

***The Erosion of “Regular Order” in the U.S. House:
A Historical Examination of Special Rules¹***

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Introduction

In October of 2015, Rep. Paul D. Ryan (R-WI) was elected Speaker of the House. Among other promises, Ryan pledged to allow more floor amendments through open processes and to return the House to “regular order” (DeBonis 2015). Ryan’s predecessor, Former-Speaker John Boehner (R-OH), had been aggressively criticized by members of both parties for his usage of special rules to bar amendments. Despite his optimism, many were skeptical Ryan would be able to deliver on his open rule promises (see e.g. Reynolds 2015). This skepticism appeared to be warranted. By May of 2018, Speaker Ryan and the 115th Congress had broken the record for the most closed rules in congressional history (McPherson 2018).

Ryan’s promise reflected the important role played by rules in legislative bodies. By allowing consideration of certain policy proposals (and barring others), rules can substantially alter policy output. They also have electoral implications, as by keeping issues off the floor, rules can protect vulnerable members from taking difficult votes. Members want to be able to offer floor amendments to satisfy both their electoral and policy motivations. Restrictive rules, as Rep. Rose DeLauro (D-CT) argued, block members “from fully debating or amending legislation, prohibiting [them] from fully giving our constituents a voice in this Congress (*Congressional Record*, 115th Congress, May 22, 2018, H297).”

Ryan’s abdication of his promise for more open rules was not surprising given the difficulties inherent in contemporary lawmaking. Indeed, both Boehner and his predecessor, Rep. Nancy Pelosi (D-CA) made similar “regular order” pledges they subsequently failed to deliver on (DeBonis 2015).² Legislation is getting longer and more complex (Curry 2015), interest group involvement has increased substantially over the past few decades (Drutman 2015), polarization

² Pelosi, upon regaining the Speakership in 2019, would continue this, pledging more open processes under her leadership (Willis 2019). These pledges on behalf of Speakers date back even earlier (see Binder 2015).

has increased and partisan control of Congress is highly competitive (Lee 2016). This has led leadership to seek tighter control over the House floor in an effort to promote both their party's policy goals and protect their electoral interests.

In the House, this tighter control has been exerted through the use of special rules. In this paper, we examine what special rules are, why they are employed and how their usage has changed throughout the history of the House. To do so, we employ three new datasets. First, using a dataset of “important” legislation from 1905 to 2018, we document the increased likelihood these bills would be considered on the House floor under a special rule and the dramatic rise in the percentage of special rules that restrict amending opportunities. Second, using a dataset of all 8,027 special rules considered on the House floor from 1905 to 2018, we highlight changing, more restrictive nature of rules. Finally, we examine the increased usage of “structured rules,” using a dataset on nearly 17,000 proposed amendments from 2005 to 2018. In the next section, we demonstrate the potential impact of special rules on policy.

Special Rules and Policy Output

Through issuing special rules, the House Rules Committee can determine when – or if – a bill will be considered, the length it will be debated and what amendments, if any, will be in order. Legislation reported by most House committees are placed in order on one of the House calendars.³ A bill is unlikely to be considered on the House floor, unless it receives a special rule allowing it to bypass other bills ahead of it on the calendar. By determining what bills receive consideration and which do not, the Rules Committee holds a great deal of agenda-setting

³ In addition to the House Rules Committee, four standing committees (Appropriations, Budget, Ethics, Administration) may report certain types of legislation directly to the House floor (Oleszek et al. 2016). Despite the authority to report privileged legislation, in the contemporary Congress, nearly all of these bills still receive special rules governing their consideration.

power.⁴ This importance is not lost on the majority party. Of the thirteen members of the Rules Committee, nine are majority party members.

The “rules process” begins with the Rules Committee crafting a special rule that creates the requirements for debate on certain pieces of legislation. According to the Committee on Rules website, the special rule must be filed while the House is in session and there should be a one-day “layover” before its consideration.⁵ Following the reporting of a special rule, the House then holds debate over the rule that has been brought up. This can allow members to discuss the type of rule that the Rules Committee has presented and argue either in favor or against the various requirements in the rule. In the House, following the allotted debate time, the legislature votes on a previous question motion to end their debate. These previous question motions essentially bring an end to the debate over the requirements listed within a special rule. These rules can contain language that outlines the length of time allowed for debate, which type of amendments can be offered, and who can offer them. Members must then vote on whether or not to agree to the passage of this resolution that has been brought up.

As the criticism of former Speaker Ryan detailed in the introduction suggests, perhaps the most controversial power held by the Rules Committee is its ability to restrict floor amendments from bills. Throughout its history, the Rules Committee has reported a number of different types of special rules that govern floor amendments. Rules that allow all germane amendments are referred to as open rules. Rules can allow only a limited set of amendments – such amendments

⁴ The House has several legislative calendars. Without a special rule, most major bills would end up on the House Calendar. If a bill involves revenue it is placed on the Union Calendar (Oleszek et al. 2016).

⁵ Layover is avoided if there is a two-thirds votes to consider it within this first day or, as we detail later, it is waived by the adoption of another special rule.

are called structured or modified rules. Rules that bar amendments completely are called closed rules. For example, H.Res. 355 from the 92nd Congress was an open rule. It stated:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R.5352) to amend the Act to authorize appropriations for the fiscal year 1971 for certain maritime programs of the Department of Commerce, and all points of order against said bill for failure to comply with the provisions of clause 3, rule XIII are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Merchant Marine and Fisheries, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. (*Congressional Record*, 92nd Congress, April 20, 1971, 10976).

In contrast, the Rules Committee can issue a closed rule that blocks all floor amendments from consideration. For example, the text of the resolution, H.Res. 340, from the 100th Congress states:

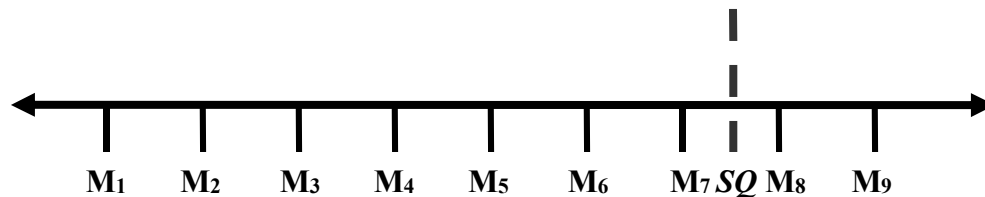
Resolved, That upon the adoption of this resolution it shall be in order to consider in the House, section 302(f) of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177) to the contrary notwithstanding, a joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes, if offered by the chairman of the Committee on Appropriations, or his designee. Debate on the joint resolution shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. The previous question shall be considered as ordered on the Joint resolution to final passage without intervening motion except one motion to recommit. (*Congressional Record*, 100th Congress, December 20, 1987, 36700)

We discuss structured rules, which allow the Rules Committee to allow some amendments and block others, later in this paper.

By restricting amendments, special rules can drastically impact policy output. Consider the following example. Assume Figure 1 represents a nine-member legislature. These nine members are ordered on a left (liberal) – right (conservative) ideological spectrum, with M_1

being the most liberal, and M_9 being the most conservative. These members hold preferences on the federal minimum wage that vary from \$14 dollars (M_1) to \$6 dollars (M_9). In this example, the dashed line labelled SQ represents the existing (status quo) policy of \$7.50. Finally, assume a committee reported a bill to the floor at M_3 's ideal policy (\$12). Under an open rule, anyone on the floor can offer an amendment. Accordingly, under the median voter theorem, policy should collapse to M_5 's ideal policy of \$10 (Black 1948).

Figure 1: Special Rules and Policy Outcomes, an Example



However, if the committee's bill is reported to the floor under a closed rule that bars any amendments, the floor is forced to choose between M_3 's ideal policy of \$12 or the existing status quo of \$7.50. In this scenario, a majority (M_1 , M_2 , M_3 , M_4 and M_5) of the committee prefer \$12 to \$7.50 and would vote for the committee bill. This represents a substantial shift in policy from the \$10 outcome under the open rule scenario. This is consistent with former Rep. John Dingell's (D-MI), well-known quote: "If you let me write the procedure, and I let you write substance, I'll screw you every time (Evans 1999, 607)."

Why Rules?

As the preceding example demonstrates, through its control of the Rules Committee, the House majority party can bias policy output towards its party median and away from the floor median. Restrictive rules can limit the power of the minority, and certain members of the majority, to influence the legislative process. For example, Roberts finds evidence that "points to

the majority party as the driving force behind the adoption of restrictive legislative procedures (2010, 327-8).” The presence of these rules allows for the Rules Committee to structure the debate and influence policy outputs. As the Committee on Rules website notes, “In essence, so long as a majority of the House is willing to vote for a special rule, there is little that the Rules Committee cannot do.”⁶

This introduces the question of what these rules may mean and whether these restrictive rules are used for partisan, informational, or efficiency purposes. The partisan theories regarding rules and the influence of party behavior on the rules process have been considered extensively. This extends further into how party influence impacts the policy making process via rulemaking. Cox examines how rules and party combine to influence legislation noting: “Rules can empower the majority party or coalition, when there is one, at three broad stages of the legislative process: at the agenda-setting stage, at the amendment stage, and at the voting stage (2000, 183).” Partisan conflict plays a central role in both the way that amendments are offered and the way that rules are structured. Binder argues, “As the electoral strength of the major parties shifts over time, so, too, does the distribution of parliamentary rights: stronger majority parties succeed in limiting minority rights, and stronger minority parties attract majority party defectors to reinforce minority rights (1996, 18).”

Scholars have provided extensive evidence displaying the role that party influence has had on the conditions and likelihood of using more restrictive rules (Sinclair 1994; 2002; Dion and Huber 1996; Marshall 2005). Additional work has examined the role of special rules in a party’s ability to set the agenda. The earlier quote from Cox discussed how the use of rules can be influential at each of the stages including the agenda-setting stage. Cox and McCubbins

⁶ <https://rules.house.gov/about>

(2005) argue in favor of a theory of negative agenda control, which allows the majority party to use their power to keep specific legislation away from the House. Finocchiaro and Rohde (2008) argue that rules impact both positive and negative agenda control. These works display the importance of the Rules Committee in crafting rules in such a way that help a majority maintain a higher level of agenda control.

Other scholars have been wary of theories that position partisan influence as the central mechanism on the rules process. Krehbiel (1991, 1997) has instead emphasized the importance of information and specialization in the House amending process. His work outlines the importance of committees and their recommendations in legislating and how rule-type selection can allow for the benefits of the committee specialization. Additionally, it is important to consider the evolving nature of congressional workload. He concludes by questioning why majority party centrists would vote in favor of special rules on the floor if it limited their ability to maximize policy benefits.

