Joint Committees on the Organization of Congress**

The U.S. Congress has implemented numerous reform efforts to address its internal organization and processes, including three times during the twentieth century when the Congress formed Joint Committees on the Organization of Congress to conduct comprehensive assessments of congressional operations. The Congress initiated Joint Committees on the Organization of Congress in 1945, 1965, and 1993 in response to circumstances that demanded that the Congress examine its functioning.<sup>2</sup> Each Joint Committee conducted a series of hearings to collect testimony from Members and scholars on a wide range of issues related to congressional operations, and issued reports recommending comprehensive changes to the internal structures and processes of the Congress. Both the 1945 and 1965, Joint Committees led Congress to adopt omnibus legislation to reform congressional operations: the Legislative Reorganization Acts of 1946 and 1970, respectively. This section of the report reviews the historical and political context that led Congress to form each Joint Committee on the Organization of Congress, and the work products of the committees.

### **The Joint Committee on the Organization of Congress, 1945–1946**

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<sup>1</sup> Please see Appendix A for a compilation of concurrent efforts to assess the Congress, and reform proposals.

<sup>2</sup> The political climate that precipitated the formation of the Joint Committees included a perception that the nature of congressional business had fundamentally changed, the expansion of Executive powers, and low public approval of the Congress. The specific conditions leading to the formation of each Joint Committee will be discussed in the subsequent sections.

Congress established the first Joint Committee on the Organization of Congress in February 1945 in response to the changing nature of congressional business and the expansion of the executive during World War II. The functions of government had grown substantially prior to the war; however, the Congress had adjusted its structures and processes piecemeal in response to this growth. The Congress had not conducted any comprehensive assessments of its internal functions, and there was a growing perception both within Congress and among the public that the Congress was not equipped to satisfy its constitutionally mandated responsibilities.<sup>3</sup> The expansion of executive powers during the war heightened sentiments regarding the ineffectiveness of Congress, and led Congress to establish a Joint Committee to study the institution's organization and operations.<sup>4</sup> Congress mandated that the Joint Committee conduct a comprehensive study of the Congress, and recommend reforms to simplify congressional operations and improve its relationship with the executive branch.<sup>5</sup>

The Joint Committee conducted its business from March 1945 through March 1946, when it released a report that recommended a wide range of reforms. Senator Robert La Follette (R-WI) chaired the Joint Committee, and Representative Mike Moroney served as the vice-chair. The Committee was comprised of twelve Members, with six from each chamber, and parity of representation from the two political parties.<sup>6</sup> The Committee held public hearings and executive sessions, during which witnesses identified barriers hindering the work of the Congress. Based on this testimony, the Joint Committee compiled a report recommending a range of reforms. The most notable recommendations in the report included reorganizing the committee structure, increasing Members' access to research and staff resources, and formalizing the congressional budget process.<sup>7</sup>

The recommendations of the Joint Committee resulted in the Legislative Reorganization Act of 1946 (LRA of 1946), which was signed into law on August 2, 1946, and is commonly cited as the beginning of the modern era on Capitol Hill.<sup>8</sup> The LRA of 1946 included many, but not all, of the changes recommended by the Joint Committee. The act made substantial changes to the committee structure in Congress, including reducing the number of committees, codifying the jurisdiction of standing committees, and limiting committee membership and committee size.<sup>9</sup> The changes to the committee system

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<sup>3</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 1 (March 4, 1946).

<sup>4</sup> Roger Davidson and Walter Oleszek, "Adaptation and Consolidation: Structural Innovation in the U.S. House of Representatives," *Legislative Studies Quarterly* 1, no. 1 (February 1976) 46.

<sup>5</sup> Establishing a Joint Committee on the Organization of the Congress, H. Con. Res. 18, (February 19, 1945).

<sup>6</sup> See Appendix B for a full list of the Members of the 1945 Joint Committee on the Organization of Congress.

<sup>7</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 (March 4, 1946).

<sup>8</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) and Roger H. Davidson, "The Advent of the Modern Congress: The Legislative Reorganization Act of 1946," *Legislative Studies Quarterly*, 15, No. 3 (August 1990) 1.

<sup>9</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 812-822.

represented Congress's first effort to actively organize committees, and are recognized as the most notable legacy of the LRA of 1946.

Other significant components of the LRA of 1946 included a mandate that committees conduct oversight, a directive that Congress develops a legislative budget, and the expansion of congressional staff and support agencies.<sup>10</sup> However, the oversight and legislative budget mandates were not implemented, and congressional staff and support agencies would require additional adjustments as the responsibilities of Congress continued to grow over the subsequent decades.<sup>11</sup> In addition, although the restructuring of committees provided the Congress with its first framework for organizing committee work, the changes also had the unintended consequence of increasing reliance on subcommittees.

### **The Joint Committee on the Organization of Congress, 1965–1966**

In March 1965, the Congress once again established a Joint Committee on the Organization of Congress to assess the institution's capacity to address increasingly complex problems, and to strengthen the institution in response to the expansion of executive powers. Congress's workload continued to expand in the years following the LRA of 1946, and by the early 1960s, internal and external pressure was growing for the Congress to resolve issues that had not been adequately addressed by the previous reform.<sup>12</sup> In response to calls for reform, the Congress formed another Joint Committee in 1965, which was given a mandate almost identical to the one issued in 1945: to study the Congress and recommend reforms to simplify congressional operations and improve its relationship with the executive branch.<sup>13</sup>

The Joint Committee conducted its business from May 1965 to July 1966, when it released a final report with reform recommendations, but it took the Congress nearly five years to adopt legislation in response to the Joint Committee's recommendations. Like in 1946, the Joint Committee included twelve members, six from each chamber, with parity in representation from the two political parties.<sup>14</sup> The committee was co-chaired by Senator Mike Monroney (D-OK) and Representative Ray Madden (D-WI), reflecting recognition that bipartisan support would be needed to advance any reform proposals.<sup>15</sup> The Committee heard testimony from Members, staff, and experts, and based on this testimony, issued a report recommending a wide range of reform proposals. Although the proposals of the 1965 were modest compared to reforms proposed in 1945, the 1965 Joint

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<sup>10</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 832, 834-837.

<sup>11</sup> Davidson, "The Advent of the Modern Congress," 14-18.

<sup>12</sup> Walter Kravitz, "The Legislative Reorganization Act of 1970: A Brief History and Summary of its Provisions," Congressional Research Service (1970) 1.

<sup>13</sup> Establishing the Joint Committee on the Organization of the Congress, S. Con. Res. 2, (March 11, 1965).

<sup>14</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at II (July 28, 1966).

<sup>15</sup> See Appendix B for a full list of the Members of the 1965 Joint Committee on the Organization of Congress.

Committee raised many of the same issues, including the efficiency of committees, the budget process, and the staff and information resources of the Congress.<sup>16</sup>

The recommendations of the 1965 Joint Committee report led to a series of bills over the next five years that aimed to address the recommendations provided by the Committee. Both chambers introduced reform legislation in 1966 in response to the Committee's findings, but neither bill received floor consideration because of the busy legislative calendar.<sup>17</sup> The following year, the Legislative Reorganization Act of 1967 (LRA of 1967) was the first major legislation considered by the Senate (S. 355), and was passed by the Senate. The House drafted multiple versions of the bill during 1967, in an attempt to respond to Members' opposition to specific provisions. The strongest source of resistance came from committee chairs who were opposed to proposed measures that would limit their powers.<sup>18</sup> As a result of the opposition in the House, the House did not pass a version of the LRA before the end of the Ninetieth Congress.<sup>19</sup>

Despite the House's failure to pass the LRA of 1967, the Ninety-First Congress continued efforts to pass comprehensive institutional reform. In 1969, more than twenty different reorganization bills cosponsored by approximately 200 members were introduced in the House.<sup>20</sup> The House Rules Committee formed a Special Subcommittee on Legislative Reorganization in 1969 to consolidate the proposals, and pursue legislation based on the 1965 Joint Committee's recommendations. The Subcommittee held additional hearings, and introduced the Legislative Reorganization Act of 1970 (LRA of 1970), a compromise bill that was signed into law in October 1970.<sup>21</sup>

Although the reforms of the LRA of 1970 were more modest than those adopted in 1946, the act made notable adjustments to increase transparency, improve Congress's deliberative capacity, and strengthen minority rights.<sup>22</sup> Unlike the LRA of 1945, which reorganized the committee structure, the LRA of 1970 focused on amending committee procedures to protect minority rights, limiting the power of the chairs, and preventing subcommittee autonomy.<sup>23</sup> The LRA of 1970 also aimed to improve the quality of deliberations, by expanding the time for members to consider legislation before a vote.<sup>24</sup> Consistent with the LRA of 1945, the 1970 legislation further expanded staff and support

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<sup>16</sup> Kravitz, "The Legislative Reorganization Act of 1970," 3 and Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at II (July 28, 1966).

<sup>17</sup> Kravitz, "The Legislative Reorganization Act of 1970," 3.

<sup>18</sup> Kravitz, Walter. prepared statement for the symposium on Service to Congress: The Congressional Research Service at 75. "The Legislative Reorganization Act of 1970 and its Aftermath." (Washington DC, July 12-13, 1989).

<sup>19</sup> Kravitz, "The Legislative Reorganization Act of 1970," 3.

<sup>20</sup> Kravitz, "The Legislative Reorganization Act of 1970," 6.

<sup>21</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, 8-32.

<sup>24</sup> Ibid, 24.

services, based on recognition that Congress's needs for information resources was growing.<sup>25</sup>

The LRA of 1970 made small improvements in Congress's ability to access resources for analyzing the budget, but like in 1945, there was insufficient support for more comprehensive budgetary reform.<sup>26</sup> However, tensions between Congress and the President continued to escalate during the early 1970s, and in response to President Nixon's use of impoundments to level spending in 1972, Congress formed the Joint Committee on Budget Control to advance comprehensive budget reform. The work of this Joint Committee led to the adoption of the Budget Control and Impoundment Act of 1974, which aimed to balance the powers of the Congress and President.

The LRA of 1970 also established a Joint Committee on Congressional Operations for continued self-evaluation of Congress, which was comprised of five members from each house.<sup>27</sup> However, the Joint Committee on Congressional Operations was abolished in 1977, based on a recommendation to abolish all joint committees issued by a Senate Temporary Select Committee to Study the Senate Committee System.<sup>28</sup> As a result, Congress would not conduct another comprehensive review of its operations until the formation of a third Joint Committee on the Organization of Congress in 1993.

### **The Joint Committee on the Organization of Congress, 1992–1993**

The Congress's final and most recent comprehensive internal evaluation of its processes and structures was initiated with the creation of a third Joint Committee on the Organization of Congress in August 1992. Once again, there was a growing perception within Congress and among the public that the issues facing Congress had changed, and that the operations of Congress had not adapted to address contemporary policy challenges.<sup>29</sup> Despite perceptions that the time might be right for another evaluation of congressional operations, a proposal to establish another Joint Committee did not gain traction until a high-profile scandal, involving the House Bank and House Post Office, broke and led to the resignation of the House sergeant at arms and the House postmaster.<sup>30</sup> In the wake of this scandal, public disapproval ratings of Congress reached an all-time high in the summer of 1992.<sup>31</sup> In response, Congress once again established a Joint Committee on the Organization of Congress to conduct a study of Congress and recommend improvements to strengthen the institution.

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<sup>25</sup> Ibid, 40-50.

<sup>26</sup> Ibid, 32-33, 34.

<sup>27</sup> Ibid, 52-54.

<sup>28</sup> S Res 4, 95<sup>th</sup> Cong, 1<sup>st</sup> Session. (1977)

<sup>29</sup> Organization of the Congress, Final Report of the Senate Members of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D S. Rep. No. 103-215 at 1 (December 9, 1993).

<sup>30</sup> Jean A. Phillips ed., *Reorganization of Congress: Modern Reform Efforts* (New York: Nova Science Publishers, 2004) 36.

<sup>31</sup> Ibid.

The Joint Committee conducted its business from January to July 1993, when it issued a report summarizing its work and highlighting the tensions identified during the Committee's hearings.<sup>32</sup> The Joint Committee was larger than the previous Joint Committees, consisting of twenty-eight members, fourteen from each chamber, with equal party representation. The Joint Committee was co-chaired by Senator David Boren (D-OK) and Representative Lee Hamilton (R-IN), and this time also included the majority and minority leaders of the House and Senate, as ex-officio voting members.<sup>33</sup> The process of the 1993 Joint Committee was conducted more publically than previous Committees' work, with the hearings televised on C-SPAN. In addition, the Committee administered opinion surveys of Members and staff, and solicited public input through op-eds.

Unlike previous Joint Committees, the 1993 committee was unable to compile a set of joint reform proposals because of disagreement between Senate and House members. In particular, members from the two chambers were unable to reach agreement on recommendations regarding the Senate's use of the filibuster and lack of a germaneness rule for amendments made on the Senate floor.<sup>34</sup> The disagreement among the Joint Committee members resulted in the two chambers holding separate mark-up sessions to draft language for a legislative reorganization act, which they intended to include in their final report.<sup>35</sup> At the end of these separate mark-up processes, the Joint Committee released a three-part final report, which included the findings of the Joint Committee, as well as separate recommendations provided by each chamber, and two different draft legislative reorganization bills. Issues raised in the reports included the need to reform the committee structure, streamline the budget process, eliminate duplication among staff, improve the use of information and technology resources, and strengthen deliberations within committees and on the floor.<sup>36</sup>

In February 1994, the House introduced H.R. 3801 and the Senate introduced S. 1824, following from the recommendations provided in the separate reports. These bills are collectively known as the Legislative Reorganization Act of 1994 (LRA of 1994). The bills were referred to the rules committees in each house, but neither committee reported out the bills. The only component of the LRA of 1994 that was adopted was a portion of H.R. 3801 regarding worker safety and employment laws, which was passed in the form of the Congressional Accountability Act.

## **From 1994 to the 113th Congress**

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<sup>32</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 (December 17, 1993).

<sup>33</sup> See Appendix B for a full list of the Members of the 1993 Joint Committee on the Organization of Congress.

<sup>34</sup> Walter J. Oleszek, "The Proposed Legislative Reorganization Act of 1994," Congressional Research Service (1994) 3.

<sup>35</sup> Ibid, 5.

<sup>36</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 (December 17, 1993) 23-27, 35-37, 49-52, 72-76, 116-121, and 183-184.

Although Congress has engaged in efforts to evaluate specific institutional processes over the last twenty years, the Congress has not made a comprehensive effort to study itself and consider opportunities for organizational reform since the Joint Committee of 1993. However, the institution continues to struggle with many of the recurring challenges identified by the three Joint Committees on the Organization of Congress. The next section of this report will review the major themes identified by the three Joint Committees on the Organization of Congress and discuss their relevance for today's Congress. The report highlights themes related to four key areas: agenda setting, the budget and appropriations process, deliberations, and staffing and information resources.



# Historical Analysis

## Agenda Setting

### Introduction

This section of the report provides a historical analysis of proposed and enacted legislation and rule changes affecting the legislative agenda-setting process. The analysis identifies three reoccurring themes that Congress has addressed during previous reform efforts. First, control of the congressional agenda has been increasingly centralized in the majority party leadership, limiting full participation of the membership on key policy areas for congressional deliberations. Second, increased internal and external pressures, including lobbyists, special interest groups, and the media, complicate Congress's ability to pursue its agenda. Finally, the Congress has repeatedly recognized the need to increase its review of executive activities in order to maintain oversight of policy implementation.

### **Theme One: Increased Control of the Agenda By Majority Party Leadership**

One challenge in setting the agenda is ensuring efficiency while balancing the objectives of Members who represent diverse constituencies. Since the 1940s Congress has used a more centralized approach to set the agenda. While this may be more efficient, a centralized approach is often less participatory. Reforms affecting agenda setting have tended to focus more on the relationship between the chamber leadership and the chairs and other members of the majority, rather than addressing the role of the minority.

### **The Joint Committee on the Organization of Congress, 1945–1946**

Prior to 1946, there was no formal way for members of Congress to synthesize individual members' policy priorities into a coherent agenda at the beginning of each Congress. To alleviate this challenge, the 1946 Joint Committee recognized the need for a mechanism to consolidate the agenda-setting process, and recommended that each chamber form minority and majority party policy committees. These policy committees were intended to serve as bodies that would organize national priorities and set the legislative agenda.<sup>37</sup> The Joint Committee recommended that the majority and minority parties in the House and Senate meet at regular intervals to coordinate policy priorities.

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<sup>37</sup>Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 12 (March 4, 1946).

In 1947, the Senate created majority and minority policy committees in response to the recommendation from the Joint Committee, and the House of Representatives followed the Senate and formed policy committees in 1949.<sup>38</sup> The policy committees were intended to provide the public with a way to assess the merit of the agenda, as well as its execution. The Senate policy committees developed an agenda based on the priorities that the parties highlighted during the election. The policy committees served as formal forums for members to offer policy ideas to their respective parties and discuss the benefits and drawbacks of proposals. The committees provided members with the opportunity to have more influence on the agenda, but policy committees could not introduce legislation.<sup>39</sup>

The 1946 Joint Committee Report also recognized a need to strengthen control of the legislative agenda by Congress vis-à-vis the executive. According to the Joint Committee Report, Members indicated that they faced “arbitrary discrimination” when bringing bills to committee. The Joint Committee report cited that legislative right-of-way is given to bills originating from the executive branch, and many bills proposed by Members do not receive attention.<sup>40</sup> In addition, the report cited that hearings on legislation primarily originated from the executive branch.

To counteract executive influence in agenda setting, the 1946 Joint Committee recommended expanding the House and Senate Office of Legislative Counsel, setting aside monthly docket days for Members to introduce their bills, and setting regular meeting days for scheduling, hearings, and committee business.<sup>41</sup> However, these recommendations were not included in the LRA of 1946.

The 1946 Joint Committee also recommended changes to hearing procedures to ensure that all Members who introduced legislation were given adequate time to have their pending bills heard. Members testified to the Joint Committee that a large number of the bills introduced were never formally considered.<sup>42</sup> The Joint Committee recommended changes to the hearings procedures to limit the amount of legislation originating in executive departments on the committee agenda. Based on these recommendations, the LRA of 1946 established regular processes for committees to meet and consider legislation. The 1946 reforms had the unintended consequence of increasing the power of committee chairs to control the agenda.

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<sup>38</sup>U.S. Congress. Senate. *A History of the United States Senate Republican Policy Committee, 1947-1997*. Prepared by Donald A. Ritchie, 105<sup>th</sup> Congress, 1<sup>st</sup> sess. 1997. S. Doc. 105-5 and CQ Press, ed. *How Congress Works*, 5th Edition. Los Angeles: CQ Press (2012) 44.

<sup>39</sup> Davidson, “The Advent of the Modern Congress.” Speaker of the House, Sam Rayburn (D-TX) pushed back against the recommendations of the 1946 Joint Committee and did not implement policy committees during his speakership. The Senate decided to take the 1946 Joint Committee’s recommendation and create policy committees in 1947. After Democrats lost control of the House in 1948 and Rayburn was no longer Speaker, the House established majority and minority policy committees. The policy committees “functioned as its framers hoped it would, considering policy options, determining party consensus, and establishing the order of business on the Senate floor.”

<sup>40</sup>Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 7 (March 4, 1946).

<sup>41</sup>Ibid, 11.

<sup>42</sup>Ibid, 7.

## **The Joint Committee on the Organization of Congress, 1965–1966**

The reforms adopted through the LRA of 1946 affected congressional authority to set the agenda by reducing the number of committees, and expanding the jurisdiction of the remaining committees.<sup>43</sup> This concentrated power in committee chairs, and widened the jurisdictional authority enjoyed by the chairs.<sup>44</sup> Following the LRA of 1946, committee chairs were able to use their influence to craft the agenda, and to control the flow of legislation through the deliberations process. These changes led Congress to reevaluate the influence of committee chairs on the agenda-setting process in 1965.

The 1965 Joint Committee found that senior House and Senate committee chairs had accrued too much influence in the agenda-setting process.<sup>45</sup> While chairs were tasked with the substantial job of managing various aspects of the committees, the report stated that the ultimate power of the committee should rest with the members themselves, and not the respective chairs.<sup>46</sup> Committee chairs followed the priorities of the party leadership, and tended not to allow junior members to contribute to the committee agenda. In addition, fewer congressional committee chair positions translated into longer wait times for members to ascend to a leadership positions. The committee system favored seniority, increased younger Members' frustrations, and led to a call for more reform.<sup>47</sup> The reforms suggested by the 1965 Joint Committee aimed to make the committee structure more inclusive for all participant members and for the agenda-setting process.

To dilute the concentration of influence and include junior members, the 1965 Joint Committee recommended reforming the elections of committee chairs within each political party.<sup>48</sup> The Joint Committee suggested that seniority was a custom and not the rule, and that members should hold votes on committee chairs.

The 1965 Joint Committee also proposed the adoption of a Committee Bill of Rights to reduce the concentration of power in committee chairs. The Committee Bill of Rights proposed that Senate standing committee members should be able to call a meeting if a chair failed or chose not to, and if the majority of the committee members agreed to call the meeting.<sup>49</sup> This would bring Senate rules in line with House rules. The Committee Bill of Rights also proposed that if a committee chair in either chamber was absent, the

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<sup>43</sup>Davidson, "The Advent of the Modern Congress," 371.

<sup>44</sup>Walter Kravitz, "The Advent of the Modern Congress: The Legislative Reorganization Act of 1970." *Legislative Studies Quarterly*, 15, no. 3 (Aug. 1990) 376.

<sup>45</sup>Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 9 (July 28, 1966).

<sup>46</sup>Ibid.

<sup>47</sup>Kravitz, "The Advent of the Modern Congress," 376.

<sup>48</sup>Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 9 (July 28, 1966).

<sup>49</sup>Ibid, 8.

senior majority member present had the ability to preside over the meeting.<sup>50</sup> In addition, it proposed abolishing proxy voting when votes on bills or amendments were required. Finally, the Committee Bill of Rights proposed that all chairs be required to submit reports outlining and explaining committee measures, and these should be submitted within seven days of a decision. Although many of these provisions were not formally adopted under the LRA of 1970, the spirit of these ideas found traction with congressional reformers. Many of the recommended changes have since been adopted through rules of each house.

## **The Joint Committee on the Organization of Congress, 1992–1993**

The 1993 Joint Committee included recommendations offered by the Congressional Research Service. These recommendations included reforms that sought to reassert control of the agenda by the party leadership. The CRS report found that institutional reforms during the 1960s and 1970s had two unintended consequences: there was an increase in the power and number of subcommittees, and the power of committee chairs and the central leadership decreased. However, the report found that committee chairs continued to have significant powers over the agenda-setting process through determining the assignment of Members to committees, deciding who will serve as party Whip, and using omnibus bills.<sup>51</sup> CRS reported that omnibus bills affected the agenda-setting process by complicating the tracking of specific legislative provisions as well as limiting, which members have input on specific provisions. As a result, a committee chair was able to exert a high degree of influence over the agenda-setting process through using an omnibus bill.

To re-assert the role of the House and Senate leadership in setting the agenda, the 1992 CRS Service made the following recommendations to the 1993 Joint Committee. First, the committee recommended establishing a Consensus Committee, made up of party leaders, committee chairs, and other key party members.<sup>52</sup> The Consensus Committee would conduct long-term planning, seek to reach consensus on various policy issues, and facilitate two-way lines of communication between party leadership and its members.<sup>53</sup> Although the CRS report noted the value of holding Consensus Committee meetings, the report also raised the possibility that such a committee could be seen as a threat to the autonomy of committee and subcommittee members to craft their own agendas.<sup>54</sup>

The second recommendation to reassert the power of chamber leadership was to create an organizational mechanism to streamline the agenda-setting process. The CRS report suggested that this institutional change could assure that the agenda-setting process “reflected broad institutional and societal interests.”<sup>55</sup> The report did not define a specific

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<sup>50</sup> Ibid.

<sup>51</sup> Congressional Research Service, "Congressional Reorganization: Options for Change. Report of the Congressional Research Service Library of Congress to the Joint Committee on the Organization of Congress," S. Rep. 103-19 103rd Cong., 1st Sess., (1993) 35.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid, 36.

agenda-setting mechanism, but outlined several possible venues for agenda setting including: party conferences, a “State of the House or Senate” address, or a House-Senate leadership meeting.<sup>56</sup> The authors hoped that a streamlined agenda-setting process would help differentiate the congressional agenda from the executive agenda, and help establish consensus at the congressional level.<sup>57</sup> However, these recommendations were never enacted.

## **From 1994 to the 113th Congress**

In 1994, the Republican Party gained control of the House of Representatives for the first time since 1953. The Republicans announced the Contract with America agenda during the campaign. This was the first time in modern American history that a political party outlined a comprehensive policy agenda for an audience outside the congressional structure: the American public.<sup>58</sup>

Since 1994, the agenda-setting process has been characterized by increased centralization among party leadership. Some important themes emerge with the degree of centralization of the agenda during this period. First, the power of the Speaker of the House increased. Second, the capacities of the steering committees to implement party policies increased, which diminished the responsibilities of the policy committees. Third, the concentration of power and the level of control practiced by Speakers and party leaders alienated committee chairs.

## **Theme Two: Internal and External Pressures that Influence the Agenda**

There are complex and often conflicting pressures on Members that influence the agenda-setting process. Internal pressures arise from a Member’s responsibility to serve his or her constituents, be responsive to the interests of the party leadership, and compromise with other Members to reach consensus. Members have also become increasingly sensitive to external pressures resulting from the constant campaign cycle, the growing number of special interest groups with expertise on legislative issues, expanded media coverage of Congress, and better transparency of the legislative process. This section reviews the internal and external pressures that Members face, the affects of these pressures on the legislative process, and Congress’s attempts to respond to these pressures to maintain an efficient and fair legislative process.

### **Internal Pressures**

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Randall Strahan and Daniel J. Palazzolo, “The Gingrich Effect,” *Political Science Quarterly* 119, no. 1 (Spring 2004).

Members can best serve their constituents if they are able to advance their individual objectives with the leadership of their chamber and work collaboratively with other Members to reach consensus. By design, Congress requires that Members balance constituent interests, party interests, and personal convictions to achieve their desired legislative outcomes. Although the tension between serving a constituency and serving a party is inherent to the institution, some scholars argue that this tension has intensified in recent years, with increased polarization across the two political parties, and the rise of factions within the parties.<sup>59</sup>

## **External Pressures**

The pressure for Members to deliver outcomes to their constituents has changed over time as the nature of campaigns has evolved, as interest groups have become more powerful, as the role of the media has changed with the introduction of new technology, and as transparency of the legislative process has increased.

## **Electoral Campaigns**

Electoral campaigns affect the way that Members allocate their time, and their ability to engage in deliberations and advance their legislative agenda. The average congressional campaign requires significant fundraising: approximately \$8 million for the Senate and \$1.2 million for the House. Since 2000, this represents a 37 percent increase in the Senate, and a 67 percent increase in the House.<sup>60</sup> In this environment, Members face pressure to keep pace with the increasing cost of campaigns and must allocate time to fundraising. Party leaders expect Members to make financial contributions to their party's campaign committees, colleagues, and other candidates in order to bolster the party's resources devoted to securing a majority of seats.<sup>61</sup> The need to fundraise makes Members beholden to partisan donors, which may skew the agenda-setting process and make it more difficult for Members to compromise.

## **The Influence of Special Interest Groups**

Although Congress has attempted to regulate the role of lobbyists, special interest groups continue to influence the agenda. The Congress's first effort to regulate lobby groups resulted from the work of 1946 Joint Committee on the Organization of Congress, which expressed concern about the undue influence of lobbying on the legislative process. The Joint Committee cited that lobbyists make it more difficult for legislators to effectively debate issues and evaluate public sentiment. To address these concerns, the 1946 Joint Committee recommended that Congress adopt legislation requiring the registration of

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<sup>59</sup> Thomas E. Mann and Norman J. Ornstein. *It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism*. (Basic Books: United States of America, 2012) 46.

<sup>60</sup> See "House and Senate Campaign Expenditures" for a complete review of costs of congressional campaigns from 1974 to 2010. Available from *The Campaign Finance Institute* at [www.cfinst.org](http://www.cfinst.org).

<sup>61</sup> Eric S. Heberlig, "Congressional Parties, Fundraising, and Committee Ambition," *Political Research Quarterly* 56, no. 2 (2003) 160-161.

organized groups seeking to influence legislative activity. This provision was included in the LRA of 1946 as the Federal Regulation of Lobbying Act, which aimed to inform the public and congressional leaders of lobbyists' goals and financing.<sup>62</sup>

The 1966 Joint Committee cited that despite the reforms of 1946, lobbyists still had excessive influence over Congress. The LRA of 1946 mandated that the Clerk of the House of Representatives and the Secretary of the Senate oversee lobbying groups, but the 1966 Joint Committee found that offices did not have capacity to properly analyze the information, and there was a lack of sufficient oversight.<sup>63</sup> To address the issue, the Joint Committee revisited the influence of lobbying in the legislative process and recommended several changes to the 1946 law. The 1966 Joint Committee sought to adjust the definition of what constitutes a lobbying group to close loopholes and recommended transferring regulatory authority to the General Accounting Office (GAO).<sup>64</sup> However, the Congress did not include provisions for restricting lobbying when it enacted the LRA of 1970.

It was not until the passage of the Lobbying Disclosure Act of 1995<sup>65</sup> that Congress amended a fifty-year-old lobbying registration law (the Federal Regulation of Lobbying Act of 1946), which had required registrations and disclosures of lobbying activities directed at Members of Congress. The Lobbying Disclosure Act of 1995 clarified the criteria and thresholds for determining when an organization should register its employees or staff as lobbyists or when a lobbying firm or individual lobbyist needs to register and identify clients. The act specifically covers professional lobbyists (those who are compensated to engage in lobbying) by requiring them to register and report certain information and general financial data.

The 1995 lobbying disclosure law was amended substantially in 2007 in the Honest Leadership and Open Government Act of 2007,<sup>66</sup> to require more frequent disclosures, information, and reporting from professional lobbyists covered by the Lobbying Disclosure Act of 1995. The 1997 enhancements require registered lobbyists to provide additional information in their disclosure reports, specifically any offers of gifts, donations, payments, or contributions from lobbyists and their clients to or on behalf of federal public officials. The 2007 amendments were aimed to provide more transparency of lobbying activities.

In addition to this legislation, rules in the House and Senate govern the interactions between Members of Congress and lobbyists. These rules are adjusted periodically to further refine protections against undue influence of lobbyists.

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<sup>62</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 52 (July 28, 1966).

<sup>63</sup> Ibid, 52-55.

<sup>64</sup> Ibid.

<sup>65</sup> Lobbying Disclosure Act. P.L. 104-65, 109 Stat. 691, (1995), as amended by the Lobbying Disclosure Technical Amendments Act, P.L. 105-166, (1998)

<sup>66</sup> Honest Leadership and Open Government Act of 2007. P.L. 110-81, 121 Stat. 735, (2007)

## Media Influences on the Agenda-Setting Process

The media has exerted more influence in the agenda-setting process with the rise of the twenty-four-hour cable news networks and online news sources. However, as early as the 1946 Joint Committee on the Organization of Congress, Members recognized the pressures created by the media. Since the early 1970's, Members of Congress expressed concerns that the media had the ability to distort public opinion and exert pressure on the legislative process.<sup>67</sup>

The nature and role of media has evolved substantially due to technological innovations, and managing media relations and messaging has become a central task for every congressional office. The 1992 Joint Committee recommended that congressional parties use new mass media capabilities to directly appeal to the American public, counter the President's media advantage, and further party interests.<sup>68</sup> Although no legislation was passed advancing these ideas, Members have felt pressure to find better ways to use mass media to communicate their agendas.

Since the 1990s, media pressure on the agenda-setting process has continued to grow. Daily media coverage requires that Members shape messages for mass consumption through the print news, radio, television, and social media. Some Members have cited that congressional debate was historically more substantive, and mass media communications overly simplify complex bills, increase partisanship, and weaken debate.<sup>69</sup> As a result, Members take highly publicized policy positions that might be politically expedient for their party and constituents, and then have difficulty reaching compromises because of their inability to separate from these positions. This may contribute to inefficiency in the agenda-setting process and create legislative deadlock.

## Public Hearings

Congress has increased the transparency of the legislative process, primarily by publishing information on legislative activities and opening hearings to the public. To increase transparency, the 1946 Joint Committee recommended that all committees be required to record committee proceedings (except executive sessions), including attendance and votes on bills and amendments.<sup>70</sup> The Committee also recommended that voting records be published in the *Congressional Record*. The LRA of 1946 incorporated all of these suggestions to increase the documentation of committee activities, but did not require committee votes to be published.<sup>71</sup> The LRA of 1946 also required that hearings be open to the public, unless the majority of committee members vote to close a hearing.

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<sup>67</sup> Congressional Research Service, "Congressional Reorganization: Options for Change. Report of the Congressional Research Service Library of Congress to the Joint Committee on the Organization of Congress," S. Rep. 103-19 103rd Cong., 1st Sess., (1993) 196.

<sup>68</sup> Ibid.

<sup>69</sup> Lee Hamilton, Public Remarks for Congress and the Media programs, *Close-Up Foundation and C-Span*, <http://congress.indiana.edu/congress-and-media-close-foundation-and-c-span>, Date Unspecified.

<sup>70</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 7 (March 4, 1946).

<sup>71</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 831.



This exemption limited the consistent enforcement of open hearing requirements in practice.<sup>72</sup>

The 1966 Joint Committee found that the LRA of 1946 did not sufficiently increase public access to committee proceedings, and recommended additional steps to open the committee hearing process. The Committee's recommendations included televising or broadcasting hearings, allowing nonexecutive meetings to be fully open to the public, and publishing a record of all votes on bills and amendments.<sup>73</sup> The 1966 Joint Committee also recommended requiring that committees provide a two-week advance notice of hearings and produce a daily summary to be published with the committee's report.<sup>74</sup> These recommendations sought to inform the public about committee activities and ensure that committee members had access to the information they needed to engage in hearings.<sup>75</sup> The LRA of 1970 included all of the Joint Committee's recommendations.<sup>76</sup>

Public access to congressional proceedings and information about legislation has increased with technological advances, including the television and the Internet. Today, the public can access information about Congress almost instantly. The Congress's increased transparency leads to more external input into the agenda-setting process, which may allow for the inclusion of different perspectives and strengthen legislation. However, it is also possible that input is not well informed, and increased transparency may make it more difficult for members to set and execute the agenda.

