Committee on Rules

U.S. House of Representatives

H-312 The Capitol
Washington, DC 20515–6269

February 13, 2003

The Honorable Tom Davis
Chairman
Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Davis:

In accordance with clause 2(d)(1) of rule X of the Rules of the House, please find enclosed a copy of the Oversight Plan for the Committee on Rules for the 108th Congress, as adopted by the Committee by voice vote on February, 12, 2003. As requested, an electronic version has been emailed to Randy Kaplan with your staff.

Please feel free to contact me if you have any questions.

Sincerely,

David Dreier
Chairman

Enclosure

OVERSIGHT PLAN OF THE HOUSE COMMITTEE ON RULES FOR THE 108TH CONGRESS ADOPTED FEBRUARY 12, 2003

Committee Action: Pursuant to clause 2(d) of House Rule X, the Committee on Rules met in public session on February 12, 2003, and, with a quorum present, by a non-record vote, adopted the following oversight plan for the 108th Congress for submission to the Committee on House Administration and the Committee on Government Reform.

Background

The Committee on Rules has existed as part of the House committee structure since the First Congress, when it was established in 1789 as a select committee. The essential portion of the present jurisdiction of the Committee is set forth in clause 1(m) of rule X, which grants the Committee jurisdiction over rules and joint rules (other than those relating to the Code of Conduct), the order of business of the House, and recesses and final adjournments of Congress. Clause 3(i) of rule X assigns to the Rules Committee special oversight responsibility over the congressional budget process.

Major portions of the Congressional Budget Act of 1974 were enacted as an exercise of the rule making power of the House and Senate. Therefore, proposals to amend that Act, as well as special orders waiving provisions of that Act, are within the jurisdiction of the Committee. Propositions to change the rules of the House, to create committees, and to direct committees to undertake certain investigations also fall within the Committees jurisdiction. The Committee also has general jurisdiction over statutory provisions changing the procedures of the House for consideration of resolutions or bills disapproving or approving proposed action by the executive branch or by other governmental authorities.

The Committee on Rules has been at the forefront of efforts to reform the process and procedures of the House to improve the effectiveness of the institution. The Committee considered and reported the Congressional Budget Act of 1974, which created the congressional budget process and a mechanism for disapproving or approving impoundment and rescission proposals of the President. The Committee also reported the Legislative Reorganization Act of 1970, which made major changes in the rules of the House.

Additionally, in recent years, the Committee has played the lead role in putting forth substantive changes to the rules of the House that occur at the beginning of each Congress. Such changes include streamlining the committee system, making Congress compliant with anti-discrimination and workplace safety laws, opening committee meetings to the public and press, modernizing the rules of the House to make them more understandable, and consolidating the number of standing rules from 51 to 28.

Some of the positive rules changes that were adopted on the opening day of the 108th Congress include: incorporating new rules providing for the continuity of Congress in the event

of an imminent threat or attack on Congress; codifying rules governing the operating procedure of the Committee on Standards of Official Conduct; requiring new and additional cost estimates for revenue measures based on macroeconomic analysis by the Joint Committee on Taxation; permitting the joint referral of measures under exceptional circumstances; clarifying the privilege and order of a motion to adjourn during a call of the House; expanding the Speaker's authority to reduce the minimum time for electronic voting following a fifteen-minute vote to include all succeeding votes provided no other business intervenes and notice of possible five-minute voting is given; prohibiting on limitation amendments to appropriations measures which seek to limit funds for the administration of taxes and tariffs; and ensuring the ethical accountability of staff by providing that the value of perishable food sent as a gift to an office shall be allocated among the individual recipients. In addition, the 108th rules package included the creation of the Select Committee on Homeland Security with both legislative and oversight responsibilities. This is in recognition of the new threats and challenges facing the U.S. and the new Department of Homeland Security.

During the 108th Congress, the Rules Committee will continue to work proactively on its legislative and oversight responsibilities, using its two subcommittees -- the Subcommittee on Legislative and Budget Process and the Subcommittee on Technology and the House -- extensively in this effort.

Budget Process Reform & Enforcement

The Rules Committee has worked for several years to improve the cumbersome and antiquated congressional budget process. Among the chief criticisms of the existing budget process are its frequent failure to produce timely budget and appropriations decisions, its complexity, the lack of accountability for the fiscal decisions it fosters, the low level of public confidence it inspires and the weakness of existing enforcement mechanisms. According to the General Accounting Office (GAO), executive branch agencies find the budget process to be burdensome and time-consuming, and Members of Congress find it too lengthy with too many votes on authorizations, budget resolutions, reconciliation, appropriations, and emergency supplementals. The budget process reached a new low during the 107th Congress with the Senate failing to approve a concurrent resolution on the budget and the Congress failing to enact eleven of the thirteen appropriations bills by the close of the 107th Congress.