Partisan theorists offer a number of explanations in response to this. First, in most cases, centrists are not being asked to vote against their ideological interests, rather to forgo opportunities to pull status quos closer to their ideal points (Cox and McCubbins 2005; Jenkins and Monroe 2012a). Second, votes in favor of special rules are said to lack “traceability,” and thus unlikely to lead to electoral punishment by constituents (Arnold 1990). Finally, scholars speculate that in exchange for supporting the less visible vote on the special rule, majority party moderates are paid off with side payments. These include favorable office assignments (Cox and McCubbins 2005), disproportionately high compensation to congressional campaigns (Jenkins and Monroe 2012a, 2012b), increased access to the amending process (Lynch, Madonna, and Roberts 2016), and collective benefits accrued through the maintenance of a favorable partisan

“brand name” (Monroe and Robinson 2008). In what remains of this paper, we examine the evolution of House special rules and conclude with some suggestions for new directions in research.

Early Usage of Special Rules

After being notified he would be serving as Chairman of the Rules Committee, Rep. James P. McGovern (D-MA) jokingly referred to the Rules Committee as the place where “democracy goes to die (McGovern 2018).” If restrictive rules really kill democracy, then the Rules Committee’s murder rate was low for much of the twentieth century. The Rules Committee did not begin issuing special rules until 1883 (Roberts 2010; Roberts and Smith 2003). Using rules to restrict debate or amending opportunities was exceptionally rare in the decades afterwards as well.

In the early-twentieth century, most major laws were not brought to the floor under a special rule. Rather, they were considered under unanimous consent, suspension of the rules, taken directly from the House Calendar, or brought forth using an alternative procedure like Calendar Wednesday. While rarely employed today, unanimous consent agreements for debate and amending were frequently used in the early-twentieth century on non-controversial and controversial matters alike. For example, the 17th Amendment (62nd Congress), the Federal Reserve Act (63rd Congress) and the Revenue Act of 1929 (71st Congress) were all considered in the House under unanimous consent.

While also not employed in the contemporary area, Calendar Wednesday referred to clause six of House Rule XV, which provided for the “Calendar Call of Committees, Wednesdays.” The rule allowed committees to call up non-privileged bills directly from the Union Calendar. It provided for two hours of debate, equally divided, on any such bill. The rule

was adopted in 1907 in response to pressure from rank-and-file members who chaffed at the power wielded by the “Czar” Speakers, Thomas Brackett Reed (R-ME) and “Uncle” Joe Cannon (R-IL) (Jones 1968). Landmark measures like the Mann Act of 1910 and 19th Amendment were considered in the House under Calendar Wednesday.

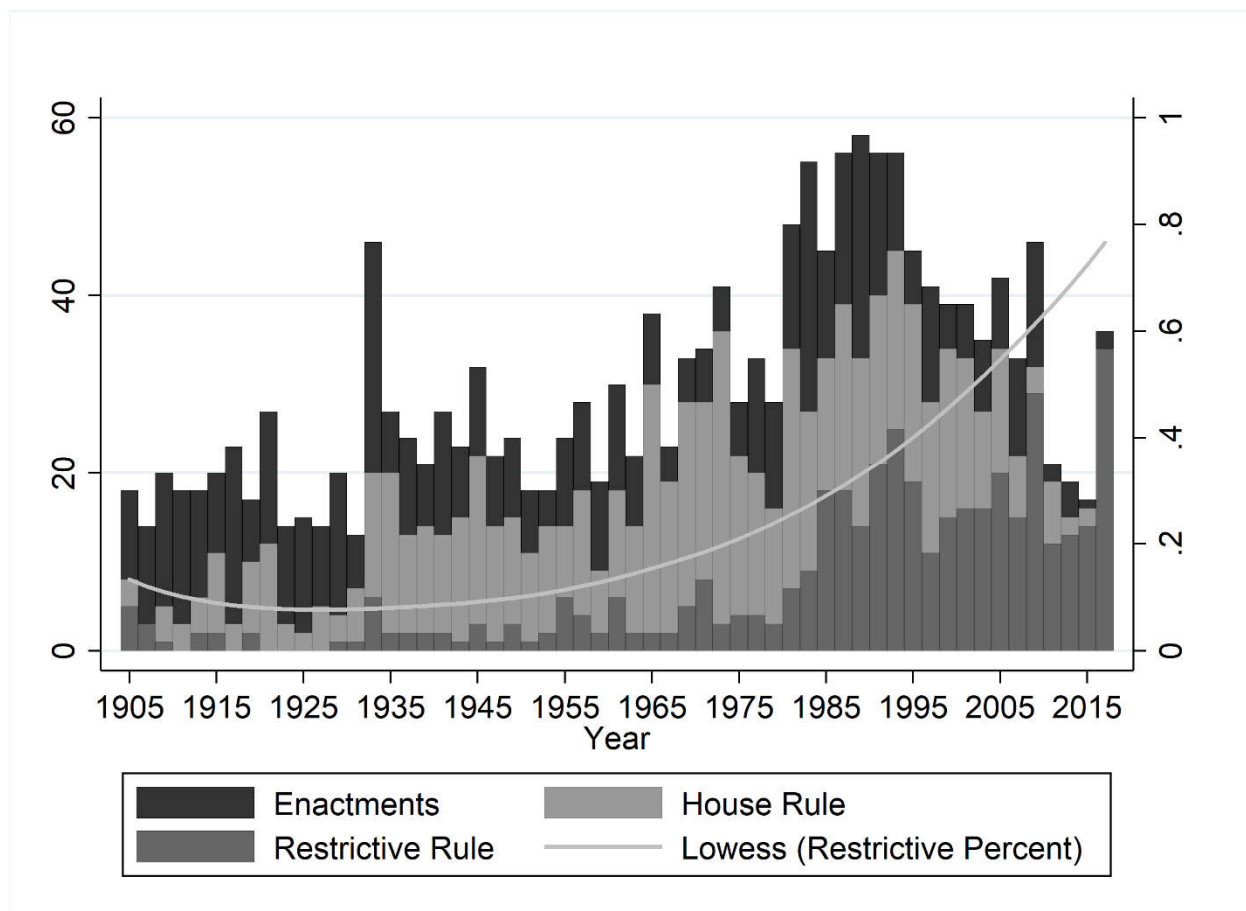
In contrast, motions to suspend the rules are still commonly used in the modern area. Motions to suspend are in order on certain days in the House session, though as we discuss below, special rules are often used to provide for motions to suspend the rules on other days. Debate is limited to forty minutes, evenly divided between supporters and opponents and floor amendments are prohibited. Currently, and for much of the House’s history, passage of the motion necessitates the support of two-thirds of members voting majority.⁷

Figure 2 plots the rising usage of special rules on “important” legislation from 1905 to 2018.⁸ As expected, the figure demonstrates a huge increase in both the percentage of measures receiving any rule on the House floor and the percentage of those measures that were considered under restrictive rules. “Restrictive rules” are defined to include closed rules, modified-closed rules and structured rules. A lowess smoothing line was included to highlight the growth in measures considered under restrictive rules.

⁷ An exception occurred in the 60th Congress when Republican leaders altered chamber rules so that bills could be passed via suspension by only a simple majority.

⁸ The data include all enactments listed as landmark by Stathis (2003; 2014), Petersen (2001), Mayhew (1991; 2005) and *CQ Almanac*, the ten most important bills per Congress as coded by Clinton and Lapinski (2006) and at least two “routine” appropriation bills per Congress (see Lynch and Madonna 2019). We then tracked how each measure was initially considered on the House floor. This approach allows us leverage in analyzing the approximate percentage of major laws brought to the floor without a special rule. Information on our important legislation dataset (“Important Legislation, 45th (1877-1879) - 113th (2013-2014) Congresses”) can be found here: <https://www.thecongressproject.com/data>

Figure 2: Important Enactments by Initial House Floor Consideration



As Figure 2 demonstrates, the usage of special rules on important policy initiatives did not become common until the early 1930s. President Franklin Delano Roosevelt’s (D-NY) “New Deal” comprised a large and ambitious set of proposals. Special rules from the Rules Committee were needed to facilitate the passage of many New Deal measures. Specifically, the large increase in chamber workload meant rules were needed to ensure these bills a spot on the calendar. Their substance would frequently be too controversial to pass via suspension and unanimous consent agreements were unlikely to be successful.⁹

⁹ Calendar Wednesday was also of limited utility. Controversial legislation would be debated across a number of Wednesdays and would back up other items on the calendar. As Jones noted, “bills of great length and complexity were called up and debated on successive Calendar Wednesdays (all nine Calendar Wednesdays were devoted to one bill in the third session of the 61st Congress) (1968, 625).”

The President and his liberal supporters encountered resistance from conservatives on the Rules Committee. While more measures received special rules, they were rarely restrictive. Moreover, some rules were blocked, leading to either a successful motion to discharge the rule or the defeat of the proposal.¹⁰ This led Roosevelt and his supporters to successfully back a Democratic primary challenger to Rules Committee Chairman John O'Connor (D-NY) in 1938 (Polenberg 1968).¹¹

O'Connor had become chairman of the committee through the House seniority rule. While O'Connor's successor, Rep. Adolph Sabath (D-IL) was a New Deal supporter, the committee still operated under a conservative majority. The subsequent Democratic Rules Committee Chairs, Representatives Harold "Judge" Smith (D-VA) and William Colmer (D-MS), held their posts from 1955 through 1973. They were conservative Southerners who also received their gavels through seniority. As a result, it was exceptionally rare to see restrictive rules used to promote partisan interests during this period (Schickler and Pearson 2009).

While restrictive rules were rarely employed early in the early to mid-twentieth century, their usage was not unprecedented. When used, the minority would complain, dubbing them "gag" rules and using dramatic language to describe them. For example, Rep. William Bankhead (D-AL) dubbed the closed rule used on the Smoot-Hawley Tariff Act "the most ironclad and

¹⁰ Since the revolt against the Czar speakers in 1910, House standing rules have made it possible to discharge a special rule if it has not been reported out after 30 legislative days. Since 1935, the rule necessitated the support of a simple majority of members. Prior to 1935, the rule had been liberalized so that a motion to discharge only necessitated a minority of lawmakers (145) (Schickler and Pearson 2009). The Fair Labor Standards Act in 1938 is a notable example of an important enactment that was brought to the floor under a special rule discharged from the Rules Committee.

¹¹ In addition to forcing the majority to discharge a rule providing for consideration of the Fair Labor Standards Act, O'Connor had led the successful fight against Roosevelt's Government Reorganization Act in the 75th Congress (1937-1938). During the campaign, O'Connor asserted that Roosevelt was a "dictator" who employed "demagogic expressions." He would later run unsuccessfully as a Republican (see "Sees Purge as Step to Dictatorship," *The New York Times*, August 19, 1938). In breaking with Roosevelt, O'Connor also broke with his brother, Basil, who was a close friend and former partner of the President. Basil O'Connor's admiration for the President led him to donate "hundreds of millions of dollars" in the fight against polio, eventually leading to the first vaccine (Whitman 1972).

restrictive rule ever reported to the House of Representatives (*Congressional Record*, 71st Congress, May 24, 1929, 1874).” Despite this, it was generally conceded that restrictive rules would be employed on early tariff legislation, revenue bills and/or the occasional party priority.¹² Responding to a minority party member’s complaint over the use of a restrictive rule on the Agriculture Adjustment Act in 1933, Bankhead, now the Rules Committee Chair, asserted that the member had served a long time and should “know how the game is played here in the House of Representatives (*Congressional Record*, 73rd Congress, March 21, 1933, 666).”

