

**“Fixing Congress”**  
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Former Senator Howard Baker once said, “There are three things I simply cannot understand: the Holy Ghost, the Middle East, and the House of Representatives.” No one fully understands Congress, but most people do believe that it is broken... badly broken.

I’ve been a congressman, off and on, for almost thirty years. I’ve witnessed the decline of Congress first-hand, but the decline is not what really worries me. Congress has been broken before; in fact, it’s always been the butt of jokes. I am concerned that, as the world’s only superpower, we cannot afford a breakdown *now*. Worse, I worry that, as an aging superpower, we are *losing our capacity for self-renewal*. We’ve always been able to bounce back; our greatest strength is resilience. As Churchill said, “America can always be counted on to do the right thing... after it has exhausted all the alternatives.”

You are about to hear a more fundamental critique of Congress than you have probably heard. I will focus on the House much more than the Senate, although the need for filibuster reform is urgent. Forgive me for speaking in topic sentences due to time constraints. What follows is a tough diagnosis, but it’s better for the patient to hear the news early rather than late. And don’t get depressed, we still have enough time to be cured. Not a lot of time, but enough.

**First, I see a Congress that is willfully blind to our nation’s worst problems. For example, the true national debt is many times higher than published figures, much closer to \$50 trillion than \$15 trillion.** Because Congress has exempted the federal government from normal accounting rules, few people notice. Howell Jackson here at Harvard Law School has been outspoken, but not even the *Wall Street Journal* reports the real “accrual” numbers. No interest group in America supports real accounting for the federal government, so Congress sleeps. Not even the President’s Fiscal Commission could wake us.

**Second, the core business of federal government is insurance, namely the giant entitlement programs like Social Security, Medicare, Medicaid, and VA that few people want to understand.** You often hear people say, “Keep the government’s hands off my Medicare!” These programs are so large that national defense and homeland security are sidelines; the rest of federal government – interstate highways, national parks, scientific research, agriculture, etc. – is fading in importance. Yet, despite insurance’s dominance, Congress has no committee on insurance; we spend all our time on other things. Tax expenditures exceed all appropriations, but rarely does Congress hold hearings on the annual \$1.3 trillion drain on the nation’s finances. Never has America been in greater need of tax reform.

**Third, the biggest disconnect in politics is the fact that these vital entitlement programs are not, as politicians claim, sacred commitments, vested benefits, or even government promises – they are “scheduled benefits” that we do not know how to fund. Until we fix this disconnect, these vital programs are in jeopardy.** When this realization sinks in, it could make the Tea Party Movement seem like a picnic. The sooner we act to stabilize these programs, the more likely we can save them. It will be painful, but we should be thankful we still have time to act.

**Fourth, Congress refuses to use the right tools to solve problems. Most members barely know what our toolbox contains.** Year-round campaigning distracts us from the job we were hired to do. A screwdriver problem needs a screwdriver, not a wrench. Congress, however, chooses the wrench because wrenches are popular. Tax credits are the classic example. These are rhetorical gold on the stump, but, as Jon Gruber of MIT has shown for health care tax credits, usually a waste of money. I sometimes wish that we had competency testing for Congress.

**Finally, Congress has grown terribly spoiled in recent years because modern Presidents have seldom vetoed legislation or chastised the institution.** For most of his administration, George W. Bush vetoed fewer bills than any President since Thomas Jefferson. Every President since Nixon had budget rescission power and used it hundreds of times, except for our last two Presidents. In his first speech to Congress, President Obama called for an end to earmarks; the next day his Democratic Congress gave him 8,500.

How did Congress get this way? And why didn't you notice?

### **The 1980s Congress**

When Cambridge's own Tip O'Neill was Speaker just over twenty years ago, Congress was very different, far from perfect but functional. Tip O'Neill believed that he was Speaker of the whole House. He wanted the House “to work its will,” not necessarily for Democrats to win every vote. He criticized President Reagan during the day and drank beer with him at night. He was proud of his powerful committee chairmen like Danny Rostenkowski of Ways & Means.

On major issues, members were expected to vote their conscience and their district. It was the job of the eloquent Majority Leader, Jim Wright, to put together partisan majorities, and the job of the gentlemanly Minority Leader, Bob Michel, to defeat them. You were supposed to disagree without being disagreeable. You were considered a party loyalist if you supported your party's position 70% or 80% of the time. Members could know exactly what they were voting on because an elite group of staffers called the Democratic Study Group wrote authoritative pro-con memos

before every important vote. Dozens of Republicans subscribed to the Democratic Study Group because they trusted its work.