The effort to reform the existing congressional budget process is certainly not new. Since the inception of the Congressional Budget Act of 1974, proposals for modifying the procedures governing the consideration by the Congress of the nation's spending and revenue plans have been plentiful. In previous Congresses, modifications to the budget process have generally occurred as part of reconciliation legislation, or as changes to House rules on the opening day of a new Congress. Additionally, the House has from time to time considered high profile single-issue changes to the process, most notably in recent years were the Line Item Veto Act, the Unfunded Mandates Reform Act, the Deficit Reduction Lock-Box Act, and proposals to enact an automatic continuing resolution mechanism.

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Another key aspect of budget process reform that the Rules Committee will review this Congress is budget enforcement. Budget enforcement procedures were first adopted as part of the Balanced Budget and Emergency Deficit Control Act of 1985 (also known as Gramm-Rudman-Hollings). As amended by the Budget Enforcement Act of 1990, the Act provides two separate enforcement mechanisms: spending caps, designed to limit discretionary spending to a designated level; and the PAYGO process, designed to limit changes in the level of revenues and direct spending by new legislation. In both cases, the mechanism is enforced during congressional consideration of budgetary legislation and by a presidential sequester order after the end of a congressional session. Both of these mechanisms expired at the end of fiscal year 2002. Although PAYGO will not be applied to new legislation, the enforcement process is scheduled to remain in effect through September 30, 2006 to capture the outyear budgetary effects of legislation enacted before October 1, 2002. In the 108th Congress, the Rules Committee intends to review the success of these processes and assess what other mechanisms will be needed to ensure fiscal discipline in the future.

Biennial Budgeting

While the Rules Committee's work has focused on a host of budget process reforms, much attention has been concentrated on biennial budgeting as a viable alternative to the current system. The current budget process is overly repetitive, inefficient and bureaucratic, filled with time-consuming budget votes, and routinely fails to produce timely budget and appropriations decisions. Effective oversight and management of federal programs get crowded out.

The annual process of developing budgets and justifications has kept federal agencies on a perpetual budget cycle treadmill, leaving little time to step back and review the management and effectiveness of the programs they run. Executing an annual budget requires nearly three years of combined effort by the Congress and the Administration. The federal government expends an enormous amount of effort to prepare, review, submit and ultimately legislate the budget.

With regard to the competition for Members' time and attention, as well as floor time, the annual budget process places great constraints on the workings of Congress and its committees. As a result, the authorization process has suffered -- leaving large portions of the discretionary federal budget unauthorized each year. The programs which receive taxpayers' dollars to function each year are not receiving the careful scrutiny they should get from the committees in Congress with the greatest expertise. Every year the Congressional Budget Office (CBO) generates a thick report identifying the programs that are operating without current authorization. In fiscal year 2002, $91 billion in appropriations were provided for 131 federal programs whose authorizations had expired.

Proponents of biennial budgeting cite these trends and facts as overwhelming arguments in favor of making a fundamental change in the way the federal budget is developed and implemented. During the 107th Congress, three biennial budgeting bills were introduced in the House of Representatives. Each of these bills was referred to the Committee on Rules and the Committee on the Budget.

In addition, 245 Members cosponsored a sense of the House resolution (H.Res. 396) calling for the enactment of a biennial budget process in the second session of the 106th

Congress. Accordingly, the Committee held a series of lengthy hearings to examine proposals from various Members of Congress, the Executive Branch, and outside experts on establishing a two-year budget and appropriations cycle in an effort to develop consensus legislation that would streamline the budget process, enhance programmatic oversight, strengthen the management of government programs and bureaucracies, and reform Congress.

These hearings laid the groundwork for a bipartisan biennial budgeting amendment during floor consideration of H.R. 853, the Comprehensive Budget Process Reform Act. This amendment was narrowly defeated on May 16, 2000, by a record vote of 201 to 217.

President George W. Bush, while Governor of Texas, experienced the benefits of biennial budgeting and made it part of his election platform as a tool to promote long-range planning and increase off-year oversight. He has included biennial budgeting, along with other budget process reform proposals in his fiscal year 2002, 2003 and 2004 budget submissions to Congress.

During the 107th Congress, the Subcommittee on Legislative and Budget Process held a hearing on H.R. 981, the Budget Responsibility and Efficiency Act of 2001, and other proposals to establish a two-year budget and appropriations cycle. On August 3, 2001, the Budget Committee reported a substitute version of H.R. 981 by voice vote. The Budget Committee's version would have created a Commission on Federal Budget concepts to study the idea of biennial budgeting, among other items. On November 1, 2001, the Rules Committee favorably reported by voice vote H.R. 981, which would have established a two-year budgeting and appropriations cycle. H.R. 981 was not considered by the full House prior to the adjournment of the 107th Congress.

The Committee intends to work closely with the Administration and the Budget Committee to reform the budget process. The Committee intends to hold further hearings on biennial budgeting and may review and mark up legislation implementing part or all of a biennial budget process. The Committee's legislative efforts may combine biennial budgeting with other budget process reforms, or consider biennial budgeting as a stand-alone proposal.

Government Performance and Results Act

When the Government Performance and Results Act (GPRA) (P.L. 103-62) was enacted in 1993, it required the federal government to develop measurable performance goals for its departments in the hopes that the measurement of program success would no longer be inputs and funding but rather results-oriented goals and data.