Rules in the Post-Reform Congress

Figure 2 demonstrates the rising usage of restrictive rules on major laws did not begin until the late 1970s during the “post-reform” congresses (Rohde 1991).¹³ In 1975, the speaker was granted the authority to appoint members of the Rules Committee (subject to the approval of the party’s caucus). Around this time, the Rules Committee began to issue more restrictive rules. These rules were issued for both partisan advantage and to reduce uncertainty on the House floor (Bach and Smith 1988; Rohde 1991). Specifically, legislation was getting larger and more complex. In response, the Speaker had begun referring legislation to multiple committees for input and amending.¹⁴ Restrictive rules were used to balance the committee interests and control potentially lengthy amending processes.

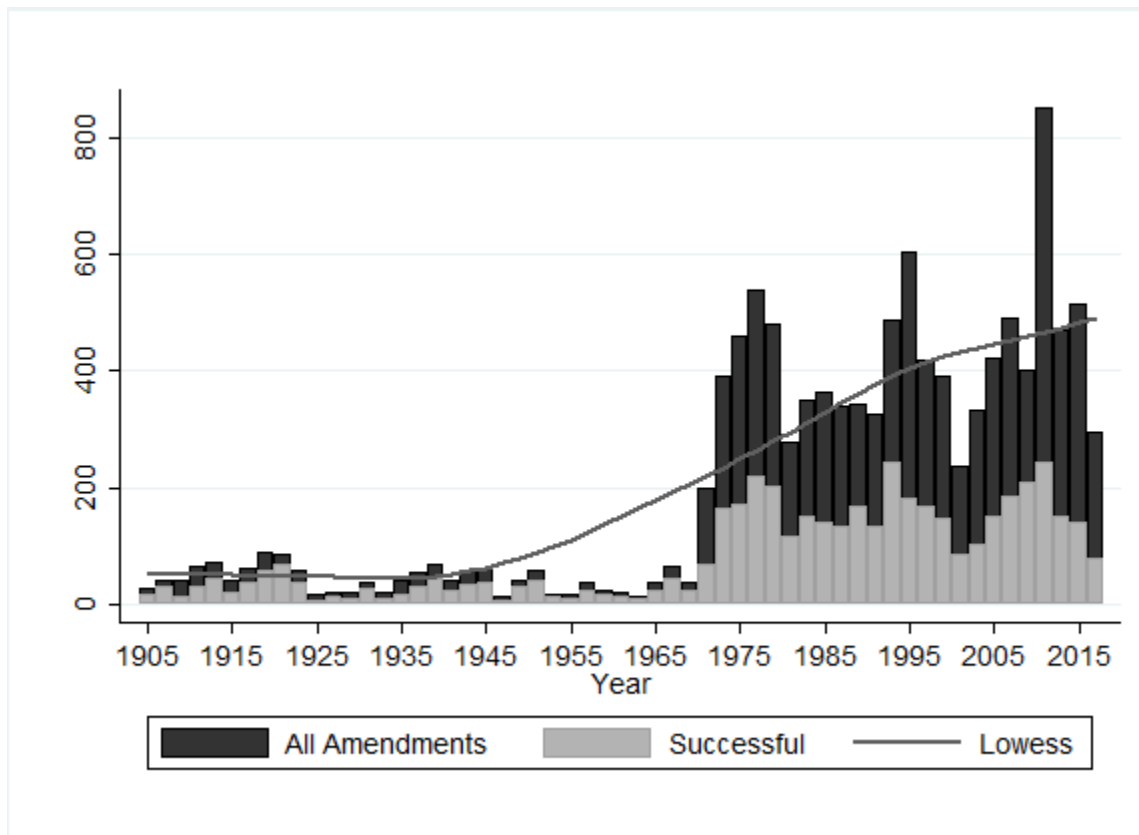
¹² For example, in 1947, Rep. Adolph Sabath (D-IL) conceded that “during [the] 16 years the Democratic Party held control of Congress, and during my service of 8 years as chairman of the Committee on Rules,” he did bring restrictive rules for tariff and/or revenue bills (*Congressional Record*, 80th Congress, February 20, 1947, 1201).

¹³ Of the 53 major laws and appropriation bills passed in the 114th and 115th congresses (2015-2018), only 5 were not considered in the House under a restrictive rule. Two appropriation bills (Energy and Water and Veteran’s Affairs) were considered under modified-open rules in the 114th Congress. Three measures were passed under suspension, one (The Justice Against Sponsors of Terrorism Act) in the 114th Congress and two (Countering America’s Adversaries Through Sanctions Act and the First Step Act of 2018) in the 115th.

¹⁴ The Speaker of the House was given the authority to refer legislation to multiple committees in another important early 1970s reform.

Moreover, the need for restrictive rules was greater after the chamber rules were reformed to allow for recorded teller voting in the Committee of the Whole (Bach and Smith 1988). The change ensured that members would be able to receive roll call votes on floor amendments, even if they were defeated. Combined with the 1973 introduction of electronic voting, which made the process faster, this led to a marked increase in recorded votes on floor amendments (Roberts and Smith 2003). This increase is documented in Figure 3, which plots the number of floor amendments that received roll call votes from 1905-2015 (Crespin and Rohde 2019).

Figure 3: Floor Amendments that Received Roll Call Votes, 1905-2015



The sharp increase in amendments that received recorded votes is consistent with scholarship that had documented the rise in “messaging amendments” (Roberts and Smith 2003;

Smith 1989). This increase in amending activity caused a large number of problems for House leaders. These amendments, which as Figure 3 demonstrates were mostly unsuccessful, delayed other legislative business. They also forced majority party members to cast votes that would be taken out of context and used against them in campaigns. This threatened legislative compromises and the coalitions put together by party leaders and bill managers. In response, Democratic leaders began to employ more restrictive rules.

For example, in the 94th Congress (1975-1976), long-serving House Administration Chairman Rep. Wayne Hays (D-OH) was implicated in a scandal. The Washington Post reported that Hays had a mistress he was paying to serve as a House staffer.¹⁵ After several months, Hays resigned. Majority-party Democrats prepared several reforms, including one that ordered the Government Accounting Office (“GAO”) to audit members and committees implicated in sex scandals.¹⁶ Republicans dubbed these reforms “entirely inadequate” and dubbed them a “grandstand play by the Democrat majority (*Congressional Record*, 94th Congress, July 1, 1976, 21791).”¹⁷

Republicans prepared several amendments to the Democratic reform proposals. Seeking to make the theme of the 1976 congressional elections “Clean up Congress,” these amendments included one by House Minority Leader John Rhodes (R-AZ) that would have ordered the GAO

¹⁵ The staffer, Elizabeth Ray, claimed she was being paid purely to serve as Hays’ mistress. She famously noted, “I can’t type, I can’t file, I can’t even answer the phone.” She added, “Supposedly, I’m on the Oversight Committee. But I call it the Out-of-Sight Committee (Clark and Maxa 1976a).” Ray claimed she went forward with the allegation after Hays did not invite her to his wedding earlier in the year. “I was good enough to be his mistress for two years, but not good enough to be invited to his wedding (Clark and Maxa 1976b).”

¹⁶ While unquestionably the most prominent, Hays was just one of several House Democrats implicated in separate sex scandals in the 94th Congress. Rep. John Young (D-TX) was the focus of a similar charge. Reps. Joe Waggoner (D-LA) and Allan Howe (D-UT) were both arrested on charges of soliciting undercover police officers for sex (*CQ Almanac*, 1976. “Congress 1976: Spotlight on Ethics.”)

¹⁷ Minority Leader John J. Rhodes (R-AZ) called the reforms “entirely inadequate (*CQ Almanac*, 1976. “Congress 1976: Spotlight on Ethics.”) Rep. Robert Coughlin (R-PA) dubbed them a “grandstand play.”

to conduct audits of all House members and committees (Osolin 1976). Democrats bypassed these amendments by considering the reforms under closed rules. Republicans cried foul, but were likely not surprised, given the occasional usage of restrictive rules for salient measures like ethics reforms.¹⁸ They prepared to offer the same amendments H.R. 14238, the Legislative Branch Appropriations bill, knowing that appropriation bills were always considered under open rules. Two months later, just before the election, Democrats brought up H.R. 14238 under H.Res 1507, a modified-closed rule:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14238) making appropriations for the legislative branch for the fiscal year ending September 30, 1977, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations, the bill shall be considered as having been read for amendment. All points of order against title I of said bill for failure to comply with the provisions of clause 2, rule XXI, are hereby waived. No amendments to said bill shall be in order except amendments recommended by the Committee on Appropriations and the amendments printed in the Congressional Record of August 31, 1976, by Representative Shipley, and said amendments shall be in order, clause 2 of rule XXI to the contrary notwithstanding, but shall not be subject to amendment except amendments recommended by the Committee on Appropriations and pro forma amendments. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions (*Congressional Record*, 94th Congress, September 1, 1976, 28851).

Republicans were outraged. They dubbed it a “gag rule” and argued it was an “unprecedented action” to take on an appropriation bill.¹⁹ Rules Committee Chair Richard

¹⁸ The ethics reforms were passed in 1976 as three separate resolutions, all governed by closed rules: H.Res. 1260 (considered under H.Res. 1272); H.Res. 1368 (H.Res. 1395); and H.Res. 1372 (H.Res. 1396).

¹⁹ Rhodes argued that he did not “remember ever having brought an appropriation bill up under a gag rule (*Congressional Record*, 94th Congress, September 1, 1976, 28853).” The House Parliamentarian would later dub this “the first time the House had ever adopted such a rule for an appropriations bill (*CQ Almanac*, 1976. “Pay Raise Cut from Legislative Funds Bill.”)

Bolling (D-MO) conceded the rule was “very unusual” and “the first time there has been a closed rule or a modified closed rule on a general appropriation bill in a very long time.” But he argued the rule was needed because Republican amendments represented “campaign issue[s]” that would likely kill the reforms put into place (*Congressional Record*, 94th Congress, September 1, 1976, 28851-28857).²⁰ While 61 Democrats joined all Republicans in opposing the rule, it passed 208 to 193.²¹ Considering legislative branch appropriation bills under a restrictive rule became common afterwards, as members frequently sought to offer amendments cutting their own pay for electoral purposes.

The Rise of Restrictive Rules

Starting in the late 1970s, usage of restrictive rules increased sharply. In an effort to combat the increased demand for amendments and to exert more control over the floor, party leaders and the Rules Committee also began issuing increasingly complex rules. These rules occasionally had creative features like king/queen of the hill rules or self-executing provisions to help leaders deal with competing provisions or problematic political situations (Smith 1989).²² These rules were also overwhelmingly restrictive.

