

# Extension of Remarks



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## The House That Newt Re-Built: Or Did He?

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On September 27, 1994, over 300 Republican Members and candidates for Congress gathered on the West Front of the U.S. Capitol and made an unprecedented commitment to change in the form of a "Contract With America." In effect they pledged, as a *TV Guide* ad for the Contract later put it, "If we break this contract, throw us out. We mean it."

Ten years later, Republicans still control the House with roughly the same number of members as when they took control in January 1995. Apparently the electorate has not yet found them in gross violation of the Contract's terms or spirit.

While most public and media attention focused on the ten planks of the Contract that promised House action on specific legislative items such as welfare reform, tax relief, and a balanced budget amendment in the first 100 days of the 104th Congress, the document's preface was in some ways even more breathtaking and audacious because it promised to change the *way* Congress does business. Here are some of the stirring words from opening paragraphs of the Contract With America:

This year's election offers the chance, after four decades of one-party control, to bring to the House a new majority that will transform the way Congress works....To restore accountability

to Congress. To end its cycle of scandal and disgrace. To make us all proud again of the way free people govern themselves...On the first day of the 104th Congress the new Republican majority will immediately pass the following major reforms aimed at restoring the faith and trust of the American people in their government....

There followed a list of eight institutional reforms the Republicans pledged to adopt on the very first day of the new Congress if they became the majority. These included:

- Passing the Congressional Accountability Act to apply to Congress many of the same workplace laws that apply to the private sector;
- Conducting an independent audit of House finances;
- Cutting the number of committees, and reducing committee staff by one-third;
- Limiting the terms of all committee chairs to three terms (later extended to subcommittee chairs, along with a four term limit on the Speaker);
- Banning proxy voting in committees;
- Requiring committee meetings to be open to the public;
- Requiring a three-fifths majority vote to

pass income tax increases; and

- Implementing zero-base-line budgeting.

All eight were put to separate votes in the House on opening day and all but two received overwhelming bipartisan support. Moreover, the actual resolution adopting House Rules for the 104th Congress (H. Res. 6) added another 23 House Rules changes—most of which Republicans had long fought for while in the minority. These included:

- Requiring committees to adopt oversight agendas at the beginning of each Congress;
- Limiting members to no more than four subcommittee assignments;
- Limiting committees to no more than five subcommittees;
- Eliminating rolling quorums in committees;
- Requiring committee roll call votes to be published in committee reports;
- Restoring the minority's right to recommit bills on the floor with amendatory instructions;
- Banning commemorative bills (e.g., "National Clown Week") and Legislative Service Organizations (also known as informal member caucuses);
- Requiring that the Congressional Record be a substantially verbatim account of floor proceedings;
- Requiring automatic roll call votes on budget resolutions, and appropriations and tax bills; and
- Providing certain changes in procedures for considering appropriations bills, including allowing offsetting amendments and permitting the majority leader to move and end to the offering of limitation amendments.

Two other things that should be noted here that were part of the informal changes that took place were the role of the Speaker to designate committee chairmen before the Steering Committee met to vote on them, and the pledge by the Rules Committee chairman to report more open rules for amendments on the floor—even offering a goal of 70 percent open rules compared to just 44 percent under Democrats in the 103rd Congress.

In a November 11, 1994 speech to the Washington Research Symposium, the presumptive Speaker, Newt Gingrich (R-Ga.), prime architect of the Contract With America, explained the opening day scenario. The Republican candidates and incumbents who signed the Contract, he noted, "basically said, 'Look, we are a team; we are going to go in a dramatically different direction; we're going to give you eight reforms on the opening day...'" After discussing some of the reforms, Gingrich offered the following warning:

If this just degenerates after an historic election back into the usual baloney of politics in Washington and pettiness in Washington, then the American people, I believe, will move towards a third party in a massive way. I think they are fed up with this city; they are fed up with its games; they are fed up with petty partisanship.