In the 106th Congress, the Rules Committee recognized that the success of agency compliance with GPRA depended heavily on the ability of committees to define congressional intent with respect to the missions and goals of agencies and programs, particularly those subject to overlapping committee jurisdictions. Therefore, the House adopted, as part of the opening day rules package for the 107th Congress, a new requirement that committee reports include a statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding. This requirement was maintained in the rules adopted for the 108th Congress. Performance goal statements should: (1) describe goals in an objective, quantifiable, and measurable form; (2) describe the resources required to meet the

goals; (3) establish performance indicators to measure outputs or outcomes; and (4) provide a basis for comparing actual program results with performance goals.

During the 108th Congress, the Committee will continue to review GPRA and evaluate to what extent the new rule was successful in assisting agencies in obtaining a better understanding of congressional intent. The Committee intends to do so by thoroughly examining reported legislation containing authorizations, as well as legislation enacted in the 107th and implemented by federal agencies. This examination will help to ensure that the performance goals and objective statements sufficiently address the four criteria cited above and assess whether those criteria assisted implementing agencies.

Dynamic Scoring

As part of the opening day rules package adopted for the 108th Congress, the House adopted a new requirement that the Committee on Ways and Means include in reports on measures amending the Internal Revenue Code of 1986 an analysis by the Joint Tax Committee on the macroeconomic (behavioral) impact of such legislation. This requirement is limited, as the committee is not required to include such analysis if the Joint Tax Committee certifies that such analysis is not calculable.

Because of the great influence that estimates of revenue and spending changes have over whether a proposal is adopted, current federal estimating conventions that are used to determine the budgetary impacts of proposed policy changes have been under scrutiny. In the 107th Congress, the Rules Subcommittee on Legislative and Budget Process held a hearing on the estimating conventions as currently applied by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB). This hearing demonstrated that while current estimating models take into account a number of behavioral reactions to tax and spending changes, these models are limited in their inclusion of feedback effects.

During the 108th Congress, the Committee will continue to investigate the issues and the changes, if any, that need to be made to ensure more accurate revenue and expenditure forecasting by further evaluating current estimating models. As part of its oversight function, the Committee intends to review the dynamic scoring analyses included in tax proposals reported under this new rule (Rule XIII, clause 3(h)).

Freedom to Manage Act

In his August 25, 2001, weekly radio address to the nation, President Bush announced the release of The President's Management Agenda, a report identifying 14 management problems in the federal government and offering specific solutions to address them. The report urged "rethinking government," called for a reduction of middle management, and championed "market-based" administration that emphasizes positive performance and results.

According to the report, the need to reform government programs and agencies is urgent. The General Accounting Office (GAO) "high-risk" list identifies areas throughout federal government that are most vulnerable to fraud, waste, and abuse. Ten years ago, the GAO listed eight such areas. Today it lists 22. New programs are frequently created with little review or assessment of the already-existing programs to address the same perceived problem. Over time,

numerous programs with overlapping missions and competing agendas grow alongside one another, wasting money and resources.

Legislative proposals in support of the report include the Freedom to Manage Act. The President put forward this proposal as the first step for reforming the government. During the 107th Congress, the Committee held a hearing on the Freedom to Manage Act. During the 108th Congress, the Committee will continue to review this important reform initiative through additional hearings to evaluate the potential improvement of government administration and the effects on Congressional oversight and will initiate further legislative activities as deemed needed.

The Unfunded Mandates Reform Act of 1996

In the 104th Congress, the 1996 Unfunded Mandates Reform Act (UMRA) was enacted. Among a number of provisions designed to reduce, or eliminate, the enactment of unfunded mandates, this law requires the Congressional Budget Office (CBO) to estimate the cost of unfunded public and private sector mandates. CBO cost estimates are now required to be included in committee reports accompanying legislation brought to the House floor for consideration.

In addition, the UMRA also created a new enforcement mechanism, using points of order, for legislation proposing unfunded public and private sector mandates exceeding the UMRA's allowable limits. For 2003, legislation to be considered on the House floor with an intergovernmental mandate exceeding $59 million and/or a private sector mandate exceeding $119 million face the prospect of triggering points of order under the UMRA. With respect to the federal rule-making process, the UMRA also requires the Executive Branch to prepare written statements identifying the costs and benefits of unfunded federal mandates costing more than $100 million or more.

In the 105th, the 106th, and the 107th Congresses, the Rules Committee exercised its oversight authority regarding the UMRA by holding original jurisdiction hearings on the law, and in some years, reporting legislation designed to build on the UMRA's success in curtailing the growing proliferation of unfunded public mandates. These measures would have established another point of order against bills with private sector mandates exceeding $100 million. While the House approved this legislation, unfortunately the Senate did not.

Provisions within Title I of the UMRA, as amended, originally authorized appropriations for the CBO to perform its new duties and obligations over the next five fiscal years. This authorization expired at the end of FY 2002, and will need to be reauthorized during the 108th Congress. The Rules Committee may utilize this opportunity to examine the UMRA and its procedures in order to determine if the UMRA can be improved for the future.