²⁰ Not all Democrats subscribed to this argument. For example, Rep. Patricia Schroeder (D-CO) conceded that Republicans were likely “up to nothing but election year mischief.” However, she still opposed the closed rule, arguing “if we were to support a closed rule on the grounds that the opposition is engaging in political mischief, embarrassment for embarrassment sake, we would have closed rules on every piece of legislation that came ambling onto the floor (*Congressional Record*, 94th Congress, September 1, 1976, 28857).”

²¹ The previous question motion was adopted by voice vote. While Republicans were unable to force Democrats to cast recorded votes on separate reform proposals, they did get a recorded vote on a package of eight reform amendments. This was done through a motion to recommit with instructions offered by Coughlin. The motion to recommit garnered support from 64 Democrats, but failed 195-199 (*CQ Almanac*, 1976. “Pay Raise Cut from Legislative Funds Bill.”)

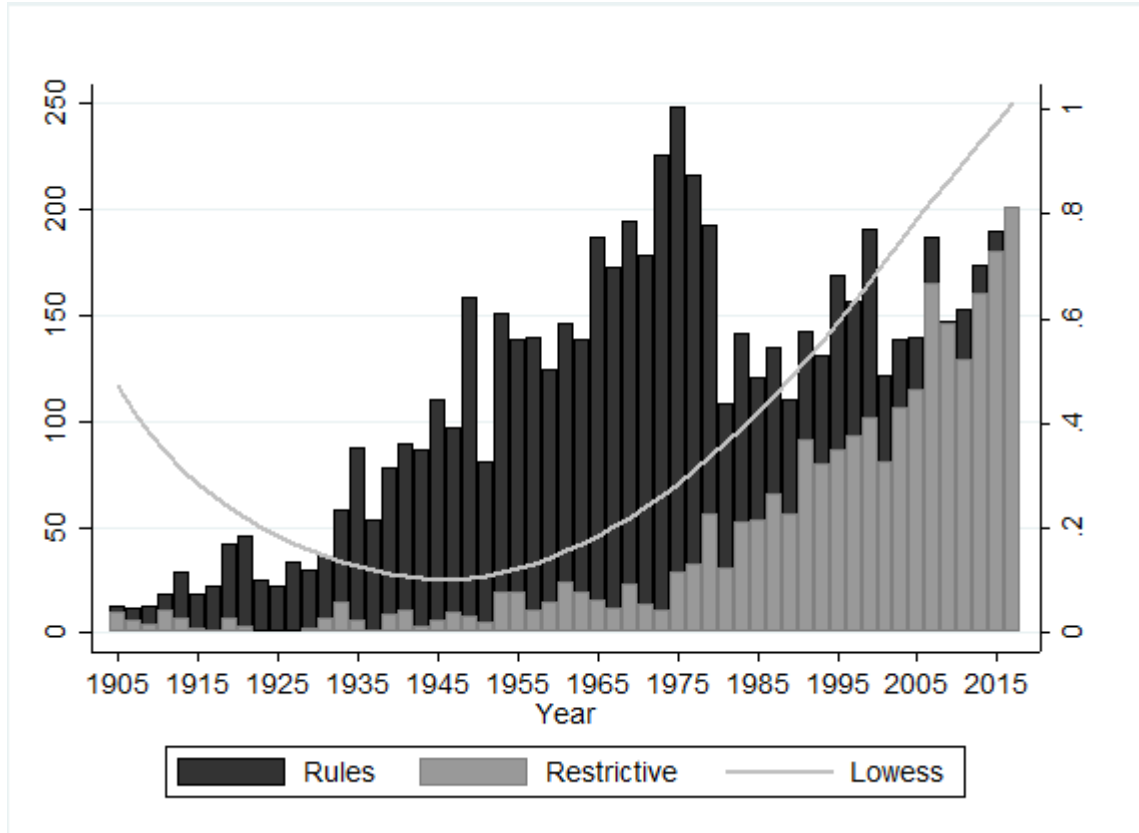
²² A self-executing rule is one that provides “that the House – upon adoption of the special rule – is considered or “deemed” to have taken some other action as well (Binder 2010).” “Queen of the Hill” and “King of the Hill” (or mountain) rules are unorthodox rules that allow the floor to consider multiple competing proposals, but specify how a winner will be decided. They generally will say something to the effect of “the amendment with the greater number affirmative votes is to be considered adopted” or “the last amendment to receive a majority of affirmative votes shall be considered adopted.”

Using a new dataset that includes all House special rules considered on the chamber floor from the 59th (1905-1907) to the 115th Congress (2017-2018), we demonstrate the stark increase in restrictive rules in the House. Our dataset includes 7,329 House resolutions considered on the floor that provide special rules for legislation. Of these resolutions, 494 of them provided special rules for multiple bills, resulting in 8,027 rule-bill level observations. Using a team of undergraduate researchers, we collected the text of these rules and coded them into twelve rule types. This dataset is discussed in greater detail in Appendix A.²³

In examining restrictive House rules, we excluded waiver-only rules, martial law and suspension rules, rules covering consideration of a conference report, those providing for a conference committee and a few rules classified as either special orders or miscellaneous. This left us with 6,571 special rules, 2,428 of which were restrictive. Figure 4 plots the raw number of special rules per year in black. The number of those classified as restrictive is plotted in gray. The figure also includes a simple lowess smoothing line that reported the percentage of total rules that were restrictive per Congress (percentage reported on the second y axis on the right).

²³ The full dataset (“House Rules, 59th (1905-1907) - 115th (2017-2018) Congresses”) is available here: <https://www.thecongressproject.com/data>

Figure 4: House Special Rules by Restrictive Status, 1905-2018



Consistent with the conventional wisdom, Figure 4 demonstrates a sharp increase in both the raw number of restrictive rules and the percentage that are restrictive. As we noted in the introduction, 100% of special rules considered in the 115th Congress were restrictive. Rather than an outlier, the 115th Congress represented only a graduate increase in restrictiveness from its predecessors. Over the past 10 years, 598 of the 625 special rules were restrictive (or 96%). However, as we discuss in the next section, innovations in rule design have limited the utility derived from classifying special rules dichotomously.

Structured Rules and Contemporary Trends

In the early 1980s, opposition to President Reagan's management of the Cold War led liberals to push for the passage of legislation that would freeze the build-up of nuclear

weapons.²⁴ The issue was heavily focused on during the 1982 midterm elections. Buoyed by the gain of 26 House seats, Democratic leaders made passage of a nuclear freeze a legislative priority (Maraniss 1982). The measure, H.J.Res. 13, was brought to the floor on March 16, 1983, under H.Res. 138, an open rule. After five full days of debate and amending, the House had dispensed with 39 amendments, adopting 26 of them. An additional sixty floor amendments were still pending.

In an effort to further expedite chamber business, and fearing they had lost momentum on the issue, Democratic leaders took the unprecedented step of having the House Rules Committee issue a second rule.²⁵ This rule ended debate and amendments after an additional ten hours. Republicans again cried foul, with the ranking minority member on the Rules Committee asserting it was a “gag rule” and comparing it to a “a team coming out of a locker room after the halftime and asking the referees to make a few little rules changes.”²⁶ Rules Committee Chairman Claude Pepper (D-FL) asserted it was necessary to complete action on the bill, but emphasized they were not setting a precedent “the Committee on Rules anticipates will become a frequent event (*Congressional Record*, 98th Congress, May 4, 1983, 11037).” Despite this pledge, the Rules Committee would take similar actions twice more that same year.

²⁴ The movement was strengthened by the Reagan administration’s frequent usage of the phrase “protracted nuclear war (see Halloran 1982).”

²⁵ Rules Committee Chair Claude Pepper (D-FL) conceded that, “So far as we are able to ascertain, the Rules Committee has never taken that action before but the emergency I think justifies what we are doing today (*Congressional Record*, 98th Congress, May 4, 1983, 11037).”

²⁶ The ranking member, Rep. Delbert Latta (R-OH), continued, “Why, if that ever happened in a football game they would be booed off the field by their own fans (*Congressional Record*, 98th Congress, May 4, 1983, 11037).” Democrats accused Republicans of obstruction. For example, Majority Leader Jim Wright (D-TX) asserted Republicans were engaging in a “filibuster by frivolous amendment (*Congressional Record*, 98th Congress, May 4, 1983, 11044).”

As the nuclear freeze episode demonstrates, there are substantial advantages to pre-screening floor amendments. The most common way to do so in the contemporary Congress is through the issuing of “structured rules.”²⁷ These rules require members to submit their amendments to the Rules Committee for consideration, generally after a “Dear Colleague” letter is circulated alerting them that a bill is going to be considered under a structured rule. There is a substantial amount of bill-level variance in both the number of amendments submitted and granted floor consideration under structured rules. Defense Authorizations, for example, are generally subject to large numbers of proposed amendments. There were 682 amendments submitted to the structured rule governing consideration of H.R. 2500, the National Defense Authorization Act for Fiscal Year 2020. Of those, 440 were granted consideration.

Structured rules allow House leadership to protect their policy goals while minimizing uncertainty on the floor (Lynch, Madonna and Roberts 2016). Accordingly, most restrictive House rules fall into the structured rule category (Oleszek et al. 2016). Since the 109th Congress, the Rules Committee has posted descriptions of amendments submitted for consideration under each structured rule. An examination of the aggregate data demonstrates that while a partisan

²⁷ The term “structured rule” first appears in the Rules Committee year end reports at the conclusion of the 103rd Congress. It is not used to characterize a specific type of rule, rather it is used as a “catch-all” term to describe rules that are not purely closed or open. Democrats claimed the rising use of these “structured rules” reflected “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.” House Rules Committee, Report 103-891. January 2, 1995, 23).”