### **Theme Three: Use of the Oversight Function**

The Congress has repeatedly recognized the need to increase its review of executive activities and has introduced reforms to prioritize oversight in the agenda-setting process. This section addresses the Congress's efforts to strengthen its oversight function.

#### **The Joint Committee on the Organization of Congress, 1945–1946**

The 1946 Joint Committee on the Organization of Congress recognized the need for formal legislative oversight of the executive branch citing that “without effective legislative oversight of the activities of the vast executive branch, the line of democracy wears thin.”<sup>77</sup> Prior to 1946, select investigating committees handled oversight, a practice that the 1946 Joint Committee recommended discontinuing. Select investigating committees lost favor because they were generally convened in response to a crisis, and the Joint Committee found this practice to be too ad hoc. The Joint Committee

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<sup>72</sup> Ibid.

<sup>73</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 10 (July 28, 1966).

<sup>74</sup> Ibid, 11.

<sup>75</sup> Ibid, 12

<sup>76</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 8-14.

<sup>77</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 6 (March 4, 1946).

recommended that executive agencies should be required to file reports on their operations and implementations of policies, and that all standing committees should exercise continuous review of the executive agencies through recurring committee meetings. The Joint Committee concluded that by actively engaging in oversight, committees would be better placed to anticipate challenges, and to use the agenda-setting process to proactively work to solve these challenges. The Joint Committee also recommended that standing committees have the authority to undertake studies on issues within their jurisdiction to assist their review of executive functions.<sup>78</sup>

The Legislative Reorganization Act of 1946 included these recommendations.<sup>79</sup> While some committees took the initiative to conduct more extensive oversight by either forming permanent investigating subcommittees or dividing the review function among multiple issue-specific subcommittees, others did not. Committees also faced other challenges that limited their capacity to conduct oversight, including increasing workloads and limited staffing resources.<sup>80</sup> As a result, Congress continued to focus on oversight efforts in future reform efforts.

### **The Joint Committee on the Organization of Congress, 1965–1966**

To address the recurring unevenness in oversight, the 1966 Joint Committee recommended that all committees should conduct more oversight.<sup>81</sup> They recommended providing a review specialist for each standing committee, who should work exclusively on oversight issues.<sup>82</sup> The review specialist could be tasked with supporting committees to ensure that existing programs were being run efficiently and in accordance with congressional intent. In addition, the specialist would review GAO reports and present findings to the committee each year.<sup>83</sup>

The 1966 Joint Committee also recommended that the committees provide an annual report to the leadership of both Houses and the President on the implementation of programs. In the reports, the committees were to include evaluations of programs under their jurisdiction, an assessment of the administration of agencies investigated, and recommendations for organizational and program changes, as well as any proposed elimination of unnecessary activities under their jurisdiction.<sup>84</sup>

The 1966 Joint Committee Report also recommended that standing committees hold hearings on major reports issued by the executive branch. The committee suggested that these hearings could generate a more consistent dialogue between the executive and

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<sup>78</sup> Ibid.

<sup>79</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 832.

<sup>80</sup> George B. Galloway, “The Operation of the Legislative Reorganization Act of 1946,” *The American Political Science Review* 45, no. 1 (March 1951) 41-68, 59.

<sup>81</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 24 (July 28, 1966).

<sup>82</sup> Ibid, 23-24.

<sup>83</sup> Ibid, 24.

<sup>84</sup> Ibid.

legislative branches, and result in Congress placing greater emphasis on legislative oversight in the agenda-setting process.<sup>85</sup> The Joint Committee also called for a thorough review of all existing agency reports required by law to determine if the reports were still useful.<sup>86</sup>

The 1970 Legislative Reorganization Act did not incorporate most of the Joint Committee's recommendations regarding oversight activities. The LRA of 1970 did require each standing committee to submit a report to their respective house on their oversight activities at the beginning of the year, every other year, starting in 1973.<sup>87</sup>

In the 1970s, Congress passed legislation to improve oversight, and increase the role of oversight in the congressional agenda. The Congressional Budget Impoundment and Control Act authorized the GAO to establish an Office of Program Analysis (OPA), which recommends methods for Congress to use in the review and evaluation of programs and provides technical assistance to committees on how to design and execute oversight hearings and assists committees in conducting oversight.<sup>88</sup> The Inspector General Act of 1978 placed inspectors in executive agencies to evaluate programs and submit reports to Congress.<sup>89</sup> Congress intended that these reports would support legislative oversight functions.

### **The Joint Committee on the Organization of Congress, 1993–1994**

The 1993 Joint Committee on the Organization of Congress reported that the lack of oversight of the executive branch continued to be an issue. Members testified that Congress did not engage in sufficient oversight and did not pay enough attention to the oversight it did perform.<sup>90</sup> The Joint Committee cited that the lack of oversight was in part due to members' busy schedules, which left little time to invest in oversight. The Committee also cited that Members did not have adequate incentives to perform oversight.<sup>91</sup> The Committee noted that Members seek election to form national policy and represent their district, state, or a broader national constituency.<sup>92</sup> While Members may see legislative oversight as an important function, most do not view their role as being an overseer of government.<sup>93</sup>

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<sup>85</sup> Ibid, 25.

<sup>86</sup> Ibid.

<sup>87</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 21.

<sup>88</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 156 (December 17, 1993).

<sup>89</sup> Ibid, 153.

<sup>90</sup> Ibid, 165.

<sup>91</sup> Stanley Bach, "Incentives and Opportunities for Oversight: Comparative Implications of the American Congressional Experience," *Congressional Research Service* (2000) 9.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

During the 1994 Joint Committee hearings, Members offered recommendations to enhance oversight activities and increase the role of oversight in the legislative agenda. For instance, some Members proposed moving to a biennial budget system that would allow committees to focus on oversight in the year not dedicated to the budget and appropriations process.<sup>94</sup> Other Members recommended that committees be required to conduct annual hearings on the previous year's Inspector General (IG) and GAO reports. Under this recommendation, agencies would deliver annual reports to standing committees on their actions in response to outstanding IG and GAO recommendations.<sup>95</sup> Congress did not pass legislation implementing the recommendations of the 1994 Joint Committee.

## **From 1994 to the 113th Congress**

Since the 1994 Joint Committee, oversight of the executive branch continues to challenge the Congress and affect the relevance of the congressional agenda. Some have argued that while legislative oversight in the form of investigation of scandals has taken place since 1993, traditional oversight activities have declined.<sup>96</sup> For example, oversight hearings in the House and Senate (excluding appropriations committees) dropped from 782 and 429 hearings, respectively, in the first six months of 1983, to 287 and 175 hearings during the first six months of 1997.<sup>97</sup> This reduction in legislative oversight has continued since the late 1990s, despite the hearings generated by crises of the 2000s, including September 11, the war in Iraq, and Hurricane Katrina, during which calls for more oversight continued to be made by the public and those in Congress.<sup>98</sup>

# **The Budget and Appropriations Processes**

## **Introduction**

This section of the report provides a historical analysis of proposed and enacted legislation and rule changes affecting the federal budget and appropriations processes. The analysis highlights three recurring themes that emerged during previous reforms of the budget and appropriations process. First, there was a continuous effort to establish and maintain a balance in budgetary power between the executive and legislative branches. Second, Congress tried to mitigate a tension between centralized and decentralized control within the Congress over budget and appropriations measures. Third, the Congress attempted to adapt its budget and appropriations processes to respond effectively to increase spending and reduce the deficit and deficit growth. The following analysis explores these three themes in relation to each era of budget reform.

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<sup>94</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 156 (December 17, 1993)165.

<sup>95</sup> Ibid, 165-166.

<sup>96</sup> Norman J. Ornstein and Thomas E. Mann, "When Congress Checks Out," *Foreign Affairs* (November/December 2006) 67-84.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

## **Theme One: Balancing Executive and Legislative Control of the Budget and Appropriations Processes**

The first recurring theme identified by the Joint Committees is the effort to balance budgetary control between the executive and legislative branches. While the Constitution does not grant power over the federal budget process to one branch of government, it places the “power of the purse” in the hands of Congress.<sup>99</sup> This authority gives Congress absolute power to determine how much the federal government shall spend.<sup>100</sup> However, the share of executive or legislative control over the federal budget has historically been determined by several factors. One such factor is the ability to consider the budget as a whole: information collected and reported by program as well as total revenues and expenditures. Another factor is the amount of informational, technical, and analytical resources available to the President or the Congress to assist in budget-related activities. Finally, the political environment within and between the executive and legislative branches affected the amount of control that each branch was able to exert over the budget and appropriations processes. The joint committee recommendations and resulting legislation attempted to balance the roles and authorities of the President and the Congress in formulating, deliberating, and establishing a budget and appropriating funds.

### **An Early Imbalance**

From the beginning of the Republic through World War I, budgetary power was concentrated in the legislative branch. The President was not directly involved in the budget formulation because federal agencies submitted their individual budget requests directly to congressional committees. This was problematic because agency heads submitted the same budget request to more than one committee with spending jurisdiction. This resulted in an overlap in appropriations and an increase in total spending.<sup>101</sup>

During World War I, the United States government saw a dramatic increase in federal spending and deficits. In 1920, recommendations from select committees<sup>102</sup> in the House and the Senate identified the need for an executive budget to address rising appropriations and lack of control over total spending. In the select committee hearings, members expressed that the President needed to play a larger role in the coordination of the budget to better manage and control total spending and to determine an appropriate

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<sup>99</sup> Edward Davis and Robert Keith, "Congressional Budget Process Reform," *Congressional Research Service* (February 8, 1988) 4.

<sup>100</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 25 (July 28, 1966).

<sup>101</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 110 (December 17, 1993).

<sup>102</sup> In 1919 the Congress established select committees in the House and the Senate to hold hearings and recommend ways to involve the President in the budget process.

balance between projected revenues and outlays.<sup>103</sup> These congressional studies led to the enactment of the Budget and Accounting Act (BAA) of 1921 (P.L. 67-13), which required that the President formulate and submit a consolidated, unified budget to the Congress at the beginning of each session. This act centralized the budget preparation with the President.

The BAA also created the Bureau of the Budget (BOB), later renamed the Office of Management and Budget (OMB), to aid the President in creating the unified budget. The BOB supported the executive budget-making process through the provision of detailed research and analysis on federal programs and policies. The new agency was tasked with advising the various federal agencies on the development of their budget requests and reviewing the requests before including them in the President's budget.<sup>104</sup> The new process allowed the President to ensure that the annual budget request reflected his policy priorities.<sup>105</sup>

### **The Joint Committee on the Organization of Congress, 1945–1946**

Although the BAA created a coordinated budget process in the executive branch, it did not alter the legislative budget and appropriations processes. As a result, the Congress depended upon the President's budget resources to inform budget and appropriations deliberations. This reliance on the President and lack of congressionally controlled resources to match the expertise in the BOB resulted in formal reviews of congressional operations, one of which was its first Joint Committee on the Organization of Congress in 1945.<sup>106</sup> To help mitigate the imbalance, the Joint Committee recommended the chambers formulate and pass a centralized budget resolution to provide the Congress with its own independent source identifying and addressing factors affecting the budget. The Congress included these recommendations in the LRA of 1946 (P.L. 79-601), which required the annual budget resolution to be passed in both the House and the Senate by February 15. The resolution was supposed to include estimates of total revenues, a spending ceiling, and an acknowledgement of deficit spending if estimated outlays exceeded revenues.<sup>107</sup>

A lack of proper procedural planning prior to the formal deliberations of the resolution and irreconcilable differences between the House and Senate prevented the Congress from successfully passing the budget resolution provision in 1947.<sup>108</sup> A budget resolution passed in 1948, but the Congress did not adhere to the resolution in the appropriations

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<sup>103</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 110-111 (December 17, 1993).

<sup>104</sup> Allen Schick, *The Federal Budget: Politics, Policy, Process* (Washington D.C.: The Brookings Institution, 2007) 35.

<sup>105</sup> *Ibid.*, 35-36.

<sup>106</sup> Davidson, "The Advent of the Modern Congress," 360.

<sup>107</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 833.

<sup>108</sup> George E. Outland, "Congress Still Needs Reorganization," *The Western Political Quarterly*, 1, no. 2 (June 1948) 157.

process because it was not a binding law.<sup>109</sup> In 1949, the resolution process was abandoned, although not formally repealed until 1970.<sup>110</sup> As a result of the failure of the budget resolution option, the budgetary power imbalance remained in favor of the executive branch.

In subsequent formal reviews of congressional operations, the Congress revisited the need to have an integrated, unified approach to budget and appropriations processes controlled by the Congress. The Congress enacted a formal process to achieve an annual unified budget by passing the Congressional Budget and Impoundment Control Act of 1974 (CBA 1974). The congressional budget reforms leading to CBA 1974 are discussed in the next section.

### **The Joint Committee on the Organization of Congress, 1965–1966**

The LRA of 1946 attempted to correct the imbalance in analytical and informational resources available to the Congress compared to those of the President resulting from the creation of the BOB. While the President had the BOB to support the development of the executive budget, the Congress did not have adequate in-house technical or professional capacity to produce its own independent review of the budget request. The 1946 Joint Committee Report recommended that the Library of Congress's Legislative Reference Service (LRS) fulfill that role and provided a permanent authorization for appropriations for the LRS.<sup>111</sup> This would have given the LRS the responsibility and authority to evaluate the President's budget and help the Congress construct its own budget to replace the President's. The LRS was not adequately funded by the Congress in the years that followed the passage of the LRA,<sup>112</sup> which rendered it unable to conduct an independent budget review and assist the Congress with budget issues.<sup>113</sup> The Congress was left without independent analytical resources.

The BAA and the unsuccessful fiscal reforms of 1946 resulted in budgetary power residing with the President. This power bolstered presidential initiatives of the 1950s and 1960s, including funding for the Cold War, the space program, the Vietnam War, and President Johnson's Great Society programs. Presidential control of the budget directly affected the power of the President to initiate and advance policy.<sup>114</sup>

The increasingly dominant role of the executive branch in the budget process was partially responsible for the creation of the 1965 Joint Committee on the Organization of

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<sup>109</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 111 (December 17, 1993).

<sup>110</sup> Paul Ryan, "The Federal Budget Process, A Brief History of Budgeting in the Nation's Capital" (December 7, 2011) <http://budget.house.gov/uploadedfiles/bprhistory.pdf>, accessed December 1, 2012, 1-2.

<sup>111</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 836.

<sup>112</sup> Schick, "The Federal Budget... 2007," 158.

<sup>113</sup> Ida A. Brudnick, "The Congressional Research Service and the American Legislative Process," *Congressional Research Service* (April 12, 2011), 1. <http://www.fas.org/sgp/crs/misc/RL33471.pdf>, accessed December 3, 2013.

<sup>114</sup> "Federal Spending Hits 142.2 Billion," *New York Times* (July 7, 1966) 18.

Congress and the resulting LRA of 1970. Members voiced similar concerns to those expressed in 1946, primarily that they lacked resources needed for producing and analyzing a unified budget. Members perceived that the OMB, formerly BOB, provided the executive branch with superior data upon which to make policy and funding choices. In response, the Joint Committee recommended increasing the amount of data available to the Congress, and improving the quality of economic forecasting.<sup>115</sup> To achieve this goal, the GAO was assigned the responsibility of providing objective fiscal information to Congress in 1970.<sup>116</sup> This was similar to the role that the LRS was assigned but unable to carry out in 1946. While the 1967 LRA was not enacted, this recommendation laid the foundation for the creation of the Congressional Budget Office (CBO) in 1974.

Congress's efforts to build its own capacity to analyze the budget continued through the 1960s and early 1970s. The Congress again tried to build budget capacity through the LRA of 1970 (P.L. 91-510). The law increased congressional resources for information on financial matters by requiring that the GAO produce cost-benefit analyses of federal programs and compile budgetary information, including receipts and expenditures from federal agencies.<sup>117</sup> Whereas the LRA of 1946 designated the GAO with the responsibility of helping executive branch agencies improve their accounting systems and controls over spending, the responsibilities for the GAO set forth in the LRA of 1970 focused on helping the Congress analyze how well government programs were meeting their objectives.<sup>118</sup> The LRA of 1970 also required the President to submit a supplementary budget and a midsession review of the budget and its underlying assumptions to inform the Congress of changes made to its initial projections.<sup>119</sup>

The GAO proved to be ineffective at providing the economic information required by Congress. Made up of mostly accountants, the GAO was skilled at auditing the budget but was not equipped to conduct and analyze program evaluations.<sup>120</sup> While Congress gained some capacity by receiving a supplemental budget and midsession reviews, it continued to lack adequate resources needed to conduct independent analysis.

The early 1970s were marked by an escalation of tension between the two branches over the budget and appropriations processes. In 1972, President Nixon asked Congress for the

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<sup>115</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 2-3 (July 28, 1966)

<sup>116</sup> LRS's role was defined in the 1967 LRA to provide for more robust research capabilities.

<sup>117</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 29 (July 28, 1966)

<sup>118</sup> "The History of GAO – After World War II," *Government Accountability Office*, [www.gao.gov/about/history/postwwii.html](http://www.gao.gov/about/history/postwwii.html), accessed April 22, 2013; the shift in responsibilities occurred in the wake of LBJ's Great Society Era programs.

<sup>119</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 112 (December 17, 1993).

<sup>120</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 7 (July 28, 1966)



authority to cut federal spending at his own discretion in order to stay under the \$250 billion spending ceiling that was proposed by the Congress for fiscal year 1973.<sup>121</sup> Congress refused this request, but Nixon used the impoundments to level spending.<sup>122</sup> The Congress saw this as an overreach of power.<sup>123</sup>

## **Congressional Budget and Impoundment Control Act of 1974**

In response to Nixon's use of impoundments, Congress formed the Joint Committee on Budget Control of 1972, which led to the enactment of the Congressional Budget and Impoundment Control Act of 1974 (CBA 1974). The CBA 1974 addressed the imbalance of power between the two branches in two ways. First, the CBA 1974 created the Congressional Budget Office (CBO) to match the expertise provided to the executive branch through the OMB. The CBO was to provide the Congress with objective, timely, nonpartisan analysis on information and estimates required by the Congress, including economic forecasts, to better analyze impacts of budget decisions.<sup>124</sup> With the CBO, the Congress could rely on its own experts' budget estimates and facts to develop its budget resolution independent of the executive branch, and the President's budget could be assessed with expertise internal to the Congress.<sup>125</sup>

The CBA 1974 also addressed the balance of power between the two branches by limiting the President's power to use impoundments. The CBA divided presidential impoundments into two distinct classes, rescissions and temporary deferrals of expenditures, and assigned congressional roles to each class.<sup>126</sup> Rescissions could be proposed by the President but would require congressional approval to be implemented, and temporary deferrals would be proposed by the President and be implemented unless rejected by Congress.<sup>127</sup> As such, impoundments could no longer be made at the President's total discretion, but rather as a joint effort between the executive and

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<sup>121</sup> Richard Nixon, "Statement about Budget Results for Fiscal Year 1973," (July 26, 1973) <http://www.presidency.ucsb.edu/ws/?pid=3918>, accessed November 29, 2012.

<sup>122</sup> An action taken by the President in which he or she proposes not to spend all or part of a sum of money appropriated by Congress. Prior to CBA 1974, impoundments were undertaken by way of executive order that would forbid the Treasury to transfer the money in question to the agency's account. After CBA 1974 was enacted, impoundments were divided into two categories: rescissions and temporary deferrals of expenditures. Specific procedures for both are discussed.

<sup>123</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 112 (December 17, 1993).

<sup>124</sup> Ibid.

<sup>125</sup> James A. Thurber, "Twenty Years of Congressional Budget Reform," *The Public Manager* (Summer 1996) 1.

<sup>126</sup> Rescissions are permanent cancellations of budget authority which would require congressional approval and temporary deferrals of expenditures remain in force unless rejected by the Congress. Jurisdiction over both rescissions and temporary deferrals was assigned to the appropriations committees in both chambers.

<sup>127</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 113 (December 17, 1993).

legislative branches. The creation of the CBO and the control of aimed to improve the balance of budgetary power between the branches.

Despite the enactment of CBA 1974, growing budget deficits in the 1980s caused further escalation of the tension between the two branches over budgetary control. Although both branches sought to cut the deficit, they differed over the most effective way to achieve that goal. President Reagan supported the adoption of a Constitutional amendment requiring a balanced budget. He also wanted the executive to have the authority to implement a line item veto.<sup>128</sup> The Congress sought to reduce the size of the deficit through the mechanisms created in the Gramm-Rudman-Hollings (GRH) Act 1985 (P.L. 99-177).<sup>129</sup> The GRH 1985 required the Congress to adhere to target amounts for deficit reduction each year until expenditures were in balance with revenues. Failure to reach these targets could result in sequestration<sup>130</sup> or automatic spending cuts on all nonexempt programs.<sup>131</sup>

### **Joint Executive-Legislative Deficit Reduction Efforts**

Sequestration was intended to motivate Congress and the President to work together to find a common solution towards deficit reduction, rather than face the threat of automatic spending cuts. For mandatory spending programs, the cuts would be done automatically each fiscal year. The discretionary spending sequester would be achieved by lowering the discretionary spending caps by the sequester amount over the period of five years.<sup>132</sup> In order to avoid the automatic cuts, the branches would have to work together to meet the targets outlined in GRH 1985.

The Supreme Court ruled the elements of the legislation unconstitutional because of the process for determining sequestration orders. By order of the court, the Congress revised the sequestration procedure creating the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119).<sup>133</sup> This act retained the deficit reduction targets of GRH 1985 and also required the OMB and CBO to develop an annual joint report making recommendations for meeting the deficit reduction cuts and implementing sequestration procedures if the targets were not reached.<sup>134</sup> The mechanisms enacted in

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<sup>128</sup> John Palmer, and Rudolph Penner, "The Hard Road to Fiscal Responsibility," *Public Budgeting & Finance* (Fall 2012) 16.

<sup>129</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 114 (December 17, 1993).

<sup>130</sup> Sequestration is a process of automatic, largely across-the-board spending reductions to meet or enforce certain budget policy goals.

<sup>131</sup> Exempt programs include Social Security; Medicaid; veteran's compensation; veterans pensions; Aid to Families with Dependent Children (AFDC, currently known as TANF), Supplemental Security Income (SSI); Women, Infants, and Children (WIC); food stamps (currently known as SNAP); postal service fund; the earned income tax credit; and various other related programs are exempt.

<sup>132</sup> Rich Meade (Managing Director at Prime Policy Group), presentation to the Republican National Committee, "The Budget Control Act: A Breakdown," *Prime Policy Group* (August 4, 2011), <http://www.prime-policy.com/practitioners-corner/budget-control-act-breakdown>.

<sup>133</sup> Davis, "Congressional Budget Process Reform," 9.

<sup>134</sup> Ibid.

the 1987 act did not result in reducing the deficit, the cause of which will be further explained in a later section. However, it is important to note that this legislation was an attempt at collaboration between the two branches on budget reform.

In the early 1990s, the two branches continued to work together on a plan to reduce the growing deficit. In 1990, Congress convened a bipartisan budget summit and agreed to a deficit reduction plan. The agreement was implemented in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508). Title XIII of this act is referred to as the Budget Enforcement Act (BEA), which established statutory discretionary spending caps. The BEA also authorized the President to invoke a budget sequestration if the Congress spent in excess of the established spending caps.<sup>135</sup> The BEA also established the Pay-As-You-Go (PAYGO) process, which required that any new executive or legislative proposal be budget neutral or be offset with savings in another area. With these statutory restrictions in place, neither branch had the liberty to fund great expansions of programs or initiatives without balancing them with revenue increases or spending cuts.

## **Executive-Legislative Budget Negotiations**

Negotiations between the executive and legislative branches have varied across different Congresses depending on the executive's approach to budgeting, and the size of the President's party in Congress. Some Presidents have been more invested and successful than others in negotiating with the Congress. Presidents who make budget negotiations their top priority have typically enjoyed more success in influencing the legislative budget. However, the success and outcomes of budget negotiations between the branches depended on whether the Congress and the government are divided. If the President's party did not have a majority in the Congress, it was often difficult for the President to ensure that his tax and spending priorities were included in the final budget and appropriations legislation.

Historical trends in budget negotiations and outcomes demonstrate the sensitivity of the budget process to partisan politics when there is a divided government. In addition, the traditional challenges in the budget process have been exacerbated by the growth of the federal deficit, and the integration of debt limit and deficit-reduction negotiations with the traditional budget functions. For example, a fiscal year 2012 budget was never adopted, leaving executive agencies without clear funding levels and the threat of a government default. The executive branch recognized the need for an outside process to deal with debt and deficit questions.

In place of a budget for fiscal year 2012, the President and the Congress agreed to the Budget Control Act of 2011 (BCA 2011). The BCA 2011 prevented a government default in the short term by raising the debt ceiling. To offset the costs of the debt-ceiling increase, a sequestration order would have taken effect in January 2013 if the Congress and the President could not develop a compromise. While the Congress came to a short-

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<sup>135</sup> Budget Enforcement Act, 1990, Title VIII. Pub.L.101-508, 104 Stat. 1388-573; 2 U.S.C. & 15 U.S.C. § 1022 (1990).

term compromise in the final hours of 2012, they did not reach a long-term agreement and a federal sequestration bill was signed into law on March 1, 2013.

The tight restrictions on spending, the threat of sequestration, and deficit ceilings restrict both branches from acting unilaterally on the budget and appropriations processes. For either branch to adopt legislation that significantly changes spending or revenue, it must be willing to engage in negotiation. These negotiations do not always result in a successful compromise, especially when the majority party in the Congress differs from the political party of the President. However, negotiations and the ability to develop compromise between the two branches is a necessary component to passing a unified budget.

## **Theme Two: Centralized versus Decentralized Congressional Budget and Appropriations Processes**

Unlike the first theme, which focused on the President and the Congress, the second recurring theme focuses on the tension within the Congress between establishing centralized or decentralized budget, authorizations, and appropriations processes. In the 1946 and 1970 Joint Committees on the Organization of Congress, members expressed a need to centralize the processes.<sup>136</sup> Prior to 1974, there was no overarching authority in the Congress with responsibility to view the budget as a whole. This resulted in standing committees authorizing programs, and appropriations committees making funding recommendations for those programs without regard for overall spending totals or consideration of projected revenues.<sup>137</sup>

Decentralization allowed for individual members to hold a concentrated amount of power over the authorizing and appropriations processes, often leading to increased spending, growing deficits, and a lack of transparency. In 1974, reforms advocating centralization measures aimed to reduce overall spending and to increase transparency in the budget and appropriations processes. Centralization efforts led to tensions within the Congress over matters related to control of the authorization and appropriations processes.<sup>138</sup>

### **Early Attempts at Centralization**

In the early 1920s, the House and the Senate attempted to centralize the budgetary process within the Congress. The BAA of 1921 reconsolidated appropriations jurisdiction in the House Appropriations Committee. The Senate followed suit in 1922. This consolidation effort was short lived. “Backdoor spending,” through borrowing authority and contract authority,<sup>139</sup> allowed legislative authorizing committees to bypass the

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<sup>136</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 111 (December 17, 1993).

<sup>137</sup> Ibid, 111-112.

<sup>138</sup> Outland, “Congress Still Needs Reorganization,” 158.

<sup>139</sup> Borrowing authority is the legal ability of a federal entity to issue promissory notes or other monetary credits and then obligate or expend those funds without prior appropriations from the Congress. Contract

appropriations committee and annual appropriations process.<sup>140</sup> The decentralized and “backdoor” appropriations processes led to increased spending and rising deficits due to a lack of consideration for total spending.

### **The Joint Committee on the Organization of Congress, 1945–1946**

The LRA of 1946 created new protocols for the budget and appropriations processes to make the allocation of money more centralized, open, and fair. As stated in the previous section, the LRA of 1946 contained a provision requiring a concurrent congressional budget resolution that would estimate total receipts and outlays. The LRA of 1946 also required the Congress to recommend how to reduce the public debt if estimated outlays exceeded revenues.<sup>141</sup> The centralized consideration of spending with respect to revenue would have reduced the power of individual committee chairs who held appropriations power by placing limits on the appropriations amounts. Many of the senior members and committee leaders opposed the centralized budget resolution process and did not support its implementation.<sup>142</sup>

In addition to restricting the Congress’s ability to control total spending, decentralized budget and appropriations processes also led to a lack of information and transparency among members of Congress. The 1946 Joint Committee recommended rules to provide members the opportunity to scrutinize expenditures proposed by the appropriations committees. Members reported they did not have enough time or standardized information to make informed decisions when voting on appropriations bills.<sup>143</sup> As a result, the LRA of 1946 required that appropriations committee and subcommittee hearings be open to the public, and required a three-day wait period between the formal reporting of the bill and the floor vote to give members more time to read and understand the legislative proposal scheduled for a floor vote.<sup>144</sup> The provisions were not successfully implemented or enforced following the passage of the act, due largely to the lack of support of senior leaders and committee chairs who saw this as reducing their authority and control.<sup>145</sup>

### **The Joint Committee on the Organization of Congress, 1965–1966**

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authority is the legal authority given to federal entities to make funds available for obligation, but not expenditure, prior to receiving funds through legislative appropriations.

<sup>140</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 111 (December 17, 1993).

<sup>141</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 833.

<sup>142</sup> Davidson, “The Advent of the Modern Congress,” 371.

<sup>143</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 20-21 (March 4, 1946).

<sup>144</sup> Outland, “Congress Still Needs Reorganization,” 157.

<sup>145</sup> Ibid, 157, 164.

The movement to centralize the congressional budget process reemerged in the 1965 Joint Committee report.<sup>146</sup> The use of a timetable as a means of budget reform was introduced by suggesting an annual appropriations process. The Joint Committee advised appropriations committees to be more conscious of the importance of their role in fiscal control and adopt procedures to further that role.<sup>147</sup> Since the appropriations committees were the primary funding committees at that time, the Joint Committee encouraged them to consider the budget as a whole and to review major programs during their deliberations.<sup>148</sup> The Joint Committee of 1965 resulted in the LRA of 1970. The LRA of 1970 attempted to centralize the budget and appropriations processes by requiring annual appropriations and codifying a long-range budget plan, including a five-year cost projection to be included in authorization committee reports on legislation.<sup>149</sup>

### **Congressional Budget and Impoundment Control Act of 1974**

Deadlines for passing annual appropriation bills were not well enforced under the LRA of 1970, so the need for a timetable for the budget and appropriations process arose again in CBA 1974. The act required a concurrent budget resolution as a tool for considering the budget as a whole. The process followed a timeline for enacting the budget resolution. The budget resolution required that Congress provide a general budget blueprint for authorizing and appropriations committees. This would help to place the various revenue, spending, and debt limit decisions in a logical sequence that would allow for sensitivity to the larger budget context.<sup>150</sup> The budget resolution was designed to be an internal authority to strengthen the operations of Congress; it did not carry the authority of law. After passage of the CBA in 1974, the Congress had its own procedure to vote on total spending, revenues, budget priorities, and the size of the deficit.<sup>151</sup>

A second way that CBA 1974 centralized the budget and appropriations processes within the Congress was by creating standing budget committees in both chambers.<sup>152</sup> The committees were responsible for examining the President's annual budget message, reestimating the budget as desired, drafting the concurrent resolution that set the overall revenue and spending levels, setting budget authority and outlay targets for each of

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<sup>146</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 111 (December 17, 1993).

<sup>147</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 33 (July 28, 1966).

<sup>148</sup> *Ibid.*, 32.

<sup>149</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 112 (December 17, 1993).; five year cost projections were also required to be included in the President's budget submission.

<sup>150</sup> Davis, "Congressional Budget Process Reform," 4.

<sup>151</sup> Thurber, "Twenty Years of Congressional Budget Reform," 1.

<sup>152</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 112-113 (December 17, 1993).

twenty-one spending categories, and preparing guidelines in the annual budget resolution for cutting programs to meet spending targets.<sup>153</sup>

The responsibilities granted to the budget committees directly challenged the power of the authorizations and appropriations committees, weakening the power of all committee chairs.<sup>154</sup> While creating the standing budget committees centralized the budget process within Congress, members questioned whether this strategy was effective for developing a cohesive, overall approach to budget and appropriations activities. Some members questioned whether the standing budget committee would curtail the power of the authorizations and appropriations committees, and increase divisiveness within the Congress.<sup>155</sup>

### **Centralization of the Budget Process for Deficit Reduction**

Unprecedented deficit levels in the 1980s led the Congress to continue its effort to centralize the budget and appropriations process. In 1981 the House created the Beilenson Task Force and the Senate created the Quayle Committee. Both committees were tasked with formally reviewing the structure of the congressional budget process, including the timing of resolutions and coordination of budgetary activities by various committees.<sup>156</sup> There were concerns about how large the deficit had grown, and these committees were established to address these concerns.<sup>157</sup>

These appointed committees were the first focused budgetary reform efforts since 1974 and resulted in the enactment of the GRH Act in 1985. The GRH Act contained numerous provisions establishing a requirement for the gradual reduction and elimination of budget deficits over a six-year period by specifying annual deficit limits and by creating a means of developing and enforcing a budget within these established limits.<sup>158</sup> President Reagan supporters inside of the Congress were concerned that the concurrent budget resolution process would not be effective for meeting deficit targets. They asserted that agreements on the levels of spending would be more enforceable if the budget resolution was enacted into law.<sup>159</sup> This would have required Presidential approval, giving the President a formal role in shaping congressional budget policies. This recommendation was never enacted because the congressional leadership was

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<sup>153</sup> "Committee History," *U.S. House of Representatives Committee on the Budget*, <http://budget.house.gov/about/committeehistory.htm>

<sup>154</sup> Mark W. Huddleston, "Assessing Congressional Budget Reform: The Impact on Appropriations," *Policy Studies Journal* 9, no. 1 (September 1980) 1.

<sup>155</sup> *Ibid.*

<sup>156</sup> Megan Suzanne Lynch, "Statutory Budget Controls in Effect between 1985 and 2002," *Congressional Research Service* (July 1, 2011) 2.