In the O’Neill era, members worked a four or five day week in Washington, D.C., where most of their families lived. Members knew each other, and often spouses and children as well. A few members did belong to what O’Neill called the “Tuesday-Thursday Club,” a shorter workweek that enabled them to spend more time back home. In addition to legislating in Washington, the job of congressmen was casework, cutting through bureaucratic red tape, in order to help constituents.

On the House floor, so-called “King-of-the-hill” rules were common. Members were allowed to choose among competing alternatives to solve a national problem. The proposal with the most votes won, sometimes even if another proposal had already received a majority. King-of-the-hill rules made it harder for party leaders to predict how their members would vote, but allowed members freedom of choice.

Back then, you never contributed to your colleagues’ campaigns except in emergencies. In fact, you insulted them if you gave them money, like handing them a tip. Campaigns could cost several hundred thousand dollars, but only if they were hotly contested. Likewise, your political party did not dare charge you dues money; on the contrary, it was their job to help you. The office of the Chair of the Democratic Congressional Campaign Committee was a modest room several blocks from the Capitol, near the page dormitory. Chairing the DCCC was considered a chore, not a stepping-stone.

### **The 1990s Congress**

Congress has deteriorated since the O’Neill era. When Newt Gingrich became Speaker in 1995, he centralized power in the Speaker’s office and politicized its function. Gingrich waged total war against President Clinton, even shutting down the government temporarily to try to get what he wanted. Gingrich believed that Republicans should win every vote, effectively merging the Speaker’s Office with the Majority Leader’s and Whip’s Offices. Committee chairmen were emasculated.

The next Speaker, Dennis Hastert, articulated Gingrich’s partisanship when he admitted that he listened only to Republicans, “the majority of the majority” as he called it. Congress polarized rapidly; party unity climbed to 95+%. Objective information sources like the Democratic Study Group were literally banned. Members were told by their leadership how to vote and were force-fed talking points so that everyone could stay on message. Gingrich reportedly said that the first step in a revolution is to shut down the television stations.

King-of-the-hill voting was ended. All major floor votes became partisan steamrollers with one big vote, YES or NO, at the end of debate. No coherent alternatives were allowed to be considered, only approval of party doctrine. Instead

of allowing members to express their views on different solutions to national problems, it was my way or the highway.

Gingrich ordered freshman Republicans not to move the families to Washington because they needed to campaign back home full-time. Soon everyone belonged to the “Tuesday-Thursday Club” that O’Neill had criticized as lazy. Members became strangers to each other, making it easier for them to fight.

The cost of campaigns escalated into the millions. Some members began spending as much as 75% of each day on “call time,” dialing for campaign dollars from special interests at call centers near the Capitol. Parties required their members to pay minimum of \$100,000 in dues, but dues could exceed \$1 million. Colleagues began expecting and demanding contributions from each other, in addition to party backing. Instead of legislation and casework, the job of members of Congress became telemarketing, fundraising and earmarking. The chairmen of party campaign committees could pick offices in the Capitol itself because they were being groomed for leadership.

### **Return of Democratic Control**

When Democrats took back control of the House in 2007, Democratic leaders did not even try to return to the ways of Tip O’Neill. We blew our chance to go back to the future. Instead, we quietly adopted most of the procedures of Gingrich and Hastert. Few Democrats remained who could remember the O’Neill era. We forgot “Brigadoon” and settled for “Lord of the Flies.” Some people said it was impossible to go back because the media climate had changed. Fox and MSNBC had certainly inflamed partisanship. Social media had popularized non-fact-based reality.

The truth is that the Gingrich-Hastert model works... if you are only interested in controlling Congress. No Speaker wants to yield to stubborn committee chairs or opinionated rank-and-file members. It’s easier to keep them in the dark because it quells dissent. It’s also easier for back-benchers to follow the party line than to think for themselves. This quasi-parliamentary system is certainly efficient. What’s lost are the hallmarks of Congress: open debate, independent decision-making, and putting the nation first. It will be interesting to see if Speaker John Boehner follows the parliamentary or the congressional model, or if he even appreciates the difference.

### **Today’s Congress**

Members of the 112<sup>th</sup> Congress took the oath of office just three weeks ago. Two colleagues missed the oath while they were attending a fundraiser. The first weekend after the oath, another colleague was nearly murdered by an assassin. Since then, both parties have had a planning retreat, have read the Constitution aloud on the House floor, voted on repealing health reform, and received committee assignments. The big vote that everyone is wondering about is the debt ceiling

increase this spring: whether Republicans will risk ruining America’s credit rating in order to force spending cuts.