The following year, the new Republican majorities characterized rules as “structured/modified closed.” This category was defined to include rules that “limit[ed] the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which precludes amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment (“Survey of Activities of the House Committee on Rules, 104th Congress.” House Rules Committee, Report 104-868. November 26, 1996, 30).” This change, according to Democrats, was so Republicans could put a more positive spin on their record of employing restrictive rules in that Congress: “Essentially the Republicans decided to change the rules of the game in order to make their manipulation of the rules process look more open than that of the Democrats (“Survey of Activities of the House Committee on Rules, 103rd Congress.” House Rules Committee, Report 103-891. January 2, 1995, 144).”

advantage exists in the amendment screening process, it is smaller than political observers might have anticipated. The total number of amendments submitted and granted floor consideration by Congress is presented in Table 2. The 1,555 amendments with bipartisan cosponsors are treated as Majority-sponsored amendments in Table 2.²⁸

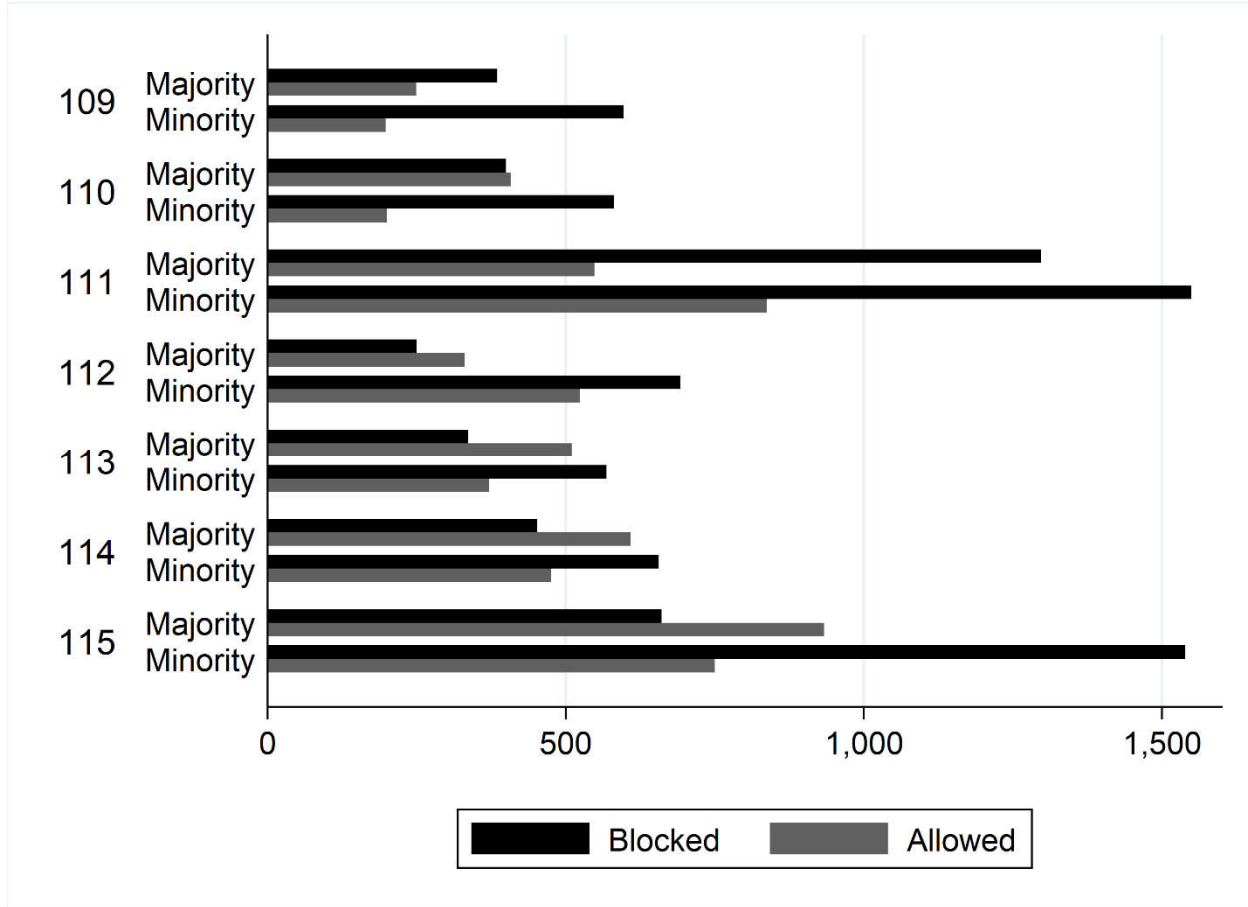
Table 2: Amendments Considered Under Structured Rules, 2005-2018

Congress	Majority			Minority			All		
	<u>Submitted</u>	<u>Allowed</u>	<u>Percent</u>	<u>Submitted</u>	<u>Allowed</u>	<u>Percent</u>	<u>Submitted</u>	<u>Allowed</u>	<u>Percent</u>
109	634	249	0.39	795	198	0.25	1,429	447	0.31
110	808	408	0.50	781	200	0.26	1,589	608	0.38
111	1,846	548	0.30	2,386	837	0.35	4,232	1,385	0.33
112	581	331	0.57	1,217	524	0.43	1,798	855	0.48
113	846	510	0.60	939	371	0.40	1,785	881	0.49
114	1061	609	0.57	1,131	475	0.42	2,192	1,084	0.49
115	1,594	933	0.59	2,289	750	0.33	3,883	1,683	0.43
Total	7,370	3,588	0.49	9,538	3,355	0.35	16,908	6,943	0.41

As Table 2 notes, of the 16,908 total amendments submitted under structured rules, 6,943 were granted floor consideration. As we would expect, minority party members typically submit more amendments. Majority party members are more likely to have their amendments granted floor consideration, but still only receive it about half of the time. Figure 5 plots the partisan split graphically.

²⁸ Withdrawn amendments are excluded.

Figure 5: Amendments Under Structured Rules, 2005-2018



Given their increased usage, there has been a gradual rise in the number of amendments submitted under structured rules during this period. The spike in the 111th Congress reflects the consideration of all appropriation bills under structured rules. As Lynch, Madonna and Roberts (2016) have argued, ideological factors also influence the likelihood an amendment would be granted consideration under a structured rule. Excluding amendments with bipartisan co-sponsors, ~43 percent of majority party-sponsored amendments were offered by members located between the party and floor medians.²⁹ 51.8% of amendments sponsored by these majority party centrists were granted floor consideration. For non-centrist majority party

²⁹ These numbers are calculated using DW-NOMINATE scores (Poole and Rosenthal 2007).

members, 45.3% of amendments were granted floor consideration. A conventional t-test reveals these differences are significant at the .05 level. In contrast, there is not a significant difference between amendments sponsored by centrist and non-centrist members of the minority party.³⁰

Evaluating Trends in House Special Rules

While the rise in structured rules reflects the most notable shift in House rules behavior over the past twenty years, three other trends are worth considering. First, as discussed in the previous section, the usage of special rules to waive availability requirements has increased fairly starkly. During the nearly 90 years between the 59th (1905-1907) to 103rd congresses (1993-1994), there were 57 resolutions that included language waiving the availability rules or making suspension in order. During the seven years between the 112th (2013-2014) and 115th congresses (2017-2018), there were 70. This is consistent with scholarly work stressing the increased speed and limited committee consideration majorities are employing to pass legislation (Curry 2015).

Second, resolutions are increasingly being used to provide rules for multiple bills. Of the 494 resolutions that covered multiple measures, over half of them (248) were considered in the seven years between the 112th (2013-2014) and 115th congresses (2017-2018). In short, House special rules are becoming even more complex and reflective of increased majority party centralization under the speaker.

Finally, the decision to package more special rules into fewer resolutions may reflect a response to the increased likelihood special rules will receive roll call votes (Lynch and Madonna 2019). During the nearly 90 years between the 59th (1905-1907) and 103rd congresses

³⁰ Non-centrist minority party amendment sponsored are actually slightly *more* likely to be allowed to offer their amendments on the floor. Non-centrist members account for just over 60% of proposed minority party amendments. Of these, ~36.3 percent were granted floor consideration, compared to ~34 percent of amendments sponsored by centrists. A conventional t-test cannot reject the null that the samples do not differ significantly. Future iterations of this paper will examine these factors more systematically and evaluate the success of amendments granted floor consideration on the floor.

(1993-1994), there were 5,317 resolutions providing for special rules. Of those, 332 (or 6.2%), received roll call votes on the motion to order the previous question. In comparison, of the 501 resolutions providing special rules considered during the seven years between the 112th (2013-2014) and 115th congresses (2017-2018), 400 (or just under 80%) received roll call votes ordering the previous question.³¹

This is not surprising. Even when a rule is open, contemporary minorities are incentivized to demand a recorded vote ordering the previous question motion. If the previous question is defeated, the minority can move to amend the rule. Accordingly, minority party members will frequently urge the defeat of the previous question motion so they can amend the rule to consider unrelated legislation. For example, in May of 2016, the House considered H.R. 5055, the Energy and Water Development and Related Appropriations Act under H.Res. 743, a modified open rule.

Despite praising the bill and the rule's open status, Rep. Louise Slaughter (D-NY), the ranking member on the Rules Committee, urged Congress to defeat the previous question motion. Slaughter explained that by doing so, she would "offer an amendment to the rule to bring up comprehensive legislation that provides the resources needed to help the families in the city of Flint, Michigan, recover from the water crisis (*Congressional Record*, 114th Congress, May 24, 2016, H2982)." The previous question motion passed on a straight party-line vote. However, the vote provided leverage for Democrats on the campaign trail who could argue by voting for the previous question motion, Republicans voted against funding for Flint.

³¹ Examining votes on the rule itself demonstrated a comparable trend. 1,515 of 5,317 resolutions from the 59th (1905-1907) to 103rd congresses (1993-1994) received recorded votes (or 28.5%). From the 112th (2013-2014) to 115th congresses (2017-2018), 477 of 501 resolutions (or 95.21%) received roll call votes.

After H.Res. 743 was adopted, the House considered and debated on amendments to H.R. 5055 for two days. The chamber considered 57 amendments on the floor, adopting 34 of them. One of those amendments, sponsored by Rep. Sean Patrick Maloney (D-NY), prohibited funds being used that would contribute to discrimination based on sexual orientation and gender identity (McPherson 2016). Maloney had offered the amendment to the Veteran's Affairs Appropriation bill the previous week and it was narrowly rejected after some controversy.³²

This time around Maloney's amendment was adopted, 223-195.³³ The amendment ultimately proved fatal to the bill, as conservative Republicans joined Democrats in opposing H.R. 5055 on final passage and the bill was overwhelmingly defeated, 112-305 (McPherson 2016). Currently, this was the last non-restrictive rule issued by the House. Speaker Ryan announced shortly afterwards he was abandoning open rules in favor of restrictive structured rules for appropriation bills (Collender 2016). As detailed in our introduction, the following Congress then became the first in history to issue only restrictive special rules.

New Directions for Examining House Special Rules

The decision to issue a restrictive or open special rule can have a direct and important impact on policy output. As former Rules Committee Chair Dave Drier (R-CA) argued during a debate over standing rules, "process is substance (*Congressional Record*, 111th Congress, January 6, 2009, 14.)" Given this, it is not surprising media outlets frequently discuss restrictive

³² Maloney's amendment to that appropriation bill, H.R. 4974, had initially secured enough votes for passage. However, the vote was left open and leadership persuaded seven members to change their votes, leading to the amendment's defeat 212-213. Democrats shouted "Shame, Shame, Shame!" in response (Pathe 2016).

³³ The amendment was one of several controversial provisions included in the bill, as Republicans offered controversial amendments "targeting the Iran nuclear deal and defending the North Carolina transgender bathroom law (McPherson 2016)." Conservative Republicans ultimately voted against the bill after a conference meeting that featured a reading of bible verse that called for violence against homosexuals by a freshman member (Shutt 2016).

House special rules, quoting member complaints over their usage and arguing their usage is indicative of an abandonment of “regular order” (see e.g. Spulak and Crawford 2018). However, regular order is an amorphous concept and members who pine for a return to it are often doing so for personal self-interest (Oleszek 2014; Wolfensberger 2013). The same minority party members who complain about restrictive House rules are certain to vote for them when they ascend to the majority.