<sup>157</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 113-114 (December 17, 1993).

<sup>158</sup> Lynch, "Statutory Budget Controls," 2.

<sup>159</sup> Davis, "*Congressional Budget Process Reform*," 12.

concerned that this reform would increase executive branch authority over the budget and appropriations process.<sup>160</sup>

In the 1990s and 2000s, the Congress continued its effort to control the federal deficit through the budget and appropriations processes. The deficit-control measures heightened conflict during the congressional budget and appropriations negotiations.<sup>161</sup> Congress used three mechanisms to deal with deficits—all of which had implications for spending and revenue decisions and added additional components and requirements to the budget process.

The first mechanism was strict deficit targets created by GRH with automatic sequestration imposed if the targets were not met. The provisions of GRH concentrated on single-year outcomes, which led to short-term fixes and accounting tricks.<sup>162</sup> The second mechanism was the pay-as-you-go process (PAYGO), created in 1990 by the BEA. PAYGO eliminated annual deficit targets and included more flexible spending controls. PAYGO mandated that new spending, mandatory or discretionary, be budget neutral. This requirement helped the Congress to better control new or expanding mandatory spending programs, but did not allow Congress to account for growth in eligibility or enrollment in the existing entitlement programs.<sup>163</sup> PAYGO's attempted to limit deficit growth by requiring that Congress offset proposed funding increases with reductions in other funding, or increases in revenue. Increased transparency and scrutiny of proposed legislation resulted in slower and more contentious deliberations over spending.

The third mechanism that has centralized consideration of the budget and appropriations processes is the reconciliation procedure introduced by the CBA 1974. Reconciliation is an optional process intended to help the Congress meet spending limits and revenue floors established in the budget resolution.<sup>164</sup> In developing reconciliation language, individual committees proposed legislation to change existing revenue and spending laws. The legislation has typically been aggregated by the budget committees into one omnibus reconciliation act.<sup>165</sup> Large omnibus bills were meant to simplify the reconciliation process by allowing a single vote on all measures, but in practice reconciliation has slowed the budget processes within the Congress for two reasons.

Although the original purpose was to trim the deficit by increasing revenues or decreasing spending, in some instances reconciliation has been used by the Ways and Means and Finance Committees as a tool for reducing taxes.<sup>166</sup> The unintended consequence of reconciliation has been a reduction in revenue when direct spending

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<sup>160</sup> Ibid.

<sup>161</sup> Alice M. Rivlin, "Rescuing the Budget Process," *Public Budgeting & Finance* (Fall 2012) 55.

<sup>162</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 114 (December 17, 1993).

<sup>163</sup> Ibid, 116.

<sup>164</sup> Schick, "The Federal Budget... 2007," 142.

<sup>165</sup> Ibid, 143.

<sup>166</sup> Ibid, 142.



requires additional funds. In addition, because the reconciliation bill cannot be filibustered in the Senate, members often try to attach unrelated provisions to the bill before it reaches the floor, which has further delayed consideration and increased the complexity and divisiveness of the budget process.<sup>167</sup>

Additional measures in CBA 1974 intended to centralize budget power in the Congress by providing an overall view of the budget, which allowed individual spending decisions to be placed in the context of all spending decisions. Standing budget committees were created in each chamber to examine the legislative budget as a whole. Although the budget committees increased the centralization of the process, the committees have also made the process more complex.<sup>168</sup>

The standing budget committees were created at a time when the roles and responsibilities of the authorizations and appropriations committees were becoming increasingly intertwined.<sup>169</sup> Leaders of authorizations and appropriations committees were reluctant to cede power to the budget committees.<sup>170</sup> Because the leadership's buy-in for this reform was so tepid, passing the budget resolution and appropriations bills in a timely and complete manner became even more difficult.

When the House and the Senate have been controlled by differing parties, the budget resolution process has been contentious and unsuccessful. A budget resolution was not passed in 1999, 2003, 2005, 2007, 2011, 2012, all divided chambers within the Congress. Without a budget resolution, the Congress is unable to adequately plan for the next fiscal year because Members automatically have to adopt the previous year's resolution. This prevents the Congress from creating a framework based on timely, accurate economic assumptions for funding decisions in the immediate and near term.

The complex centralized budget resolution process also affects the appropriations process. Because the concurrent budget resolution is often late or unsuccessful, the appropriating committees frequently begin spending deliberations prior to receiving the spending guidelines of the budget committees in the resolution.<sup>171</sup> Therefore the appropriation subcommittees base their allowable spending on the prior year's resolution and the President's request. As a result, Congress rarely passes individual annual appropriations bills on time for the beginning of a fiscal year. The last time the Congress completed all of the appropriations bills individually by the start of the new fiscal year was 1994.<sup>172</sup>

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<sup>167</sup> Ibid, 146.

<sup>168</sup> Rivlin, "Rescuing the Budget Process," 53.

<sup>169</sup> Ibid, 54.

<sup>170</sup> Ibid.

<sup>171</sup> James Saturno, statement before Senate Committee on Intelligence. "The Separation of Authorizations and Appropriations: A Review of the Historical Record" (Washington D.C., November 13, 2007) 6.

<sup>172</sup> Maya MacGuineas, "Congress' Bad Record of Passing Appropriations Bills Shows Need for Budget Process Reform," *The Hill's Congress Blog* (December 10, 2009) <http://thehill.com/blogs/congress-blog/economy-a-budget/71619-congress-bad-record-of-passing-appropriations-bills-shows-need-for-budget-process-reform>, accessed February 16, 2013.

Instead, the Congress has passed short-term continuing resolutions, which generally provide a temporary continuance of the previous year's appropriation to an agency or program. Continuing resolutions can increase or decrease funding for a program or activity dictated by including specific provisions in the legislation. Therefore, appropriations can be continued and even altered without the Congress reconciling differences. This has implications for the effective implementation and planning conducted by managers of federal programs since they have to develop their next year's budgets without knowing their final funding levels of the previous year.<sup>173</sup> They have to conduct business in a fiscal year in which final funding levels are not available until the fiscal year has begun. As a result of this uncertainty, many managers hoard funds and halt hiring and purchasing, which reduces productivity and innovation in federal agencies.<sup>174</sup> This condition makes program execution and capacity planning difficult at best for agencies impacted by uncertain funding levels.

### **The Joint Committee on the Organization of Congress, 1993–1994**

Efforts to centralize budgeting and appropriations in the Congress had unintended consequences on effectiveness and efficiency of those processes. In some instances the centralization efforts led to redundancy and increased complexity that impinged on timeliness as reported by the 1993 Joint Committee on the Organization of Congress.<sup>175</sup> Members testifying before the committee recommended combining authorizations and appropriations committees to decrease complexity in the congressional budget process.<sup>176</sup> The 1993 Joint Committee also recommended consideration of a biennial federal budget process intended to reduce the pressure of the annual timeline.<sup>177</sup> Although the report included suggestions such as these for reducing redundancy and increasing efficiency in the congressional budget process, the LRA of 1994 was not passed, and the Congress adopted none of the budget recommendations.

Since the 1993 Joint Committee review, budget reform efforts have largely focused on the ways that the congressional budget processes can be used to control the deficit and enforce budgetary discipline rather than improve the timeliness of those processes and ensure appropriate funding levels for individual federal agencies and programs.<sup>178</sup> The use of the budget as a deficit-control mechanism will be discussed in the next section.

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<sup>173</sup> Ibid.

<sup>174</sup> Roy Meyers, "Late Appropriations and Government Shutdowns: Frequency, Causes, Consequences and Remedies." *Public Budgeting and Finance* (Fall 1997) 30.

<sup>175</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 118 (December 17, 1993).

<sup>176</sup> Ibid.

<sup>177</sup> Ibid, 117.

<sup>178</sup> Some recent reform proposals have focused on increasing efficiency and timeliness in the budget process but have not been enacted. These proposals include switching to a biennial budget process and eliminating the Budget Committees in both chambers.

## Theme Three: Controlling Growth in Mandatory Spending and Federal Deficits

The third theme identified in history of budget reform legislation is Congress's desire to increase control over total spending and federal deficits using the budget and appropriations processes. Through the second half of the twentieth century, budget reform efforts increasingly focused on the Congress's need to better manage growth in entitlement program spending and its impact on the federal deficit.<sup>179</sup> CBA 1974 created the congressional budget process to allow Congress to review and control total federal spending, including mandatory spending for entitlement programs. However, since the early 1990s, the Congress has been unsuccessful in completing the annual process, and adjusting provisions in direct spending programs to reduce funding requirements. As a result, deficit spending continued through the early twenty-first century, causing the government to reach and extend its debt ceiling seventy-six times since 1962.<sup>180,181</sup> Many modern budget-reform proposals have focused on increasing Congress's ability to effectively control mandatory spending and achieve balanced budgetary outcomes.

### Historical Overview of Mandatory Spending and Budget Reform

Growth in mandatory federal spending has been a major driver of the increase in federal debt since the early in the twentieth century.<sup>182</sup> New and expanded social and regulatory programs in the 1930s led to a significant increase in the federal deficit.<sup>183</sup> Direct spending on Social Security, interest on national debt, and income supports increased fivefold during the 1940s.<sup>184</sup> As a result, the LRA of 1946 required Congress study options for reduction of permanent or mandatory appropriations. Like many of the budget-related items in the LRA of 1946, this provision was never fully implemented.<sup>185</sup> Mandatory spending continued to grow as a portion of the total federal budget.

Increased spending was also a problem throughout the 1960s because of the implementation of the Great Society—era programs enacted by President Johnson and the

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<sup>179</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 113-114 (December 17, 1993).

<sup>180</sup> The debt ceiling is the legal limit that the federal government is allowed to borrow and the Congress must authorize any increase in that limit.

<sup>181</sup> Austin, D. Andrew and Mindy Levit, "The Debt Limit: History and Recent Increases," *Congressional Research Service* (May 22, 2012.) 8.

<sup>182</sup> Bipartisan Policy Center Debt Reduction Task Force, "Restoring America's Future Executive Summary," *Bipartisan Policy Center* (November 2010), 12-13.  
[http://bipartisanpolicy.org/sites/default/files/FINAL%20DRTF%20EXECUTIVE%20SUMMARY\\_0.pdf](http://bipartisanpolicy.org/sites/default/files/FINAL%20DRTF%20EXECUTIVE%20SUMMARY_0.pdf), accessed November 29, 2012.

<sup>183</sup> Schick, "The Federal Budget... 2007," 35.

<sup>184</sup> Office of Management and Budget, *Historical Tables*, table 3.1—Outlays by Superfunction and Function: 1940–2018, <http://www.whitehouse.gov/omb/budget/historicals>.

<sup>185</sup> Outland, "Congress Still Needs Reorganization," 157.

expansion of social welfare program spending, especially Social Security.<sup>186</sup> The funding needs created by these programs were not met through increased revenues. The 1965 Joint Committee report called for better long-range planning by requiring five-year cost projections in both the President's budget submission and in standing committee reports on legislation.<sup>187</sup> These recommendations were not passed into law, but helped lay the foundation for future deficit reduction.

The enactment of CBA 1974 was an effort to reduce total spending, and while it was successful in decreasing discretionary spending, mandatory spending continued to grow. The CBA 1974 did not require Congress to balance the budget and did not require the congressional budget resolution to be enacted into law. This decreased the strength of and accountability to the ceilings set in the resolution.<sup>188</sup> As a result, the deficit grew in the ten years after CBA 1974 was enacted, largely driven by growth in federal insurance programs and Social Security spending. This pattern continued through the 1980s and into the early 1990s, causing members to propose budget reform that would increase Congress's ability to use the budget process to reduce mandatory spending and decrease the deficit. The GRH Act in 1985 and the BEA of 1990 imposed statutory measures that would allow the Congress to reduce the deficit and control spending increases.

The 1993 Joint Committee recommended several ways that the congressional budget process could be altered in order to strengthen the Congress's ability to monitor and control spending. For example, members recommended sunset legislation for all mandatory and entitlement spending accounts that would reduce the special status of entitlement programs by allowing them to be reviewed every few years.<sup>189</sup> Congress would evaluate programs to determine whether they were still worthwhile, and if any spending changes were needed. The 1993 Joint Committee also recommended a constitutional amendment requiring a balanced federal budget. This measure aimed to prevent the Congress from using the temporary deficit reduction agreements that had been previously passed, but not adhered to.<sup>190</sup> The recommendations included in the 1993 report did not gain consensus from Members and ultimately none were enacted.

The 1999 Comprehensive Budget Process Reform Act (CBPRA) focused on ways that the federal budget process could be altered to improve control over mandatory spending. It proposed several specific changes to the congressional budget process that would strengthen the power of the Congress to limit expansions of existing entitlement programs and limit new mandatory spending legislation. Like the 1994 Joint Committee, the CBPRA recommended that new mandatory spending legislation include a sunset

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<sup>186</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 112 (December 17, 1993).

<sup>187</sup> Ibid.

<sup>188</sup> Schick, "*The Federal Budget... 2007*," 160.

<sup>189</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 119-120 (December 17, 1993).

<sup>190</sup> Ibid, 121.

review process in ten years or fewer.<sup>191</sup> It also included a provision that would subject any new direct spending authorization to discretionary appropriations, unless specifically precluded under terms of a special rule.<sup>192</sup> The CBPRA proposed the creation of a new title in the CBA 1974 to alter the treatment of Medicaid and Medicare from cash accounting to accrual accounting. This would allow the Congress to review and incorporate information about the expected long-term costs of the federal insurance programs into their annual budget resolutions and five-year projections. Finally, the CBPRA recommended that both the President and the CBO prepare long-term budgetary trend analyses to better account for long-term mandatory obligations.<sup>193</sup> The CBPRA was introduced as H.R. 853, but it failed to pass in the House.<sup>194</sup>

In 2004 the Congress attempted to increase its power over mandatory spending through the Spending Control Act. This act would have reinstated the PAYGO requirement in the budget process for mandatory spending only, mandating that the Congress offset the costs of any new program with revenue increases or spending decreases in another area but the Congress could not address funding increases due to eligibility cash-in. The Spending Control Act of 2004 also did not pass a House vote.<sup>195</sup>

In 2010, the President's National Commission on Fiscal Responsibility and Reform (NCFRR) was created through an executive order and charged with two main tasks. First, the Commission was tasked with proposing significant cuts to entitlement programs, including Social Security, agricultural programs, and federal pensions as a method of increasing budgetary balance. The commission was also charged with developing budget reform measures that would increase the ability and accountability of both the President and the Congress to maintain a balanced budget. To fulfill the latter requirement, the NCFRR report provided a "stabilization plan" for the federal budget process that would achieve a balanced budget by 2015 and require maintenance of the balance thereafter.<sup>196</sup> The tools for achieving this stabilization included increased reporting requirements for both the OMB and CBO regarding the long-term implications of executive budget proposals and congressional budget resolutions on the public debt. It also required the President and the Congress to include specific recommendations for "stabilization" legislation in their respective budget proposals to bring a budget back in line with the deficit and debt targets established by the commission.

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<sup>191</sup> James Saturno, "H.R. 953 The Comprehensive Budget Process Reform Act: Summary of Provisions." *Congressional Research Service* (August 25, 1999) 9.

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

<sup>194</sup> Comprehensive Budget Process Reform Act of 1999, H.R. 853, 106th Cong. (2000), <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:H.R.853:>.

<sup>195</sup> Bill Heniff Jr., and Robert Keith. "Federal Budget Process Reform: A Brief Overview," *Congressional Research Service* (July 8, 2004) 1.

<sup>196</sup> "The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform," National Commission on Fiscal Responsibility and Reform (December 1, 2010) 56-58.

[http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12\\_1\\_2010.pdf](http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf).

The NCFRR recommended that if the Congress was unable to pass a budget resolution, any member should be allowed to introduce stabilization legislation, which would enjoy fast-track procedures on the floor of each chamber. The recommendations of the sixteen-member NCFRR needed fourteen votes in favor to pass, but received only eleven votes. As a result, the reform package did not receive consideration in the full Congress.

In 2011, former members of the Congress and federal budget experts created two commissions aimed at improving fiscal responsibility by developing recommendations for budget process reform. One, the Pew-Peterson Commission on Budget Reform, published a report with specific recommendations aimed at improving the control of the Congress over total spending.<sup>197</sup> The report recommended creating statutory debt targets and spending and tax expenditure caps. If the established targets were not met, the commission recommended the creation of automatic triggers for sequestration attached to the major drivers of spending including Medicare, Social Security, and tax expenditures.<sup>198</sup>

The second commission, The Bipartisan Committee for a Responsible Federal Budget, also published a report in 2011 that recommended reinstating a strict, statutory PAYGO requirement. The new PAYGO would require that any expansion of existing mandatory spending or new mandatory spending should be offset by increases in revenue or reductions in other mandatory spending programs.<sup>199</sup> The Bipartisan Committee also recommended offsetting automatic cuts for predetermined mandatory programs if the PAYGO requirement was violated.<sup>200</sup> The Bipartisan Committee also recommended that explicit long-term budgets for major entitlement programs be enacted, and that a Fiscal Accountability Commission should be created to assess whether the mandatory program growth was within the established long-term budget.<sup>201</sup> If the program growth were outside of the long-term budget, the Fiscal Accountability Commission would propose measures to restore long-term sustainable growth.

The growing federal deficit, driven largely by increasing mandatory spending on entitlement programs, has garnered significant attention from members of Congress and federal budget experts. The current congressional budget process, as established by CBA 1974, may lack the long-term sustainability planning needed to predict and plan for future trends and obligations.<sup>202</sup> However, some experts posit that the lack of leadership and accountability to the existing process may be more to blame than the process itself.<sup>203</sup>

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<sup>197</sup> Bill Frenzel, Timothy Penny, and Charlie Stenholm, Co-Chairs, "Getting Back in the Black," *Pew-Peterson Commission on Budget Reform* (November 2010) 3.

[http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic\\_Mobility/Peterson-Pew\\_report\\_federal\\_budget\\_process\\_reform.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Peterson-Pew_report_federal_budget_process_reform.pdf), accessed December 1, 2012.

<sup>198</sup> *Ibid.*, 15.

<sup>199</sup> Bipartisan Policy Center Debt Reduction Task Force, *Restoring America's Future*, 20.

<sup>200</sup> This PAYGO requirement would be different PAYGO requirement enacted by President Obama in February of 2010 in that it would exempt significantly fewer programs from the requirement and would impose automatic offsetting cuts if requirement was not met.

<sup>201</sup> Bipartisan Policy Center Debt Reduction Task Force, *Restoring America's Future*, 21.

<sup>202</sup> Schick, "The Federal Budget... 2007," 315.

<sup>203</sup> Jim Nussle, "Perspectives on Budget Process Reform," *Public Budgeting and Finance* 32, no. 3 (Fall 2012) 59.

Some suspect that even with improved or altered budget procedures, the Congress may still face difficulty in significantly reducing spending and the federal deficit due to continued disregard for established rules and procedures.<sup>204</sup> Therefore, before the current process can be declared a failure and in need of comprehensive reform, the Congress might consider how best to adhere to the established procedures and rules.

## **Deliberations**

### **Introduction**

This section of the report provides a historical analysis of proposed and enacted legislation and rule changes affecting congressional deliberations. The Congress's ability to legislate rests heavily on discussions, debates, and compromises that take place among Members of Congress as they consider legislative proposals. This set of activities make up what Members and congressional scholars describe as congressional deliberations. Formal deliberations take place in congressional committees and during floor consideration of legislation. The analysis highlights two recurring themes that emerged during previous reforms of the deliberative process. The first theme is efforts to balance efficiency in the deliberative process with minority participation. The second theme is the decline of deliberations by committees.

### **Theme One: Balancing Efficiency in the Deliberative Process and Ensuring Minority Participation**

#### **The Joint Committee on the Organization of Congress, 1945–1946**

In 1946, the Joint Committee on the Organization of Congress made several recommendations to improve the efficiency of congressional deliberations by reforming the committee system, but the discussion of measures to advance minority participation in deliberations was limited. Testimony before the Joint Committee included proposals to set aside specific days each month to allow Members with legislation pending before the committee to secure public hearings on their proposals. The proposal aimed to ensure that minority Members would have opportunities to publically deliberate their legislative proposals, even when the chair did not support them. The Congress did not adopt this recommendation because some Members believed that it would erode committee chairs' ability to control deliberations.<sup>205</sup>

#### **The Joint Committee on the Organization of Congress, 1965–1966**

The issue of minority party participation in committee deliberations arose again when the Congress convened another Joint Committee on the Organization of Congress in 1965.

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<sup>204</sup> Ibid, 58.

<sup>205</sup> E. Scott Adler, *Why Congressional Reforms Fail: Reelection and the House Committee System* (Chicago: University of Chicago Press, 2002) 134.

The Joint Committee considered several reforms to improve minority participation in the deliberative process.

### **Dedicated Hearings**

Recommendations to enhance minority participation in committee proceedings were limited to providing the minority a dedicated time for conducting hearings. The 1965 Joint Committee recommended allocating the minority at least one day of hearings for witnesses of their choosing. According to the Joint Committee report, an outcome of this recommendation would have been to ensure that minority perspectives could be analyzed and appropriately debated within committees.<sup>206</sup> This recommendation was further refined before enactment in the 1970 legislation, requiring that the majority of the minority formally request that a day of hearings to be granted this privilege by the chair.<sup>207</sup>

### **Minority Viewpoints in Committee Reports**

The Joint Committee also considered allowing the minority to submit formal viewpoints on legislation to be included in committee report. To support this change, the Joint Committee recommended that reports should be available to Members for a minimum of two days prior to official filing.<sup>208</sup> In addition to supporting minority participation in deliberations, this recommendation would have prevented the committee chair from issuing a report without input from committee members. The Joint Committee justified these reforms by stating, “controversial questions can best be analyzed when all sides of the issue are set forth clearly in a single volume.”<sup>209</sup>

### **Timing Between Filing and Floor Action**

The Joint Committee also recommended that newly filed committee reports be available at least three days before any subsequent legislative action could be taken.<sup>210</sup> Allowing this time between actions would give Members the opportunity to read congressional documentation accompanying the legislation, and become versed in the legislative provisions and their purpose prior to committing to a floor vote.<sup>211</sup>

### **Enhancing Authorities of the Minority Leader**

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<sup>206</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 12 (July 28, 1966).

<sup>207</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 17.

<sup>208</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 12 (July 28, 1966).

<sup>209</sup> Ibid, 13.

<sup>210</sup> Exceptions were included for a declaration of war or natural emergency, Joint Committee on the Organization of Congress, Ibid, 12.

<sup>211</sup> Ibid, 13.



Members of the minority party recommended that the minority leader be given the same authority as that of the majority leader to extend debate on the House floor before voting to recommit a bill to committee. This authority would allow the minority to better engage in debate on amendments offered by the majority, as well as ensure that Members had sufficient time to consider amendments offered by the minority. The majority party viewed this recommendation as one that could potentially limit the ability of the majority to control deliberations on the floor in an efficient manner.<sup>212</sup>

With the exception of extending the authority of the minority leader, the Legislative Reorganization Act of 1970 contained all of these recommendations. The reforms represented the largest procedural changes affecting minority participation up to that time.

### **The Joint Committee on the Organization of Congress, 1993–1994**

In 1993, the Joint Committee on the Organization of Congress examined the role of the minority in deliberations, with a focus on the minority's role in floor debates. The committee discussed a variety of rule changes that could result in enhanced participation of the minority. Some of these changes were discussed in previous joint committee efforts and others offered new approaches, including proposals related to the open and closed rules, and filibuster procedures.

#### **Enhancing Authority of the Minority Leader**

Several Members proposed that the minority should have the authority to offer motions to recommit legislation to committees, with instructions, before proceeding to final floor votes. The proposed LRA of 1994 contained provisions reflecting these recommendations. The provision altered the reform proposal by limiting the minority's authority to recommit under specific circumstances: when a special rule prevented the minority from offering amendments, and when the motion to recommit is at the direction of the minority leader. In these situations, the Speaker could postpone action on the motion for up to two hours.<sup>213</sup>

The legislation containing these provisions did not pass the House prior to the end of the congressional session. However, the new Congress resulted in a transition of the minority to the majority party.<sup>214</sup> With momentum focused on changing the operation of the House, the new majority instituted amendments to the House Rules, which codified the right of the minority to offer a motion to recommit, with instructions, the bill back to the floor after the committee added a specific amendment.<sup>215</sup> This rule change was noteworthy

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<sup>212</sup> Kravitz, "The Advent of the Modern Congress," 23.

<sup>213</sup> Legislative Reorganization Act of 1994, H.R. 3801, 103rd Cong. (February 3, 1994) 141-142.

<sup>214</sup> Carol Hardy Vincent and Paul S. Rundquist, "Comparison of H.R. 3801 and S. 1824, 103d Congress; Reform Bills of the Joint Committee on the Organization of Congress," *Congressional Research Service* (May 9, 1994) 6.

<sup>215</sup> Judy Schneider, Christopher Davis, and Betsey Palmer, "House of Representatives: Modern Reform Efforts," *Congressional Research Service* (2003) 59.

since the new majority party adopted rules to enhance the role of the minority in deliberations taking place on the House floor.

## Minority Participation and Rules of Debate

### House of Representatives: Growth in the Use of Closed or Restricted Rules

The House Rules Committee is responsible for determining the rules for debate on the House floor. These rules control the nature and number of amendments that can be offered, the time allotted for debate, and the applicability of certain parliamentary rules. The rules primarily reflect the parameters for deliberations established by the majority. These rules include:

- **Open rules** permit the offering of any amendment that otherwise complies with House rules, and allows debate under the five-minute rule.
- **Modified-Open rules** operate much like open rules, but include some restrictions on the “universe” of amendments, either through a preprinting requirement or an overall time limit on consideration of amendments.
- **Modified rules** specify that only certain amendments may be considered and specify the time for debate.
- **Closed rules** effectively eliminate the opportunity to consider amendments, other than those reported by the committee reporting the bill.<sup>216</sup>

Before the 1980s, the House rarely used closed and modified rules to move legislation through the floor amendment process, and typically reserved the use of these rules for budgetary or emergency legislation.<sup>217</sup> Rules are restricted if they include limitations to the number of amendments or who can offer amendments. During the Ninety-Fourth Congress (1975–1977), 81 percent of rules adopted in the House of Representatives were considered open to full debate and additional amendments.<sup>218</sup> In contrast, by the One Hundred and Tenth, only 12 percent of the rules were open.<sup>219</sup> This shift to the use of the closed or restricted rule has significant implications for the participation of the minority in floor consideration of legislation.

While scholars agree that the use of closed or restricted rules increased substantially over the past thirty years, there are different theories to explain why this happened. Some suggest that the shift started in the early 1980s when the Senate majority and the

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<sup>216</sup> “About the Committee on Rules,” House of Representatives Committee on Rules, <http://www.rules.house.gov/about>.

<sup>217</sup> Michael Doran, “The Closed Rule,” *Emory University Law Journal* 59, no. 6 (2012), 1374. <http://www.law.emory.edu/fileadmin/journals/elj/59/59.6/Doran.pdf>.

<sup>218</sup> Stanley Bach and Steven S. Smith, *Managing Uncertainty in the House of Representatives* (Washington, D.C.: The Brookings Institution, 1988) 50.

<sup>219</sup> Doran, “The Closed Rule,” 1389.

President were of the same political party. This may have placed pressure on the House to tighten control of deliberations to advance the legislative agenda.<sup>220</sup> Others suggest that the rise in use of the closed rule is a direct result of the desire of committee chairs to preserve the integrity of the legislation reported out of their committees. Some of these concerns derive from the dilution of the power of committee chairs, which began in the 1970s with the growing power of subcommittee chairs, and the increased use of multiple referrals to assign complex legislation.<sup>221</sup> Others suggest that the LRA of 1970 provision institutionalizing record votes in the Committee of the Whole led Members to cast votes that reflected constituents' interests more than those of committee chairs or party leadership.<sup>222</sup> All of these suggested factors point to the growing uncertainty committee chairs face when managing their legislation on the floor. Therefore, it is not surprising that committee chairs would seek rules that restrict debate and assist them in managing their bills during floor deliberations.<sup>223</sup>

There are several consequences of the increased implementation of closed and restricted rules. First, the minority party has consistently perceived that closed or restricted rules erode the minority's ability to offer amendments and affect the direction of debate.<sup>224</sup> A statement made by a Member in the 1993 Joint Committee report exemplified this perspective, "legislative debate on the Floor has degenerated into a majority monologue. . . interrupted now and then by the minority, whose ability to alter legislation has been previously thwarted by the action of the House Rules Committee."<sup>225</sup> Others perceive that increased use of the closed and restricted rules reduce accountability by limiting from public consideration of controversial policy options.<sup>226</sup>

Others believe that closed or restricted rules are a necessary alternative to open rules. House members expressed frustration that open rules can result in floor proceedings taking an unreasonable amount of time, and make it difficult to schedule other House business. In addition, open rules may result in controversial legislation remaining on the floor with no prospects of passage, and obscure important policy discussions.<sup>227</sup> In testimony before the 1993 Joint Committee, a Member's statement exemplified this perspective: "open rules would undermine the committees version of legislation, allow amendments to be adopted without a study of their efforts, and shift focus away from the consideration of a major policy alternatives."<sup>228</sup>

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<sup>220</sup> Bach, *Managing Uncertainty*, 68.

<sup>221</sup> Barbara Sinclair, *Unorthodox Lawmaking: New Legislative Processes in the U.S. Congress*, *Congressional Quarterly* (1997) 85.

<sup>222</sup> Kravitz, "The Advent of the Modern Congress," 391.

<sup>223</sup> Bach, *Managing Uncertainty*, 57.

<sup>224</sup> Roger H. Davidson, Walter Oleszek, and Frances E. Lee, *Congress and Its Members* (Washington D.C.: CQ Press, 2010) 252.

<sup>225</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 35 (December 17, 1993).

<sup>226</sup> *Ibid.*, 36.

<sup>227</sup> Bach, *Managing Uncertainty*, 69.

<sup>228</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 36 (December 17, 1993).

## Senate: The Filibuster

Unlike the House, the Senate operates under standing rules, including those governing floor considerations of legislation. These standing rules have been relatively stable because a two-thirds vote by the Senate is required to change or eliminate a rule. The Senate also differs from the House because it has a long history of embracing unlimited debate in its floor proceedings. The rule that has been most scrutinized in conjunction with minority protections in Senate deliberations is the filibuster rule. While all of the Joint Committees on the Organization of the Congress included reforms related to House deliberations, most of the reforms to the filibuster rule have been attempted outside of the joint committees.

### Background and History on the Filibuster

The Senate defines a filibuster as an “informal term for any attempt to block or delay Senate action on a bill or other matter by debating it at length, by offering numerous procedural motions, or by any other delaying or obstructive actions.”<sup>229</sup> Extended debate is considered a right of the Senate, and any senator can attempt to delay action of legislation by talking continuously. The mere threat of a filibuster may have been instrumental in creating an environment within the Senate that supported “the collegial processes of seeking consensual agreement.”<sup>230</sup>

A formal procedure to end a filibuster did not exist prior to 1917, when the Senate established the cloture rule. This rule allows two-thirds of those present on the Senate floor to vote to limit debate to no more than one hour per senator.<sup>231</sup> Cloture was seldom invoked until the 1960s, when it was used to counter the use of filibusters to prevent the discussion and advancement of civil rights legislation.<sup>232</sup> While the Senate did discuss the effect of the filibuster during this time, much of the debate focused on preserving the perceived Senate traditions of protecting minority rights and the embracing the value of extended debate on important national issues.<sup>233</sup>

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<sup>229</sup> “Glossary,” *U.S. Senate*, [http://www.senate.gov/reference/glossary\\_term/filibuster.htm](http://www.senate.gov/reference/glossary_term/filibuster.htm).

<sup>230</sup> Richard S. Beth, “Entrenchment” of Senate Procedure and the “Nuclear Option” for Change: Possible Proceedings and Their Implications,” *Congressional Research Service* (March 28, 2005), 4. [http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%270E%2C\\*P%2C%3B%3F%22%20%20%20%0A](http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%270E%2C*P%2C%3B%3F%22%20%20%20%0A).

<sup>231</sup> This happened after President Wilson called an emergency session of the Senate following a filibuster of the Treaty of Versailles. While the President could not change the rules of the Senate, he did demand that the Senate do it themselves. Richard A. Arenberg and Robert B. Dove, *Defending the Filibuster: The Soul of the Senate* (Bloomington: Indiana University Press, 2012) 24.

<sup>232</sup> Due in part to “a coalition of Southern senators [that] enjoyed extraordinary power in the Senate, as a result of both the seniority that came from serving in safe seats representing one-party states and the use of the filibuster to block civil rights legislation.”

Catherine Fisk and Erwin Chemerinsky, “The Filibuster,” *Stanford Law Review* 49, no. 2 (January 1997), 199. via <http://www.jstor.org/stable/1229297>.

<sup>233</sup> *Ibid.*

The original cloture rule only applied to debate on the legislative measure itself and did not apply to other Senate procedures, such as the motion to proceed to consideration of a measure.<sup>234</sup> This allowed endless debate on bills on the Senate floor, and limited the ability of the Senate to move deliberations forward. In 1949 the Senate amended the cloture rule to include all motions except a motion to proceed. It also changed to vote needed to invoke cloture from two-thirds of senators present on the floor to two-thirds of all senators.<sup>235</sup>

Between the Eighty-Third Congress and the Eighty-Fifth Congress (1953–1959), concerns with the filibuster grew as it was frequently invoked to circumvent civil rights legislation that had passed the House. To address these concerns, several senators advocated for revisions to the standing rules. Specifically, the senators wanted to permit a simple majority to vote to change the rules at the beginning of a new Congress.<sup>236</sup> These revisions were not adopted. Instead, in 1959 the Senate changed the cloture rule reverting back to the requirement that two-thirds of senators present must vote for cloture. The 1959 changes also codified the continuing nature of Senate practices by specifically stating that Senate rules carry over to subsequent Congresses.<sup>237</sup>

Over the next fifteen years, other reforms aimed to reduce the delays in deliberations caused by the filibuster. These reforms included restructuring the Senate agenda to accommodate deliberations on noncontroversial legislation, a decrease in the total number of votes needed to invoke cloture, and a reduction in the hours of debate following the adoption of a cloture petition. In the early 1970s, the Senate leadership instituted a “two-track system” that permitted the Senate to work on filibustered legislation in the morning, but redirected the focus to noncontroversial legislation in the afternoon.<sup>238</sup> While designed to ameliorate frustrations of senators over the amount of time consumed by filibusters, this two-track system created the “silent” or “stealth” filibuster, relieving those initiating a filibuster from the requirement that they conduct continuous action on the floor to maintain the filibuster. The Senate became less likely to debate controversial measures until the majority could guarantee enough votes to invoke cloture.<sup>239</sup> While the minority preserved its ability to influence deliberations, that influence was limited because controversial legislation was not brought to the floor.