Aside from our own personal safety after Tucson, members are preoccupied with two concerns: redistricting and campaign cash. The important issues of the day – health care, military spending, the deficit – are secondary. Freshman members are feeling pinched financially because of high Washington rent and because some of their colleagues have already spent hundreds of thousands of dollars by paying their party dues in advance. Some of those eager beavers ended up with great committee assignments - hardly a coincidence.

Running for Congress today is really three campaigns for money: election fundraising, paying your party dues, and a new factor, appealing to *Citizens United* donors to help with both. The media do a much better job of covering the race to get *into* Congress than the race to get *on top* of Congress, but *Citizens United* may soon decide your fate in both races.

## **Redistricting**

Many members are panicked about their district changing radically in the next few months. An old Tennessee legislator used to say, “There are two things you don’t mess with: my wife or my district... and not necessarily in that order.” Every decade the Constitution requires that every congressman represent the same number of people, about 700,000. Some states are losing congressional seats; others are gaining; most keep the same number.

Let’s be honest: Democrats and Republicans both love gerrymandering. Today there are only 91 politically balanced districts in America (out of 435), but both political parties think this is far too many. They are working hard with their state legislatures to create fewer competitive districts for their party – and for the other party as well. How convenient! Computer technology helps them etch tiny lines, enabling them to split neighborhoods, houses, and even, in theory, double beds, because politicians know a great deal about your voting habits. The secret ballot is almost dead. You may soon need a GPS device to find your new district.

Today, both Democrats and Republicans are trying to hide the fact that every ten years there is a secret election going on in America that effectively determines most subsequent races for Congress. The public has no chance to participate in the state legislatures’ decisions about who can, and who cannot, vote for incumbents like me. It’s not only a secret election but a reverse election because only the politicians get to vote, not regular citizens. The consequences are grave because the new maps can last for generations.

Gerrymandering fosters extremism on the left and right because extremists get more votes in highly Democratic or Republican districts. Once elected, extremists only have to focus on primary elections, where they are only vulnerable

to someone more extreme. Few centrist or independent voters participate in primaries. States with party registration have even made their participation illegal, strengthening the partisan grip on such districts. These are often the loudest voices in Congress.

This week, I filed H.R. 419, a bill that could stop such gerrymandering by requiring disclosure of redistricting maps before they become law. This gives the public a chance to intervene. This is our last chance to stop the abuse.

### **Citizens United**

The role of money in politics has always been awkward. Professional athletes cannot take money from people who want them to throw a game, but that’s perfectly legal in government. Massachusetts Congressman Barney Frank warned us when he said that the current campaign finance system “assumes that congressmen are capable of perfect ingratitude.” Current laws flood Congress with money but demand that each incumbent stay dry. Good luck with that theory.

Last year, the average member of Congress raised about \$1.6 million for a job that pays a tenth as much. The top ten campaigns spent more than \$8.5 million each. Each new member’s lapel pin is probably the most expensive piece of jewelry in the world.

Some campaigns raised all that money; others were flooded with outside, allegedly independent television ads in the final weeks of the campaign – just like the cavalry in an old Western movie riding to your rescue. The Supreme Court’s *Citizens United* decision created those cavalries last year when it allowed corporations to campaign. Already these new troops have boosted election spending by \$300 million, but the sky is the limit now that such mercenaries are legal.

I have several objections to *Citizens United*:

- 1. Allowing corporations, which are artificial persons under the law, free speech rights puts regular citizens – ordinary human beings – at a disadvantage in our democracy. A better name for *Citizens United* is *Corporations Supreme*. The Court should stop emancipating robots.** Now the Court is considering giving corporations privacy and due process rights. What’s next? Voting rights?
- 2. The Court did not change the century-old law making a felony of any corporate contribution directly to a federal candidate. But the Court, by a slender 5-4 majority, turned everything around the felony into a celebration of the First Amendment.** Politicians know how technical this distinction is. You don’t have to contact a campaign to know what it needs, especially right before an election. And hardly anyone focuses on the tagline at the end of a thirty-second ad. One negative ad resembles another.