The Congressional Review Act of 1996

The Congressional Review Act (CRA) was enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L.104-121) during the 104th Congress. The CRA provides Congress with an opportunity to review regulations before their final implementation. Under the expedited procedures established by P.L. 104-121, if a majority of

the House and Senate vote to approve a joint resolution of disapproval and the president signs it into law within 60 legislative days of the regulation's publication in The Federal Register, the proposed regulation cannot go into effect.

Since its enactment, the CRA has been used sparingly. Before the 107th Congress, only seven joint resolutions of disapproval had been introduced, and none of those measures were considered by either the House or Senate.

However, in the 107th Congress, the CRA's expedited procedures for consideration of such joint resolutions of disapproval were utilized. On March 1, 2001, Senator Don Nickles introduced S.J. Res. 6, which was a joint resolution of disapproval for a regulation regarding ergonomics that the Clinton Administration sought to implement in its waning days. The Senate passed S.J. Res. 6 on March 6, 2001, by a vote of 56-44. On March 7, 2001, the House passed the measure by a vote of 223-206. On March 20, 2001, President Bush signed it into law (P.L. 107-5).

The Rules Committee may examine the CRA, and its procedures, in order to determine if the CRA can be enhanced and better utilized in the future.

Expedited Procedures and Trade Promotion Authority

Section 151 of the Trade Act of 1974 established a "fast track" procedure for the consideration of legislation implementing trade agreements negotiated by the President. Section 1103(b) of the Omnibus Trade and Competitiveness Act of 1988 provided the last extension of trade negotiating authority with "fast track" procedures, until 2002. This extension applied to implementing bills submitted with respect to trade agreements entered into before June 1, 1991, and was further extended until June 1, 1993, through operations of provisions of section 1103(b). Subsequent to the expiration of the trade negotiating authority on June 1, 1993, Public Law 103-49 (H.R. 1876) provided for an additional extension of the fast track procedures only for the purposes of concluding the Uruguay Round of multilateral trade negotiations.

After a nine year interval during which the President's ability to successfully negotiate significant trade promoting international agreements was significantly impaired by the fact that Congress had not granted the President Trade Promotion Authority, Congress passed the necessary legislation (P.L. 107-210) in 2002. The expedited procedures of P.L. 107-210 limit the capacity of Congress to amend legislation implementing trade agreements. In order to offset this limit on congressional authority once implementing legislation is introduced, the statute requires the Administration to undertake significant consultation and cooperation with Congress during trade negotiations. P.L. 107-210 also provides an expedited process for disapproval resolutions. These resolutions are required to be referred to both the Ways and Means Committee and the Rules Committee.

The completion of bilateral free trade agreements with Singapore and Chile, and the anticipated start of additional negotiations with Australia, Morocco, the South African Customs Union, and other Western Hemisphere trading partners are proof of the President's commitment to a free trade agenda throughout this hemisphere and the world. This progress in both multilateral and bilateral trade negotiations would not have been possible without the passage by Congress of trade promotion authority.

Since it is likely that the first trade agreements to be completed under the newly renewed trade promotion authority will occur during the 108th Congress. The Rules Committee anticipates working closely with the Office of the U.S. Trade Representative and the Committee on Ways and Means to ensure the smooth implementation of the Trade Act of 2002. The Rules Committee intends to continue to monitor the effectiveness of the expedited procedures related to trade promotion authority.

Impact of New Information Technologies on the House

By constitutional design, Congress is usually a slow-moving institution, and the process of consensus is often messy and difficult. Even though the institution has crossed the threshold into the computer age, it still faces numerous pressures and challenges in adapting emerging technologies to a deliberative legislative process.

Congress has taken remarkable steps to adapt to the information age. Prior to the 104th Congress, fewer than 50 House Members had e-mail addresses, and there were no committee or personal office Web sites. The House of Representatives was a paper-based institution where electronic information and documents existed in separate computers that were not interconnected. Most documents were only available for mass distribution in hard-copy (paper) format.

Today, Congress's efforts to bring itself online in the age of the information superhighway have become an important, albeit largely unheralded, part of the institutional reform efforts of recent years. The technological infrastructure of the House is state of the art. Members and staff are better trained and technically more savvy. Every Member and standing committee has a website. The public has unprecedented access to Members of Congress and real-time legislative information, such as roll call votes, the Congressional Record, bills, and committee reports. Committees now have the ability to cybercast their hearings over the Internet, thus bypassing conventional media.

This new medium of communication is transforming the culture, operations, and responsibilities of Congress in a positive way. Providing real-time access to information allows the broader public to play a more meaningful role in making government work better. Technology is helping us bridge the gap of time and distance to bring representative government closer to the people. It is helping us to create a more orderly process and to reduce costs and bureaucracy.

At the same time, there is concern that misapplied technology can exacerbate inequities in our political system, maintain those aspects of the status quo that require change and undermine the nature of representative government that has served our country so well over the past two centuries.