In 1975, the Senate formally amended the cloture rules to require three-fifths of all senators to vote to invoke cloture. This increased the likelihood that the Senate majority could invoke cloture, but did not significantly affect the use of the filibuster as a dilatory

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<sup>234</sup> Martin B. Gold and Dimple Gupta, “The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Overcome the Filibuster,” *Harvard Journal of Law and Public Policy* 28 (2004) 228.

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*, 231.

<sup>237</sup> *Ibid.*

<sup>238</sup> Fisk, “The Filibuster,” 201.

<sup>239</sup> *Ibid.*, 202.

tactic by members of the minority.<sup>240</sup> In 1979, the Senate amended post-cloture debate time to a maximum of one hundred hours. In 1986, the Senate lowered the cap even further to thirty hours of debate in order to accommodate the introduction of televised chamber proceedings.<sup>241</sup> This substantial decrease in debate time allowed Members to advance legislation more quickly, and further limited the minority's ability to influence deliberations.

### **Modern Filibuster Reform Efforts**

Proposed reforms to the filibuster considered between the mid-1980s and the 1993 Joint Committee on the Organization of Congress offered some approaches to alter the nature of Senate floor debate. These proposals included: limiting floor debate; limiting the use of roll calls used to stall legislative actions; and allowing a majority vote to require germane amendments.<sup>242</sup> Proposed reforms during this period appeared to focus on ways to limit debate between Members, instead of encouraging lively deliberations.<sup>243</sup>

The 1993 Joint Committee studied the effects of the filibuster rule along with the cloture and general debate rules on deliberations. Senators shared the same frustrations of decades past and suggested several reforms including: allowing a motion to proceed to a bill without debate (or limiting debate to two hours);<sup>244</sup> requiring a simple majority to end a filibuster; reducing the number of filibusters during debate from six to two; lowering the number of votes needed for cloture with each successive vote; and discontinuing the practice of calling for a quorum (as some perceived as a tactic to delay deliberations process).<sup>245</sup>

The proposed LRA of 1993 included only one reform affecting Senate deliberations, and that was to institute a two-hour limit on all motions to proceed. However, the legislation did not pass.<sup>246</sup> Concerns remained on how to control deliberations to avoid unnecessary blockage, while honoring the Senate tradition of debate and building consensual agreements.

### **Debate Rules: From 1994 to the 113th Congress**

Issues with the application of closed and special rules in the House persist. In the 109th Congress (2005–2007) twenty-two bills were considered under an open rule. In the 110th Congress (2007–2009), that number decreased to eleven. According to a 2011 House

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<sup>240</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 47-48 (December 17, 1993).

<sup>241</sup> *Ibid.*, 49.

<sup>242</sup> Stanley Bach, "State of Senate: Conditions, Proposals and Prospects for Change," *Congressional Research Service* (1992) 3.

<sup>243</sup> *Ibid.*, 36.

<sup>244</sup> *Ibid.*, 50.

<sup>245</sup> *Ibid.*, 52.

<sup>246</sup> Carol Hardy Vincent and Elizabeth Rybicki, "Committee Numbers, Sizes, Assignments and Staff: Selected Historical Data," *Congressional Research Service* (February 1, 1996) 6.

Rules Committee report, the 112th Congress (2011–2012) did not consider any legislation under the open rule. Additionally, 27 percent of House Members in the 112th Congress reported never experiencing an open rule during the tenure of their membership.<sup>247</sup>

In the Senate, the tensions between parties continue to manifest themselves through the threat of the use of the filibuster and the votes needed to invoke cloture. Because of the close margins between the majority and minority, the threat of a filibuster continues to delay and stop deliberations on controversial legislation. Senators are frustrated that they are not able to debate and pass legislation, and the Senate has considered additional reform options.

One reform proposal would impose an ever-decreasing threshold for successive votes to invoke cloture on a nomination, until it could be achieved by a majority vote of the full Senate.<sup>248</sup> This proposal was seen as so drastic that it became known as the “nuclear option.” Proponents suggest that this option preserves the rights of the minority by preventing the advancement of a bill for up to eight days. Opponents argued that the rights of the minority would be more symbolic than authentic, as the majority could simply wait out the required period. This could further reduce incentive to compromise.<sup>249</sup> Also, while the rule change would apply only to confirmations of judicial nominations, some expressed concerns that this change would establish a new precedent and its application would expand. To avoid the potential long-term implications of accepting the “nuclear option,” a group of senators from both parties (the so-called Gang of Fourteen) crafted a compromise that removed the “nuclear option” from discussion and allowed some of the stalled nominations to proceed.<sup>250</sup>

Congress has recognized the need to resolve the tension associated with facilitating an efficient deliberative process, and the need for contributions from both processes. While the reform efforts of the past six decades identified this tension, substantive and lasting solutions to address this tension are still needed.

## **Theme Two: The Decline of Deliberation by Committees**

Congress has attempted to strengthen committee structures and processes so that committees serve as the central force for deliberation of policy by experts. In addition, Congress has made efforts to alleviate the growing demands on Members’ schedules and ensure sufficient time for deliberations. Despite these reform efforts, deliberations by committees have declined over time.

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<sup>247</sup> “Open Rules by the Numbers,” *House Rules Committee* (June 1, 2011), <http://rules.house.gov/blog/open-rules-numbers-0>

<sup>248</sup> Betsey Palmer, “Changing Senate Rules: The Constitutional or Nuclear Option,” *Congressional Research Service* (2005) 2.

<sup>249</sup> Dubbed “The Harkin Ratchet,” this was actually proposed by Sen. Tom Harkin in 1995 but received little attention.

Arenberg, *Defending the Filibuster*, 75.

<sup>250</sup> *Ibid*, 78.

## The Joint Committee on the Organization of Congress, 1945–1946

### Committee Size, Structure, and Alignment

The Joint Committee of 1946 recommended substantial changes to the committee system to create structures and processes that would serve as the engine for congressional deliberations. Congressional committees largely determine the direction and final action on a bill. Because of this power, committee jurisdiction, membership, and methods for assigning leadership have been focal points for reform. The 1946 Joint Committee cited that Congress had historically avoided necessary reforms of committee structure in favor of the efficacy of committees.

To improve the efficiency of committees, the 1946 Joint Committee sought to decrease the number of standing committees in both the Senate and the House of Representatives. The Joint Committee also suggested limiting membership of senators to two committees in order to reduce the demands on senators.<sup>251</sup> The Joint Committee recommended limiting House members to one major committee assignment in an effort to reduce House committee size to an average of twenty-three members.<sup>252</sup> The suggestions to limit committee assignments stemmed from the practice of Members participating in six or more committees, leading the Joint Committee to question the ability of those Members to dedicate sufficient time to all of their committees. In line with the restructuring, the Joint Committee recommended the Senate and House amend the rules to clearly define the jurisdiction of each committee to ensure speedy and accurate referrals of legislation.<sup>253</sup>

The Legislative Reform Act of 1946 acted on these recommendations and decreased the number of standing committees, from forty-eight to nineteen in the House, and thirty-three to fifteen in the Senate by eliminating some committees and merging others.<sup>254</sup> Senators were limited to membership on two committees, which reduced each committee size to thirteen.<sup>255</sup> Members in the House were limited to membership on one standing committee, which reduced the prescribed committee size to an average of twenty-five.<sup>256</sup> The jurisdiction of each committee was defined in the LRA of 1946, but some argue the definitions did not go far enough because the act did not align the committees across the

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<sup>251</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 2-4 (March 4, 1946).

<sup>252</sup> With the exception of Appropriations, which would retain a membership of 43. *Ibid.*, 4.

<sup>253</sup> *Ibid.*, 5.

<sup>254</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 822-830.

<sup>255</sup> Senators on the Committee on the District of Columbia or the Committee on Expenditures in the Executive Departments were an exception and could retain membership on three standing committees instead of two. *Ibid.*, 820.

<sup>256</sup> Members on the Committee on the District of Columbia or Committee on Un-American Activities could served on two committees, as could Members of the majority party who served on the Committee on Expenditures in the Executive Departments or on the Committee on House Administration *Ibid.*, 823.



House and the Senate.<sup>257</sup> While the realignment mandated by the LRA sought to facilitate the deliberative process, additional cross-chamber alignment also had the potential to further reduce duplicate work from committees with different objectives, but overlapping jurisdictions.

### **Committee Accountability**

To increase the accountability of committees and ensure thorough review of all legislation within the proper jurisdiction, the 1946 Joint Committee recommended that all committees institute consistent meeting days to conduct business on a weekly or monthly basis. If the workload necessitated more interaction, the committee chair could call additional meetings as needed. The Joint Committee also suggested that all committees be required to record committee proceedings (except executive sessions), including attendance and votes on bills and amendments.<sup>258</sup> Furthermore, the report recommended voting records should be published in the *Congressional Record*.

The LRA of 1946 incorporated all of these suggestions to increase the documentation of committee activities, but did not require committee votes to be published.<sup>259</sup> The final legislation included a provision requiring that hearings conducted by committees or subcommittees be open to the public. The LRA of 1946 provided an exception allowing the majority of the committee to vote to close a hearing and convene in an executive session that was not subject to the openness requirement. This exemption limited the consistent enforcement of open hearing requirements in practice.<sup>260</sup>

### **Congressional Scheduling**

The 1946 Joint Committee also recommended methods for making more efficient use of Members' time. Concerns arose that Members might be in Washington, D.C., more than in their home districts, which the Joint Committee felt did not reflect the role of Congress.<sup>261</sup> The LRA of 1946 took this into consideration and instituted a congressional adjournment from the end of July to the beginning of October, unless Congress was responding to a national emergency.<sup>262</sup> This change attempted to stop congressional sessions from lasting nearly continuously, and was intended to facilitate the interaction of Members with their constituents.

The Joint Committee also proposed experimenting with the schedule of Congress to ensure full and equal time for committee and chamber sessions. The post-Depression and postwar era significantly increased demands on Congress, and the Congress was

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<sup>257</sup> Outland, "Congress Still Needs Reorganization," 159.

<sup>258</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 7 (March 4, 1946).

<sup>259</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 831.

<sup>260</sup> *Ibid.*

<sup>261</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 25 (March 4, 1946).

<sup>262</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 831.

confronting new challenges and expectations.<sup>263</sup> While the recommendation was not incorporated in the final legislation, the Joint Committee raised new awareness of constraints on Members' time. In contrast, the LRA of 1946 actually limited the schedule of Members in some ways by prohibiting committees from meeting while their chamber was in session without "special leave" provided by unanimous consent.<sup>264</sup> This granted a single Member the ability to obstruct the business of an entire committee.

## **The Joint Committee on the Organization of Congress, 1965–1966**

### **Committee Procedures**

The Joint Committee of 1966 recommended a number of changes to the committee system to refine the structures established in 1946, and improve committees deliberations. The Joint Committee responded to concerns that committee chairs were hindering deliberations by proposing a "Committee Bill of Rights." One suggestion sought to allow a majority of the committee to call a meeting if the chair failed to do so to ensure full deliberation on all relevant measures.<sup>265</sup> Prior to the inclusion of this provision in the LRA of 1970, committee chairs could prevent such meetings if they opposed a bill or wanted to move forward with unilateral action on a measure without input from the committee members.<sup>266</sup>

The Joint Committee also strongly recommended steps to ensure increased meeting attendance, including a ban on proxy voting and the prevention of votes on bills or amendments without a majority of the committee present. The Joint Committee argued that proxy voting discouraged attendance and subsequently affected the ability of the committee to discuss, consider, and compromise on legislation.<sup>267</sup> The LRA of 1970 limited the general use of proxy voting, but still permitted utilization of the practice if committee-specific rules allowed it.<sup>268</sup>

### **Subcommittees**

The LRA of 1946 codified substantial changes to the structure of the committee system, its membership, and the relevant jurisdiction of each. By reducing the number of standing committees and expanding the jurisdiction of each, the LRA of 1946 had the unintended

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<sup>263</sup> Davidson, "The Advent of the Modern Congress," 36.

<sup>264</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 832.

<sup>265</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 8 (July 28, 1966).

<sup>266</sup> Kravitz, "The Advent of the Modern Congress," 377.

<sup>267</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 9-10 (July 28, 1966).

<sup>268</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 11.

consequence of a rapid expansion in the number of subcommittees, which were not governed by the specific rules guiding the parent committee.<sup>269</sup>

The Joint Committee of 1966 clarified that the intended role of subcommittees is to support its parent committee with its workload, and not to rival the status of the standing committees. The level of autonomy granted to some subcommittees meant deliberations and recommendations on measures occurred without consideration for perspectives in the entire standing committee. To address this concern, the Joint Committee suggested that subcommittees be required to publish their specific rules at the beginning of each Congress and that subcommittees commit to follow all rules of the relevant parent committee.<sup>270</sup> The Joint Committee sought to centralize deliberations within the standing committees by restricting the independence of all subcommittees and minimizing any duplication or “unwarranted activities.”<sup>271</sup> Based on Joint Committee recommendations, the final version of the LRA 1970 incorporated all of these provisions.<sup>272</sup>

### **Committee Hearings**

To minimize obstructions to the committee-hearing process, the 1966 Joint Committee recommended the majority and minority party leaders be given the ability to jointly grant permission for committees to conduct hearings during floor sessions.<sup>273</sup> The LRA of 1970 incorporated these suggestions, amended the rules for committees, and allowed the majority and minority leader to approve hearings during floor sessions.<sup>274,275</sup> While this strengthened committees’ ability to conduct business and meet growing legislative demands, the provision also removed committee members from deliberations on the floor and further separated the committees from the chamber as a whole.

### **Committee Size, Structure, and Alignment**

The LRA of 1946 outlined a significant change in committee structure, but the Joint Committee of 1966 sought to reform it even further to achieve three objectives:

1. Reduce the workload of overburdened committees

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<sup>269</sup> Kravitz, “The Advent of the Modern Congress,” 377.

<sup>270</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 13 (July 28, 1966).

<sup>271</sup> *Ibid.*, 14.

<sup>272</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 26.

<sup>273</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 13 (July 28, 1966).

<sup>274</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 20.

<sup>275</sup> The law amended the House rules to allow committees to meet during floor sessions without special approval, but banned the practice while the House considered any measure until the five-minute rule. However, this situation occurred more often during the Committee of the Whole proceedings. Kravitz, “The Advent of the Modern Congress,” 380.

2. Realign the committee jurisdiction to parallel the functions in the executive branch agencies
3. Realign the committees across the Senate and House to parallel each other and facilitate subsequent conference committee work.<sup>276</sup>

The Joint Committee specifically commented on the overlap between committees in each chamber and the inefficiencies stemming from one committee in the House working with several committees in the Senate (or vice versa) to finalize legislation. The Joint Committee also noted a concern with the evolving nature of Congress, and cited that jurisdiction reform would only address problems in the short term. The report stated that, “further jurisdictional realignments will unquestionably be required in the future to meet new developments in workload and program evolution.”<sup>277</sup> This admission illustrates in a trend across reform efforts thus far to suggest that the jurisdiction of committees cannot be amended once and then ignored in future years. To do so might actually duplicate the work of committee members and detract from the ability of members to deliberate substantively. Yet both the Senate and the House demonstrated resistance to the 1966 Joint Committee’s recommendations, and complete alignment across chambers and agencies was not included in the LRA of 1970.<sup>278</sup>

The 1966 Joint Committee report attempted to address a deficiency in the LRA of 1946, which limited standing committee assignments in the Senate to two per member. By 1965, enforcement of that provision proved difficult without consideration of minor, special, and joint committees that left senators sitting on up to five committees per session.<sup>279</sup> The 1966 Joint Committee noted that the Senate must manage a workload similar to the House with less than one-fourth of the membership, which inevitably increased the number of committee members and enhanced scheduling concerns.<sup>280</sup> To address these concerns, the Joint Committee recommended specific limitations of committee membership in the Senate. Each senator would be permitted to serve on:

1. Two major committees
2. One minor, joint, select, or special committee
3. One temporary committee within one Congress or a joint committee related to the senator’s membership on the minor committee<sup>281</sup>

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<sup>276</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 14 (July 28, 1966).

<sup>277</sup> *Ibid.*, 15.

<sup>278</sup> Kravitz, “The Advent of the Modern Congress,” 380.

<sup>279</sup> *Ibid.*

<sup>280</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 18 (July 28, 1966).

<sup>281</sup> The suggestion also named Appropriations, Finance, Foreign Relations, and Armed Services as exclusive committees and limited Senators to only one of these in consideration of major committee membership. *Ibid.*, 18-19.

These recommendations sought to equalize the workload between senators and eliminate less productive committees, assuming that senators would choose their assignments more strategically. However, the recommendation did not insist on immediate implementation, and allowed existing assignments to continue to ensure the retention of “special knowledge of those members who have served for long periods.”<sup>282</sup>

The LRA of 1970 incorporated all of these suggestions, included the “grandfather” of current assignments, and limited each senator to one full committee chair position and one subcommittee chair position.<sup>283</sup> However, the final legislation accomplished little of its goals in the following years as the “grandfather rights were continually extended, some senators were allowed to serve on more than their prescribed number of committees, and some committees were entirely exempted from the rules.”<sup>284</sup> While the LRA of 1970 provisions sought to reduce the workload and scheduling concerns in the Senate, the effect of waivers and exceptions continued to prevent substantive change and limit the quality of deliberations in committees and on the floor.

### **Committee Accountability**

Believing the 1946 Joint Committee and LRA did not sufficiently increase committee access and accountability to the public, the 1966 Joint Committee recommended significant changes to committee hearing procedures. First, the Joint Committee believed that allowing a simple majority to bar the public from a hearing was not justified, and amended the provision to allow a hearing to be closed by majority vote if the subject matter deals with national security or the reputation of others.<sup>285</sup> The Joint Committee suggested additional steps to open the committee hearing process such as televised/broadcasted hearings at the discretion of committees, allowance of nonexecutive meetings to be fully open to the public, and a public record of all votes on bills and amendments by Member.<sup>286</sup> The Joint Committee also proposed that each recommendation could encourage all committee members to focus on “active and responsible participation” by emphasizing the accountability to the public.<sup>287</sup>

The 1966 Joint Committee recommended changes to committee hearing procedures to ensure meaningful forums of information to be shared as well. The committee suggested changes such as two-week advance notice of hearings, a requirement of witnesses to provide written statements two days in advance, and production of a daily summary for use by the committee and to be published with the committee’s report.<sup>288</sup> These recommendations sought to ensure the ability of all committee members to stay informed

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<sup>282</sup> Ibid, 19.

<sup>283</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 31-32.

<sup>284</sup> Kravitz, “The Advent of the Modern Congress,” 394.

<sup>285</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 10 (July 28, 1966).

<sup>286</sup> Ibid.

<sup>287</sup> Ibid, 11.

<sup>288</sup> Ibid, 11.

on hearing topics and facilitate voting decisions within the committee and on the floor.<sup>289</sup> The LRA of 1970 included all of the Joint Committee’s recommendations, based on a desire to increase the accountability of committee members to their deliberative obligations and to the public.<sup>290</sup>

### **Congressional Scheduling**

Finally, the 1966 report attempted to address the failure of the LRA of 1946 to adequately address scheduling concerns by suggesting all committee and floor sessions be completed during a five-day workweek. The Joint Committee noted the emerging trend of conducting committee business Tuesday through Thursday, despite the increasing workload experienced by most committees. The Joint Committee expressed concern about the ability of members to adequately process important legislation within the commonly practiced schedule.<sup>291</sup> However, this suggestion was not in the final legislation.

The final legislation did incorporate a suggestion from the Joint Committee to amend the language from 1946 that permitted Congress to defer adjournment in July in order to deal with a “national emergency.” According to the 1966 Joint Committee report, this exemption was invoked in every session following 1946, and prevented Members from returning to their home districts and facilitating constituent interactions.<sup>292</sup> The 1970 LRA rectified this concern and required adjournment except in instances of declared war.<sup>293</sup> The Joint Committee believed this would encourage more productive action from Congress, but also mentioned that the congressional workload would not decrease. This raised a tension in Members’ need to balance the workload in their respective chambers and participate fully in the deliberative process while still fulfilling the needs of their constituents.

## **The Joint Committee on the Organization of Congress, 1993–1994**

### **Committee Size, Structure, and Alignment**

The 1993 Joint Committee noted that the 103rd Congress represented the embodiment of changes in committee structure since the last reform effort. Two hundred fifty-two select, special, and joint committees existed during the 103rd Congress, and the average committee sat forty members.<sup>294</sup> Committee assignments averaged twelve for senators

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<sup>289</sup> Ibid, 12.

<sup>290</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 8-14.

<sup>291</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 55 (July 28, 1966).

<sup>292</sup> Ibid.

<sup>293</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 58.

<sup>294</sup> Compared to an average of 25 in 1967

Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 16 (December 17, 1993).

and six for representatives.<sup>295</sup> Although rules still existed to limit committee assignments, the party leadership retained the ability to grant waivers, and routinely did so.<sup>296</sup> Additionally, the Joint Committee mentioned concerns with unequal workloads among committees and the lack of a requirement for the Senate to provide written explanations of each committee's jurisdiction.<sup>297</sup> These concerns echoed similar comments from the 1966 Joint Committee, and the failure of the LRA of 1970 to adequately address the challenges.

Members unanimously supported reductions in committee size because Members were, "spread too thin in their committees duties, and with fewer assignments not only would efficiency increase, but also the deliberative function would be enhanced."<sup>298</sup> In response to the Joint Committee report, the House included a provision to limit each Member to membership on two standing committees and four subcommittees in H.R. 3801 (103rd Congress). The bill also restricted waivers with a requirement that all waivers must be recommended from the relevant party caucus and subject to a vote. The comparable legislation attempt in the Senate (S. 1824, 103rd Congress) created categories of committees and restricted senators to specific limitations within each category. This was similar to the distinction of major and minor committees in the 1970 LRA, but did not include a grandfather provision. The Senate bill restricted waivers as well by mandating submission of a waiver from the party leader with the senator's name attached and a full vote.<sup>299</sup> Despite these advancements, neither bill advanced to passage or implementation.

### **Subcommittees**

To reduce the number of subcommittees that added to Members' scheduling concerns, both chambers attempted to set specific limits. The House included a provision in H.R. 3801 to limit major committees to five subcommittees and minor committees to four subcommittees. The Senate attempted to limit the top tier of committees to three subcommittees and the lower tiers to two subcommittees.<sup>300</sup> Both legislative attempts also banned subcommittee meetings during meeting of the full committee.<sup>301</sup> While this legislation was not successful, the interest in reducing the number of subcommittees continued with the 104th Congress.

### **Congressional Scheduling**

Minimal requirements on deliberations and overextension of members affected committees' ability to thoroughly consider legislation. The Joint Committee observed that the House allowed committees to hold hearings with a minimum of two members, both the House and the Senate allowed committees to report measures without a majority

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<sup>295</sup> Ibid.

<sup>296</sup> The Senate waivers required a vote by the chamber, but most were approved.

Ibid, 18.

<sup>297</sup> Ibid, 20.

<sup>298</sup> Ibid, 24.

<sup>299</sup> Vincent, "Committee Numbers, Sizes, Assignments and Staff," 3.

<sup>300</sup> Ibid, 4.

<sup>301</sup> Ibid, 5.

present, and many committees in both chambers continued to allow proxy voting.<sup>302</sup> Some members advocated for the elimination of proxy voting, suggesting the ban would allow, “greater attendance in committees listening to the testimony, listening to the arguments and amendments, and [the Members] would be making their decision based on hard information that they had obtained, rather than prior to the committee meeting, giving proxy to someone.”<sup>303</sup> The House did not address proxy votes in attempted reform legislation, and the Senate limited proxy votes so that they could not affect the outcome of a full committee vote.<sup>304</sup> However, when party control shifted in the 104th Congress, the House changed its rules to ban all proxy votes in committees.<sup>305</sup>

The 1993 Joint Committee report reflected multiple Members’ concerns with “fragmentation” in their duties. The Joint Committee suggested sources of these frustrations related to short workweeks, brief legislative deadlines, ongoing conflict between the activities of the committees and floor, and a constant pull between responsibilities in Washington, D.C., and at home to constituents.<sup>306</sup> Members suggested amendments to the congressional schedule to alleviate these concerns. One recommendation proposed a monthly division of work, with three weeks spent in the Capitol and one week spent in the Member’s district. Other recommendations considered increasing the number of session days and formally establishing a four- or five-day workweek.<sup>307</sup> One senator mentioned frustration with the scheduling of business: “several senators have the Senate frustrated because of the way we schedule our business on the floor. It is very difficult for them to balance committee business with floor activity, because often we do allow committees to meet, very often, while the Senate is in session.”<sup>308</sup>

The House addressed these concerns in H.B. 3801 by attempting to define any House schedule as including: a four-day workweek, specific time for committee and floor sessions, improvement of committee scheduling to avoid conflicts, and the increased use of a computerized scheduling system. Language included in S. 1824 attempted to set specific meeting days for each tier of committee to avoid overlap.<sup>309</sup> However, despite the work and recommendations, the 103th Congress adjourned before any legislation could be passed.

## **From 1994 to the 113th Congress**

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<sup>302</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 23 (December 17, 1993).

<sup>303</sup> Ibid, 27. summarized comments of Rep. Carlos Moorhead

<sup>304</sup> Vincent, “Committee Numbers, Sizes, Assignments and Staff,” 5.

<sup>305</sup> Schneider, “House of Representatives,” 53.

<sup>306</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 34 (December 17, 1993).

<sup>307</sup> Ibid, 37.

<sup>308</sup> Ibid, 52. Summarized remarked of Sen. David Boren

<sup>309</sup> Vincent, “Committee Numbers, Sizes, Assignments and Staff,” 4.



The obstacles to effective deliberations continued over the past twenty years. Members remain overextended by committee assignments and attempts to balance constituency needs. In the 113th Congress, the standing committees of the House average thirty-eight members. In the Senate, the average number of members is twenty.<sup>310</sup> Some argue committee work has continued to devolve to align with the goals of party leadership and enhance the influence of members during campaigning. One indication of the decreased regular order can be seen in the increase of unreported legislation.<sup>311</sup> In the 103rd Congress, 38 percent of public measures passed were unreported. By the 111th Congress, that number increased to 55 percent.<sup>312</sup> While the workload is constantly increasing, the demands surrounding members' time and ability to participate substantively in deliberations are more restricted than ever.

The limited workweek in Congress continues to be a point of concern as well. While the leadership of the 104th Congress attempted to expand the legislative workweek to five days to address the impediments to deliberative activities created by the Tuesday-to-Thursday schedule, Congress did not fully implement the schedule due to complaints from Members from Western states, and from those whose families remain in their home states or districts.<sup>313</sup> As a result, the expected impact from the schedule change for deliberations was not fully realized and schedules remain problematic today.<sup>314</sup>

Overall, Congress has noted that insufficient deliberation by committees results in fewer viable policy options. However, attempts to reform committee structure and governance have not been successful in transforming them into an open forum for thorough deliberation and development of legislative options. One factor contributing to this problem is that Members of Congress have increasingly spent a significant amount of time off Capitol Hill or out of Washington, which limits their participation in deliberative activities.

## Staffing

### Introduction

This section of the report provides a historical analysis of proposed and enacted legislation and rule changes affecting the staff and information resources available to Congress. The analysis highlights two recurrent themes that emerged during previous reform efforts related to staff and information services. First, Congress made efforts to expand the capacity of congressional staff and support agencies, either in number of

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<sup>310</sup> "Committees," *U.S. House of Representatives*, <http://www.house.gov/committees/> and "Committees," *U.S. Senate*, [http://www.senate.gov/general/committee\\_assignments/assignments.htm](http://www.senate.gov/general/committee_assignments/assignments.htm).

<sup>311</sup> Donald R. Wolfensberger, "Getting Back to Legislating: Reflections of a Congressional Working Group," *Bipartisan Policy Center* (November 27, 2012) 5. <http://bipartisanpolicy.org/sites/default/files/Congress%20Report%202013.pdf>.

<sup>312</sup> *Ibid.*, 19.

<sup>313</sup> Richard S. Beth, "House Schedule: Recent Practices and Proposed Options," Congressional Research Service (February 2, 2001) <http://www.policyarchive.org/handle/10207/bitstreams/1145.pdf>.

<sup>314</sup> *Ibid.*

employees or availability of expertise. Second, Congress attempted to increase efficiencies in staffing while maintaining autonomy in staff management processes for committees and individual Members.

## **Theme One: The Expansion of Congressional Staff and Support Agencies**

The first reoccurring theme is Congress's historical efforts to expand congressional staff and support agencies in response to increasing demands. The need for increased staff capacity resulted from the expanding constituencies each Member represented as well as increases in the amount and intricacy of legislative issues. Between 1946 and 2010, the U.S. population more than doubled, from approximately 141 million to 310 million.<sup>315</sup> During the same period, Congress grew by four Members, from 531 to 535,<sup>316</sup> with the inclusion of four senators from Alaska and Hawaii. For Members of the House of Representatives, this meant that on average their individual constituencies more than doubled in size, from 300,000 to 700,000, with a similar proportional change for senators. Further increasing the demands on Members, technology has made contact from constituents easier and faster. In addition to mail and email, social media opened more avenues of dialogue and information exchange between Congress and the American public; social media not only changed the mechanism for communication, but also the expectation of a faster response. In the past decade, most congressional offices experienced an increase of 200 to 1000 percent in the volume of communications.<sup>317</sup> Constituents previously not engaged by the government have found new access points in which to engage, expanding the informing function demands on Congress.<sup>318</sup>

Expansions to the legislative function of Congress, such as Franklin D. Roosevelt's New Deal and Lyndon B. Johnson's Great Society, also increased Congress's oversight and appropriations responsibilities. The Congress has also responded to the growth in the size and powers of the executive branch, and required additional staff to help keep pace with government growth.<sup>319</sup> Members have increasingly relied on expert knowledge to evaluate legislative proposals and provide oversight as the Congress expanded its role into the affairs of the nation and its citizens.<sup>320</sup> The increase in demands on Congress in

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<sup>315</sup> "Census.gov," *United States Census Bureau*, accessed November 2, 2012, <http://www.census.gov>.

<sup>316</sup> *Ibid.*

<sup>317</sup> "How Citizen Advocacy is Changing Mail Operations on Capitol Hill," *Congressional Management Foundation* (2011) 2. [http://www.congressfoundation.org/storage/documents/CMF\\_Pubs/cwc-mail-operations.pdf](http://www.congressfoundation.org/storage/documents/CMF_Pubs/cwc-mail-operations.pdf).

<sup>318</sup> "#Social Congress: Perceptions and Use of Social Media on Capitol Hill," *Congressional Management Foundation* (2011) [http://www.congressfoundation.org/storage/documents/CMF\\_Pubs/cmf-social-congress.pdf](http://www.congressfoundation.org/storage/documents/CMF_Pubs/cmf-social-congress.pdf).

<sup>319</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 59 (December 17, 1993).

<sup>320</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 36 (July 28, 1966).

both the informing and legislative functions created expectations beyond the capabilities of individual Members.

## **The Joint Committee on the Organization of Congress, 1945–1946**

The first Joint Committee on the Organization of Congress in 1946 sought to provide Members and committees with more expert staff aides.<sup>321</sup> The 1946 Joint Committee recognized that Congress needed access to pertinent information to make well-informed decisions and perform legislative duties. The Joint Committee found that policy issues had become too complex for Members to rely solely on self-study to understand the issues.<sup>322</sup> In response to the Joint Committee's findings, the Legislative Reorganization Act of 1946 authorized each standing committee to employ four professional staff experts and six clerical staff at higher salaries than previously allotted.<sup>323</sup> The Joint Committee intended the appointment of professional committee staff members to be without regard to political affiliation.

To reduce Members' nonlegislative workload, the 1946 Joint Committee also recommended authorizing each Member's office to employ an experienced administrative assistant.<sup>324</sup> The LRA of 1946 did not include this provision, but the Senate later enacted it in a separate bill. The addition of administrative assistants lightened the workload of senators by reducing the demands of departmental business, constituent inquiries, and speech writing.<sup>325</sup>

The LRA of 1946 increased Congress's ability to obtain information by expanding the scope and appropriations of congressional support agencies.<sup>326</sup> "Congressional interest in establishing a legislative reference service, mirrored in many state legislatures, reflected an emphasis on the acquisition of knowledge for an informed and independent legislature."<sup>327</sup> The LRA of 1946 expanded the Legislative Reference Service (LRS), increasing the agency's capacity to answer the inquiries of individual Members and committees.<sup>328</sup> The LRA of 1946 also gave the GAO auditing authority over executive branch agencies to help Congress perform financial oversight and reduce waste in federal funds.<sup>329</sup>

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<sup>321</sup> Galloway, "The Operation of the Legislative," 53.

<sup>322</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 14 (March 4, 1946).

<sup>323</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 834-835.

<sup>324</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 15 (March 4, 1946).

<sup>325</sup> Galloway, "The Operation of the Legislative," 57.

<sup>326</sup> The Legislative Reference Service, now known as the Congressional Research Service (CRS), was first created after the introduction of multiple bills from 1909 to 1914. The 1921 Budget and Accounting Act created the General Accounting Office, now known as Government Accountability Office (GAO), and transferred auditing authority from the Department of Treasury.

<sup>327</sup> Brudnick, *The Congressional Research Service*, 4.

<sup>328</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 15 (March 4, 1946).

<sup>329</sup> *Ibid.*, 22.