While no third party has emerged since those words were spoken, many observers would argue that Washington still runs on "the usual baloney of politics," still plays the same games, and still engages in the same petty partisanship as it did a decade ago—if anything, more intensely than ever. It is therefore relevant to ask, as Republicans commemorate the tenth anniversary of their takeover of the House, whether anything has really changed. Have Republicans managed to transform the institution as promised and bring a new way of doing business to Washington? Or has institutional change taken a back seat to the realities of governing and the need to pass legislation important to a majority's survival (even at the expense of fairness to the minority party)? This article cannot provide a definitive answer to those questions. Instead it is hoped it will shine some light on what has and has not changed in the House over the last ten years by highlighting a few of the significant rules changes as they affect institutional

processes and results and whether they have had in impact on the culture and processes of Congress.

First, the Republican rules changes in the 104th Congress aimed at making the committee system more deliberative and accountable by better concentrating members' energies. That is why members were limited to four subcommittee assignments; why three committees were abolished (from 23 to 20); why some 32 subcommittees were eliminated (from 118 to 86); why proxy voting and rolling quorums were banned; and why roll call votes in committee were to be published in committee reports.

It is also why committee and subcommittee chairman were limited to three terms. Republicans felt that longevity in chairmanships breeds too much familiarity with the outside interests and bureaucracies they oversee—the old “iron triangle” problem.

What impact have committee reforms had? It is doubtful that committees are stronger than they were under the Democrats and more likely they are somewhat weaker. Trumping any benefits flowing from the procedural reforms adopted is the continued growth of party leadership power as an alternative to committee power. As a House Republican Leadership Task Force on Committee Review in the 104th Congress noted in November 1996, “The history of the House underscores that often there is an inverse relationship between parties and committees. As party power grows, committee power wanes.” The Task Force went on to note that while much of the 20th century could be characterized as “committee government” in Congress, “Party centralizing tendencies became evident during the speakership of Thomas O’Neill and escalated significantly during the 104th Congress.”

What all this means for reforms designed to encourage a more deliberative legislative process is that there is little incentive to deliberate if the leadership can

easily reverse the results of those deliberations once a reported bill gets to the Rules Committee. Moreover, leadership acquiescence in members' demands to spend more time with their constituents have produced shorter work weeks which in turn make it virtually impossible for committees to do quality legislative or oversight work. A jam-packed two- or three-day week is not ideal for conducting detailed fact-finding hearings or careful consideration of legislative alternatives and language.

It should also be pointed out, in all fairness, that committee chairmen are usually not the champions of making their committees more deliberative. For instance, many, if not most chairmen, would love to restore proxy voting because it obviously strengthens their hand when that hand is full of signed slips of paper. They almost had their way at the beginning of the 107th Congress in forcing a caucus vote on restoring proxies, but the matter was dropped. The difficulty of keeping a quorum during markups has instead led to the adoption of an alternative rule to proxies and the old “rolling quorums.” At the beginning of the 108th Congress (2003) the House adopted a rule that permits committee chairmen to postpone roll call votes on amendments during committee markup until a later time in the process—similar to what the House already does in delaying and clustering floor votes. The rule does allow for additional debate on any postponed amendment votes.

The three-term limit on committee and subcommittee chairs still stands. Only one exception has been made, and that for the chair of the Select Committee on Intelligence in the 108th Congress. Another possible waiver was being considered at the outset of the 109th Congress for Rules Committee Chairman David Dreier on grounds it's the Speaker's committee and thus the Speaker's call. Other chairs have reluctantly accepted their fate and either retired or rotated to other committee or subcommittee chairmanships.

Meanwhile, Speaker Hastert has continued the precedent set by Speaker Gingrich in 1994 of not following a strict seniority rule in elevating members to chairmanships. But, whereas Gingrich did this unilaterally, Hastert has relied on the collective decision of the Steering Committee without attempting to impose his will on it. The combination of rotation and leadership discretion in choosing chairmen gives the party enormous leverage over committees. It would be difficult to argue that this combination has not further strengthened party leadership powers at the further expense of the power and respect committees once enjoyed. Almost any assessment of the evolution of the House committee system over the last decade would trace its decline to the trend towards greater party governance begun under Democratic majorities in the 1980s.