In an effort to institutionalize a permanent examination of how technology is impacting the institution, in the 107th Congress the Rules Committee replaced the Subcommittee on Rules and Organization of the House with a new Subcommittee on Technology and the House. In addition to retaining the jurisdiction of the old Subcommittee, the new Subcommittee has general

responsibility for measures or matters related to the impact of technology on the processes and procedures of the House.

During the 106th Congress, the Rules Committee examined the impact of technology on the role and responsibilities of committees; the dissemination of information electronically; and deliberation as the institution becomes more accessible to the public. The Committee examined the use and impact of technology in the state legislatures. The Committee reviewed how recent acquisitions of new forms of technology affected House and committee rules and decision-making in committees and on the House floor. The Committee reviewed how the Internet and other information technologies affect the way Members of Congress communicate with constituents and examined the advantages and disadvantages of providing immediate on-line access to various forms of congressional documents and information, particularly in light of the House rule requiring the electronic availability of committee publications. Finally, the Committee canvassed other committees' Internet broadcasting procedures and recommended a new model rule for the 107th Congress requiring Internet broadcasting of committee hearings to be fair and non-partisan.

The terrorist attacks against the United States on September 11, 2001 and the subsequent anthrax attack and contamination of various House and Senate facilities one month later underscored the vulnerabilities of the continuity of Congress in the event of a future attack or threat against the institution. The Committee addressed some of the procedural vulnerabilities through the aforementioned changes in the 108th Congress rules package. During this Congress, the Committee will continue to build on these efforts as well as thoroughly examine the potential benefits of new and evolving technologies to further enhance the continuity of Congress. In doing so, the Committee will work to ensure that a proper balance is struck between the requirement to improve security, the desire to enhance democracy and participation, and the need to maintain the deliberative traditions and representative nature of the institution.

Resolving Jurisdictional Disputes

Beginning in the 104th Congress, the House sought to streamline what was considered to be a bloated and ineffective committee system. The opening day rules package for the 104th Congress, abolished 3 full committees (Committees on Post Office and Civil Service, the District of Columbia, and Merchant Marine and Fisheries) and transferred their jurisdictions to other remaining committees. The rules package also gave the Budget Committee shared legislative jurisdiction over certain budgetary legislation, and limited the number of subcommittees each committee was allowed to have. In the 107th Congress, the trend toward jurisdictional consolidation continued in the opening day rules package with the establishment of a new Committee on Financial Services.

The opening day rules package (H. Res. 5) for the 108th Congress included a separate order establishing the Select Committee on Homeland Security. As part of its establishment, the Select Committee, was charged with conducting a thorough and complete study of the operation and implementation of the rules of the House, including rule X, with respect to the issue of homeland security. The Select Committee was also directed to submit its recommendations regarding any changes in the rules of the House to the Committee on Rules not later than September 30, 2004. The Rules Committee, having sole jurisdiction over the rules of the House, welcomes the submission of the Select Committee's recommendations for consideration. The

Rules Committee is prepared to assist the Select Committee to ensure an effective and institutionally sound proposal.

In the 108th Congress, the Rules Committee will continue to review proposals to streamline the committee system and increase effective oversight. Fragmented jurisdictions, differences in jurisdiction between House and Senate committees, the budget and appropriations process, and the oversight process are ongoing areas of concern for the Rules Committee when considering issues as broad as homeland security, terrorism, hunger, and drug control. The House has at its disposal several different mechanisms to deal with these broad and important national issues from both a legislative and oversight standpoint. The Committee will continue to explore various options available to the House in an effort to insure that these important national issues are addressed in the most effective way possible.

Unauthorized Appropriations

According to a January 2002 Congressional Budget Office report entitled: Unauthorized Appropriations and Expiring Authorizations, Congress appropriated over $91 billion to unauthorized federal programs in FY 2002. In an effort to bring greater attention to this problem, the opening day rules package for the 107th Congress amended clause 3(f)(1) of Rule XIII to expand the reporting requirements for unauthorized appropriations to include a statement of the last year for which the expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures. In fiscal year 2002, $91 billion in appropriations were provided for 131 federal programs whose authorizations had expired. The Congressional Budget Office predicts that in fiscal year 2003, $486 billion in appropriations will be provided for 64 federal programs whose authorizations have expired.

The Rules Committee will continue to examine additional proposals to encourage committees to use early months of a congressional session to report authorizing legislation that must be in place before the thirteen regular appropriation bills are considered.

Democratic Views

There is little need for the Democratic Members of this Committee to once again express our opposition to many of the proposed legislative initiatives outlined by the Committee majority in this report. We continue to oppose biennial budgeting for the reasons we have reiterated time and again, and our opinion of the President's "Freedom to Manage" initiative remains as negative as it was last year. In short, we see the Committee's oversight plan for the 108th Congress to be more of the same bad ideas.