## **The Joint Committee on the Organization of Congress, 1965–1966**

The 1966 Joint Committee on the Organization of Congress continued to examine ways to increase the efficiency and availability of staff and information resources. The Congress again felt the encroachment of the executive branch into legislative jurisdiction, which required an expansion in congressional information resources.<sup>330</sup> The Joint Committee recommended further increases in staff and resources, as there had been a continuous growth in the congressional workload.<sup>331</sup> The Joint Committee intended that staff increases keep pace with Members' growing workload and need for expertise, even if the workload itself could not be reduced.

The increases in staff capacity and resultant efficiencies recommended by the 1965 Joint Committee affected committee staff, Members' staff and support agencies. The Congress formalized the committee system through the LRA of 1946, and as committees became the forum for deliberating legislation, committees required expert staff. The LRA of 1970 approved six professional staff for each standing committee, as most committees were already employing additional staff on an ad hoc basis to keep pace with the growth in the congressional workload.

To ensure the staff expansion benefited both parties, the House authorized minority members to appoint two professional staff members, one or more clerical staff members, and the minority party was granted one-third of the temporary staff funds.<sup>332</sup> The House rescinded the one-third minority funding provision in 1971, but later restored the provision in 1974. The 1974 resolution also increased committee professional staff to eighteen, with six allotted for the minority. The House further augmented committee staff sizes to better serve Members and committees by allowing an additional staff member for subcommittee chairs and ranking minority Members.

The Senate also increased committee staff sizes by authorizing an additional staff person per senator for each committee on which the senator served, for up to three committees.<sup>333</sup> To increase equity between parties in committee staffing, Congress added to the number of staff allowed per committee rather than changing the allotment of current staff. This approach avoided reducing the staff appointed by the majority party. Although these provisions increased the number of staff available to committees, the amount of expertise provided varied by committee appointment.

The 1966 Joint Committee also examined the allowance for Members' office staff, as demands on individual Members continued to grow and offices needed more resources to

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<sup>330</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 59 (December 17, 1993).

<sup>331</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 21 (July 28, 1966).

<sup>332</sup> Kravitz, "The Advent of the Modern Congress," 379.

<sup>333</sup> *Ibid.*, 388.

fulfill their legislative and informing functions. The Joint Committee recommended that each Member have a full-time staff member dedicated to the evaluation and analysis of legislative business. The Committee also found that the combined workload of legislative and constituent services needed increased attention. The Joint Committee considered adding an administrative body to deal with a portion of constituent services on behalf of Members, but decided against making that recommendation, as it was deemed a proper function of each individual Member's office.<sup>334</sup>

The LRA of 1970 did not enact the recommendation of a full-time legislative staff person for each Member. This resulted in Members retaining the same staff allowance without implementing a restriction on the type of staff hired. In 1975, however, the House increased office staff positions to eighteen, and an additional four part-time or temporary staff were authorized in 1979. Allowances for Senate office staff varied by state population and did not have a set allotment of positions.<sup>335</sup>

The 1966 Final Report of the Joint Committee on the Organization of Congress deduced that the "1946 act endorsed the principles that (a) research can be most effectively supplied by a pool of independent experts, and (b) that the Congress should have direct access to its own separate research agency."<sup>336</sup> The LRA of 1970 renamed the LRS as the Congressional Research Service (CRS) and authorized tripling the size of the agency.<sup>337</sup> The LRA of 1970 further defined the CRS's responsibilities: to analyze potential legislation; provide and evaluate alternatives to policies and programs; and directly support committees.<sup>338</sup> This change upgraded the CRS's status from a reference entity that stored and retrieved data into an agency capable of creating new information and analysis as needed in response to inquiries and on its own initiative.<sup>339</sup>

The LRA of 1970 and the CBA of 1974 both strengthened the GAO mandate to audit and evaluate government programs.<sup>340</sup> This change in focus led to the professionalization of GAO staff auditors, and to the creation of professional audit standards throughout the mid-1970s. By 1972, the GAO and the Bureau of the Budget created the *Standards for*

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<sup>334</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 36 (July 28, 1966).

<sup>335</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 64 (December 17, 1993).

<sup>336</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 39 (July 28, 1966).

<sup>337</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 46.

<sup>338</sup> Joint Committee on the Library of Congress, *Annual Report of the Librarian of Congress for the Fiscal Year Ending June 30, 1972* (1973) 25. <http://catalog.hathitrust.org/Record/000072049>, accessed September 25, 2012.

<sup>339</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 40 (July 28, 1966).

<sup>340</sup> "History of The GAO - The Early Years," *General Accountability Office*, <http://www.gao.gov/about/history/earlyyears.html>, accessed November 14, 2012.

*Audit of Governmental Organizations, Programs, Activities and Functions.*<sup>341</sup> The 1966 Joint Committee recommended that committees use GAO reports on budget justifications and proposed legislation to obtain fiscal expertise and to make recommendations.<sup>342</sup> These reports provided Congress with an internal resource, and reduced the need to rely on outside sources.

To aid Congress in providing nonpartisan, impartial analysis and cost estimates for proposed legislation, Congress established the Congressional Budget Office (CBO) with passage of the Budget Impoundment and Control Act of 1974.<sup>343</sup> The CBO is responsible for creating the annual Budget and Economic Outlook and Analysis of the President's Budget.<sup>344</sup> The CBO provides Congress with its own institutional capacity to obtain budget information instead of relying on the OMB. After its creation, Congress gave the CBO responsibility for estimating the costs of federal legislation on state and local budgets and increased analysis, testimony and hearings resulting from the State and Local Government Cost Estimate Act (1981) and the Balanced Budget Act and Deficit Control Act (1985).<sup>345</sup>

### **The Joint Committee on the Organization of Congress, 1993–1994**

In a shift from the previous reform efforts, the 1993 Joint Committee on the Organization of Congress made recommendations that focused on increasing the efficient use of staff and support agencies, rather than expanding staff and resources. Congressional staff had grown in order to match the growth in Members' workloads, create independence from the executive branch, establish the Congress's power over the purse, and to distribute staff to district offices. By 1993, some Members of Congress regarded the expansion of congressional staff as wasteful, citing that previous Members of Congress had hired too many staff, hired the wrong type of staff, or had not used staff fairly or efficiently.<sup>346</sup> The reform bills of the Joint Committee on the Organization of Congress presented by both the House (H.R. 3801, 103rd Congress) and the Senate (S.1824, 103rd Congress) recommended reducing the number of full-time staff in the legislative branch consistent

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<sup>341</sup> Ibid.

<sup>342</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 34 (July 28, 1966).

<sup>343</sup> Congressional Budget Office, "Overview," from *An Introduction to the Congressional Budget Office* <http://www.cbo.gov/about/overview>, accessed December 3, 2012

<sup>344</sup> "Our Processes," *Congressional Budget Office*, <http://www.cbo.gov/about/our-processes>, accessed December 3, 2012.

<sup>345</sup> Alice M. Rivlin, (statement of Director of the Congressional Budget Office), Congressional Budget Office's Appropriations Requests for Fiscal Year 1982, 81st Cong. (March 10, 1981) <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/101xx/doc10187/81doc08.pdf>, accessed September 27, 2012.

<sup>346</sup> Frederick Pauls, "Congressional Reorganization: Options for Change," *Congressional Research Service* (1992) 61-62.

with the reductions of almost a fifth of the federal workforce implemented by the executive branch under the National Performance Review in 1993.<sup>347 348</sup>

During the hearings held by the 1993 Joint Committee, Members expressed competing views on the size of congressional staff; however, the 1993 Joint Committee Report revealed a general inclination to reduce the amount of Capitol Hill staff.<sup>349</sup> Justification for the reduction came from claims of over-reliance on staff, personnel bloat, and duplication of effort.<sup>350</sup> Conversely, other Members urged fellow Members to consider cuts by function rather than several across-the-board measures.<sup>351</sup>

## From 1994 to the 113th Congress

Although Congress did not adopt a Legislative Reorganization Act based on the findings of the 1993 Joint Committee, Congress implemented a number of changes that affected their staffing and resources. Reductions in staff occurred in response to the calls for increased staff efficiency and campaign promises for reform.<sup>352</sup> The number of committees had remained fairly constant since 1946. However, a dramatic drop in the total number of staff allotted for House committees occurred in 1994 when House committee staff decreased from 1,947 to 1,258. As of 2009, House committee staff remained reduced at 1,362.<sup>353</sup> Senate committee staff also decreased in the mid-1990s from 1,094 to about 900 but has since rebounded to 1,153 in 2009.<sup>354</sup>

In the mid-1990s, Congress cut support agency budgets, but the expectations for the services provided by those agencies did not change. The GAO experienced a 25 percent decrease in staff, with little decrease in responsibilities.<sup>355</sup> In 2004, Congress passed the GAO Human Capital Reform Act of 2004, changing the name of the GAO from the General Accounting Office to the Government Accountability Office. The CBO also decreased staff to a low of 205 in 1998 as a result of reduced funding. Staff numbers steadily increased to approximately 250 by 2012. After 2008, Congress enlarged the

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<sup>347</sup> "A Nation Transformed: Clinton-Gore Administration Accomplishments: 1993 - 2000," National Partnership for Reinventing Government, Accomplishments fact sheet; National Economic Council, (June 26, 2000), <http://clinton4.nara.gov/WH/Accomplishments/additional.html>.

<sup>348</sup> Carol Hardy Vincent and Paul Rundquist, "Comparison of H.R. 3801 and S. 1824, 103d Congress: Reform Bills of the Joint Committee on the Organization of Congress," Congressional Research Service, (1994), 11.

<sup>349</sup> "I think we could do with less staff." Joint Committee, *Final Report*, 1993, 72. Testimony by Representative Dan Rostenkowski, Ways and Means Committee Chairman.

<sup>350</sup> *Ibid.*, Paraphrased testimony by Freshman Representative, Mike Huffington of California.

<sup>351</sup> *Ibid.*, Paraphrased testimony by Representative John Dingell, Energy and Commerce Committee Chairman.

<sup>352</sup> Vincent, "Committee Numbers, Sizes, Assignments and Staff," 6.

<sup>353</sup> R. Eric Peterson, Parker Reynolds and Amber Hope Wilhelm, "House of Representatives and Senate Staff Levels in Member, Committee, Leadership, and Other Offices 1977-2010," *Congressional Research Service* (2010) 17-18.

<sup>354</sup> *Ibid.*, 24.

<sup>355</sup> "Comptroller General's 1995 Annual Report," *General Accounting Office* (January 24, 1996), 8. <http://161.203.16.4/f0102/156050.pdf>, accessed November 1, 2012 and "Comptroller General's 1996 Annual Report," *General Accounting Office* (1997), <http://161.203.16.4/f0102/158315.pdf>, accessed November 1, 2012.

CBO's responsibility for financing health care, increasing scoring requests for proposed bills and amendments.<sup>356</sup> The CRS initially experienced a 5 percent decrease in staff in 1994, from 811 to 769. Although the Congress has nearly doubled CRS appropriations since 1994, staff decreased to 653 by 2010. During this period, the CRS worked to improve efficiency and information dissemination and focused hiring on analytic expertise rather than support staff.

Constituent expectations for Members' district and Capitol Hill staffs have shifted as technology has advanced. As of 2010, 40 percent of Members' personal office staff work in state and district offices; most of these staffers are dedicated to handling constituent requests and correspondence.<sup>357</sup> The Members' office staffs now see an overwhelming amount of correspondence and casework requests; some offices receive more than 3,000 correspondence emails per week.<sup>358</sup>

Congress continues attempts to pool resources and improve access to facilities for constituent services. As part of the Joint Committee preparations in 1992, CRS analysts proposed the creation of a constituent assistance office to alleviate the casework load on individual offices.<sup>359</sup> Other casework reduction recommendations included creating a mechanism to report related constituent complaints and inquiries, and encouraging Member offices to share information about casework.

Information on legislative activities became more accessible with the launch of THOMAS in 1995. THOMAS was developed and maintained by the Library of Congress. It is a website service that disseminates federal legislative information freely to the public.<sup>360</sup> In September of 2012, the Library of Congress released a beta version of Congress.gov to replace the THOMAS and the Legislative Information Service (LIS). This new website will improve the information dissemination to the public and within the Congress, and will potentially decrease the casework load of individual Members by allowing the public to access reliable information on their own.

## **Theme Two: Staff Management and Resource Pooling**

The second theme explored in this section is the need to balance Members' discretion in staffing their offices and committees with the efficiencies gained by pooling resources. In their own offices, Members have supported a decentralized congressional staffing system. Instead of determining job descriptions, salaries, and hiring systems across all Members'

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<sup>356</sup> "Congressional Budget Office Appropriations Requests, 2003-2013," *Congressional Budget Office*, <http://www.cbo.gov/my-cbo/>, accessed October 16, 2012.

<sup>357</sup> *Keeping it Local: A Guide for Managing Congressional District and State Offices, 3rd Edition*, Congressional Management Foundation (March 8, 2010) xii.

<sup>358</sup> Aaron Scherb, "Contacting Congress: The Staff Perspective," *Friends Committee on National Legislation*, no. 748 (May/June 2011)

[http://fcn1.org/resources/newsletter/mayjun11/contacting\\_congress\\_the\\_staff\\_perspective/](http://fcn1.org/resources/newsletter/mayjun11/contacting_congress_the_staff_perspective/).

<sup>359</sup> Oleszek, Walter. "Congressional Reorganization: Options for Change," *Congressional Research Service*, (1992), 133-134.

<sup>360</sup> Library of Congress. "About THOMAS," [http://thomas.loc.gov/home/abt\\_thom.html](http://thomas.loc.gov/home/abt_thom.html), accessed March 3, 2013.



offices and committees, Members prefer to retain their autonomy in staffing and the usage of staff resources. This resulted from the various approaches employed to organize staffs, and the many methods personal staff use to perform constituent and legislative services. Members also exercise control over committee staff appointments, resulting in politically appointed staff that change based on the committee leadership.

## **The Joint Committee on the Organization of Congress, 1945–1946**

Staff turnover reduces the staff expertise and administrative efficiencies potentially gained by implementing a nonpartisan personnel system and resource pooling. There is a tension between Members' staffing discretion and the efficiencies of pooling resources, and the Joint Committees have made efforts to address this tension. The Joint Committee on the Organization of Congress of 1946 emphasized the importance of retaining professional, nonpartisan staff on committees to provide needed expertise. The Joint Committee intended for the professional, nonpartisan staff to be a pooled resource that could provide expertise to all Members on the committee and not be subject to any one Member's appointment. According to the Joint Committee of 1946, Congress lacked adequate "fact finding services and skilled staffs" and relied upon other organizations and agencies for reports and information.<sup>361</sup> Consequently, Congress increased its efforts to professionalize its staff by creating positions for attorneys and economists, and setting pay scales according to staff function and organizational assignment.<sup>362</sup> The 1946 Joint Committee recommended that the professional staff be appointed to committees without political consideration. The higher salaries recommended by the Joint Committee for the professional committee staff were intended to command high technical skill and sufficient experience. The LRA of 1946 adopted these recommendations. However, this authorization caused a mixed outcome, as many committees retained qualified staff while some committees continued to take political affiliation and patronage into consideration when staffing.<sup>363</sup> The act further stated that the professional committee staff should solely work on committee issues. The mixed outcome of the LRA of 1946 limited the efficiencies and expertise that Congress intended to gain with these changes.

With the objective of eliminating duplicative services, the 1946 Joint Committee recommended the establishment of a Congressional Personnel Office. The Joint Committee intended for this office to establish and centralize qualification standards; job classifications; tenure of employment; and regular rules for promotions, raises, leave, and retirement for congressional staff.<sup>364</sup> To further pool staff and create efficiencies, the Joint Committee also recommended the creation of a stenographic pool for Members to augment their clerical facilities in response to the increase in mail and the demand for constituent services. These recommendations promoted the efficiencies that could be gained by pooling some of the congressional staffing resources, but with the cost of some

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<sup>361</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 9 (March 4, 1946).

<sup>362</sup> *Ibid.*, 10.

<sup>363</sup> Galloway, "The Operation of the Legislative," 55.

<sup>364</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 16 (March 4, 1946).

Member discretion regarding staffing decisions. The LRA of 1946 did not include a provision for Congressional Personnel Office. The Congress also removed the creation of a stenographic pool for Members from the LRA of 1946. The elimination of these shared resources from the final act of 1946 suggests that Congress preferred the ability to have discretion in staffing to the proposed standardization of personnel policies.

## **The Joint Committee on the Organization of Congress, 1965–1966**

Some Members of Congress continued to value the decentralized nature of congressional staffing and viewed a centralized personnel system as problematic since it could interfere with the ability of Members to take into account political considerations in their hiring practices.<sup>365</sup> The 1966 Joint Committee recommended the establishment of an Office of Personnel and Office Management, which had been previously outlined by the 1946 Joint Committee. The office would be a centralized resource to review job applicants and provide office management assistance.<sup>366</sup> The LRA of 1970 did implement the Office of Placement and Office Management, but specified that no Member, committee, or officer be required to use its facilities.<sup>367</sup>

The 1966 Joint Committee continued to struggle with balancing the desire for professionalized expertise on committees with retaining Members' power to appoint committee staff. The LRA of 1946 specified that the professional staff be appointed "on a permanent basis without regard to political affiliations and solely on the basis of fitness to perform the duties of office,"<sup>368</sup> but the 1966 Joint Committee recommended strengthening the language regarding appointment without political affiliations. However, this language was not changed in the LRA of 1970.

The 1966 Joint Committee provided additional recommendations to increase the expertise available to committees because the existing structure did not ensure that committee staff were appointed based on their experience. The LRA of 1970, "authorized committees to pay tuition and other educational fees of committee staff when such educational programs were related to staffs' official duties."<sup>369</sup> The act also allowed for committees to employ outside consultants to advise on subjects within its jurisdiction.<sup>370</sup>

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<sup>365</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 71 (December 17, 1993).

<sup>366</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 36 (July 28, 1966).

<sup>367</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 54.

<sup>368</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 834.

<sup>369</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 70 (December 17, 1993).

<sup>370</sup> Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 44.

## **The Joint Committee on the Organization of Congress, 1993–1994**

The 1993 Joint Committee Report described a fluid and informal personnel system, which indicates that Members continued to value a decentralized staffing structure. The careers of personal or committee staff remained dependent on the Member who employed them. The proposed House reform bill (H.R. 3801, 103rd Congress), based on the 1993 Joint Committee report recommendation, increased development and implementation of training for staff.<sup>371</sup> The training would enhance staff skills and knowledge, better preparing staff to serve the needs of Congress. The 1993 Joint Committee also described committee staff as generally older, more experienced, and better paid than their colleagues in personal offices.<sup>372</sup> These professionals often begin their careers in a personal office and follow the Member to a subcommittee or committee staff position.<sup>373</sup> For congressional staff to obtain the highest placement on committees, their career path must often be tied to an influential Member.

In 1992, following reports of improprieties by the House Sergeant at Arms and the Postmaster of the House, the House undertook management reform.<sup>374</sup> The administrative reform resolution created the position of Director of Non-Legislative and Financial Services. The House tasked the position with managing House financial and administrative services. The resolution also gave the Director of Non-Legislative and Financial Services the authority to establish a formal personnel system for the House.<sup>375</sup>

### **From 1994 to the 113th Congress**

Members' control over their staffing decisions continues limit the creation of a formalized career path and stable employment for congressional staff. This system impedes staff's ability to advance based on their expertise, or remain in a position they have obtained. The system may also prevent committees from appointing and retaining the most qualified experts. The Congress has been unsuccessful in pooling committee resources into a professional nonpartisan staff, resulting in a lack of retention of institutional knowledge. High staff turnover frequently leaves Members with inexperienced office staff, who lack the necessary expertise. According to a 2003 survey by the Congressional Management Foundation, the average staff tenure on Capitol Hill was five and a half years.<sup>376</sup>

The Congress remains resistant to a personnel system removed from political considerations. Currently the House provides the House Vacancy Announcement and Placement Service to assist Members and committees to fill staff vacancies. The Senate

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<sup>371</sup> Vincent, "Committee Numbers, Sizes, Assignments and Staff," 11.

<sup>372</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 71 (December 17, 1993).

<sup>373</sup> Ibid.

<sup>374</sup> Ibid, 65.

<sup>375</sup> Ibid, 71.

<sup>376</sup> "2002 House Staff Employment Study," *Congressional Management Foundation*, (2003).

offers the services of a similar placement office to its Members. These are optional services and do not have hiring authority, nor do these placement offices control salaries or job requirements.<sup>377</sup>

The most consistent finding regarding the placement of staff is that Members want flexibility in staffing their offices and committees. Members prefer autonomy regarding staffing to the potential efficiencies of pooling resources through a central personnel system, or a core of professional committee staff. Members continue to need balance the desire to have discretion when staffing their offices and committees, and pooling staff resources to produce gains in efficiencies for Congress.

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<sup>377</sup> “Positions with Members and Committees,” *U.S. House of Representatives*, [http://www.house.gov/content/jobs/members\\_and\\_committees.php](http://www.house.gov/content/jobs/members_and_committees.php), accessed March 3, 2013.

# Reform Proposals

## Introduction to Reform Proposals

This section of the report presents institutional reform options that Congress may consider to improve its capacity to operate efficiently and effectively. The reform options are intended to aid Congress to regain leadership in initiating policy, ensure robust deliberations, and restore public confidence in the institution. The recommendations are informed by the historical analysis of the tensions that Congress identified during previous reform efforts, and challenges today's Congress faces related to these tensions. Some of the reform proposals aim to address issues that have emerged in the two decades since the last Joint Committee on the Organization of Congress convened in 1993. However, many of the options aim to alleviate pressures that have been repeatedly raised by institutional reformers within Congress, and may be inherent to the institution.

The reform options are organized based on the four categories that informed the historical analysis contained in the first part of this report: agenda setting, budget and appropriations, deliberations, and staffing. Within each category, the report identifies recurrent tensions based on the historical analysis, problems that today's Congress faces related to these tensions, and reform options that could address the problems. The report analyzes the feasibility of the reform options based on the advantages and disadvantages of the proposal, including potential unintended consequences. Although there are additional problems and options that were considered, the report only includes the reform options that were determined to be relevant and realistic based on the feasibility analysis.

This part of the report is divided into two parts. Part One identifies recurring tensions that exist within the structure and the processes of the Congress, the attendant problems these tensions create and options that the Congress might consider to mitigate these problems. Part Two analyzes the advantages and disadvantages of each of the options.

## Part One: Tensions, Problems and Options

### Agenda Setting

#### Recurring Tensions

- Balancing the majority's desire to advance their legislative agenda with the protection of a participatory deliberative process.
- Consolidation power within party leadership, and shifting away from the "regular order."

- Mitigating internal and external pressures that affect Members’ ability to shape and advance the legislative agenda.

## **Problem One**

Control of the congressional agenda has been increasingly centralized in the majority party leadership and committee chairs, thus limiting full participation of the minority and general membership in initiating action on key policy areas for congressional deliberations.

### **Reform Options**

1. Set aside two days per month to allow the minority the opportunity to hold hearings.
2. Require that the parties and major caucuses publish their legislative policy agendas at the beginning of each Congress, and ensure that the agendas are available to the public.

## **Problem Two**

The Congress has responsibility to ensure effective implementation and outcomes of policies. Traditionally the Congress has assigned this review to its oversight functions. The Congress has not consistently used these functions, resulting in periodic lapses in the formal review of programs and policies.

### **Reform Options**

1. Institute a “sunset” review protocol of all executive and legislative agencies, including discretion to review agencies more frequently as needed.
2. Establish specific period(s) in the legislative calendar when committees conduct oversight.
3. Encourage more oversight of policy implementation through congressional field hearings.

## **Budget and Appropriations**

### **Recurring Tensions**

- Balancing executive and legislative control of the budget and appropriations processes.

- Centralized versus decentralized congressional budget and appropriations processes.
- Controlling growth in mandatory spending and federal deficits.

## **Problem One**

Fiscal policy, specifically focused on deficit reduction, has impeded the ability of the Congress to complete the annual budget and appropriations processes.

### **Reform Options**

1. Enact legislation that requires a strict budget neutrality requirement for all new or reauthorized tax and mandatory spending legislation.
2. Create an independent commission to conduct regular comprehensive reviews of all tax and mandatory spending legislation according to a defined timeline.

## **Problem Two**

Congress has made efforts to centralize the budget and appropriations processes to improve coordination among the committees and increase transparency of spending. However, Congress has been reluctant to implement congressionally endorsed reforms to centralize the budget and appropriations process, leading to an inability to pass an annual budget resolution and timely appropriations.

### **Reform Options**

1. Reduce membership on the House and Senate budget committees to seven, including: the majority and minority chairs of the appropriations committees, majority and minority chairs of the revenue committees, majority and minority whips, and the Senate majority leader, and Speaker of the House.
2. Following similar rules and procedures to the budget resolution, appropriations bills should go to the floor for an up or down vote after they are voted out of committee.

## **Deliberations**

### **Recurring Tensions**

- Facilitating an efficient deliberative process while also ensuring minority participation.

- The growing demands on Members' schedules, and the strain this places on the quality of deliberations by committees.

## **Problem One**

The filibuster has gained increasing importance as a legislative procedure that both Democrats and Republicans use to delay or effectively terminate legislation in the Senate. This is inconsistent with the intended purpose of the filibuster, which is to ensure sufficient debate. While not a problem in itself, the supermajority requirement to close a filibuster has created a bottleneck to bills and nominations in the Senate, slowing the deliberations of Congress.

### **Reform Options**

1. Introduce a graduated plan to reduce the threshold of votes needed to invoke cloture.
2. Mandate that a continuous floor presence be required to maintain a filibuster.
3. Abolish the filibuster practice and limit debate to thirty hours.

## **Problem Two**

Congress has noted that insufficient deliberation by committees results in fewer viable policy options. However, attempts to reform committee structure and governance have not been successful in transforming them into an open forum for thorough deliberation and development of legislative options.

### **Reform Option**

1. Allow committees to hold closed debrief sessions after hearings to allow Members additional opportunities to ask questions.

## **Problem Three**

Members of Congress spend a significant amount of time off Capitol Hill or away from Washington, D.C., which limits their participation in deliberative activities.

### **Reform Option**

1. Adopt a congressional workweek schedule that allows Members to spend more time in Washington, D.C., for example, a five-day workweek for three weeks, with one week off for work in Members' home states/districts.

## **Problem Four**



The House leaderships' role in developing and conducting the work of committees varies across leadership, at times causing tension between the leadership and the chairs. This tension may have consequences for achieving effective deliberations.

### **Reform Option**

1. Change procedure for electing committee leadership to allow the entire committee or subcommittee membership to vote for their chair and ranking member.

### **Problem Five**

Congress has recognized the need to resolve the tension associated with facilitating an efficient deliberative process, and the need for contributions from both minority and majority parties.

### **Reform Option**

1. The House of Representatives should enhance the use of the open rule and restrict the use of the closed rule.

### **Additional Reform Options**

1. Realign committees and their jurisdictions across chambers and between branches.
2. Require and record attendance at committee hearings and markups, including how long Members remain. Institute penalties for Members' absence—for example, if a Member misses more than five hearings/markups, then he/she and loses his/her committee position.

## **Staffing**

### **Recurring Tensions**

- Balancing a Member's discretion regarding his/her office, and the need for efficient processes in Congress.
- Balancing the benefits of pooling of information, work, and expert staff to increase efficiency, and maintaining flexibility to adjust resources as needs change.

### **Problem One**

The increase in demands on Congress in both the informing and legislative functions have created expectations beyond the capacities of individual Members. There is a need

to balance Members' discretion in staffing their offices with the efficiencies of pooling resources.

### **Reform Options**

1. Pool technical support to provide objective policy information to the public, and allow Members to customize the way this information is presented on their websites. Consider housing this new function within existing systems or agencies.
2. Integrate the Congressional Research Service, Government Accountability Office, and Congressional Budget Office under one umbrella agency to increase the efficiency of the support agencies.

### **Problem Two**

Congress has difficulty accumulating and retaining pooled expertise and institutional knowledge among committee staff members.

### **Reform Option**

1. Establish a core of permanent professional committee staff to provide internal expertise to committees, and help committees retain institutional knowledge through leadership transitions.

## **Part Two: Analysis of Reform Options**

### **Agenda Setting**

#### **Problem One**

Control of the congressional agenda has been increasingly centralized in the majority party leadership and committee chairs, thus limiting full participation of the minority and general membership in initiating action on key policy areas for congressional deliberations.

#### **Background**

Members of Congress have identified barriers to minority participation in congressional agenda setting as a concern during each reform effort undertaken by Congress over the last seventy years. Members of the minority party testified about minimal levels of participation during all three of the Joint Committees on the Organization of Congress, and cited the minority's inability to initiate hearings and schedule movement on legislation. In 1947, the lack of minority participation was largely the result of the power and autonomy of the committee chairs. Since 1947 there has been a shift from committee chair control to majority party leadership control, but meaningful participation in the

agenda-setting process by the minority party remains limited.<sup>378</sup>

The 1946 Joint Committee on the Organization of Congress addressed this problem with the suggestion that the Senate committees hold a monthly docket day. The monthly docket days would have allowed bill sponsors to hold a hearing when they could not secure a hearing from the committee chair.<sup>379</sup> However, this suggestion was not included in the LRA of 1946 because party leadership opposed it on behalf of most committee chairs.<sup>380</sup>

Competing interests within the majority party also present difficulties in determining what is included in the official agenda of the majority party. The public does not have good information about the legislative priorities of the majority party, or the other parties and caucuses within Congress. Although candidates and parties present their platforms during campaigns, there is no mechanism for parties to clearly articulate their agenda to the public at the beginning of each Congress.

## **Reform Option**

### **Set aside two days per month to allow the minority the opportunity to hold hearings.**

Two days of each month would be dedicated to a minority party docket day, where the minority party could hold hearings that had not been scheduled by the majority leadership and committee chairs. If sponsors of stalled legislation fail to schedule hearings, the majority would then be allowed to resume normal proceedings.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Increased participation**  
Docket days could increase participation by minority members. This could help ensure that legislation is more representative of all interests, not just that of the majority party.
- **Increased quality of deliberations**  
Docket days may also increase the quality of deliberations by exposing Members to different issues and perspectives.

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<sup>378</sup> This is described in detailed in the Deliberations Historical Analysis section of this report

<sup>379</sup> The Joint Committee recommended, “ that all committees set aside monthly docket days for the public hearing of Members who have bills pending before them; that committees set regular meeting days for the consideration of such business as the committee determines. . . .”

Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 7 (March 4, 1946).

<sup>380</sup> House Speaker Rayburn made the declaration on the floor. Davidson, “The Advent of the Modern Congress,” 364.

- **Increased scheduling effectiveness**  
Requiring that hearings be scheduled at least one week in advance may limit attempts to delay action, and allow the majority leadership to fill open times that are not used by the minority.
- **Possible tool to restore “regular order”**  
Experts in and outside of Congress consistently mention a desire to return operations to the regular order. Some scholars argue for shifting power back from the leadership to committees, where deliberations and markups should occur.<sup>381</sup> Strengthening the power of the minority within the committee may help to restore the regular order and reduce legislative roadblocks.

### *Disadvantages*

- **Resistance to change**  
The majority party leadership may be reluctant to transfer power to the minority party. Specifically the leadership may be concerned about losing control over the agenda, which could stall deliberations and limit the majority’s ability to advance their agenda.
- **Possible tool to delay action**  
Members could use these days as a way to delay the majority’s agenda. Reserving time for minority hearings that may not take place could prove to be an inefficient use of the busy legislative calendar, and allow members to introduce procedural delays.
- **Importance of attendance**  
There may not be sufficient incentive for majority party Members to participate in minority party hearings. This may result in split hearings in which Members only attend hearing held by their party, which would further limit the amount of substantive deliberations in committees.

### **Reform Option**

**Require that the parties and major caucuses publish their legislative policy agendas at the beginning of each Congress, and ensure that the agendas are available to the public. Clearly stated policy objectives could help streamline the agenda-setting process.**

The Republican Party used this approach in 1994 when it regained control of the House. Scholars attribute the successful execution of that agenda to creation and implementation

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<sup>381</sup> Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006) 170-175.

of a clear set of policy goals that were effectively communicated to the public.<sup>382</sup> Building from this experience, this reform proposal would provide for the creation of a detailed platform for each major party at the beginning of each session, as agreed on by a majority of members. Since the 1994 agenda-setting activities, there have not been subsequent efforts to determine a clear policy agenda for each Congress.

Some might point to the reservation of the first ten House bills for the majority and the second ten for the minority as indicators for party agendas. However, current House rules allow the Speaker and the minority leader to reserve those slots without specific designation or purpose and insert legislation throughout the session. Technically, one of these prime designations could be reserved until the end of the session, which limits this mechanism as a means for clearly articulating the party's legislative priorities. Neither party clearly articulates its priorities in an easily accessible and publicly available format at this time.<sup>383</sup> Some localities have formalized their preparation and use of agendas to help inform state legislatures. These may serve as models for possible congressional adaptations.<sup>384</sup>

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Transparency and improvement of the informing function of the Congress**  
Each party or caucus would commit to priorities that would clarify their agenda and improve the public's understanding of the direction and goals of the Congress. Clarity of policy goals could also enhance public understanding of each party's approach to public policy problems and provide the public with a way to engage with the Congress.<sup>385</sup>
- **Focused agenda**  
Clearly stating policy priorities and the approach(es) considered for addressing them could result in a richer and more inclusive dialogue among those who hold a

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<sup>382</sup> Jeffery B. Gayner, "The Contract with America: Implementing New Ideas in the U.S.," *The Heritage Foundation* (Oct. 1995). <http://www.heritage.org/research/lecture/the-contract-with-america-implementing-new-ideas-in-the-us>

<sup>383</sup> For example, as of April 2013, only House Resolutions 3, 11, and 12 are named and awaiting further action. The other 17 slots are still reserved under the respective party leader. Despite being cited as an indicator of party focus by congressional experts, the current standing of these bills fail to adequately support the informing function of Congress. This reform option aims to duly inform and increase transparency to the public about the agenda priorities of both parties. As determined by searching for H.R. 1- H.R. 20 on the beta version of Congress.gov.