Turning to the floor, the trend toward party government is perhaps even more evident as fewer and fewer choices are left to members in dealing with bills reported by committees. The leadership has fully utilized its powers through the Rules Committee in shaping legislative outcomes both by crafting the base texts of bills to be considered, and by limiting the number of amendments that can be offered on the floor and even self-executing the adoption of favored amendments that change the committee-reported bill—something political scientists Barbara Sinclair refers to euphemistically as “post-committee adjustments.”

According to my data, in the last Democrats controlled the House, the 103rd Congress, 44 percent of the special rules for major bills were open or modified open rules, 38 percent were structured (allowing only specified amendments), and 9 percent were modified closed (one amendment) and 9 percent closed (no amendments). While Republicans improved briefly on that when they took over in the 104th Congress with 58 percent open or modified open rules, and 14

percent each for structured, modified-closed, and closed rules, that record grew progressively worse over the succeeding four Congresses. By the end of 108th Congress, only 26 percent of the special rules were open or modified open, a comparable percentage of rules was structured, while 21 percent were modified closed, and 27 percent were closed.

What has happened to the Republican advocates of sunshine and openness who were so vocal and persistent when in the minority? Frankly, as Rules Committee Chairman David Dreier publicly concedes, things look quite different once you’re in the majority. Governing is more difficult than you could have imagined as a minority member. In order to pass the party’s legislation with razor thin majority control, it is necessary to limit floor options available to members on important bills. The leadership cannot afford to lose even a handful of Republicans on an amendment or final passage vote since Democrats are increasingly voting in unity against Republican measures and for Democratic alternatives.

Interestingly enough, Speaker Hastert is using the new guarantee of a minority motion to recommit a bill with amendatory instructions (something Democrats had frequently denied the Republican minority) as a sign of Republican fairness. As columnist David Broder quotes Speaker Hastert at a December 12, 2003, luncheon on the Centenary of Joe Cannon’s Speakership, “We take the job of fairness very seriously;” even when the number of amendments is limited, “we guarantee the minority the right to recommit the bill with instructions, giving them one last chance to make their best arguments to amend the pending legislation.” Ironically, a minority party right is being invoked to justify the majority’s depriving the minority of its ability to more fully and fairly participate in the legislative process as co-equal representatives.

The other interesting development is that as the number of amendments being offered to major legislation declines, the

number of non-controversial, parochial member bills considered under suspension of the rules (no amendments allowed, and two-thirds vote required for passage) has increased. They've become so popular as a pay-off to members that the number of suspension days per week has been increased to three. Whereas suspension bills constituted just 50 percent of all laws in the 103rd Congress, by the 107th Congress they comprised 70 percent of all laws (although, fewer laws are being enacted). As the end of the 108th Congress grew near, suspensions were running at 75 percent of all enactments. It is my theory that the leadership throws these suspension bones to members as compensation for not demanding a right to offer substantive amendments on major legislation. In fact, in confirming this theory, one leadership aide told me suspensions are jokingly referred to as "pacifiers."

In summary, the House has changed since Republicans took over in January 1995, but probably is not much more different than it would have been at this point if Democrats had retained control. Republican minority ideas about how the House should be run were soon considered naive and impractical. Republicans quickly adopted the old Democratic majority ways of doing things and embellished on them. Likewise, Democrats picked up the old Republican minority playbook for waging an effective opposition insurgency, and added a few new plays of their own. While party unity was at times considered an oxymoron when Democrats were in the majority, the narrow gap between minority and majority status coupled with an imperious Republican majority and president have energized and unified the minority as never before. It is doubtful that the slight widening of that gap in the 2004 elections will weaken the minority's appetite for regaining control.

Party governance in the House is a reality that will likely be around for awhile—at least until one party or the other establishes such a firm working majority that it can afford

to think at times about working across the aisle on national problems. The House that Newt re-built is not the House minority Republicans envisioned. It is closer to the model Democrats were building. It is still evolving under the transactional leadership of Speaker Hastert (in contrast to the transformational vision of Gingrich). Nevertheless, the question remains: Will it still be recognizable as the "People's House" when the party's over?