3. ***Citizens United* has the potential of multiplying the money involved in American politics. No matter how expensive today’s campaigns are, they look cheap to a major corporation.** Business routinely spends more money advertising toothpaste, diapers, or colas, often for less return on their investment. In contrast, a cleverly spent million dollars in politics can return a billion dollars in tax breaks or government spending.
4. ***Citizens United* allows attacks by groups with hidden sponsors.** You may never know if a *Citizens United* cavalry saved or ruined your election, or whether you should credit Indians, guerillas, snipers, or aliens. *Citizens United* does not fit any script you have seen or could imagine. Don’t count on the Federal Election Commission forcing disclosure; it’s notoriously flat-footed, timid and lenient. Half of *Citizens United* spending so far is anonymous; that percentage is likely to grow.
5. Finally, *Citizens United* could reduce the role of Washington lobbyists. Why use a middleman if you can buy direct? This may seem like a good thing but, remember, for all the criticism of K Street, it could be worse. Today’s lobbyists are at least identifiable (many are former members), play with a relatively small amount of money (millions not billions), and are sometimes less selfish than their bosses realize. I am not saying that lobbyists advocate good government, but pretty-good government. In a *Citizens United* world, stateless ad agencies could shape public opinion without ever talking to a voter or elected official.

Ironically, the cure for *Citizens United* may be corporations themselves. This could be a welcome reprieve because the alternative is changing the Constitution or changing Justices, both very difficult tasks. I doubt most large corporations wanted the new freedom that the Court gave them, but will they be able to resist the temptation to use it? For a few years at least, most companies will be unfamiliar and uncomfortable with electioneering. Meanwhile, what if a few corporate fanatics damage the image of mainstream corporations, causing a backlash against the Court’s decision? Which will come first: corporations overcoming their reluctance, or business retribution against outlaw firms? We can only hope it’s the latter.

## **Conclusion**

The real trouble with Congress is that you get what you pay for, and we are paying for the wrong things. Right now taxpayers are paying for mediocre members of Congress to look good while ducking fundamental issues in order to get re-elected. Fixed salaries do much more to perpetuate the terrible status quo than most people realize. Why is Congress an organized appetite? Because it pays for Congress to be obese.

Today, it is almost unimaginable to consider paying Congress to slim down or get fit – to pay for results – and congressmen would be the first to object. Members could not stand one colleague being paid more than another. But real leadership is expanding the scope of what can be discussed and then sealing the deal. Why not pay members of Congress for performance? Every other profession has been facing such pressures for years.

As a thought experiment, what if Congress were paid on commission to cut spending? You’d never have to worry about budget deficits again. Of course, Congress should be reducing deficits already but both donkeys and elephants move much faster toward a carrot than a stick.

Another thought experiment: What if congressmen could only raise money from real people who actually lived in their district, not outside interests? That would put a premium on residency and raise the stakes in redistricting even higher. But it would also give local taxpayers more power.

The lesson of both thought experiments is simple: We should put the carrot in the right place. I think taxpayers should make that decision, not special interests. We need better laws, not more loopholes. It’s ironic that the lessons of the market economy are ubiquitous outside of Congress but almost unknown within it. Think about it: China has its own version of state capitalism; Congress doesn’t even have its own version of capitalism. In fact, as we have seen, Congress isn’t even being true to itself when it acts more and more like a parliament.

But, remember, Congress is not funded by taxpayers only. Special interests finance most of the permanent campaigns that have become the norm. The *Citizens United* decision puts these special interests on steroids. The corporate and union takeover of political campaigning is bad enough, but, since the retirement plan of many members of Congress is to become a Washington lobbyist, special interests are also paying for second careers. Remember, the average tenure of a House member is about ten years. Because of this revolving door, Congress has long been a farm team for K Street; after *Citizens United*, Congress could become a wholly-owned subsidiary.

Don’t expect too much of Congress. It will never be more than a sausage factory, but it can be a better sausage factory if we get the incentives right and if top-quality people choose to work there or at least help those who do. What if “Teach for America” channeled its volunteers into campaigns or government after their teaching years? Better yet, what if Harvard and other law schools started “Lawmakers for America” to help us reform democracy? I’ve never understood why “A” students wanted to spend their lives working on laws drafted by “C” students. It should be the other way around.

Although Congress will always be flawed, we should never lose faith in our country, or in our ability to bounce back. The mere fact that we know Congress is



broken should give us hope; it means that a cure is underway. The worse things seem to be, the prouder we are of our response. As Mark Shields said recently, "...we saw a white Catholic male Republican judge murdered on his way to greet a Democratic Jewish woman member of Congress, who was his friend. Her life was saved initially by a 20-year-old Mexican-American gay college student, and eventually by a Korean-American combat surgeon, and this all was eulogized by our African-American President." Only in America. Only in America.

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