The rising demand for floor amendments in both the House and the Senate has created challenges for chamber leaders, who are rarely well-served by an open amending process. Part of the normative stigma over restrictive House rules stems from scholarly work that almost exclusively examines the U.S. Congress in a historical, as opposed to comparative context. When viewed in the context of other legislative bodies (including those of foreign nations and state governments), the House appears to be just one of many legislatures that employ restrictive special rules (Taylor 2012). Additionally, between the previous question motion, to their nearly unfettered right to offer motions to recommit with instructions (which essentially gives the minority an opportunity to get a roll call on an alternative bill), the House minority party has many options to get roll calls on its policy positions.

Future research on House special rules would be well-served by moving beyond the dichotomous treatment of rules as either restrictive or open. As we have documented here, the rising usage of structured rules has resulted in substantial variance regarding the number of amending opportunities provided to House members. This variance calls out for more nuanced theories of legislative behavior. Under what conditions are minority party ideologues more likely to receive amending opportunities? Majority party moderates? Members of the reporting committee? However, given the narrow nature of many submitted amendments, answering these

questions would likely require scholars to abandon the comforts provided by unidimensional theoretic approaches like the one we presented in Figure 1.

The normative debate over “regular order” in both the House and the Senate has focused heavily on the right to offer floor amendments (see e.g. Madonna and Kosar 2015). Presumably, this is because of concerns over transparency consistent with Monroe and Robinson’s (2008, 230) view that restrictive rules “represent the deciding of policy *out of the view of citizens*.” While theoretically appealing, we have no reason to believe restrictive rules actually make lawmaking less transparent to voters. Germaneness rules and the suspension of the rules process also restrict floor amending. Moreover, while the House and Senate floor have always been a visible aspect of the legislative process, this does not mean the public is watching them any more closely than they watch committee consideration. In our view, the rising trend of legislation being drafted apart from committees and avoiding committee mark-up and amending represents a much more serious break down of legislating than the restricting of floor amendments (see Curry 2015). The theoretical breakdown in transparency highlighted by Monroe and Robinson does suggest more research should be conducted at the intersection of congressional institutions and mass electoral behavior. Most scholars of legislative rules and procedure argue voters do not respond to changes in their usage. But little work has been conducted examining this potential link.

Additionally, underlying their domination of the Rules Committee is the familiar argument that the majority party’s electoral brand name would be damaged if the party brought issues to the floor that led to intraparty disagreement. The so-called “Hastert Rule,” named after former speaker, was an informal rule that no bills would be brought to the floor unless a majority of the majority party supported them (see Binder 2013). Once again, very little evidence exists

suggesting voters punish majorities for observing manifest policy disagreement on the floor. This is unfortunate, given the centrality of the “maintaining a favorable partisan brand name” argument to leading theories of legislative behavior.

In contrast, there is work demonstrating that high levels of partisan voting on the floor hurts majority party members electorally (Carson et al. 2010). This finding contradicts not only the “electoral brand name” thesis, but also the view that members support the party on procedural roll calls more frequently because those votes lack “traceability” (Arnold 1990). There are many other reasons to be skeptical of the traceability thesis in the contemporary era. As we have noted, the minority has wide latitude to “spin” the substance of votes on things like previous question motions. Campaigns frequently aggregate procedural roll calls in attack ads to demonstrate the member often supports an unpopular politician (i.e. Congressman Jones votes with Speaker Paul Ryan on 92% of all votes). Finally, interest groups like the National Rifle Association and the Sierra Club often select procedural roll calls votes as “key votes” they use to score members (see Smith, Ostrander and Pope 2013). Given this, more work should be done exploring how voters respond to attacks featuring procedural roll calls.

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Appendix A – Coding Special Rules

Coding these data began in the spring of 2018. The dataset was put together using a variety of sources. First, an initial list of special rules from 1905 to 1937 was provided by Roberts (2010).³⁴ Using the *Congressional Record* index, we then expanded this list through the 92nd Congress (1971-1972). Specifically, a graduate student coder went through the “House Resolutions” subsection of the History of Bills and Resolutions and checked each resolution that received floor consideration.³⁵ The final dataset includes 3,120 resolutions that included special rules from the 59th Congress (1905-1907) to the 92nd Congress (1971-1972).³⁶

Special rule information for the 93rd Congress (1973-1974) through the 115th Congresses (2017-2018) were downloaded from [congress.gov](https://www.congress.gov). Initially, we downloaded all 9,313 House resolutions that received floor consideration during this time frame. Through key word searches of the rule descriptions we were able to distinguish between special rules and simple House resolutions. This resulted in 4,209 resolutions that included special rules from the 93rd Congress (1973-1974) through the 115th Congresses (2017-2018).

We employed four additional sources to ensure we did not miss any special rules that received floor consideration. First, we compared our final dataset with our dataset of important legislation.³⁷ For all bills in our important legislation data, we went through the index and

³⁴ The full Roberts (2010) dataset extends from 1881 to 1937. From 1905 on we merged in roll call vote numbers when appropriate and added resolution numbers when available. We also added the text of the rules. We thank Jason Roberts for making these data available.

³⁵ “Floor consideration” was defined to include any resolution that received at least one vote (either recorded or note). This could include rules subjected to failed motions to discharge, those defeated on the House floor or this considered under suspension.

³⁶ Information is available on additional 167 resolutions during that period that were later excluded on the basis of not receiving floor consideration or not constituting a special rule.

³⁷ Information on our important legislation dataset (“Important Legislation, 45th (1877-1879) - 113th (2013-2014) Congresses”) can be found here: <https://www.thecongressproject.com/data>

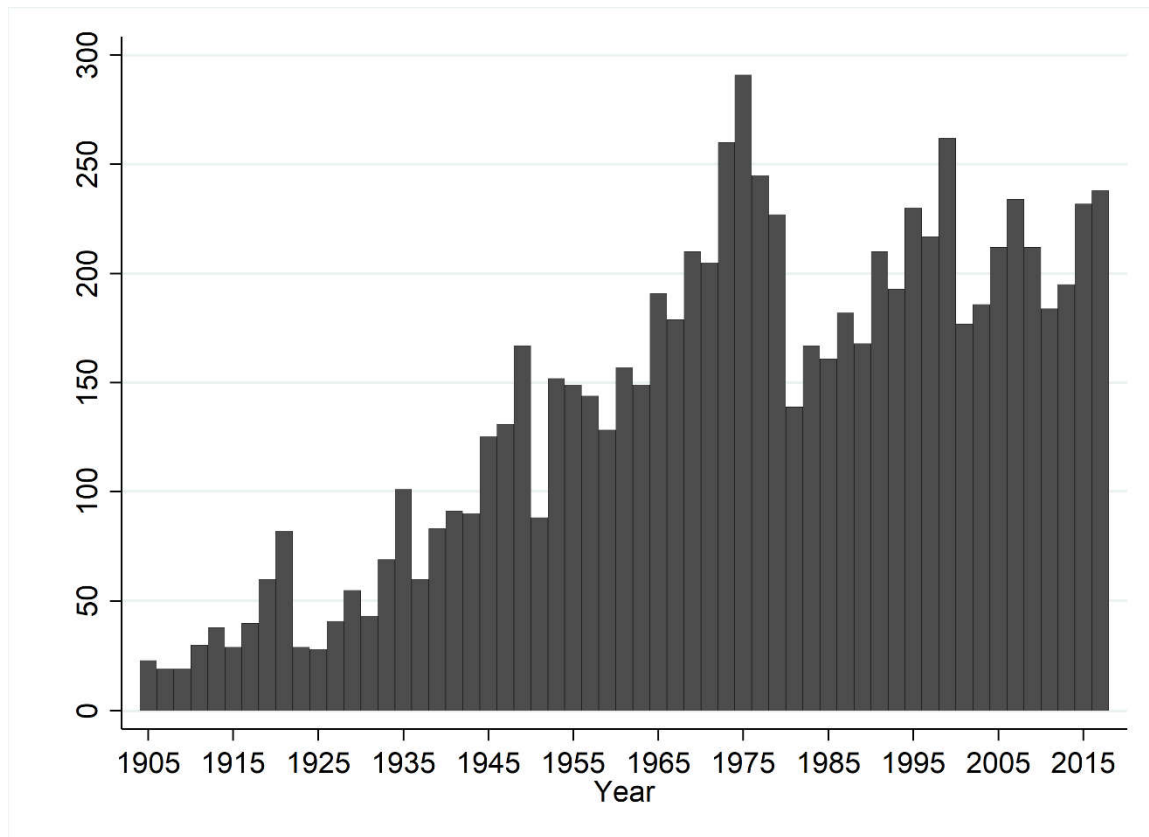
separately coded any special rules related to the bill. All of these rules were present in the congress.gov data. Second, we compared our data to a dataset from Voteview.com or all special rules subjected to roll call votes. Third, when the time series matched, we compared our data to data collected by Stiglitz (2008).³⁸ Finally, from the 98th through the 115th Congress, we checked to ensure the rule was listed in the Rules Committee's *Annual Survey of Activities Reports*.

The final dataset includes information on 7,329 House resolutions considered on the floor that provide special rules for legislation. Of these resolutions, 494 of them provided special rules for multiple bills, resulting in 8,027 rule-bill level observations. Figure A-1 below plots the 8,027 rules per Congress. The full dataset ("House Rules, 59th (1905-1907) - 115th (2017-2018) Congresses") is available here:

<https://www.thecongressproject.com/data>

³⁸ Stiglitz's data is restricted to rules subject to recorded votes and stretches from the 98th Congress (1983-1984) through the 109th Congress (2005-2006).

Figure A-1: House Rules by Congress, 1905-2018



Once our list of rules was established, we had faculty, two graduate students and 25 undergraduates code rule and vote types. While our primary interest was in coding whether the rule received a recorded vote or not, we had the student coders collect supplemental variables that are discussed below.

Coding Rule Types

Student coders were initially tasked with coding the bill or bills the rule corresponded to. Rules that cover multiple bills, often either bifurcated or multi-measure (also referred to as “grab-bag” rules) are common in recent congresses.³⁹ For rules that cover multiple bills, students

³⁹ For example, H.Res. 477 in the 112th Congress provided three separate structured rules for HR 527; HR 3010 and HR 3463.

would code the bill numbers and code a dummy variable denoting a multi-measure rule as a “1”. As discussed above, 494 resolutions in our dataset provided special rules for multiple bills, resulting in 8,027 rule-bill level observations. Using our team of undergraduate researchers, we collected the text of these rules and coded them into twelve rule types (categorizing each as either “restrictive,” “open” or “other”). These are listed in Table A-1 and discussed below.