We would like to take this opportunity to point out a few matters we believe, in the interest of fairness and the democratic process, that the Committee should pay closer attention to than its worn-out proposals for "reforming" the House and the government at-large. We believe the Republican majority has, in the years since it took control of this institution, made a concerted effort to shut down debate and stifle those voices, on both sides of the aisle, who believe that alternative viewpoints are deserving of consideration and debate in this democratic institution. Therefore, we would hope this Committee would spend more time working to ensure fair and open debate and less on issues that do little to promote democracy in this body.

Broken Promises

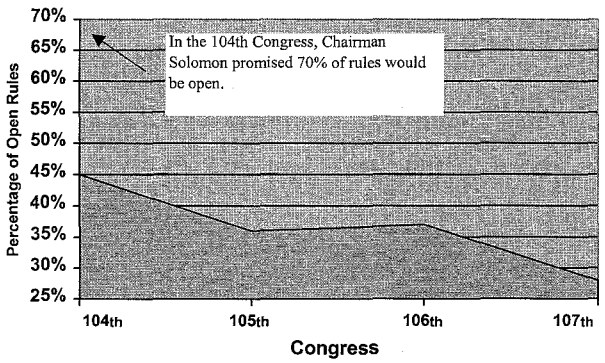
We recall quite clearly the pledge made by our late Chairman, Gerald B.H. Solomon on opening day of the 104th Congress about how he would run the Committee now that he was chairman. Mr. Solomon pledged 70 percent of all rules reported by the Committee on Rules would be open. Unfortunately, since 1995 when the Republican Party did take control of the House, this committee has never reported any where near the 70 percent open rules he pledged to report. In fact, in the last Congress, this Committee reported only 31 percent open rules in the First Session and 26.5 percent open in the Second Session, for a combined average of 28.4 percent for the entire 107th Congress.

While Chairman Dreier may not have made the pledge, if we took as a goal 50 percent open rules, this Committee reported 21.6 percent below that goal between January 2001 and December 2002. We believe this percentage represents only a small part of the record of systematically closing down debate in the House of Representatives – fully two-thirds of the rules reported in the 106th Congress were closed or restrictive and almost three-fourths in the 107th. It should be noted that included in the percentage of open rules are those rules providing for the consideration of appropriations bills. While these rules are "technically" open, the type of amendments that may be offered to appropriations bills are severely restricted given the prohibition on the consideration of legislative amendments or amendments that do not comply with the Budget Act.

The following is a chart demonstrating that Chairman Solomon's pledge has never been fulfilled and that the Republican majority is steadily eroding the percentage of

open rules that provide for consideration of legislation in the House.

Broken Promise: The Percentage of Open Rules Has Steadily Declined Since Republicans Took the Majority



We completely understand that in order to manage the time of the House efficiently, it is necessary for the majority party to restrict debate and amendments on many important legislative proposals considered on the floor. In fact in the *Survey of Activities* published by the Rules Committee at the end of the 103rd Congress, the Committee stated: "The Committee has granted more and more structured rules in recent years. While the minority may disagree with this rationale, the Committee contends that structured rules are necessary to ensure that the House continues to be a vigorous, effective lawmaking body in which the majority prevails." The House has a long history of moving toward more structured debate, a trend that was noted in the *Survey* as being a reflection of the "desire of the membership for more structured debate, more certainty in the schedule, and advance notice of the amendments to be debated." *(Survey of Activities of the House Committee on Rules, 103rd Congress, p. 23, 1/2/95.)*

We understand that the Republican minority, prior to the 104th Congress, may have had some legitimate complaints about being shut out of the debate by the actions of the Rules Committee. And, the Members of this Committee were not reticent when it came to making their case on the floor. For example, during the debate on the rule on the Federal Employees Political Activities Act in 1993, Mr. Solomon said:

> Every time we deny an open amendment process on an important piece of legislation, we are disenfranchising the people and their Representatives from the legislative process. The people and their Representatives are not even being treated as second-class citizens; they might as well not be citizens at all given how little impact they have on shaping legislation in the House. If that is not undemocratic,

> I would like to know what is. . . . In other words, Mr. Speaker, the further you and your leadership stray from the regular order around here, the more you are instituting a new order which is not democracy by any definition. . . . The people are sick and tired of this political gamesmanship. They want back their own House and they want it open and democratic, not closed and dictatorial. *(Congressional Record, pp. H975-976, 3/3/93, rule on Federal Employees Political Activities Act.)*

The simple fact that 72 percent of the rules reported from this Committee in the last Congress were closed or restrictive certainly makes a case that Mr. Solomon's statement could very well apply to the current Leadership of the House. But, more importantly, we believe the Committee, and the Membership as a whole, should pay close attention to the concerted efforts this Committee and the Republican Leadership have made to close down debate by denying Democratic Members of the House the right to offer substantive amendments to important legislative proposals.

Gagging the House

For many years before the Republicans took control of this institution, it was often heard from their Members that the Committee on Rules and the Democratic Leadership were "gagging" Members by cutting off their ability to offer amendments on the floor. We believe the same can be said of the Republican Leadership since they have taken control; in fact, we believe their actions are far more egregious than any taken by Democrats in the past. As we have stated above, we are perfectly aware of the need of the majority leadership to establish certainty in the schedule and to ensure that the majority will prevails. This acknowledgement does not, however, mean that we concur in the majority's ability to prevent most, and in many instances any, contrary opinions to be heard on the Floor.