<sup>384</sup> The City Council of Portland provides one possible model to consider for this reform proposal in its annual policy platform for the state legislative session. The goal of the Portland platform is to clearly articulate the specific objectives, initiatives, and policy positions of the city in preparation for the Oregon legislative session. See Office of Governmental Relations, City of Portland, "Legislative Agenda 2013 Session," Office of Governmental Relations, City of Portland, "Legislative Agenda 2013 Session," <http://www.portlandonline.com/govrelations/index.cfm?c=32924&a=430397>.

<sup>385</sup> Gayner, "The Contract with America"

common interest in addressing a particular policy, but who hold different positions on how to approach the issue.

### ***Disadvantages***

- **Conflicting agendas**  
Presenting an agenda at the beginning of each session will not address the disparate nature of the agendas. By locking parties into positions, the process could decrease Congress's ability to reach compromises. This also may not leave enough flexibility to adjust to changing circumstances, for example, new information, unanticipated events, etc.
- **Increased work**  
This would require additional work of Members and congressional staff, because each major caucus would need to write and vote on a policy agenda. Additionally, it may be difficult for parties and caucuses to reach agreement on an agenda. Members might be hesitant to approve the entire agenda if it contains provisions with which they do not agree.
- **Difficult to maintain allegiance**  
Members would not be required to adhere to the policy agenda. This may result in the agenda becoming superficial, thus undermining the effectiveness of this reform in practice.

### **Problem Two**

Congress has responsibility to ensure effective implementation and outcomes of policies. Traditionally the Congress has assigned this review to its oversight functions. The Congress has not consistently used these functions, resulting in periodic lapses in the formal review of programs and policies.

### **Background**

Congressional oversight occurs in the form of hearings and investigations to analyze executive agencies' implementation of policies. There has been a reduction in these oversight functions over time, as indicated by a decline in the quantity of hearings. In 1983, oversight committees held 782 hearings to review the implementation and outcomes of policies. The number of oversight hearings declined to 175 in 1997.<sup>386</sup> According to a report by Senator Coburn, this reduction in oversight continued, with the 111th Congress conducting 318 fewer hearings than the previous Congress.<sup>387</sup> The

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<sup>386</sup> Joel Aberbach, "What's Happened to the Watchful Eye," *Congress and the Presidency* 29, no. 1 (2002).

<sup>387</sup> Senator Tom Coburn, "Shooting the Messenger: Congress Targets the Taxpayer's Watchdogs," *Government Accountability Office* (November 2011), [http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File\\_id=c6bdb64-ad37-4571-9c6a-8d97a3154253](http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=c6bdb64-ad37-4571-9c6a-8d97a3154253).

decline of the congressional oversight function has led to a reduction of the institution's ability to hold the executive branch accountable for policy implementation.

The decline in congressional oversight is in part the result of increasing demands on Members' schedules, which limit the time available to conduct hearings and oversight.<sup>388</sup> Oversight may also be declining because of the amount of technical expertise that is needed to oversee increasingly complex government programs. Oversight activities are less likely to receive media attention, except in the case of high-profile investigations, reducing the incentives for Members to dedicate time to oversight. In addition, when there is a unified government, the majority party may be unwilling to perform oversight on an administration of the same party.<sup>389</sup> In these circumstances, Members also do not see a political benefit from performing oversight.

## **Reform Option**

### **Institute a sunset review protocol of all executive and legislative agencies, including discretion to review agencies more frequently as needed.**

Many state legislatures use sunset provisions that set a date for an agency's expiration, and require that the legislature review the agency's performance and pass legislation to extend the agency's jurisdiction. For example, the Texas Legislature requires that bills establishing agencies sunset every twelve years. A commission comprised of members of both parties and legislative chambers must review the agency's performance when the sunset occurs, and submit a report to legislature recommending potential reforms.<sup>390</sup>

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Holding institutions accountable**  
Sunset provisions would require the Congress to evaluate the performance of executive agencies. This creates an incentive for Congress to look at previous policies, and ensure that agencies are fulfilling their legislative mandate. Although the Government Performance Results Act of 1993 requires the Congress to conduct performance evaluations of agencies, the sunset process would provide a mechanism to ensure that a thorough review is conducted regularly.
- **Opportunities for reform**

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<sup>388</sup> Walter J. Oleszek, "Congressional Oversight: An Overview." *Congressional Research Service* (February 22, 2010) 14. <http://www.fas.org/sgp/crs/misc/R41079.pdf>.

<sup>389</sup> Ibid.

<sup>390</sup> "Texas Sunset Advisory Commission Records," Archives and Information Services Division, Texas State Library and Archives Commission (1977-2005) <http://www.lib.utexas.edu/taro/tslac/40063/tsl-40063.htm>.

Sunset provisions would create opportunities for the Congress to identify areas for improvement within executive agencies, and establish a regular process for updating and innovating.

- **Opportunities to abandon failed agencies**

If there are clear indicators of an agency failure through persistent problems, Congress can allow the agency to sunset. Currently, eliminating flawed agency practices requires new legislation, but under sunset, the Congress would have the power to dissolve agencies through the review process.

### *Disadvantages*

- **Increased congressional workload**

Congress could give authorizing committees sunset authority, establish this function within an existing legislative support agency, or create a new commission. All of these options would require additional Member and staff time to support the review and authorization of agencies that are under sunset.

- **Minority party able to block extensions**

Sunset provisions could allow the minority party to block policy extensions that have majority party support through a Senate filibuster. Sunset reviews may be seen as an opportunity to block programs or policies to force political concessions.

- **Increased complexity within agencies**

Implementing sunset legislation could introduce more bureaucracy within agencies by requiring additional performance tracking and reporting to the sunset commission.<sup>391</sup>

- **Reduced flexibility in the congressional agenda**

Sunset provisions might reduce party leadership's flexibility when setting the legislative agenda. The sunset provision would force Congress to review agencies according to a set calendar, which may reduce party leadership control over the Congress's oversight function.<sup>392</sup>

### **Reform Option**

#### **Establish specific period(s) in the legislative calendar when committees undertake oversight.**

Congress could strengthen congressional oversight by establishing a set number of workdays when members are required to hold oversight hearings. For example, the

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<sup>391</sup> Vern Mckinley, "Sunrises without Sunsets: Can Sunset Laws Reduce Regulation?" *Regulation*, no. 4 (1995) 63. <http://www.cato.org/sites/cato.org/files/serials/files/regulation/1995/10/v18n4-6.pdf>.

<sup>392</sup> Donald R. Wolfensberger (congressional scholar at the Woodrow Wilson International Center for Scholars and Bipartisan Policy Center), discussion with authors (LBJ Students). March 25, 2013, Austin, Texas.



Congress could select a number of days per month, or a number of days per Congress, that committees must dedicate to reviewing the implementation of existing programs.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Elevates the role of oversight**  
Setting aside time for the review of existing programs would institutionalize the oversight function. Although previous Joint Committees have recommended that committees conduct more oversight, the implementation of oversight related provisions has been limited. Allotting time for the review of programs may help committees overcome the disincentives to conduct oversight, and elevate the role of oversight in the committee agenda.
- **Timely responses to policy problems**  
This reform could ensure that oversight activities are not limited because of time constraints. As the demands on member and committee schedules increase, allocating time dedicated for the review of programs provides committees with an opportunity to fulfill their oversight function.

### **Disadvantages**

- **Politicization**  
Hearings may be used for political purposes rather than used as an opportunity to review existing programs.
- **Limited participation by Members**  
Member participation in committee hearings is already limited, and simply providing the time for oversight hearings may not result in Members attending these hearings.

### **Reform Option**

#### **Encourage more oversight of policy implementation through congressional field hearings.**

For Congress to fulfill its oversight function, congressional leadership should encourage committees to hold more field hearings. Field hearings are congressional trips that allow members to review policy implementation at the local level or at a level at which policy implementation takes place.<sup>393</sup>

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<sup>393</sup> Valerie Heitshusen, "Field Hearings, Fact Sheets on Purposes, Rules, Regulations and Guidelines," *Congressional Research Service* (December 8, 2009) <http://www.fas.org/sgp/crs/misc/RS20928.pdf>.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### *Advantages*

- **Increased incentives to conduct oversight**  
Field hearings may provide an incentive for committee members to participate in oversight activities, because the Members may perceive that there are tangible benefits to participating in the hearings. For example, Members may view field hearings as an opportunity to build their policy expertise, or as an opportunity to engage in constituent outreach.
- **Building policy expertise on committees**  
Field hearings provide members with opportunities to oversee policy implementation on the state and local level by engaging with those who have responsibility for implementation. The field hearings can provide committee members with information to inform deliberations and help them build expertise.
- **Increased opportunities for bipartisan deliberations**  
Field hearings could offer opportunities for members to work together away from the partisan context in Washington. Traveling together may provide opportunities for Members to develop personal relationships and help facilitate a more cooperative deliberative process.

### *Disadvantages*

- **Cost of travel**  
Field hearings may face opposition because of the travel expenses. Members might be unwilling to go engage in field hearings if the public believes the trips constitute wasteful government spending. In the past international congressional trips have been criticized as a way for members to advance their personal interest at the expense of the taxpayer.
- **Perceived as campaigning**  
Field hearings may also face opposition if Members or the public perceive that Members use the trips for campaign purposes. If Members or the public view the field hearings as disingenuous, the hearings are unlikely to be effective forums for conducting oversight.

## **Other Considerations**

### **Problem**

The political parties often succumb to internal and external pressures that block compromise, thus resulting in stalled or failed execution of each party's legislative agenda.

After much research and analysis, no feasible institutional reform options were identified to address this problem. The problem involves a broad range of factors, many of which are external to the structures and processes of Congress.

## **Budget and Appropriations**

### **Problem One**

Fiscal policy, specifically focused on deficit reduction, has impeded the ability of the Congress to complete the annual budget and appropriations processes.

#### **Background**

Congressional efforts to reduce the deficit during the budget and appropriations processes have increased the amount of political tension among Members, and between the Congress and the President. Differing approaches to deficit reduction have been the main contributor to the disagreement and deadlock, with some Members supporting revenue increases, others emphasizing the need for spending cuts, and still others calling for a combination of the two. Budget deliberations for fiscal year 2012 ended in a deadlock between Members, and between the President and the Congress, due to disagreement over deficit-reduction tactics.<sup>394</sup>

As a result of the heightened tension over the deficit, the Congress has been unable to pass annual budget resolutions in recent years. The Congress has not passed a budget resolution on time since fiscal year 2004, and in three of the last six years, a budget resolution has not been passed at all.<sup>395</sup> Congress has not passed a complete set of appropriations bills before the start of the fiscal year since 1994.<sup>396</sup> Additionally, the prolonged deficit-reduction negotiations and deliberations often cause the Congress to miss or extend deadlines in the annual budget and appropriations processes. For example, in the fiscal year 1996 budget cycle, Republican-led Members in the Congress delayed the budget process by several months, eventually leading to a government shutdown.<sup>397</sup> Although a government shutdown has not occurred since, increased time allocated to deficit reduction during the budget cycle and disagreement regarding spending and

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<sup>394</sup> Congressional Record: Proceedings and Debates of the 112th Congress, 157, no 183 (December 1, 2011), <http://www.gpo.gov/fdsys/pkg/CREC-2011-12-01/pdf/CREC-2011-12-01-pt1-PgH8001-4.pdf>, accessed February 19, 2013.

<sup>395</sup> Bill Heniff Jr., "Congressional Budget Resolutions: Historical Information," *Congressional Research Service* (March 13, 2012), [http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0E%2C\\*PLS2%23%20%20%20%0A](http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0E%2C*PLS2%23%20%20%20%0A), accessed February 10, 2013.

<sup>396</sup> MacGuineas, "Congress' Bad Record."

<sup>397</sup> Meyers, "Late Appropriations and Government Shutdowns," 29.

revenue totals reduce Members' ability to complete the legislative processes that are needed to fund government agencies and programs.

The decreased functionality of the budget and appropriations processes has disrupted the operations and planning of organizations and agencies, and threatens the stability of the national economy.<sup>398,399</sup> Without timely annual appropriations, future funding levels are uncertain, which makes it difficult for agencies to plan effectively for future operations, innovation, and hiring.<sup>400</sup> Another critical implication of impasse in the budget and appropriations processes is the shutdown of our national government, as occurred in 1995 and 1996.<sup>401</sup> Shutdown of the federal government, or even the threat of government shutdown, is harmful to our national economy. Previous shutdowns or threats of shutdowns have resulted in hiring freezes, employee layoffs, federal bond rating downgrades, and delays in federally backed loans. These consequences have a significant impact on the national economy.

## **Reform Option**

### **Enact legislation that requires a strict budget neutrality requirement for all new or reauthorized tax and mandatory spending legislation.**

All new or reauthorized mandatory spending or tax legislation would be offset by revenue increases or spending cuts specified within that legislation. No reauthorization or expansion of existing direct spending program or tax legislation would be exempt from the offsetting requirement. However, legislation that would increase revenues and have a positive impact on the budget equation would not be subject to the offsetting requirement.

The five-part definition of emergency spending created by the OMB in 1991<sup>402</sup> could be included in the legislation to stipulate that only spending provisions that are necessary, sudden, urgent, unforeseen, and not permanent can be deemed emergency provisions, with the agreement of both the President and both chambers of the Congress.

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<sup>398</sup> The credit rating of the US federal government was downgraded from AAA to AA+ by Standard & Poor's rating agency on August 5, 2011, citing the inability of the Congress to "bridge the gulf between the political parties" over fiscal policy due to heightened polarization in the political process. Brinkmanship regarding the federal debt ceiling and possible government shutdown were also cited by S&P. The downgrade created significant volatility in financial markets and all three major US stock indexes declined by 5% to 7% in one day.

<sup>399</sup> Standard & Poor's Financial Services. "United States of America Long-Term Rating Lowered To 'AA+' Due To Political Risks, Rising Debt Burden; Outlook Negative." *Standard & Poor's* (August 5, 2011) available from <http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245316529563>, accessed March 14, 2013.

<sup>400</sup> Scott Lilly and Eleanor Hill, "Broken Budgeting: A View of Federal Budget Making from the Trenches," *Center for American Progress* (August 2012) 7.

<sup>401</sup> Sharon Gressle, "Shutdown of the Federal Government: Causes, Effects, and Process," *Congressional Research Service* (November 8, 1999), <http://www.cnire.org/nle/crsreports/government/gov-26.cfm>, accessed February 15, 2013.

<sup>402</sup> "Emergency Spending Under the Budget Enforcement Act," *Congressional Budget Office* (December 1998). <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/10xx/doc1050/emspend.pdf>, accessed February 15, 2013.

If legislators fail to offset enacted legislation, and the budget scorecard maintained by the OMB is out of balance at the end of the fiscal year, the law would require the President to authorize an across-the-board agency sequestration totaling the amount of deficit spending that had accumulated. No on-budget programs<sup>403</sup> would be completely exempt from the cuts, but caps could be placed on programs that serve low-income or at-risk populations (e.g., maximum 4 percent reduction in Medicare spending). Each agency would be cut by a uniform amount or predetermined percentage, but agency executives would have discretion at the program and activity level. With agency recommendations, the President would submit a sequestration proposal to the Congress. Upon receiving the proposal, Members would have thirty days to pass the legislation or send an alternative version back to the President. If the Congress takes no action within thirty days, or no agreement is reached between the branches, the President's proposed cuts would become law.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible implications of the reform.

### *Advantages*

- **Controlled growth of the federal deficit**  
Through requiring legislation to be budget neutral, this reform would build a mechanism into the congressional budget process that could help control growth in the federal deficit by requiring legislators to make trade-offs between spending and revenue when proposing or reauthorizing mandatory spending increases or tax cuts.
- **Balanced revenue and expenditures**  
The strict offsetting requirement could help the Congress avoid making the deficit larger by requiring adherence to the status quo by creating a consistent process to balance spending and tax cuts.
- **Enforced fiscal responsibility**  
The requirement could result in some flexibility in its enforcement of fiscal responsibility. Legislators would be able to propose new spending or tax-reduction legislation, and would have the option of offsetting that legislation via new revenues or cuts in other areas.
- **Meeting annual budget and appropriations deadlines**  
This mechanism could reduce the amount of time and focus that Members devote to deficit reduction efforts. As a result, it could shift their focus from deficit reduction to preparing an annual budget resolution, making on-time appropriations, and conducting oversight.

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<sup>403</sup> Exempt off-budget spending includes Social Security (OASDI), the Postal Service, and government sponsored enterprises. Net interest payments on the debt would also be exempt.

- **More widely dispersed spending cuts**  
The across-the-board sequestration, with no on-budget programs completely exempt, would increase the number of agencies and programs across which the sequestration would be distributed, creating a smaller threat to each individual entity.
- **Preservation of critical programs**  
The ability of agencies to determine how to accommodate a sequestration could help preserve critical programs.

### *Disadvantages*

- **Stricter requirements may be too limiting**  
Members may be hesitant to enact a stricter offsetting requirement that would supplant the existing PAYGO law. Although many Members agree that the Congress must have increased fiscal responsibility,<sup>404</sup> the requirements of the proposed offsetting law may be perceived as too limiting and the consequences of violating it too harsh.
- **Offsetting not guaranteed**  
There is no guarantee that the Congress would adhere to the offsetting requirement. In the past, the Congress has used accounting time shifts, expanded definitions of “emergency spending,” and passed legislation to cancel sequestrations to avoid adhering to PAYGO requirements.<sup>405</sup> The level of fiscal responsibility required of Members in order to maintain budget neutrality is difficult to sustain, especially in face of economic fluctuation or other unforeseen circumstances.
- **Current exemptions included**  
The offsetting mechanism would significantly reduce the number of programs and tax cuts that are currently exempt from the offsetting requirement and eliminate all on-budget programs or policies that are currently exempt from the sequestration. There are a variety of reasons why the current PAYGO law exempts particular items and those reasons are likely to resurface if this reform were enacted.<sup>406</sup>

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<sup>404</sup> Hearing Before the Joint Select Committee on Deficit Reduction, 112th Congress, (September 13, 2011) [http://cybercemetery.unt.edu/archive/deficit/20120113182751/http://www.deficitreduction.gov/public/\\_cache/files/34e8a107-3adb-485a-88bb-f75aff4e2e4d/110913-FinalPrint.pdf](http://cybercemetery.unt.edu/archive/deficit/20120113182751/http://www.deficitreduction.gov/public/_cache/files/34e8a107-3adb-485a-88bb-f75aff4e2e4d/110913-FinalPrint.pdf), accessed February 22, 2013.

<sup>405</sup> Robert Keith, "Budget Sequesters: A Brief Review," (March 8, 2004) 4.

[http://http://archives.democrats.rules.house.gov/CRS\\_Rpt/RS20398.pdf](http://http://archives.democrats.rules.house.gov/CRS_Rpt/RS20398.pdf), accessed February 15, 2013.

<sup>406</sup> For example, the 2010 PAYGO law exempted the reauthorization of a “temporary fix” for Medicare physician payments. Without the extension of the fix, payments to Medicare doctors would have decreased by 21% and would have significantly disrupted the Medicare program. Since this reauthorization was considered in the “policy projections” for that fiscal year, it was exempted from the offsetting requirement. Similar reasons were stated for exempting the reauthorization of the estate tax deduction, alternative minimum tax, and middle class tax reductions.

- **Offsetting may not impact the deficit**  
Some Members may view the proposed offsetting requirement as being too weak. Some have argued that the projected growth of existing mandatory programs with automatic inflation increases also should be subject to offsetting requirements in order to truly have an impact on the deficit.<sup>407</sup>
- **Increased gridlock**  
The strict offsetting requirement could increase the gridlock in the Congress due to difficult decisions required in the offsetting process. If proposed legislation created new direct spending or tax cuts at the expense of another program's funding, it may create conflict among Members, committees, or between the two chambers. As a result, the Congress may find the offsetting requirement unworkable.<sup>408</sup>
- **Difficulty passing legislation**  
Legislation that included offsets from multiple programs or significantly changed tax law may become too big and/or controversial to pass.
- **Disputes over emergency spending**  
Disputes over what can be classified as emergency spending may limit flexibility of the Congress to adjust to unanticipated consequences of an emergency.
- **Mechanism itself would not reduce the federal deficit**  
Requiring offsets to ensure budget neutrality of all new tax and mandatory spending legislation could prohibit Members from adding to the deficit through new legislation, but would not, in itself, reduce the projected budget deficit and may not significantly improve the financial standing of the federal government.

## **Additional Considerations**

The offsetting requirement for tax and mandatory spending legislation would be most effective if paired with caps on discretionary spending. Currently, discretionary spending caps are in place through 2021 under the Budget Control Act of 2011. If the recommended reform is to have its intended effect of stabilizing the deficit, the discretionary caps should be extended or subject to adjustments to account for economic and socio-demographic changes.

Both chambers of the Congress currently have offsetting requirements as part of their chamber rules. The proposed reform is not meant to replace those existing chamber rules, but to reinforce them with the force of statute. The combined effect of the rule-based and

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<sup>407</sup> Brian M. Riedl, "Obama's PAYGO Law Would Not Slow Spending or Budget Deficits," *The Heritage Foundation* (February 26, 2009), <http://www.heritage.org/research/reports/2009/02/obamas-paygo-law-would-not-slow-spending-or-budget-deficits>, accessed February 12, 2013.

<sup>408</sup> Keith, "Budget Sequesters"

statute-based offsetting requirements may have the greatest impact on fiscal responsibility among Members.

## **Reform Option**

### **Enact legislation that creates an independent commission of noncongressional members to conduct regular comprehensive reviews of all tax and mandatory spending legislation according to a defined timeline.**

The purpose of the commission is to make recommendations to Congress to ensure that mandatory spending programs and tax legislation work together to increase efficiencies in providing services and control the federal deficit. The commission would review all new mandatory spending programs or tax legislation prior congressional adoption. The commission would also review all existing mandatory spending programs or tax legislation prior to congressional reauthorization.

To ensure its independence, the commission would be composed of noncongressional members with expertise in the federal budget and appropriations processes. The independent commission would conduct a simultaneous review of both mandatory spending programs and tax legislation for the purpose of ensuring a balanced approach to controlling the deficit. The Commission would report its recommendations to the Congress for all programs set to be reauthorized that year for consideration in the concurrent budget resolution by mid-February each fiscal year.

The following section will examine possible advantages and disadvantages of this reform option. This list is not exhaustive, but highlights several possible advantages and disadvantages of the reform. The idea of an independent, comprehensive review of existing mandatory spending and tax legislation borrows largely from sunset review processes proposed for federal legislation<sup>409</sup> and implemented at the state level in multiple states.<sup>410</sup> The analysis of the proposed reform in this section makes comparative references to the sunset review process because sunset review embodies a comprehensive legislative review process that has shown some success at the state level. However, the proposed reform does not purport to be a sunset review and therefore would not subject entitlement programs and tax legislation to termination, as is a typical feature of most state sunset review processes.

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<sup>409</sup> Over 70 bills were introduced in the 94<sup>th</sup> Congress (1975-1976) proposing various sunset arrangements, and sunset measures have continued to be introduced in each subsequent Congress. The only floor action on bills with sunset measures occurred in the 95<sup>th</sup> Congress. On October 11, 1978, the Senate passed S.2, the Program Reauthorization and Evaluation Act. No federal sunset review process has ever been enacted. (<http://congressionalresearch.com/RL34551/document.php?study=A+Federal+Sunset+Commission+Review+of+Proposals+and+Actions>)

<sup>410</sup> In 1976, Colorado became the first state to enact a sunset law. By 1982, sunset measures had been considered in all 50 state legislatures, and 36 states had enacted some version of the sunset review process. By 1990, 12 of the 36 states with sunset laws had ceased. As of 2007, 24 states have an active sunset review process. (<http://congressionalresearch.com/RL34551/document.php?study=A+Federal+Sunset+Commission+Review+of+Proposals+and+Actions>)



## *Advantages*

- **External mechanism to control the federal deficit**  
This reform would provide Congress with methods for controlling the deficit outside of the budget and appropriations process.
- **Oversight of the previous offsetting reform option**  
This reform could serve as an oversight function for the deficit-reduction mechanism detailed in the previous offsetting reform option, and could be built into the congressional budget process.
- **Consistent process to ensure responsible fiscal policy**  
The proposed reform would provide the Congress an effective means for eliminating excess spending in entitlement programs<sup>411</sup> and tax expenditures<sup>412</sup> and create a consistent process by which to ensure responsible fiscal policy.
- **Incentivize conflict resolution between Members**  
Because the commission would evaluate both mandatory spending and tax legislation, this reform would incentivize conflict resolution between Members who differ politically on the role each plays in facilitating deficit reduction.
- **Relieves Members of political pressures over budgetary decisions**  
An independent commission could relieve members of some of the political pressure that arises when a temporary tax cut expires, or when changes to popular entitlement programs to reduce spending are fiscally necessary.<sup>413</sup>
- **Renewed focus on annual authorizing and appropriating duties**  
Because this reform is external to the congressional budget and appropriations processes, this reform would allow the Congress to return its focus to annual authorizing and appropriating duties, rather than deficit-reduction measures.
- **Reliable information source**  
An independent commission could serve as a reliable information source that both parties can use to analyze the spending of entitlement programs and tax legislation.
- **Data and information collection for the Congress**

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<sup>411</sup> According to CBO, Social Security and the government's major mandatory health care programs (Medicare, Medicaid, the Children's Health Insurance Program, and health insurance subsidies to be provided through insurance exchanges) are of greatest fiscal concern because spending on these programs are projected to increase from roughly 10 percent of GDP today to about 16 percent 25 years from now.

<sup>412</sup> Manoj Viswanathan, "A Critical Evaluation and Prescriptions for the Future," *New York University Law Review* 82 (2007) 675.

<sup>413</sup> Although the tax cut might have outlived its usefulness after the expiration date on the provision, in the minds of taxpayers its repeal becomes a tax increase rather than a return to the status quo *A Critical Evaluation and Prescriptions for the Future* ("REFORM Sunset and the tax code") p.673

An independent commission could also relieve the Congress and legislative support agencies of some of the work involved in data and information collection to support budget and appropriations deliberations.

- **Improve access and accountability to the public**  
The commission could improve access and accountability by providing the public with neutral information about the spending and tax policies that affect the deficit.
- **Shrink the gap between spending and revenue**  
The commission could make unbiased recommendations aimed at shrinking the gap between the future cost of entitlement programs and the tax revenues that the public has been sending to the government to pay for those programs.<sup>414</sup>

### *Disadvantages*

- **Cost-effectiveness of substantive reviews**  
Some members may express concern over the commission's ability to undertake substantive reviews in a cost-effective manner. The proposed commission requires resources, and some members may question the return on investment associated with those resources.
- **No direct action-enforcing mechanism for recommendations**  
Although a review of this nature has the potential for eliminating wasteful spending and tax expenditures, there is no direct action-enforcing mechanism<sup>415</sup> that mandates the Congress to accept the commission's recommendations. Establishing an advisory body without an action-enforcing mechanism may result in recommendations that are not politically feasible.
- **Expansion of government**  
Some members and constituents may perceive the independent commission to be an unnecessary expansion of government.
- **Duplicative of legislative agencies**  
The responsibilities of the proposed commission may overlap with the duties of the budget and appropriations committees, and the CBO, CRS, and GAO.
- **Timeliness of reviews**

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<sup>414</sup> "Choices for Deficit Reduction," Pub. No. 4569, *Congressional Budget Office* (November 2012) 2.

<sup>415</sup> The sunset review process has been successful at the state level in part when programs or agencies are cut or consolidated based on inefficiencies or duplications identified by sunset commissions or committees; the termination feature of sunset review serves as an incentive to operate efficiently. However, the eligibility requirements of entitlement programs, makes the use of the termination feature illegal for mandatory spending legislation. For this reason, all federal sunset review proposals have exempted mandatory spending programs from the sunset process.

Some members may express concern over the commission's ability to review mandatory spending and tax legislation in a timely manner<sup>416</sup> because the larger and more complex the legislation, the more extensive and difficult the review process will be.

- **Support from party base**

The commission's recommendations may be too moderate to receive support of either party's base. The purpose of moderate recommendations is to achieve support from both parties, however, during times in which one party has moved away from center, the commission's recommendations may not receive the intended support.

## **Additional Considerations**

Appointments to the commission could impact the success of the proposed commission. While this proposal does not prescribe an appointments protocol, the appointments need to adhere to the requirement that the commission remain independent from the Congress. Additionally, the source of the appointments must remain party neutral as they make assignments to the proposed Commission. Possible appointments could include representatives from the CBO, CRS, GAO, and OMB. These considerations will allow the commission to serve as an independent information source for Members to make legislative decisions.

Previous commissions, such as the National Commission on Fiscal Responsibility and Reform (Simpson-Bowles Commission) of 2010, have organized with similar purpose. However, members of such commissions have been congressional members who have a political interest in obtaining support from their party base. The proposed Commission seeks to remain independent from political party pressures.

## **Problem Two**

Congress has made efforts to centralize the budget and appropriations processes to improve coordination and increase transparency of spending. However, Congress has been reluctant to implement congressionally endorsed reforms to centralize the budget and appropriations process, leading to an inability to pass an annual budget resolution and timely appropriations.

## **Background**

The 1946 and 1970 Joint Committees on the Organization of Congress acknowledged the tension between centralization and decentralization in the budget and appropriations

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<sup>416</sup> Texas has found that the sunset review process is most effective and has shown cost-savings on larger programs.

process.<sup>417</sup> The LRA of 1946 required a concurrent congressional budget resolution estimating total receipts and outlays and more transparent appropriations processes. The 1974 Congressional Budget Act required a timetable enacting a concurrent budget resolution, allowing Congress to consider the budget as a whole and use it as a blueprint for subsequent authorizations and appropriations actions. The act also created a standing budget committee in both chambers,<sup>418</sup> which lengthened the budget process and required additional procedures to govern spending and revenue deliberations.<sup>419</sup> At the same time, leaders of appropriations and authorizations committees were reluctant to cede power to this newly centralized process.<sup>420</sup>

Prior to 1974, the process for adopting a budget relied on three separate and uncoordinated processes: entitlement spending, discretionary spending, and tax legislation. While the current budget process under CBA 1974 involves discussion of entitlement spending and tax revenue, there is little evidence that CBA 1974 has impacted the legislative process except to facilitate tax cuts and entitlement increases, both of which exacerbate the problem of growing federal deficits.<sup>421</sup> CBA 1974 has effectively impacted the appropriations processes, but this only represents one-third of spending. Furthermore, it has become increasingly difficult for Congress to pass a budget resolution.<sup>422</sup> Impasse on the budget resolution affects Congress's ability to fiscally plan for the next year, and limits appropriations committees' ability to use the budget resolution as guideline for spending. Therefore, it is unclear whether the centralization efforts enacted by CBA 1974 has made the appropriations process more effective today than it was at the time the act was implemented.

Since 1994, Congress has failed to approve all discretionary appropriations bills before the start of a new fiscal year.<sup>423</sup> Instead, Congress has increasingly relied on short-term continuing resolutions, also known as stopgap funding, until an agreement can be reached. A funding gap and shutdown of affected agencies occurs if either appropriations or a continuing resolution are not agreed upon and authority to commit federal funds expires.<sup>424</sup>

Continuing resolutions are often highly restrictive to encourage compromise on a final appropriations bill, or to allow Congress maximum flexibility in making final funding decisions.<sup>425</sup> While continuing resolutions prevent the threat of a government shutdown,

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<sup>417</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 113 (December 17, 1993).

<sup>418</sup> Ibid.

<sup>419</sup> Rivlin, "Rescuing the Budget Process," 54.

<sup>420</sup> Ibid.

<sup>421</sup> Scott Lilly, Center for American Progress, email message to authors (LBJ students), April 17, 2013.

<sup>422</sup> "A budget resolution was not passed in 1999, 2003, 2005, 2007, 2011, 2012, all under divided chambers within the Congress." See Historical Analysis, 44.

<sup>423</sup> MacGuineas, "Congress' Bad Record"

<sup>424</sup> Bill Heniff Jr., "Overview of the Authorizations and Appropriations Process," *Congressional Research Service* (November 26, 2012), <http://www.senate.gov/CRSReports/crs-publish.cfm?pid=0DP%2BPLW%3C%22%40%20%20%0A>, accessed February 23, 2013.

<sup>425</sup> Joe White, "The Continuing Resolution: A Crazy Way to Govern?" *Brookings Review* 6 (Summer 1988)

agencies do not receive official indication of final funding for the year. This uncertainty encumbers agencies in planning for future operations.<sup>426</sup> As a result, agencies may face operational problems and inefficiencies from delayed hiring, administration of multiple short-term contracts, an inability to start new programs and initiatives, as well as the diversion of resources away from program administration and oversight to preparing for potential funding reductions.<sup>427</sup>

## **Reform Option**

**Reduce membership on the House and Senate budget committees to seven, including: the majority and minority chairs of the appropriations committees, majority and minority chairs of the revenue committees, majority and minority whips, and the Senate majority leader and Speaker of the House.**

- The 1974 Congressional Budget Act created the committees and established the size of the House Budget Committee at twenty-seven and the Senate Budget Committee at fifteen.<sup>428</sup> This reform proposes to reduce the membership of the Senate Budget Committee from twenty-one to seven, and the House Budget Committee from thirty-nine to seven.
- The act also stipulated that each member serve a maximum of two consecutive Congresses of every five years. The recommended reform would amend the law to create permanent positions for the seven members stated above to better reflect the original intent of the CBA 1974, which was to have the budget resolution largely influenced by leadership, Congressional Budget Office baseline projections, and authorizing committee reports.<sup>429</sup>

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Timely passage of a budget resolution**  
Reducing the number of members who have to agree to the resolution in committee could increase the likelihood of efficient negotiations and of a

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<sup>426</sup> “Government budget professionals have not, for some time, had the information they believe they need to make reliable, rational, and well-informed funding decisions.” Lilly, *Broken Budgeting* and MacGuineas, “Congress’ Bad Record”

<sup>427</sup> “Uncertainty may cause an agency to alter its operations, rates of spending, and spending patterns over time, with potential ripple effects for internal management of the agency and its programmatic activities.” Clinton Brass, “Interim Continuing Resolutions: Potential Impact on Agency Operations,” *Congressional Research Service* (November 19, 2010) summary, 10-11.

<sup>428</sup> Congressional Budget and Impoundment Control Act, Pub. L. No. 93-344 88 Stat. 297 (July 12, 1974).