Table A-1: House Special Rules by Rule Type, 1905-2018

<u>Rule Type</u>	<u>Count</u>	<u>Category</u>
Closed	782	Restrictive
Modified-Closed	580	Restrictive
Structured	782	Restrictive
Open	3,976	Open
Modified-Open	168	Open
Waiver Only	301	Other
Conference Report	519	Other
Senate Amendment	283	Restrictive
Go to Conference	52	Other
Special Order/Miscellaneous	175	Other
Martial Law	169	Other
Suspension of the Rules	240	Other
<i>Total</i>	<i>8,027</i>	

Unfortunately, there is no set definition for special rule types and terminology used by the Rules Committee has shifted over time even for the most commonly used rule types (i.e. open, modified-open, closed, modified-closed and structured rules). Broadly, we coded any rule that bars all amendments as “closed,” rules that allow a vote on only a select set of amendments stated in the rule as “modified closed,” and rules that allow a vote on amendments specified in the accompanying report as “structured.” Rules allowing for any germane amendments were classified as “open.” Open rules with some non-discriminatory limitation (generally through a

time limit on amending or a requirement that amendments be pre-printed) were categorized as modified-open. These rule types are discussed in greater detail below.

Open Rule

The most common rule type for many congresses is the open rule. An open rule will include language to the effect of “amendments will be considered under the ‘five-minute’ rule. This means any germane amendment can be offered and five-minutes will be permitted for debate and/or discussion. An example of an open rule from the 97th Congress (1981-1982) is below:

Resolved, that upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3462) to authorize appropriations to carry out the activities of the Department of Justice for fiscal year 1982, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, **the bill shall be read for amendment under the five-minute rule.** It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, and all points of order against said substitute for failure to comply with the provisions of clause 5, rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions (*Congressional Record*, 97th Congress, June 9, 1981, 11854).

Modified-Open Rule

A modified-open rule is generally considered an open rule with some non-discriminatory limitation. Generally, this takes the form of a time limit or a pre-printing requirement. In the case of a pre-printing requirement, the rule specifies that amendments will only be considered if they are printed in the *Congressional Record* by a certain time period. Practically, what this means is

that the majority wants to know what amendments are coming ahead of time. Modified-open rule language will look like this rule from the 104th Congress: “No amendment to the committee amendment in the nature of a substitute shall be in order unless printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII before the beginning of consideration of the bill for amendment.” Time limits will simply state that any amendments can be offered, but they will state that consideration of the bill and amendments will end at a specified time (i.e. at 5 p.m.) or after an allotted time period (i.e. two hours).”

Closed Rule

A closed rule is the most restrictive type of rule. It bars any amendments from being offered. The rule text will generally not reference amendments of any kind. Instead, it will specify control over debate and then include language like the following: “The previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except ne motion to recommit with or without instructions.”

Structured Rule

A structured rule is a restrictive rule that provides for only certain amendments to be in order (Lynch, Madonna and Roberts 2016). These are usually list in a report of the Committee on Rules. An announcement for a structured rule is typically made several days in advance. Amendments are then proposed and screened by the Rules Committee. Those found to be acceptable are printed in the report. The language will often look like this: “No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in part B of the report of the Committee on Rules accompanying this resolution.”

Modified-Closed Rule

A modified-closed rule is also highly restrictive. It will bar nearly all amendments, but may specify that an amendment will be offered by the Committee Chairman or his/her designee (or a set of amendments may be offered that have been approved of by the committee). Under our criteria, a modified-closed rule may also be open in parts but bar all amendments to one section. Our primary way of distinguishing between modified-open and structured rules was to identify language providing for amendments printed in the resolution, which led to the rule being classified as modified-closed, from language providing for amendments printed “in the resolution”, which was coded as structured.

Additional Rule Types

Rules that provide for consideration of a bill and waiving certain or all points of order (but do not mention amending otherwise) were classified as “waiver only” rules. These were especially common on appropriation bills and were occasionally controversial. In the House, amendments have to be germane to the bill. Accordingly, legislation could be written in such a narrow way that only a handful of amendments could be proposed even under an open rule. The majority could then provide waivers for only amendments they viewed as important but still claim credit for issuing an open rule. After one such instance in 2003, Rep. Dave Obey (D-WI) complained that “[we] have just been told that this rule is an open rule. That is an absolutely meaningless statement.”⁴⁰

Approximately 11% of the rules in our dataset cover secondary consideration. This includes rules providing for consideration of and/or waiving points of order against conference

⁴⁰ He went on: “What the majority has done once again is to waive the rules of the House for the majority product, but then refuse to waive those same rules for amendments that the minority wishes to offer. In my view, that is a gutless way to legislate. It is an unfair way to legislate. It does discredit to this House and discredit to those who impose those kinds of rules. And to suggest that this is an open rule, implying, somehow implying that this is business as usual, if this is business as usual, I think the American public would hang their heads when they understand it (*Congressional Record*, 108th Congress, September 4, 2003, 21149).”

reports and those agreeing to or separately requesting a conference with the Senate on a bill. As conference reports are not amendable under House rules, these classified as neither restrictive nor open. Rules providing for consideration of a Senate amendment with an amendment or simply concurring with a Senate amendment (and barring other amendments) were coded as restrictive.

In addition to rules covering secondary consideration, special rules waiving “availability requirements” are increasingly common in contemporary congresses. House rules specify that legislative text must be available to members for a certain period of time before floor consideration. For bills and conference reports, this is 72 hours. For special rules, it’s one day (Rybicki 2017).⁴¹ Special rules waiving these requirements are often referred to as either “same day rules” by their supporters or “martial law rules” by their opponents.

House rules also provide for consideration of motions to suspend the rules only on certain days. These rules can also be waived through a special rule and are occasionally controversial. Bills passed via suspension necessitate two-thirds support and, as such, typically have a great deal of support. But it does preclude amending opportunities. For example, in 2009, news broke that insurance companies had paid executive lucrative bonus checks after receiving federal bailout funds. Democrats moved to suspend the rules and pass a bill that would recoup much of that money. Despite supporting the bill, minority-party Republicans complained that suspension barred them from offering an amendment ensuring more funds would be recouped.⁴² Suspension and martial law rules were classified as neither restrictive nor open.

⁴¹ This can be waived by two-thirds vote.

⁴² In opposing the rule allowing the House to entertain the motion to suspend, Rep. Lincoln Diaz-Balart (R-FL) argued the bill did not go far enough. He complained: “Although I support the bills we will consider today, I find it quite unfortunate the way in which the majority leadership has decided to handle this scandal. The heavy-handed process they are using will block all Members of this House from offering amendments. It will also block every procedural right the minority has to shape legislation, including the motion to recommit. It will even limit debate on

Supplemental Variables

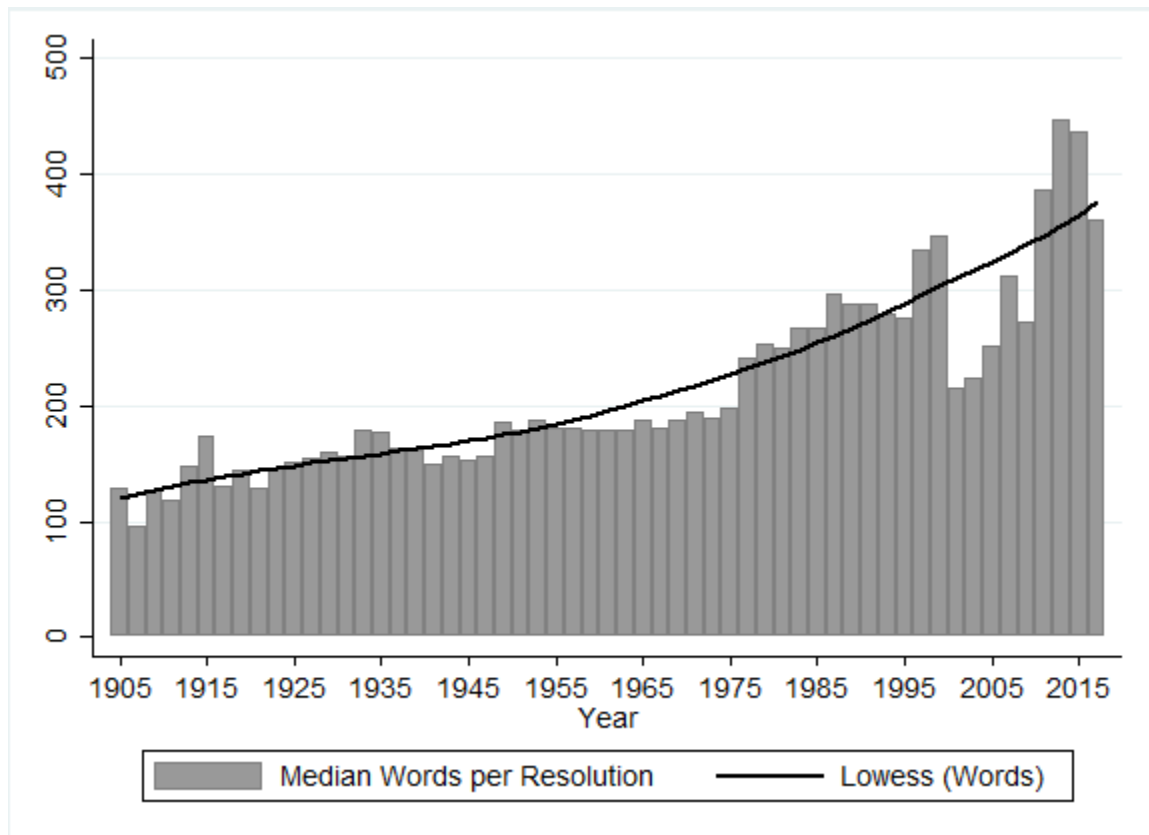
In addition to the rule type variables, our research team coded several supplemental variables. These include identifier variables like the resolution number, the bill or bills covered by the special rule, the date the rule was last voted on and the manner in which it was considered and a unique, seven to eight digit identifying variable for each resolution.⁴³ Perhaps most useful of the supplemental variables coded is the full text of the rule. Student coders copied the text of the rule as reported in the *Congressional Record* into a variable denoted text. This was done to ensure it would be easier for future researchers to recode the rule type should they want to employ an alternative coding scheme.

As we would anticipate, rules have been increasing in their complexity throughout congressional history. This is evident when we consider the increase in the median number of words per rule. Figure A-2 plots the average number of words per rule by Congress. The figure also includes a simple lowess smoothing line to indicate the general trend in the data.

this important issue to a total of 40 minutes (*Congressional Record*, 111th Congress, March 19, 2009, 8096).” In another instance, minority party Democrats criticized the usage of suspension rules because they enabled the majority to bypass committees. Rep. Joe Moakley (D-MA) argued: “These suspension rules are part of a pattern of bypassing the committee process that my Republican colleagues have turned into a state-of-art form. I just cannot support this rule that will make it even easier for my colleagues on the Republican side to bypass committees and rush bills to the floor with only 1 hours’ notice (*Congressional Record*, 106th Congress, November 16, 1999, 29832).”

⁴³ The resolution ID variable (or “rid”) is unique, seven or eight-digit id number for each resolution. The first two-three numbers correspond to the Congress, the fourth is a “3” denoting this is a House resolution. The last four digits refer to the resolution number. So if a resolution has a rid of 6530440 it is referring to Hres 440, a resolution considered in the 65th Congress. Note: For 13 resolutions (4 in the 59th Congress, 7 in the 60th Congress, 1 in the 61st Congress and 1 in the 68th) no resolution number could be identified. These resolutions were assigned resolution numbers starting with 9000 in each congress.