In 1993, Chairman Dreier expressed his opposition to the use of closed rules to bring legislation to the floor.

> Mr. Speaker, I rise in strong opposition to this closed rule, which is clearly a reflection of a House leadership stuck in a time warp. It seems to be addicted to partisan bickering and an aversion to compromise. This closed rule is very unnecessary. At a time when there is no other business waiting to come to the floor, when we seem to go into recess every other week, and when the American people are looking to us for serious debate and bipartisan cooperation, the Democrat *(sic)* leadership insists on closed rules intended only to gag debate, block compromise, and hide important issues from the American voters. It is the height of irony that a bill nominally intended to expand the democratic process is shielded by a rule which is so undemocratic. Of course, that's undemocratic with a small 'd', because closed gag rules have become the process of chose for the House Democrat *(sic)* leadership. Mr. Speaker,

> passing this bill under cover of a closed rule like this is not breaking the dreaded gridlock. It is just a very poor legislative process. (*Congressional Record, p. H496, 2/4/93, on rule for H.R. 2, the Motor Voter Bill.)*

We are particularly concerned that the Republican majority on this committee and the Republican Leadership have steadily eroded the ability of the minority to offer substantive amendments to substantive legislative proposals. We consider this trend to be dangerously close to a willful silencing of those voices that do not share the point of view of the Republican leadership. To use the words of Chairman Dreier, perhaps the Republican Leadership is insisting on closed or restrictive rules because it is their intention to "gag debate, block compromise, and hide important issues from the American voters."

A look at the record clearly demonstrates how the Republican majority methodically and with single-mindedness shuts Democrats out of the process when it comes to major issues before the House. For example, the Republican majority has made much of the fact that the Rules of the House were amended in the 104th Congress to **guarantee** the minority a motion to recommit with instructions. We agree that this was a much needed and long overdue reform. However, we must take issue with the use of this so-called guarantee as the only means to offer an alternative point of view when it is an understood practice of the two political parties in this body to consider the motion to recommit to be a party-line vote.

The Republican majority continually tries to promote the motion to recommit as an equal opportunity for the minority party to offer a substantive alternative. If one discounts the fact that a motion to recommit is afforded a mere 10 minutes of debate unless the majority floor manager requests that the motion be granted an hour of debate, the motion to recommit must conform with all the rules of the House. Thus, a motion to recommit may contain provisions which might require a waiver of a rule of the House or of the Budget Act and unless the majority on the Rules Committee grants those waivers to the motion to recommit, the minority may be prevented from offering a substantive alternative. An examination of the record reveals that the Rules Committee usually waives all points of order against the bill but rarely if ever to the motion to recommit.

Of the 37 closed rules reported by the Rules Committee in the 107th Congress, 25 waived all points of order against the bill. **In those 25 instances, the Republican bill was allowed to break procedural and budget rules while at the same time the Democratic alternative was left without the same protection.** In not one instance did the Republican majority waive points of order against the motion to recommit. We believe that if our Republican colleagues really want to be fair, all Democratic alternatives, whether substitutes or motions to recommit, should be given equal standing with the bill under consideration. Without this equality of standing, it is nearly impossible for Democrats to craft real substitutes or real motions to recommit and the minority is thus forced to piece together a substitute or motion to recommit that does not violate the rules of the House, especially when the underlying bill is not required to jump

through legislative hoops by virtue of the fact the Rules Committee has given it the waivers it needs to be considered on the floor.

Democrats usually fare no better under "structured" rules. These so-called structured rules give the Republican leadership the ability to limit the number of Democratic amendments that might be offered on any given bill, they allow the Republican majority to cherry pick from among the amendments they believe will give them less grief on the floor – usually those amendments they know they can defeat or those amendments which speak to a provision in the bill that is of little or no controversy.

It is extremely rare for the Republican majority to make in order those important and substantive amendments offered by Democrats that offer a clear policy difference with Republican policy. By making one or two rather innocuous and non-controversial Democratic amendments in order, the Republican manager of a rule will claim that Democrats are getting a fair shake thus making the rule under consideration a fair rule. The following examples paint a dismal picture of just how badly Democratic Members were treated by the Republican majority in the 107th Congress. When the House considered H.R. 2586, the National Defense Authorization Act for FY 2002, **Democrats brought 40 amendments to the Rules Committee; only two were allowed.** When the House considered H.R. 4, the Securing America's Energy Future Act, **Democrats brought 106 amendments to the Committee yet only five were made in order in the rule.** When the House considered H.R. 1, the No Child Left Behind Act, **Democrats offered 77 amendments and the Rules Committee only allowed eight of them to be debated by the full House.**