<sup>429</sup> Schick, “*The Federal Budget... 2007*,” 120, 132, 136.

resolution being passed on time.

- **Increased accountability for committee members**  
Eliminating the membership of at-large members could reduce the number of members who use the budget committee as a public platform to make general statements about their tax and spending ideology but who are not accountable for its execution.
- **Increased number of hearings on the budget resolution**  
Reducing the members on the budget committees could increase the number of hearings on the budget resolution because fewer scheduling conflicts and overlapping committee responsibilities would occur.
- **Timely passage of authorizing legislation**  
It could allow the concurrent resolution to be reported earlier allowing the Congress to proceed with the subsequent authorizing legislation on schedule.
- **Planning responsibility given to Members charged with adhering to the resolution**  
This proposed reform gives the responsibility for planning the year's budget to the Members charged with adhering to the concurrent resolution. This could lead to a functional plan for increasing or decreasing total revenue and spending based on CBO baselines and authorizing committee reports.
- **Increased likelihood of reconciled differences between the House and Senate**  
If the House and Senate Budget committees passed more functional resolutions as a result of this reform, the conference committee could be better able to reconcile the differences between the two and produce a single concurrent resolution on time.<sup>430</sup>
- **Renewed focus on a comprehensive annual budget**  
Reducing the size of the budget committees could focus the attention of the committee members on the original intent of the budget committee: to provide the Congress with comprehensive view of the annual budget rather than attempting to accommodate the objectives of individual Members.<sup>431</sup>
- **Elimination of at-large membership**  
Through eliminating at-large membership, the budget resolution negotiations could be more focused on the essential decisions needed to allow the Congress to move forward in a comprehensive manner.<sup>432</sup>

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<sup>430</sup> Ibid, 138.

<sup>431</sup> Philip G. Joyce, "Strengthening the Budget Committees: Institutional Reforms to Promote Fiscally Responsible Budgeting in Congress," prepared for the Federal Budget Reform Initiative, *The Pew Charitable Trusts* (January 2011).

<sup>432</sup> Schick, "The Federal Budget... 2007," 132.

- **Renewed reconciliation process**  
With a more timely concurrent budget resolution, it may be more likely that the reconciliation process could be used as intended, that is, to bring spending and revenue into alignment with the resolution.
- **More realistic funding allocations**  
This proposal has the potential to lead to more realistic 301(a) allocations, giving appropriations committees and subcommittees a workable limit on their total spending amount.<sup>433</sup>

### *Disadvantages*

- **Removal of positions for at-large Members**  
At-large Members will be reluctant to forgo their positions on a powerful committee.
- **Increased power of the majority party within the Congress**  
This reform could increase the ability of majority leadership to use the budget committees as an instrument of power and control.
- **Reduced likelihood of agreement within the committee**  
Eliminating the membership of at-large Members on the budget committees reduces representation and input in the development of the budget resolution, and this can dilute the political base needed for agreement to the resolution's provisions.
- **Concentrated power through permanent committee positions**  
Creating permanent positions within the committee could concentrate power in the hands of those Members. Some Members may express concern that a less frequent rotation of Members in the committee impedes on the provisions of CBA 1974 that guarantee rotating membership.<sup>434</sup>
- **Removal of members of authorizing committees from the budget committee**  
Without representation of authorizing committees on the budget committees, members on the authorizing committees may not have the opportunity to share knowledge and information related to potential consequences of funding shifts for programs and services important to their jurisdiction.
- **Timely passage of a budget resolution or appropriations not guaranteed**  
This reform is an institutional change in the Congress, which does not necessarily ensure the timely passage of a budget resolution or appropriations;<sup>435</sup> political will

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<sup>433</sup> There is no guarantee that smaller budget committees would design more realistic 301(a)s

<sup>434</sup> Ibid, 132.

<sup>435</sup> Joyce, "Strengthening the Budget Committees," 2.

of members also determines the completion or noncompletion of congressional processes.

## **Reform Option**

**Following similar rules and procedures to the budget resolution, appropriations bills should go to the floor for an up or down vote after they are voted out of committee.**

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### *Advantages*

- **Expedited consideration of appropriations bills**  
This proposal could expedite consideration of appropriations bills, by decreasing the ability of a small group of Members to hold up the process.<sup>436</sup>
- **Prevents potentially costly amendments to bills**  
A potential advantage for this proposed reform is that Members cannot add potentially costly amendments to the bill that may prevent or delay the core appropriations legislation from passing.

### *Disadvantages*

- **Limits alternative ideas in appropriations bills**  
This reform will limit the ability of the general membership to offer ideas or alternatives to provisions in appropriations bills.
- **Floor consideration or passage of appropriations bill not guaranteed**  
The expedited process for floor consideration does not guarantee that the appropriations bills will pass or will be considered on the floor. Invoking a closed rule or limiting debate may increase tensions among Members over the appropriations process, resulting in rejected appropriations bills. This could lengthen rather than expedite the overall appropriations process.
- **Potential for lengthening the appropriations process**  
This recommendation could also lengthen the overall appropriations process by requiring extensive ad hoc and informal negotiations prior to the vote in order to comply with the expedited floor procedures and guarantee the required votes for passage.

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<sup>436</sup> Bill Heniff Jr., "Consideration of the Budget Resolution", *Congressional Research Service* (May 1, 2007).



- **Potential for reduction in transparency**  
By limiting negotiations or discussion of alternatives in a public setting, this proposed reform may result in a reduction in transparency.
- **Resolution could be stalled in the Senate**  
This reform may face hurdles in the Senate because it is still privy to filibuster and requires a sixty-vote supermajority to invoke cloture, thus stalling the resolution in the Senate.<sup>437</sup>
- **Restricts the amendment process in the House**  
This reform provides no recourse for the House minority to offer alternatives after committee, through the amendment process, which may close off some interesting ideas or perspectives.

## Additional Considerations

**If appropriations legislation has not been enacted by August 15, or another deadline prior to September 30, funding authority at the prior year’s fiscal level is automatically provided to the affected agencies, programs, and activities for one additional fiscal year.**

This reform proposes automatic authority for appropriations at the prior fiscal year’s funding levels, without inflation, for appropriations bills that have not been passed by August 15, or another deadline prior to September 30, for the coming fiscal year. At this automatically appropriated level, agencies funding will not be adjusted for cost of inflation. There are several variations to this reform that can be considered, such as using a percentage of the previous year’s budget, adding inflation, and requiring the regular appropriations process after a certain number of years. Consideration should be given to limit the use of this automatic extension to two years, after which regular appropriations legislation must be enacted.

The primary tension in this proposal is between Congress’s power to “pay the Debts and provide for the common Defense and general Welfare of the United States”<sup>438</sup> and the executive’s fiduciary responsibility to execute law and efficiently spend taxpayer money. This proposal offers advantages such as allowing time for executive agencies to plan,<sup>439</sup> avoiding the cost of government shutdowns,<sup>440</sup> allowing the Congress to reduce budgets without action, and ease of implementation.<sup>441</sup> There are a few disadvantages that also should be considered. This recommendation may provide a disincentive for Congress to

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<sup>437</sup>“Parliamentary Procedure: Why the Senate Hasn’t Passed a Budget,” *The Economist* (February 15, 2012), <http://www.economist.com/blogs/freexchange/2012/02/parliamentary-procedure>, accessed April 1, 2013

<sup>438</sup> U.S. Const. art. 1, § 8, cl. 1.

<sup>439</sup> “Continuing Resolutions and an Assessment of Automatic Funding Approaches,” Government Accountability Office. (1986) 35 and Meyers, “Late Appropriations and Government Shutdowns,” 27.

<sup>440</sup> Meyers, “Late Appropriations and Government Shutdowns,” 30.

<sup>441</sup> Government Accountability Office, “Continuing Resolutions and an Assessment of Automatic Funding Approaches.” 39.

follow the budget and appropriations processes,<sup>442</sup> could decrease compromise,<sup>443</sup> and could function more like continuing resolutions in the long run.

## **Deliberations**

### **Problem One**

The filibuster rule has gained increasing importance as a legislative procedure that both Democrats and Republicans use to delay or effectively terminate legislation in the Senate. This is inconsistent with the intended purpose of the filibuster, which is to ensure sufficient debate. While not a problem in itself, the supermajority requirement to close a filibuster has created a bottleneck to bills and nominations in the Senate, slowing the deliberations of Congress.

### **Background**

Since the cloture procedure was added to the standing rules of the Senate in 1917, the filibuster has become an increasingly contentious practice. Members made significant challenges to Senate filibuster practices in 1959, 1975, and 2005. The debates regarding the filibuster revolve around the question of the Senate's role and ability to determine and enforce chamber rules. Constitutional scholars, political scientists, policy analysts, and senators retain various opinions, and there is a lack of consensus on this issue.

Amid discontent from both parties, the Senate compromised in 1959 and altered the cloture rule to revert to the requirement that two-thirds of the senators present must vote for cloture. The Senate also codified the continuing nature of Senate practices at this time by stating that all that Senate rules continue into subsequent Congresses.<sup>444</sup> This action sought to end the discussion of whether or not the Senate can adopt new rules of the chamber on the first day of a new session.

Discontent with the impact of the filibuster on the legislative process led the Senate to adopt two significant procedural changes in 1975. The leadership instituted a two-track system to limit filibustered legislation to mornings, allowing noncontroversial legislation to be debated on the floor in the afternoon.<sup>445</sup> The change led increased deliberations and adoption of legislation, but had the unintended consequence of creating the "silent" or

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<sup>442</sup> "One potential drawback of the option, however, is that it can reduce pressure on the Congress to reach funding decisions, which could lead to agencies operating under temporary funding measures for extended periods of time." Government Accountability Office, "Continuing Resolutions and an Assessment of Automatic Funding Approaches." 46.

<sup>443</sup> Ultimately, automatically appropriating, no matter which option is chosen, cannot incentivize action from every Member. If funding is cut or kept at the status quo, those who want to cut the budget would be inclined to allow this automatic mechanism to effectively cut budgets of agencies. If budgets are automatically increased, it incentivizes those who prefer budget increases.

<sup>444</sup> Gold, "The Constitutional Option to Change," 231.

<sup>445</sup> Fisk, "The Filibuster," 201.

“stealth” filibuster, because Members initiating a filibuster were no longer required to conduct continuous floor action to maintain the filibuster. The Senate became less likely to debate controversial measures until the majority could guarantee enough votes to invoke cloture.<sup>446</sup> In 1975 the Senate also formally amended the cloture rules to require three-fifths of all senators to vote to invoke cloture. This increased the likelihood that the Senate majority could invoke cloture, but did not significantly affect the use of the filibuster as a dilatory tactic by members of the minority.<sup>447</sup>

In 2005, the minority expressed frustrations with a lack of inclusive deliberations, and some senators attempted to raise awareness by obstructing the confirmation of executive judicial nominations. In response, the Senate leadership contemplated the most substantial change to filibuster practice to date: to amend the standing rules to impose an ever-decreasing threshold for successive votes to invoke cloture on a nomination, until it could be achieved by a majority vote of the full Senate.<sup>448</sup> The majority leader at the time lacked the requisite two-thirds support to invoke cloture on a rule change, which led some to deem this threat as the “nuclear option,” because it could allow the Senate to change the rules through alternative means. Constitutional arguments in favor of allowing each Senate to determine chamber rules by a simple majority resurfaced, and this led to a bipartisan compromise between both parties to avoid the proposed change.

The question of filibuster reform continues to promote debate and discussion today. The following reform options offer filibuster reform options intended to increase the efficiency of deliberations while maintaining meaningful minority participation.

## **Reform Option**

### **Introduce a graduated plan to reduce the threshold of votes needed to invoke cloture.**

Under this option, the threshold of votes necessary to overcome a filibuster would decrease every three days. For example, sixty votes would be required on the first day of debate, fifty-seven on the fourth, fifty-four on the seventh, and fifty-one on the tenth. Eventually, a simple majority could invoke cloture.<sup>449</sup> Once cloture is invoked, thirty hours of guaranteed debate would be allowed before a final vote.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

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<sup>446</sup> Ibid, 202.

<sup>447</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 47-48 (December 17, 1993).

<sup>448</sup> Palmer, “Changing the Senate Rules,” 2.

<sup>449</sup> Tom Harkin, “Examining the Filibuster: Legislative Proposals to Change Senate Procedures,” (as prepared for delivery) (September 22, 2010) <http://www.harkin.senate.gov/press/release.cfm?i=327819>.

- **Permits extended debate to include minority perspectives**  
This option ensures up to eight days before a filibustered bill could advance to a vote.<sup>450</sup> The timetable could allow for substantive deliberations, while also forcing action on the legislation.
- **Potentially promotes compromise**  
This plan can engage senators whose beliefs are closely affiliated with the majority on an issue. For example, if Republicans hold a Senate majority, those Democratic senators sympathetic to a Republican bill could be courted into the majority's deliberations process. This could increase the level of interparty compromise.
- **Ensures an eventual end to debate**  
This option would end the use of filibuster efforts to delay legislation indefinitely. Although it would take many successive votes, cloture could eventually be achieved by a simple majority vote.

### *Disadvantages*

- **Reduces the power of the minority and individual senators to prevent the advancement of the legislation**  
The rights of the minority would be more symbolic than authentic, because the majority could simply wait out the required period without further deliberations. As a result, this reform may further reduce incentives to compromise.
- **Retains potential as delay tactic**  
While minority senators might see the final outcome desired by the majority as inevitable, they could still use this procedure to delay Senate business.

### **Reform Option**

#### **Mandate that a continuous floor presence be required to maintain a filibuster.**

This reform would result in a return to the popular perception of the filibuster, that of *Mr. Smith Goes to Washington*. Under these rules, a filibuster could only continue if a senator holds the floor to speak, and the Senate could not take up other business until the filibuster has concluded. This would also eliminate the “silent” filibuster and require senators to identify any filibuster efforts on the record, instead of alerting Senate leadership in private.

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<sup>450</sup> Dubbed “The Harkin Ratchet,” this was actually proposed by Sen. Tom Harkin in 1995 but received little attention.  
Arenberg, *Defending the Filibuster*, 75.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Historically accepted practice**  
Prior to 1975, this practice was the status quo. Today, senators retain the right to speak as long as they would like to, but they are not required to speak for any specified length.
- **Encourage deliberations**  
This reform would allow the Senate to use filibuster time to actively discuss the legislation being filibustered. If the Senate is actively discussing an issue, it may encourage compromise and public engagement.

### ***Disadvantages***

- **Reduces time for deliberations on pending business**  
This option may not expedite proceedings. Senators may hold the floor for several hours at a time or may pool efforts to maintain a floor presence to block legislation, as seen in the seventy-five-day filibuster of the Civil Rights Act of 1964.<sup>451</sup> This option could also limit the Senate's ability to pass noncontroversial legislation, as the filibuster would result in a halt in all Senate business until cloture is invoked or the filibuster concludes.
- **Increase in senators' frustrations**  
Prior to the implementation of the "two-track", senators, who chose not to participate in filibusters expressed frustration with effect of a filibuster on Senate business.<sup>452</sup> A return to the continuous floor presence could increase Senate frustrations with the ability of the chamber to advance legislation.
- **Nongermane filibuster topics**  
Senators must speak continuously to hold the floor, but no requirements are in place to dictate that the content of the speech remains focused on the legislation. For example, past floor filibusters included recitations of Shakespeare, state laws, and cookbooks.<sup>453</sup> As a result, the reform may not necessarily lead to substantive discussion of the legislation that is being filibustered.

### **Reform Option**

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<sup>451</sup> O Beirne, K. "Let'Em Talk! The case for real, not fake, filibusters." *NATIONAL REVIEW-BRISTOL CONNECTICUT*- 55, no. 3 (2003): 24-25

<sup>452</sup> Fisk, "The Filibuster," 199.

<sup>453</sup> "Filibuster and Cloture," U.S.

Senate, [http://www.senate.gov/artandhistory/history/common/briefing/Filibuster\\_Clature.htm](http://www.senate.gov/artandhistory/history/common/briefing/Filibuster_Clature.htm)

## **Abolish the filibuster practice and limit debate to thirty hours.**

This option eliminates the filibuster practice. The guaranteed thirty hours of debate will protect the minority's right to speak on a subject. Under current rules, even after the Senate passes cloture, there is an opportunity for senators to speak for up to thirty hours on that issue, with an hour reserved for each senator. While senators may not use the entirety of the allotted hour, the time restriction could prevent complete participation from senators, who wish to contribute to the debate.<sup>454,455</sup>

An alternative might be to limit this option to specific areas such as nomination confirmations, similar to currently procedures for Senate appropriations bills.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Reduces delay of the legislative process**  
Without the option of the filibuster to delay debate, the majority could drive the agenda forward with fewer obstructions. This might also empower the Senate leadership to engage in more substantive conference committees.
- **Protects the minority voice in deliberations**  
The thirty-hour limit would set a minimum amount of time for minority participation in deliberations on a bill. Additionally, senators would retain the ability to share their views publically on the record.

### ***Disadvantages***

- **Increase in majority power**  
Without the possibility of a filibuster, the minority would have less leverage in negotiations. This reform could weaken the minority voice.
- **Dilutes overall power of the minority to force discussion**  
The thirty-hour limit may not allow the minority to ensure substantive debate. If the majority party knows that the time will elapse, there may be less incentive for the majority to engage in deliberations with the minority. This could lead to further decline in the quality of discussion of the Senate floor.
- **Not other means to control debate**

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<sup>454</sup> Walter J. Oleszek, "Cloture: Its Effect on Senate Proceedings," *Congressional Research Service* (May 19, 2008).

<sup>455</sup> While we recognize this as a possible disadvantage to this approach, we do not feel equipped to offer a path of guaranteed equity for speaking time.

The Senate lacks a mechanism like the House Rules Committee, which controls debate in the House. Without the threat of filibuster, senators would not have a mechanism for ensuring sufficient debate of legislation.

- **Abuse of thirty-hour limit**

Minority senators could use the thirty-hour minimum on every floor action as a means of protest. These thirty-hour “mini filibusters” could reduce substantive debate, and limit the Senate’s ability to advance legislation.

## **Problem Two**

Congress has noted that insufficient deliberation by committees results in fewer viable policy options. However, attempts to reform committee structure and governance have not been successful in transforming them into open forums for thorough deliberation and development of legislative options.

### **Background**

Committee reforms have decreased the number of standing committees and subcommittees, and attempted to limit the number of committees a Member may serve on. During the proceedings of the 1994 Joint Committee on the Organization of Congress, the CRS presented several new options for committee jurisdictional reform aimed at consolidating the legislative process. These suggestions included establishing congruent committee alignment between the House and Senate and creating unitary fiscal committees in each chamber.<sup>456</sup> The CRS also provided options for new committee jurisdictions. However, Congress never enacted these reforms.

Increasing the transparency of committee hearings has also been the focus of previous efforts to reform committees. Both the LRA of 1946 and the LRA of 1970 addressed the issue of transparency by mandating that committee hearings be open to the public in the majority of cases.<sup>457</sup> The transparency of committee hearings was also expanded through the LRA of 1970 through provisions allowing committees to broadcast of hearings through television or radio, and requirements that committees announce hearings open at least a week in advance.<sup>458</sup>

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<sup>456</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 9 (December 17, 1993).

<sup>457</sup> Legislative Reorganization Act of 1946, Pub. Law 601, ch. 753, 60 Stat. 812/ 831 (August 2, 1946) 831. and Legislative Reorganization Act of 1970, Pub. Law 91-510, 2 USC 72; 84 Stat. 1140-1204, (October 26, 1970) 16.

<sup>458</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 10-11 (July 28, 1966). The 1966 Joint Committee recommended that committee chairs with a concurrence of the majority of committee Members should be allowed to broadcast the hearings they conduct on television or radio.

Congress has taken many steps to increase transparency and open committee hearings to the public.<sup>459</sup> The spread of new technologies including the television and the Internet have made it easier for constituents to watch committee hearings. While there are many advantages to keeping committee hearings open, total transparency of these proceedings may limit a Member's willingness to discuss contentious issues. Member participation in committee hearings has declined. The content of committee hearings is often limited to prepared testimony, and Members rarely use hearings as an information gathering opportunity. The lack of active Member participation in hearings may be partially the result of media coverage, and a hesitance to ask questions or make statements that will be public.

## **Reform Option**

### **Allow committees to hold closed briefing sessions after hearings to allow Members additional opportunities to ask questions.**

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

#### *Advantages*

- **The closed briefing would result in more members attending hearings**  
The informal briefing may attract Members who are genuinely interested in receiving in-depth information and asking questions. Although reduced participation in hearings may be the result of scheduling constraints, the opportunity for a closed briefing could incentivize some Members to attend hearings because they will have the opportunity to question the witnesses in private afterwards.
- **Members will be able to analyze testimony in greater depth**  
Closed briefings would provide a venue for Members come to together to discuss concerns free from external influences, such as media, constituents, and lobbyists.
- **A space for meaningful deliberation between Members and important stakeholders**  
Members would be free to further probe the positions of those testifying and discuss technical matters that are important, but too time-consuming and detailed for public hearings.
- **No legislative or rule change required**  
The closed briefing would not require a formal change in the rules, so the transparent government movement may not see this as a step backward.



## *Disadvantage*

- **Viewed as a loss of transparent government**  
This reform may be viewed as a step backwards for those who are concerned about transparency and open government. Although this reform includes closing only a portion of the hearing, the public may feel that important issues will be discussed behind closed doors.<sup>460</sup>

## **Problem Three**

Members of Congress spend a significant amount of time off Capitol Hill or away from Washington, D.C., which limits their participation in deliberative activities.

### **Background**

Ensuring that Members participate in deliberative activities has been a recurrent challenge identified by congressional reformers, and has become increasingly important, as demands on Members' schedules have increased. The 1946 Joint Committee on the Organization of Congress identified the conflicting scheduling of floor and committee business and Members' numerous committee assignments as impediments to deliberations.<sup>461</sup> These issues continued to be part of the reform efforts of the 1970s and 1990s, but the amount of time Members spend physically away from Washington, D.C. has also become a growing concern.<sup>462</sup>

Members' desire and need to return to their home states has effectively constricted the legislative workweek to a Tuesday-to-Thursday schedule.<sup>463</sup> This schedule has substantial consequences for the deliberative process, causing committee session conflicts and competition between floor and committee business.<sup>464</sup> This schedule may also discourage some committees and subcommittees from scheduling meetings.<sup>465</sup>

The increased amount of time Members are spending away from the Capitol received considerable attention in the 1993 Joint Committee on the Organization of Congress. While Members' offered innovative solutions to the scheduling problem, the most

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<sup>460</sup> Judy Schneider and Michael L. Koempel, "House Legislative Procedures and House Committee Organization: Options for Change in the 112th Congress," *Congressional Research Service* (November 18, 2010).

<sup>461</sup> Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 2, 26 (March 4, 1946).

<sup>462</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to S. Con. Res. 2 with Supplemental and Additional Views, S.R. Rep. No. 89-1414 at 55-56 (July 28, 1966) and

Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 22-25, 37 (December 17, 1993).

<sup>463</sup> Schneider, "House Legislative Procedures"

<sup>464</sup> Ibid.

<sup>465</sup> Ibid.

popular suggestion was to schedule three five-day workweeks in Washington, D.C., followed by one week off for state or district work.<sup>466</sup>

During the 104th Congress, the leadership expanded the legislative workweek to five days to address the impediments to deliberative activities created by the Tuesday-to-Thursday schedule.<sup>467</sup> Members from Western states and from Members whose families remain in their home states or districts opposed this change. Due to these complaints, the leadership held back from fully implementing the schedule. As a result, the expected impact from the schedule change for deliberations was not fully realized.

Congress may consider the following option to address the consequences for deliberative activities created by the amount of time Members spend away from Capitol Hill.

### **Reform Option**

**Adopt a congressional workweek schedule that allows Members to spend more time in Washington, D.C., for example, a five-day workweek for three weeks, with one week off for work in Members' home states/districts.**

The proposed schedule could take the form of five-day workweeks, staggered four-day workweeks, or five-day workweeks for three weeks followed by one week off for work in Members' home states or districts. Any of these schedule adjustments could be imposed by the House and Senate leadership for their respective houses.

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### ***Advantages***

- **Past support from Members**  
This proposal, particularly the five-day workweeks for three weeks followed by one week off for work in Members' home states or districts, has had the support of many Members.<sup>468</sup>
- **More time for deliberative activities**  
Committee work and floor activities are essential to supporting the deliberative process. As Members have begun to spend more time away from Washington, D.C., in recent years, the resulting compressed workweek and scheduling

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<sup>466</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 37, 52 (December 17, 1993).

<sup>467</sup> Beth, "House Schedule"

<sup>468</sup> Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 2, 37, 52 (December 17, 1993).

conflicts among various committee sessions and between committee sessions and floor activities has placed strains on Members' full participation in deliberative activities. This option seeks to reduce conflicting commitments so that Members can engage in the important deliberations that are undertaken by committees and occur on the floor.

- **More coordinated schedules between the House and the Senate**  
If this option would be agreed to and implemented by the leadership of both houses, it could better allow for legislative coordination between the houses.
- **More predictable schedule**  
The reform would provide Members and their families with a more predictable work schedule. For instance, this option could lessen the need for late-night floor sessions, created by the current Tuesday-to-Thursday schedule, which interferes with Members' family life.<sup>469</sup>

### *Disadvantages*

- **Less time in home states/districts**  
Any of the scheduling options outlined above will lessen the amount of time available for Members to travel to their home states or districts.<sup>470</sup> This could create opposition among Members from Western states and those whose families remain in their states or districts.<sup>471</sup>
- **Recorded votes and formal committee work must be scheduled in a way to encourage Members to remain in Washington, D.C.**  
Because most Members are unwilling to miss recorded votes, this option requires that congressional leadership commit to scheduling recorded votes strategically to urge Members to stay in Washington, D.C.<sup>472</sup> This may be achieved by scheduling votes every day or every other day of the workweek. This could affect the leadership's ability to change, postpone, or eliminate scheduled votes for political expediency.

### **Problem Four**

The House leadership's role in developing and conducting the work of committees varies across leadership, at times causing tension between the leadership and the chairs. This tension may have consequences for achieving effective deliberations. Although the

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<sup>469</sup> Schneider, "House Legislative Procedures"

<sup>470</sup> The Tuesday-to-Thursday schedule allows for four four-day opportunities for Members to travel and remain in their home state or district in any four weeks. A switch to a five-day workweek reduces a Member's time to four two-day periods; staggered four-day workweeks reduces a Member's time to two two-day periods and one four-day period; three five-day workweeks in Washington followed by one week off reduces a Member's time to two two-day periods and one nine-day period.

<sup>471</sup> Beth, "House Schedule"

<sup>472</sup> Ibid.

relationship between leadership and committee chairs in the Senate may also impact the deliberative process, this analysis focuses on the tension within the House because the chamber is more sensitive to impact of leadership on committee operations. In addition, tensions between leadership and committee chairs have been prevalent in the House over the last two decades.

## **Background**

The relationship between the House leadership and the chairs of House committees often defines the outcome of the House deliberations. This relationship begins with the selection process of House committee chairs. Traditionally, the majority nominates committee chairs that they believe will execute their legislation.<sup>473</sup> The majority caucus votes on each chairperson, but in some cases the Speaker of the House has the opportunity to appoint a chairperson directly.<sup>474</sup>

The 104th and 105th House of Representatives displayed increased tensions between the Speaker of the House and the committee chairs. Chairs believed that the Speaker was not providing them with sufficient authoritative independence, and the strained relationships within the majority party diminished the ability of the House to conduct business.<sup>475</sup>

Different methods for choosing chairs may help to mitigate the tensions between the leadership and committee chairs in the future. The reform offered focuses on relationships between the House committee chairs and Members of the House leadership. This analysis does not address subcommittees.

## **Reform Option**

### **Change procedure for electing committee leadership to allow the entire committee or subcommittee membership to vote for their chair and ranking member.**

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

#### ***Advantages***

- **Build committee buy-in for committee chairs**  
Members may feel better enfranchised by this selections process. This may increase cohesion within committees and help to facilitate more efficient deliberations within committees.

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<sup>473</sup> Judy Schneider and Michael L. Koempel, "House Committee Chairs: Considerations, Decisions, and Actions as One Congress Ends and a New Congress Begins," *Congressional Research Service* (2012) 2.

<sup>474</sup> Ibid.

<sup>475</sup> Gary J. Andres, "Observations on a Post-Gingrich House," *Political Science and Politics* 32, no. 3 (September 1999) 571-574.

- **Provide minority input into chairpersons**  
The minority would have the ability to vote on chairpersons, which would allow for minority buy-in to the committee leadership, and may increase cohesion within committees as well as help to facilitate more efficient deliberations within committees.
- **Provides opportunity for Members to lead or show desire to lead**  
Members would no longer have to wait to become a chair through seniority. Younger members would have the opportunity to demonstrate their leadership and compete for committee chair positions. This may allow for innovation and provide opportunities for new leaders in the House.

### *Disadvantages*

- **May increase tensions with the Speaker**  
Limiting the Speaker's ability to choose committee chairs may exacerbate tensions between committee chairs and the Speaker. This could fragment the majority party and slow the deliberative process.
- **May contribute to gridlock in advancing the majority agenda**  
Elected chairs may not be loyal to the majority leadership and this could obstruct the majority's ability to advance its legislative priorities.

### **Problem Five**

Congress has recognized the need to resolve the tension associated with facilitating an efficient deliberative process and the need for contributions from both minority and majority parties.

### **Background**

The following analysis and reforms concern the types of rules used in the House of Representatives.<sup>476</sup> The House Committee on Rules provides order and structure for the House by creating rules that direct deliberation and structure, and the committee's influence on deliberations is substantial.

The House Committee on Rules can implement three different rules to a particular bill: open rule, modified rule, and closed rule. The open rule allows Members of the House to provide germane amendments to the particular bill on the House floor. The open rule imposes no time limit for deliberation and no limit on the amount of amendments a

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<sup>476</sup> This analysis understands that the Senate also uses a rules process that can affect deliberative efforts. The Senate Committee on Rules and Administration controls that house's rules for Senate's bills. This committee has the same amount of influence in the Senate as the Committee on Rules has in the House (Senate Committee on Rules and Administration, <http://www.rules.senate.gov/public/index.cfm?p=RuleXIX>).

Member can offer.<sup>477</sup> This rule gives Members the opportunity to modify the bill as they see fit, and approve or reject other amendments offered by other Members. This opportunity includes the ability of a Member on the supporting committee to add amendments that the committee earlier rejected.

The closed rule does not allow for debate on a particular bill or for a Member on the House floor to add any amendments to the bill. The Members of the House must vote on the bill in the form approved by the responsible committee.<sup>478</sup> The closed rule helps protect the integrity of the bill as it reaches the floor. The modified rule is a hybrid version of the open rule and the closed rule. The modified rule limits the amount of time the membership of the House can debate a particular bill. This rule can also impose limits on how many amendments a Member can offer.<sup>479</sup> The enhanced use of the closed rule over the open rule in recent years has stymied deliberation efforts between the two parties.

The House Committee on Rules has decreased the use of the open rule and increased the use of the more restrictive closed rule. For example, The Ninety-Fifth Congress allowed 85 percent of legislation to come to the floor under the open rule. In contrast, by the 110th Congress, restrictive rules accounted for 85 percent of the rules on the House floor.<sup>480</sup> During the 111th Congress, no legislation came to the floor under the open rule.<sup>481</sup>

## **Reform Option**

### **The House of Representatives should enhance the use of the open rule and restrict the use of the closed rule.**

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

#### ***Advantages***

- **Encourages deliberations**  
The open rule allows for more debate on the House floor, and encourages a more democratic process for Members to provide their perspectives.<sup>482</sup>

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<sup>477</sup> Gregory Koger, *Filibustering: A Political History of Obstruction in the House and Senate* (Chicago: University of Chicago Press, 2010) 179.

<sup>478</sup> "Congressional Glossary of Terms," American College Health Association, [http://www.acha.org/Advocacy/docs/ACHA\\_Congressional\\_Glossary\\_of\\_Terms.pdf](http://www.acha.org/Advocacy/docs/ACHA_Congressional_Glossary_of_Terms.pdf).

<sup>479</sup> "About the Committee on Rules," House of Representatives Committee on Rules, <http://www.rules.house.gov/about>.

<sup>480</sup> Paul Kane, "Filibuster Fight Reignites Partisan Sparring in Senate," *The Washington Post*, Nov. 27, 2012.

<sup>481</sup> Jennifer Steinhauer, "Method for Curbing Filibuster Faces Resistance," *New York Times* (November 28, 2012).

<sup>482</sup> Barry R. Weingast, "Floor Behavior in the U.S. Congress: Committee Power Under the Open Rule," *American Political Science Association* 83, no. 3 (1989) 801.

- **Allows germane amendments**  
The open rule allows Members to appeal to the full House to accept amendments that may have been rejected in committee. This allows a second chance for amendments, and allows the full House to deliberate the amendments.
- **Increased compromise**  
The open rule could help foster compromise by allowing more debate on legislation as well as flexibility for Members to build coalitions to advance proposals that may not have leadership or committee support.<sup>483</sup>

### *Disadvantages*

- **Increased use of House floor time**  
If Members in the House are able to offer amendments in response to other amendments, the legislative process may be stalled by amendments. Maintaining order and structure on the House floor is a balance between allowing Members to add amendments, but also proceeding with other legislation.<sup>484</sup>
- **Places compromises made in committee at risk**  
The open rule allows Members to offer amendments, which may alter bills in such ways as to undermine compromises made in committee. This is particularly relevant when bills address relatively contentious matters that require significant political concessions.
- **Increases the difficulty in passing legislation that requires immediate action**  
The open rule may stop the speedy passage of emergency legislation risking delays due to the allowance of amendments not affecting the emergency directly.
- **Use of Poison Pill amendments**  
The open rule allows Members to use tactics to kill a particular bill on the House floor. Members can add a germane amendment to a bill with the goal of preventing the bill from passing.

### **Additional Considerations**

This section contains additional reform options that were explored, but are not included in the recommendations section because of the feasibility analysis. However, each reform was analyzed in depth, and that analysis is provided for consideration.