Under the Republican majority, we have seen an alarming trend in those instances in which Democrats have been denied the right to offer a substitute or when a substitute or a motion to recommit has been hamstrung because it has been denied the same waivers granted the committee bill. In addition, we are deeply concerned about the majority's practice of denying Democrats the right to offer substantive policy-driven amendments. These actions on the part of the Republican leadership make an absolute mockery of our representative government. When Democrats offer amendments to the rule proposed by the majority and those amendments are repeatedly defeated on a straight party-line vote, we are reminded of the words of our Committee Vice Chairman Porter Goss from February of 1993,

> Mr. Speaker, as was the case yesterday, there were many good amendments proposed to correct some of this bill's most egregious problems. And, as we saw yesterday, those amendments were defeated in the Rules Committee on an almost automatic party line vote. It is becoming clear to this Member that, for the majority leadership, ending gridlock means limiting the rights of the minority while depriving this House and the people it represents of the right to fully debate and consider the issue. Our system of government is rapidly giving way to autocratic, one-party rule. *(Congressional Record, p H 496, 2/4/93, on rule for H.R. 2, the Motor Voter bill)*

In the immortal words of Yogi Berra, it's déjà vu all over again.

We would like to point out that the large number of recorded votes on the previous question in the last Congress represents the only way, in most instances, that Democrats could even attempt to meaningfully participate in the deliberations of the House. In 34 separate instances, Rules Committee Democratic Members attempted to defeat the previous question on a rule in order to offer an amendment to the rule that would permit open and fair debate on important legislative proposals. While previous question votes are almost always strictly party-line, those votes are oftentimes the only way that Democrats can put the House on record on any given issue. In a democratic society, we should expect better in the people's House.

The Vampire Congress

Much of the work of the 107th Congress was conducted under the cover of darkness, making a mockery of the idea that our work in the House of Representatives is a model of transparency for the rest of the world. This is most especially true in the case of the proceedings of the Committee on Rules.

Rule 2 of the rules of the Committee on Rules contemplates that the Committee will conduct its business through regular meetings and that the Chair will afford Members 48-hours notice of a regular meeting and provide materials relating to that meeting at least 24-hours before a hearing. Rule 2[c] allows the Chair to call an emergency meeting "at any time on any measure or matter which the Chair determines to be of an emergency nature."

Webster's Collegiate Dictionary defines "emergency as:

> *An unforeseen combination of circumstances or the resulting state that calls for immediate action.*

Although situations certainly arise (especially at the end of a session) that require the Chair to legitimately use his emergency meeting power, it is obvious the rules do not contemplate that the Chair should use the emergency meeting as a regular way to conduct the business of the Committee. The vast majority of the rules reported from the Committee are not considered under an emergency designation, but increasingly, we are disturbed to see that the number is increasing until it seems almost commonplace.

Committee chairs communicate constantly with the House leadership about when they will mark up and report out bills and work in concert with the Majority Leader's office to ensure that their bills will be considered in a timely manner once they have been reported and are ready for floor consideration. Most bills coming before the Committee are foreseeable, and have in fact been noted by the Majority Leader the week before during his colloquy with the Minority Leader or Minority Whip.

It is therefore disturbing to see that in the 107th Congress one-third of the Committee's business was conducted under an emergency designation. Of the 191 rules reported by the Committee in the last Congress, almost a third (approximately 60 rules) were issued when the Committee was sitting in emergency session. Of the approximately 115 Notices of Action issued by the Committee, about 45 (or 38 percent of all meetings) contained emergency items.

When the Rules Committee meets after 9 or 10 or later at night, or meets at 7 in the morning, Members are discouraged from attending the Committee's deliberations. Although the Committee's official policy is to welcome testimony from Members, its frequent last-minute late-in-the-night meetings send a clear message to Members, even to Committee chairs and their ranking Members as well as other Members deeply involved in the drafting of the legislation in question, that their input is not welcome.

It is also disturbing to note that often times emergency meetings are declared when the text of a bill has been significantly altered and very few Members of the House have been notified of the meeting or the changes in the text of the bill. The Committee routinely waives the three-day layover on legislation, and has in many cases, considered legislation that has not been officially reported from any committee of the House. Thus, when the Committee meets late at night, or early in the morning before the House convenes, Members are denied the right to carefully examine the proposals they will be asked to vote for or against.

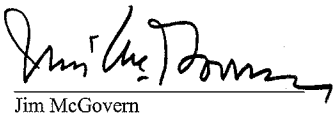
While the Chairman is given a great deal of discretion in deciding what "emergency" means, we hope that he and the Republican Leadership will be more respectful of the legislative process and the idea of transparency in the new Congress.

A Hope for a Representative House

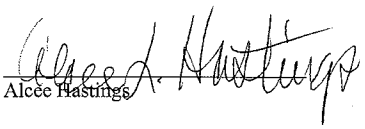
In conclusion, the Democrats on this Committee hope that in the new Congress our Committee majority will pay less attention to shop-worn legislation that comes under our original jurisdiction and more to correcting the problems they complained about so loudly when Democrats were last in control of this institution. To do less would make a mockery of the statements they made on the floor of the House of Representatives of the United States of America.

Martin Frost

Louise Slaughter



Jim McGovern



Alcee Hastings