### **Realign committees and their jurisdictions across chambers and between branches.**

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<sup>483</sup> Ibid, 802.

<sup>484</sup> Jonathan Allen and Jake Sherman, "John Boehner allows freewheeling House floor action," *Politico* (February 15, 2011), <http://www.politico.com/news/stories/0211/49604.html>.

This reform would seek to encourage deliberations and coordination among representatives, senators, and the executive branch. Presently, committee jurisdictions overlap between chambers and branches of government, making effective communication difficult. There are three ways that committee structures can be changed.

- 1) Align committee jurisdictions between House and Senate chambers.
- 2) Align committee jurisdictions with executive agencies.
- 3) Align the budget functions with the appropriations subcommittees.

These three options would result in jurisdictions being consistent across the House and Senate, as well as between the legislative branch and the executive branch. Aligning committees between the House and Senate or between the two branches of government would allow for greater coordination and communication among Members, legislative staff, and executive staff. This is because they would be focusing on potential programs and policies and could share information. A change in committee alignment could mean that the legislature could become more agile at addressing new and emerging issues.

A possible incremental reform could be to align the budget functions with the appropriations subcommittees (which are already aligned between the House and Senate). This realignment could create a more transparent budget process, and greater communication across chambers, committees, and branches of government. The process of “cross-walking” between budget functions and appropriations subcommittees can be time-consuming, onerous, and confusing. This reform would eliminate “cross-walking” and there would be clear communication where monies belonged between budget functions and appropriations subcommittees.

The main reason we chose not to pursue this reform is because there is a lack of information on realignment of appropriations subcommittees and budget functions. In addition, the reform may face opposition because Members will not want to give up their committee assignments. Historically, Members have been resistant to a decrease in committee assignments.<sup>485</sup>

**Require and record attendance at committee hearings and markups, including how long Members remain. Institute penalties for Members’ absence—for example, if a Member misses more than five hearings/markups, then he/she would lose his/her committee position.**

This reform would seek to increase Members’ attendance at committee sessions. If Members perceive that their absence from committee sessions may lead to the revocation of their committee positions, they may not only attend these sessions more regularly but may also put pressure on the committee leadership to schedule committee business in a way that better allows for Members to attend. By increasing the participation of Members in committee work, this reform may ultimately result in more informed legislation. Other

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<sup>485</sup> Schneider, "House Legislative Procedures"



advantages of this reform include historical precedent for reforms of this kind<sup>486</sup> and additional potential impact on Members' schedules.<sup>487</sup>

This reform was not pursued since it was deemed to be too punitive. An option that would offer incentives for Members to attend committee activities would have been preferred, but it was found to be very difficult to design the features of this particular type of reform. Second, this option would have implementation challenges, such as the logistics of recording Members' attendance and making sure that Members actually stay for the duration of a session.

## Staffing

### Problem One

The increase in demands on Congress in both the informing and legislative functions have created expectations beyond the capacities of individual Members. There is a need to balance Members' discretion in staffing their offices with the efficiencies of pooling resources.

### Background

Members' district and Capitol Hill offices have experienced a shift in constituent expectations as technology has advanced. As of 1994, one-third of all senatorial and one-half of all House personal staff work in district offices; most of these staffers are dedicated to handling constituency requests and correspondence.<sup>488</sup> Between 2000 and 2010, many congressional offices experienced an increase of 500 to 1,000 percent in the volume of communications. It is estimated that Members receive more than 3,000 emails from constituents per week.<sup>489</sup>

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<sup>486</sup> Recording the attendance of Members at committee sessions was an idea recommended by the 1946 Joint Committee on the Organization of Congress. During the 1993 Joint Committee on the Organization of Congress, Members echoed this earlier proposal and went a step further by recommending that the attendance of Members at committee sessions be made mandatory and public. Organization of the Congress, Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 18, S. Rep. No. 79-1011 at 7 (March 4, 1946) and Organization of the Congress, Final Report of the Joint Committee on the Organization of the Congress pursuant to H. Con. Res. 192, 102D, H.R. Rep. No. 103-413, Vol. 2 and S.R. Rep. No. 103-215, Vol. 2 at 26-27 (December 17, 1993).

<sup>487</sup> Because all Members would be required to attend a certain number of committee hearings and markups, the congressional leadership may be better able to schedule Members' time outside of these committee sessions, leading to a more predictable schedule with less competition between floor and committee activities.

<sup>488</sup> Lorelei Kelly, "Congress' Wicked Problem: Seeking Knowledge Inside the Information Tsunami," *New America Foundation* (Dec. 2012), [http://newamerica.net/publications/policy/congress\\_wicked\\_problem](http://newamerica.net/publications/policy/congress_wicked_problem) and Tim Hysom, "Communicating with Congress: Recommendations for Improving the Democratic Dialogue," *Congressional Management Foundation* (2008), [http://www.congressfoundation.org/storage/documents/CMF\\_Pubs/cwc\\_recommendationsreport.pdf](http://www.congressfoundation.org/storage/documents/CMF_Pubs/cwc_recommendationsreport.pdf).

<sup>489</sup> Aaron Scherb, "Contacting Congress: The Staff Perspective," *Friends Committee on National Legislation*, no. 748 (May/June 2011)

[http://fcn.org/resources/newsletter/mayjun11/contacting\\_congress\\_the\\_staff\\_perspective/](http://fcn.org/resources/newsletter/mayjun11/contacting_congress_the_staff_perspective/).

New access points for constituent engagement have expanded demands on Congress.<sup>490</sup> In addition to mail and email, social media has opened more avenues for information exchange between Members and their constituents. Social media has not only changed the mechanism for communication, but also the expectation of how quickly communication should occur—constituents expect faster responses to inquiries and requests. These changes in technology and communication channels occurred without a consistent and proportionate increase in the size of Members’ staff.<sup>491</sup>

There have been recent attempts to help alleviate some of the information demands placed on Members through the creation of information systems that are available to all Members. An example of such a system is Thomas.gov.

## **Reform Option**

**Pool technical support to provide objective policy information to the public, and allow Members to customize the way this information is presented on their websites. Consider housing this new function within existing systems or agencies.**

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

### *Advantages*

- **Pooled support creates economies of scale**  
Rather than each office identifying, collecting, and preparing information for constituent inquiries, a centralized support function would provide these services for all offices. This would save time and resources for Members’ offices.
- **Redirect resources to legislative and oversight responsibilities**  
The time and resources saved by pooling this function may allow Members to redirect office and district resources toward legislative and oversight responsibilities.
- **Direct public access to information**  
The pooled resources may help offices provide constituents with direct access to relevant information and reduce response time for addressing constituent needs.<sup>492</sup>

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<sup>490</sup> “#Social Congress: Perceptions and Use of Social Media on Capitol Hill,” *Congressional Management Foundation*, 2011. [http://www.congressfoundation.org/storage/documents/CMF\\_Pubs/cmf-social-congress.pdf](http://www.congressfoundation.org/storage/documents/CMF_Pubs/cmf-social-congress.pdf) p. 3

<sup>491</sup> *Communicating with Congress: How Citizen Advocacy is Changing Mail Operations on Capitol Hill*, Congressional Management Foundation, 2011.

[http://www.congressfoundation.org/storage/documents/CMF\\_Pubs/cwc-mail-operations.pdf](http://www.congressfoundation.org/storage/documents/CMF_Pubs/cwc-mail-operations.pdf)

<sup>492</sup> Fred Bernstein, “A Congress for the Many, or the Few?” *The New York Times* (September 8, 2012).

- **Core staff with expertise can lead to technological innovations**  
Creating a dedicated resource for technical support could provide a core staff with expertise on information systems architecture and content management. This expertise could advance the use of innovations in technology to the benefit of Members and their constituents. For example, technical staff could allow access to data through an application programming interface (API) or give Members the ability to complete data downloads, etc.<sup>493</sup>
- **Objective resource for public**  
This reform could create a single authoritative source of information for the public, which could contribute to a better understanding of issues using a common set of information.
- **Customizable reports**  
This system could allow for the creation of reports using the data. Members could customize these reports based on their individual information needs, for example, what are most frequently asked questions, what is the most requested information.
- **Insight on national constituencies**  
Pooled information across Members could provide Members with a broader perspective on constituent interests nationally.<sup>494</sup>

### *Disadvantages*

- **Decreased contact with constituents**  
This reform may result in less direct contact between Members and their constituents.
- **Success depends on multiple variables**  
The success of this reform depends on the quality of technical expertise dedicated to this function, the administration of the function, the governance structure and its relationship to the House and Senate leadership, and the discretion provided to those overseeing the function to choose the information included in the system and how it is collected and disseminated.

### **Background**

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<sup>493</sup> Email and phone exchange between Angela Evans, Bob Dizard and Emmet Devine. Feb. 20, 2013 and Feb. 27, 2013

<sup>494</sup> Due to the Privacy Act of 1974 (Title 5, Section 552A of the United States Code), offices are unable to share much of their constituent information with other Members or agencies. R. Eric Petersen, “CRS Report for Congress: Casework in a Congressional Office: Background, Rules, Laws and Resources,” *Congressional Research Service*, Nov. 30, 2012; John Pontius, “CRS Report for Congress: Casework in a Congressional Office,” *Congressional Research Service*, Dec. 22, 2004.; Harold C. Relyea, “CRS Report for Congress: The Privacy Act: Emerging Issues and Related Legislation,” *Congressional Research Service*, Feb. 26, 2002.

Members have consistently supported the pooling of resources, as evidenced by the creation and expansion of the congressional support agencies. The LRA of 1946 and the LRA of 1970 increased the size and role of both the GAO and the CRS, and created the CBO. These agencies serve as pooled expertise in support of legislative oversight.

## **Reform Option**

### **Integrate the Congressional Research Service, Government Accountability Office, and Congressional Budget Office under one umbrella agency to increase the efficiency of the support agencies.**

The following section will examine possible advantages and disadvantages of the proposed reform. This list is not exhaustive, but highlights several possible outcomes of the reform.

#### *Advantages*

- **Reduced administrative costs**  
The reform would streamline the mechanisms that Members use to request impartial information from agency staff. It would reduce administrative costs by eliminating duplicative functions, such as human resources, technology, and planning.
- **Interdisciplinary expertise**  
The integration of these agencies would combine program evaluation with policy creation and budget analysis. This crossdisciplinary approach to Member requirements could build on the strengths of disparate disciplines to address congressional policy needs. This could improve the experience for Members and their staff by providing one source for expertise, instead of requiring Members to choose between multiple agencies for information.
- **Increased transparency**  
Today, reports by the GAO and CBO are generally available to the public, but reports by the CRS are not. If these functions were integrated, CRS reports could also be more readily available to the general public. This could increase public understanding of public policy issues. The Congress has considered releasing CRS reports to the public in the past, stating that it is advantageous to provide citizens with access to objective and accurate policy analysis.<sup>495</sup>

#### *Disadvantages*

- **Dilution of separate missions**  
There is a risk that the separate missions of the agencies would be diluted with this reform. Integrating the congressional agencies could reduce the competition

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<sup>495</sup> Library of Congress, "About THOMAS"

that occurs as agencies enhance and expand the services they provide.<sup>496</sup> Members would also lose the ability to obtain different opinions from different agencies.

- **Leadership challenge**  
The leadership of the separate agencies may be resistant to coordinating efforts. If the agencies were merged, a new leadership system would need to be implemented, and the management teams would need to cooperate to perform effectively.
- **Committee control**  
The committees that currently oversee the agencies may not want to give up the power and control gained through oversight of the agencies. Each agency currently has a separate oversight committee in the Senate and in the House: the GAO's oversight bodies are the House Committee on Oversight and Government Reform and the Senate Committee on Oversight and Reform; the CRS is overseen by the Joint Committee on the Library; and the CBO is overseen by the House Committee on the Budget and the Senate Budget Committee. There may be resistance to this reform from committees that would lose their oversight jurisdiction through the consolidation.
- **Statutory changes**  
The Congress would have to legally change the mandates of the agencies for this reform. The Congress may need to approve the release of CRS reports to the public to be consistent with the policies of the GAO and CBO. The Congress would also need to amend the annual appropriations legislation governing the appropriations for the CRS (Legislative Branch Appropriations Acts) in order to carry out provisions related to the distribution of CRS reports.
- **Transition expenses**  
There may be significant upfront expenses associated with the merging of these agencies and their operations and staff. A full analysis would need to be performed to estimate the potential costs of merging these agencies.<sup>497</sup> However, there may be long-term budget savings realized through the consolidation of administrative functions of these agencies.

## **Problem Two**

Congress has difficulty accumulating and retaining expertise and institutional knowledge among committee staff members.

## **Background**

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<sup>496</sup> Pauls, "Congressional Reorganization," 53-54.

<sup>497</sup> A similar analysis regarding the costs and saving of combining federal departments was performed by the GAO in the "Review of Potential Merger of the Library of Congress Police and/or the Government Printing Office Police with the U.S. Capitol Police" (2002)

Recent studies show that half of current committee staff has four years of experience, and the average tenure of all congressional staff is five and a half years.<sup>498</sup> The inexperience and frequent turnover of staff may have negative implications for the availability of expertise and the institutional memory within Congress.<sup>499</sup> This may affect Congress's ability to conduct oversight and develop effective legislation.<sup>500</sup> It might also make Congress more reliant on outside experts to provide information, counsel, and advice to individual Members.<sup>501</sup> Gaining access to, determining the availability of, and maintaining the loyalty of these experts to Congress may create strains on Members' time and range of resources.

Committees play a critical role in the development of legislation and in the oversight of federal programs and policies. These responsibilities require not only knowledge of the issues within a committee's jurisdiction, but also an understanding of how these issues have been addressed in the past, their socioeconomic impact, and their implementation challenges. Committee staff play an important role in supporting Members as they navigate complex issues. As a result, limited staff capacity may diminish Members' ability to carry out their responsibilities.

## **Reform Option**

### **Establish a core of permanent professional committee staff to provide internal expertise to committees, and help committees retain institutional knowledge through leadership transitions.**

The following section will examine possible advantages and disadvantages of the proposed reform. This is not an exhaustive list, but highlights several possible implications of the reform.

#### ***Advantages***

- **Improved institutional memory**

A core of permanent committee staff would help committees build expertise and improve institutional memory. Stable, career-oriented staff positions may attract employees who will make longer-term commitments to Congress.<sup>502</sup> The institutional memory and expertise developed by these employees would be available to Members over a longer period.<sup>503</sup>

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<sup>498</sup> Congressional Management Foundation, "2002 House Staff Employment Study"

<sup>499</sup> Jennifer M. Jensen, "Explaining Congressional Staff Members' Decisions to Leave the Hill." *Congress & The Presidency* 38, no. 1 (January 2011) 40.

<sup>500</sup> Luke Rosiak, "Congressional Staffers, Public Shortchanged by High Turnover, Low Pay," *The Washington Times* (June 6, 2012) and Jensen, "Explaining Congressional Staff Members' Decisions" paraphrasing Daniel Schuman, former CRS attorney

<sup>501</sup> Kelly, "Congress' Wicked Problem"

<sup>502</sup> Barbara S. Romzek and Jennifer A. Utter, "Career Dynamics of Congressional Legislative Staff: Preliminary Profile and Research Questions," *Journal of Public Administration Research and Theory* 6, no. 3 (1996) 432.

<sup>503</sup> *Ibid*, 425.

- **Appropriations committees have de facto permanent staff**  
Several institutional experts have noted that appropriations committees for both chambers of Congress already have de facto permanent committee staff.<sup>504</sup> This suggests that appropriations committee members find value in the institutional knowledge permanent staff members possess. This precedent could be used as a model for implementing permanent professional staff in other committees.
- **Increased sharing of institutional knowledge**  
Staff members who are more congressionally career-minded may be less territorial about information sources, and more willing to share information with other staffers. When information is shared among staff members, it allows the entire staff to work collectively, and from a common set of information.<sup>505</sup>
- **Increased institutional loyalty**  
Creating a base of permanent committee staff might attract career-minded staffers who are more loyal to Congress as an institution, and are less influenced by political agendas. Career-oriented staff have been found to be relatively unaffected by partisanship, and have frequently worked for both parties during their careers.<sup>506</sup>
- **Improved professional development / training**  
A core of permanent staff would provide valuable mentorship and knowledge transfer to new committee staff members. Lack of professional development and experience can lead to staff frustration and stress, which may contribute to high turnover rates.<sup>507</sup> Permanent staff's ability to provide mentorship and training may help diminish frustration, decrease turnover, and lead to improved institutional memory and enhanced experience.

### *Disadvantages*

- **Loss of Members' power**  
Committee members may view staffers' institutional loyalty negatively. Members who assume leadership positions in committees want to advance their party's or their own agenda; thus, they need to rely on loyal staff to help them do this. Permanent professional staff may be perceived as obstacles to a member's success if the staff's loyalty to the committee as a whole trumps the chair's objectives.
- **Member reliance on staff expertise**

<sup>504</sup> \_\_\_\_\_ Discussions in Class Workshop conducted on March 25<sup>th</sup>, 2013 at the LBJ School of Public Affairs.

<sup>505</sup> David J. Webber, "Lessons of a Congressional Fellow," *The University of Missouri Department of Political Science* (Fall 1993). <http://web.missouri.edu/~webberd/fellow.html>.

<sup>506</sup> Romzek, "Career Dynamics of Congressional Legislative Staff," 433.

<sup>507</sup> *Ibid*, 426.

There is a danger that professional staff will have more knowledge and experience than committee chairs. Some perceive permanent staff as a threat to the democratic nature of Congress. In fact, some staff members have discussed term limits for staffers because they can become so deeply entrenched and powerful.<sup>508</sup>

- **Expanding the bureaucracy**

While creating permanent committee staff positions may improve institutional memory and reduce turnover costs, the job security it may create introduces the possibility of staffers becoming complacent.<sup>509</sup>

## **Additional Considerations**

### **Improve casework management by amending portions of the 1974 Privacy Act (Title 5, Section 552A of the United States Code) and other related legislation to allow for the sharing of limited constituent information across congressional and federal offices.**

If this reform were adopted, Congress could consider requiring all Members to utilize one casework management software system. This could also allow multiple offices to better share information in order to help solve constituent issues, reduce the need to offer training on multiple systems, and allow for easier collection of aggregate data on constituent issues.<sup>510</sup><sup>511</sup>

### **Change the method of receiving the privacy release forms to allow Congress to take faster steps to act on behalf of their constituents.**

Currently, a constituent must complete and sign a paper form and then mail the form to the Member's office before the Member can take action on behalf of the constituent. Consider alternative methods of submission for the release form. Examples of alternative submission methods for federal information are the Free Application for Federal Student Aid (FAFSA), which can be submitted online after students receive a PIN code, and the online tax returns the IRS accepts.

### **Create an informal group of constituent affairs staff that meet regularly to discuss legislative and correspondence trends.**

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<sup>508</sup> Ibid, 426-427.

<sup>509</sup> Robert H. Salisbury and Kenneth A. Shepsle, "Congressional Staff Turnover and the Ties-That-Bind," *The American Political Science Review*, 75, no. 2 (Jun., 1981) 383.

<sup>510</sup> R. Eric Petersen, "Casework in a Congressional Office: Background, Rules, Laws and Resources," *Congressional Research Service* (November 30, 2012).

<sup>511</sup> Harold C. Relyea, "The Privacy Act: Emerging Issues and Related Legislation," *Congressional Research Service* (February 26, 2002).



The group would be similar to the House Congressional Chiefs of Staff Association.<sup>512</sup> However, the focus would be casework. Advances in technology would allow staff in the regional offices to participate.

**Increase staff salary to make senior staff pay more competitive with the private sector.**

Senior staff are three times more likely than junior staff to leave Congress if they are unsatisfied with their salary.<sup>513</sup> Increasing staff salary might help improve retention of senior staff that have the greatest amount institutional knowledge.

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<sup>512</sup> "Navigating the First 90 Days: A Workshop for Aides of Members-elect," *Congressional Management Foundation*, <http://www.congressfoundation.org/congressional-operations/95-freshman-resource-center>.

<sup>513</sup> Jensen, "Explaining Congressional Staff Members' Decisions," 49-50.

# Appendix A

The following section lists congressional reform proposals developed by congressional commissions, scholars, and nonprofit organizations that study Congress. Many of the reform proposals address the issue areas presented in this report: the agenda-setting process, budget and appropriations process, deliberations, and staffing. While some proposals correspond with the reform proposals offered in this report, others go beyond the scope of the report, encompassing issues like campaign finance reform. However, the following reforms proposals may be of interest to those examining congressional reform efforts.

All of the following reforms and their explanation are directly quoted from selected sections of the cited sources.

## **No Labels**<sup>514</sup>

### *No Budget, No Pay*

If Congress cannot make spending and budget decisions on time, they should not get paid on time either. Every government fiscal year begins October 1. If the congressional appropriations (spending) process is not completed by that date, congressional pay ceases as of October 1, and isn't restored until appropriations are completed. This is the only No Labels solution that requires a new law.

### *Up or Down Vote on Presidential Appointments*

All presidential nominations should be confirmed or rejected within ninety days of the nomination being received by the Senate. This time frame includes both committee and floor action. If a nominee's name is not confirmed or rejected within ninety days, the nominee would be confirmed by default.

### *Fix the Filibuster*

Require Real (Not Virtual) Filibusters: If senators want to halt action on a bill, they must take to the floor and hold it through sustained debate. End Filibusters on Motions to Proceed: Today, filibusters can be used both to prevent a bill from reaching the floor for debate (motion to proceed) and to prevent its being passed. If the Senate simply ended the practice of filibustering motions to proceed, it could cut the number of filibusters in half and allow more issues to be debated and voted on by the full Senate.

### *Empower the Sensible Majority*

The House should allow members to anonymously sign discharge petitions, which allow a majority of members to override a leader or committee chair's refusal to bring a bill to the floor. Once a majority of members have signed, the names of the signers would be made public. Under current rules, discharge petitions are allowed, but signers are made

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<sup>514</sup> "12 Ways to Make Congress Work" *No Labels*, <http://www.nolabels.org/work>, accessed March 5, 2013.

public from the start. Members are reluctant to buck party leaders who may retaliate by pulling members off of important committees, bottling up legislation they support or withholding critical campaign help. Our reform would allow members to sign a discharge petition knowing at least half their colleagues are in the same boat with them. A similar reform could be undertaken in the Senate.

#### *Make Members Come to Work*

**A Five-Day Workweek:** Most Americans put in a five-day workweek. So should Congress. **Three Weeks in D.C., One Week in the Home State or District:** Instead of quick in-and-out trips home for fundraisers or hastily scheduled constituent events, Members should have a full week available for working at home with constituents. They should spend the other three weeks in Washington, D.C. **Coordinated Schedules:** A law can't pass unless it gets through both the House and Senate. If the chambers have different schedules, as they do now, it is harder to get anything done. The leaders of both chambers should work to ensure their members are in Washington during the same weeks.

#### *Question Time for the President*

We should take a cue from the British Parliament's regular questioning of the Prime Minister to create question time for the President and Congress. These meetings occasionally may be contentious, but at least they force leaders to actually debate one another and defend their ideas. Here is how it would work: on a rotating basis the House and Senate would issue monthly invitations to the President to appear in the respective chamber for questions and discussion. Each question period would last for ninety minutes and would be televised. The majority and minority would alternate questions. The President could, at his discretion, bring one or more cabinet members to the question period and refer specific questions to them.

#### *Fiscal Report to Congress: Hear It. Read It. Sign It.*

Every year, a nonpartisan leader, such as the comptroller general, should deliver a televised fiscal update in-person to a joint session of the Congress. The President, Vice President, all cabinet members, senators, and congressmen must attend this fiscal update session and take individual responsibility for the accuracy and completeness of the comptroller general's report by signing the report, just as CEOs are required to affirm the accuracy of their company's financial reporting.

#### *No Pledge But the Oath of Office*

Members should make no pledge but the pledge of allegiance and their formal oath of office.

#### *Monthly Bipartisan Gatherings*

To get Members talking to one another, both the House and Senate should institute monthly bipartisan gatherings. The gatherings would be off the record and not be televised. If both sides agreed, outside experts could be invited in to brief Members on topics of concern.

#### *Bipartisan Seating*

At all joint meetings or sessions of Congress, each member should be seated next to at least one member of the other party. On committees and subcommittees, seating also would be arranged in an alternating bipartisan way (one member would be seated next to at least one member of the other party) by agreement between the chair and ranking member. One option would be to arrange bipartisan seating in order of seniority.

#### *Bipartisan Leadership Committee*

Congressional party leaders should form a bipartisan congressional leadership committee as a forum for discussing both legislative agendas and substantive solutions. The committee would meet weekly and (subject to mutual agreement) monthly with the President. This committee would include the President pro tempore of the Senate, the Speaker of the House and the Senate and House majority and minority leaders. It would also include four open slots for any two members of the Senate and of the House, which would be determined by lottery on a rotating basis each Congress.

#### *No Negative Campaigns against Incumbents*

Incumbents from one party should not conduct negative campaigns against sitting members of the opposing party. That means no appearing in negative ads, no signing nasty direct mail letters, and no traveling to an incumbent's district or state to play attack dog. Members would of course be free to campaign or fundraise in support of candidates from their party.

#### **Fix Congress Now Caucus**<sup>515</sup>

Require a 3/5 vote to waive the Budget Act points of order dealing with adjournment, thus ensuring that Congress not adjourn as a governing body until its budgetary work is done.

Amend the Congressional Budget and Impoundment Control Act 1974 to require that the budget be a joint resolution—passed by both chambers, and signed into law—rather than a concurrent resolution.

Restructure the budget as a biennial joint resolution rather than a one-year concurrent budget resolution.

#### **Bipartisan Policy Center**<sup>516</sup>

##### *Leaders Should Commit to Five-Day Workweeks*

To help restore a culture of legislating by enabling committees sufficient time to conduct their business, the bicameral leadership should commit to holding sessions five days a week for three consecutive weeks at a time, followed by one-week recesses.

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<sup>515</sup> Fix Congress Now Caucus. *Current Issues*. <http://rigell.house.gov/fcnc/issues.aspx> (accessed March 7, 2013).

<sup>516</sup> Donald R. Wolfensberger, "Getting Back to Legislating: Reflections of a Congressional Working Group," *Bipartisan Policy Center* (November 27, 2012). <http://bipartisanpolicy.org/sites/default/files/Congress%20Report%202013.pdf>.

*Congress Should Adopt Biennial Budget Resolutions and Spin Off the Resolution's Discretionary Spending and Debt Ceilings into Statute*

Congress should move to two-year budget resolutions matching two-year discretionary spending and debt ceilings to be spun-off from final resolutions into bills for enactment. The annual appropriations process should be retained to ensure tight oversight of the executive branch.

*The Leadership Should Commit to Fully Restoring the Authorization Process*

Majority party leaders in each house, in consultation with their committee chairs, should meet at the outset of a new Congress and agree on a timetable for considering major reauthorization bills.

*Committee Chairs Should Commit to Minority Party Participation*

Committee chairs should consult with ranking minority members in developing a chair's mark for major reauthorization bills to find common ground where possible, facilitate the markup process, and ensure greater committee consensus and unity.

*Appropriations Committees Should Refrain from Authorizing in Appropriations Bills*

To further strengthen the policymaking role and relevance of authorizing committees, majority party leaders should insist on enforcing House and Senate rules against including legislative language in appropriations bills.

*A More Open Amendment Process Should Be Allowed in the House and the Senate*

Majority leadership in the House should permit more modified open amendment rules in the House by requiring preprinting of amendments in the *Congressional Record* and imposing an overall time cap on the amendment process for a bill. In the Senate the majority leader should refrain from filling the amendment tree to block minority party amendments.

*Motions to Proceed to Consider Legislation or Nominations in the Senate Should Not Be Subject to Filibuster*

Senate rules should be amended in the normal manner on opening day of a new Congress (not by exercising the "nuclear option") to make motions to proceed to the consideration of any measure or nomination privileged (not subject to filibuster).

*Leaders Should Commit to Restoring Conference Committees*

Congress should return to using House-Senate conference committees to resolve differences on major legislation. To facilitate this, all motions relating to going to conference and appointing conferees in the Senate should be privileged (not subject to filibuster); and motions to instruct conferees in the House after twenty days should be limited to not more than one each set of three legislative days if offered by the minority leader or a designee.

*Leadership Political Action Committees Should Be Abolished*

To lessen the appearance of top committee spots being allocated to the highest party givers and the associated appearance of over-dependence on interest group contributions with an interest in legislation before such committees, House and Senate rules should be amended to prohibit each representative and senator from having more than one official campaign committee.

*Members Should Be Encouraged to Deliver Annual State of the Congress Addresses to Constituents*

To better enable Members to carry out their educational and informational responsibilities to their constituents, Members should consider scheduling an annual address to their constituents in which they report on the activities of the Congress, its strengths and weaknesses as an institution, and their ideas for making it a more effective and representative body.

*Congress Should Introduce Save-As-You-Go Requirements<sup>517</sup>*

First, the Congress and the President must choose future debt (and corresponding deficit) targets (e.g., reducing debt to 60 percent of GDP by 2021) and a path to achieve it. Second, Congress must specify amounts of budget savings that achieve those targets through appropriations spending caps for the next ten years (the Congress may choose to subdivide appropriations into separate categories, such as security and nonsecurity); and a save-as-you-go (SAVEGO) rule with required year-by-year amounts of deficit reduction in the rest of the budget (from entitlement programs and/or taxes). We recommend that the Congress create two separate categories: health care and other.

Finally, the budget process law will re-create the remedies—the “sequesters”—that will achieve any intended savings that Congress and the President fail to enact. If Congress appropriates too much, overall or in any separate category, there will be an across-the-board reduction in the offending discretionary spending category to bring the total back into line. If Congress fails to comply with SAVEGO in any SAVEGO category in any year, there will be across-the-board reductions in entitlement spending and tax expenditures to achieve the mandated savings in that category (marginal tax rates cannot be increased through a sequester).

We recommend that each Congress adopt the necessary savings to meet the spending caps and SAVEGO for the following two years.

We also recommend that health care be exempt from sequester if Congress and the President achieve the required savings in the separate health care category.

We further recommend that Social Security be exempt from any subsequent sequesters if a law is enacted that the Social Security actuaries deem achieves sustainable solvency.

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<sup>517</sup> Bipartisan Policy Center. Save-as-you-Go (SAVEGO). <http://bipartisanpolicy.org/projects/economic-policy-project/savego> (accessed March 5, 2013).

If the Congress achieves the SAVEGO target in a current legislative year, but the resulting savings are not sufficient in subsequent years, the Congress may achieve the remaining required savings in later legislative years to prevent a sequester.

### **9/11 Commission<sup>518</sup>**

Congressional oversight for intelligence and counterterrorism is now dysfunctional. The Congress should address this problem. We have considered various alternatives: a joint committee on the old model of the Joint Committee on Atomic Energy is one. A single committee in each house of Congress, combining authorizing and appropriating authorities, is another.

Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties. But we believe that Congress does have the obligation to choose one in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.

Since a catastrophic attack could occur with little or no notice, we should minimize as much as possible the disruption of national security policy making during the change of administrations by accelerating the process for national security appointments. We think the process could be improved significantly, so transitions can work more effectively and allow new officials to assume their new responsibilities as quickly as possible.

The Senate should adopt special rules requiring hearings and votes to confirm or reject national security nominees within thirty days of their submission. The Senate should not require confirmation of such executive appointees below Executive Level 3.

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<sup>518</sup> The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States, official government edition (Washington, DC: U.S. Government Printing Office, 2004), 419.

# Appendix B

## 1945 Joint Committee on the Organization of Congress

| <i>Senate</i>                      | <i>House</i>                                 |
|------------------------------------|--|
| Robert Follete (WI-R),<br>Chairman | A. S. Mike Monroney (OK-D),<br>Vice-Chairman |
| Elbert Thomas (UT-D)               | E. E. Cox (GA-D)                             |
| Claude Pepper (FL-D)               | Thomas Lane (MA-D)                           |
| Richard Russell (GA-D)             | Earl Michener (MI-R)                         |
| Wallace White Jr. (ME-R)           | Everett Dirksen (IL-R)                       |
| C. Wayland Brooks (IL-R)           | Charles Plumley (VT-R)                       |

## 1965 Joint Committee on the Organization of Congress

| <i>Senate</i>                              | <i>House</i>                      |
|--|-----------------------------------|
| A. S. Mike Monroney (OK-D),<br>Co-Chairman | Ray Madden (IN-D),<br>Co-Chairman |
| John Sparkman (AL-D)                       | Jack Brooks (TX-D)                |
| Lee Metcalf (MT-D)                         | Ken Hechler (WV-D)                |
| Karl Mundt (SD-R)                          | Thomas Curtis (MO-R)              |
| Clifford Case (NJ-R)                       | Durward Hall (MO-R)               |
| J. Caleb Boggs (DE-R)                      | James Cleveland (NH-R)            |

## 1993 Joint Committee on the Organization of Congress

| <i>Senate</i>                       | <i>House</i>                        |
|-------------------------------------|-------------------------------------|
| David Boren (OK-D), Co-Chairman     | Lee Hamilton (WI-D), Co-Chairman    |
| Pete Domenici (NM-R), Vice-Chairman | David Drier (CA-R), Vice-Chairman   |
| Jim Sasser (TN-D)                   | David Obey (WI-D)                   |
| Wendell Ford (KY-D)                 | Al Swift (WA-D)                     |
| Harry Reid (NV-D)                   | Sam Gejdenson (CT-D)                |
| Paul Sarbanes (MD-D)                | John Spratt, Jr. (SC-D)             |
| David Pryor (AR-D)                  | Eleanor Holmes Norton (DC-D)        |
| Nancy Kassebaum (KS-R)              | Robert Walker (PA-R)                |
| Trent Lott (MS-R)                   | Gerald Solomon (NY-R)               |
| Ted Stevens (AK-R)                  | Bill Emerson (CO-R)                 |
| William Cohen (ME-R)                | Jennifer Dunn (WA-R)                |
| Richard Lugar (IN-R)                |                                     |
| George Mitchell (ME-D), Ex-Officio  | Richard Gephardt (MI-D), Ex-Officio |
| Robert Dole (KS-R), Ex-Officio      | Robert Michel (IL-R), Ex-Offici     |



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