Figure A-2: Median Words per House Rule by Congress, 1905-2018



Coders were also asked to code how the resolution was finally dispensed with. Specifically, there should be at least two votes for special rules. The first of these is ordering the previous question motion. The previous question motion requires a simple majority to enact and serves to terminate debate. The motion is present in the House, but not the Senate, and is frequently described as an important procedural difference between the two chambers. Defeating the previous question motion allows the minority to amend a rule and a defeat is devastating to majority party agenda control (Finocchiaro and Rohde 2008). Once the previous question motion is ordered, a vote is taken on the rule itself. For each resolution, our research team coded whether the vote on the previous question motion and the rule itself was recorded (as opposed to a voice

vote, or unrecorded teller or division vote). Figures A-3 and A-4 document the sharp increase in recorded voting on both the previous question motion and the rule itself.

Figure A-3: Previous Question Motions by Vote Type, 1905-2018

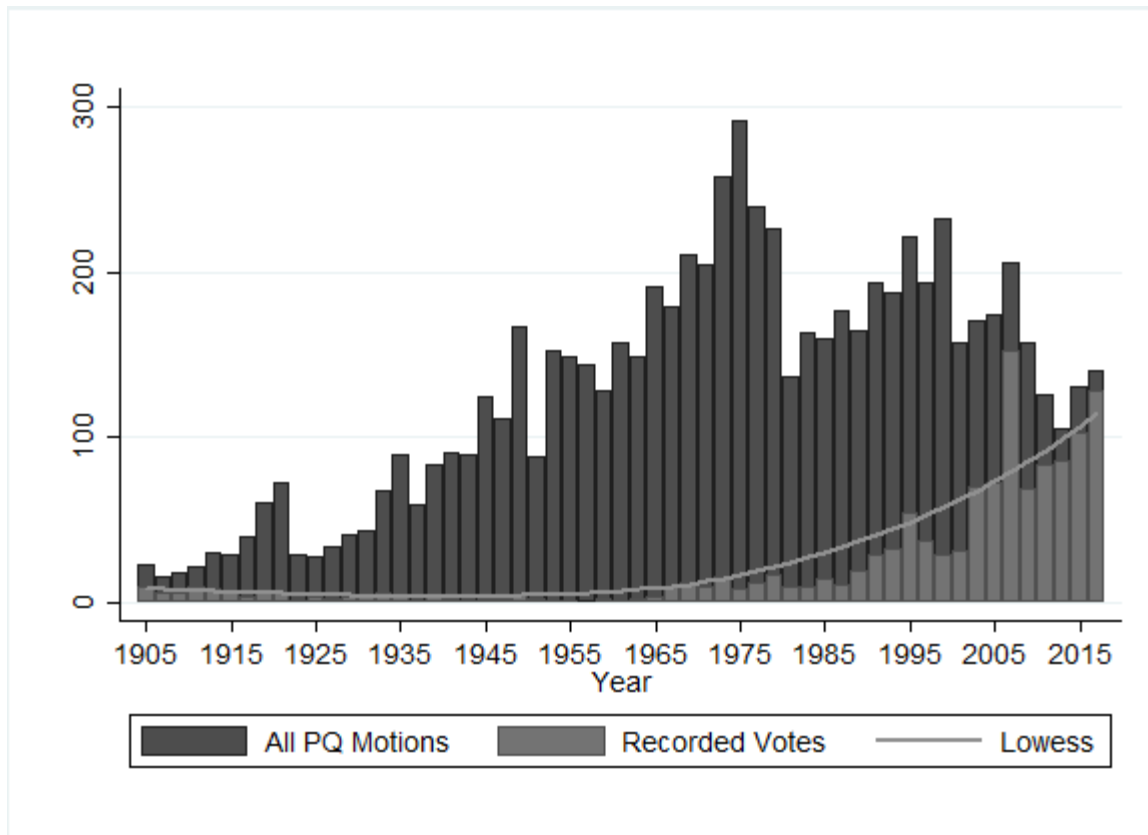
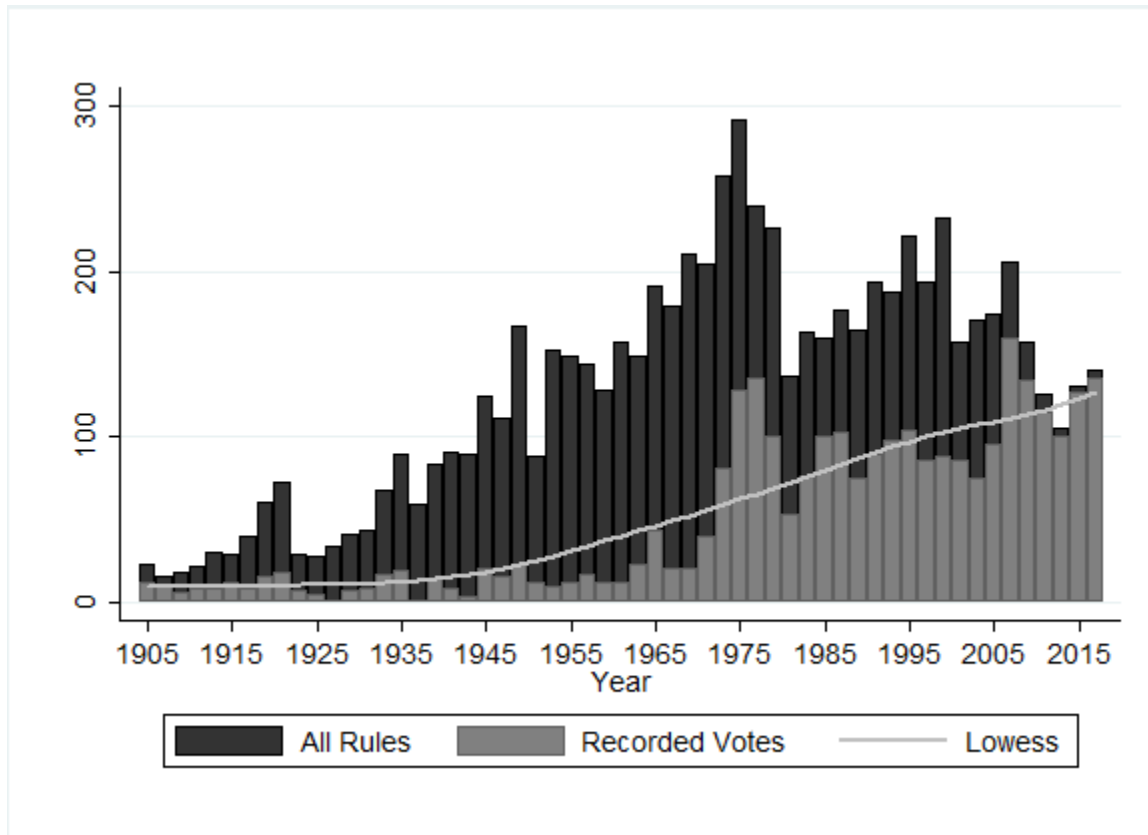


Figure A-4: Special Rules by Vote Type, 1905-2018



Additional supplemental variables were also coded. These include notes, which often contain quotes from the majority and minority rule managers. For example, for Hres 108 in the 101st Congress, there is language in the rule that states “the bill shall be considered for amendment under the five-minute rule.” Subsequent language that adds that: “Consideration of all amendments to the committee amendment in the nature of a substitute shall not exceed three hours.” This suggests that we’re looking at a modified-open rule. That suggestion is confirmed by the subsequent debate.

Specifically, right after the text of the rule is presented, the sponsor, Rep. Claude Pepper (D-FL) explicitly states: “House Resolution 109 is a modified open rule providing for the consideration of H.R. 1231 (*Congressional Record*, 101st Congress, March 15, 1989, 4158).”

The minority manager for the rule, Rep. Lynn Martin (R-IL), concedes the rule is “modified-open,” but takes issue with its construction. She characterizes it accordingly:

“But lo and behold, when we returned in the afternoon we had a new wrinkle called a modified open rule. This is modified open about as much the Incredible Hulk is a modified ballerina. The modified rule says that no matter how worthwhile your amendments may be, when we reach the 3-hour mark, we must stop debating and offering amendments and come to a final vote (*Congressional Record*, 101st Congress, March 15, 1989, 4158).”

The exchange between Pepper and Martin is included in the notes variable. Other supplementary variables include dummy variables denoting whether or not the rule provided for a full text substitute amendment, whether it provided for en bloc amendments, information on related or companion bills that may have been mentioned in the rule and dummy variables denoting self-executing, and/or king or queen of the hill rules.

A self-executing rule is one that provides “that the House—upon adoption of the special rule—is considered or “deemed” to have taken some other action as well (Binder 2010).” Their usage has also increased throughout the history of the House and they are commonly included in rules resolving differences between House and Senate bills. For example, in the 88th Congress, H.Res. 789 provided for House consideration of H.R. 7152, the Civil Rights Act of 1964, which had just been amended by the Senate. The bill manager, Rep. Emmanuel Celler (D-NY) attempted to concur in the Senate amendments by unanimous consent, but this request was blocked. H.Res. 789 provided that the bill “with the Senate amendment thereto, be, and the same is hereby taken from the Speaker's table, to the end that the Senate amendment be, and the same is hereby agreed to.”

Queen of the Hill and King of the Hill (or “mountain”) rules are unorthodox rules that allow the floor to consider multiple competing proposals, but specify how a winner will be decided. They generally will say something to the effect of “the amendment with the greater

number affirmative votes is to be considered adopted” or “the last amendment to receive a majority of affirmative votes shall be considered adopted.” For example, Hres 198, during the 97th Congress, had a hill rule provision in it. Specifically, it provided that “if more than one amendment in the nature of a substitute has been adopted in the Committee of the Whole, only the last such amendment adopted shall be reported to the House.”⁴⁴

A full listing of supplemental variables can be found in the Codebook tab of the dataset (“House Rules, 59th (1905-1907) - 115th (2017-2018) Congresses”), available here:

<https://www.thecongressproject.com/data>

⁴⁴ The rule covered H.R. 4242, President Reagan’s signature tax plan, which was originally drafted by the Ways and Means Committee Chair, Rep. Dan Rostenkowski (D-IL). The measure included a 15% cut to the individual income tax rate. The rule provided for consideration of two substitute amendments, noting that “if more than one amendment in the nature of a substitute has been adopted in the Committee of the Whole, only the last such amendment adopted shall be reported to the House.”

The first was a liberal proposal by Rep. Mo Udall (D-AZ) that exclusively targets low-income tax payers and was not going to pass. The second is President Reagan's preferred proposal, sponsored by Reps. Barber Conable (R-NY) and Kent Hance (D-TX). It's a 25% cut. The rule manager, Rep. Richard Bolling (D-MO) dubbed it the "most unusual rule and probably the most unusual tax bill in the history of the Republic. It is billed as being the biggest tax bill that we have ever had."

Republicans were fairly supportive of the rule with one exception: it barred them from offering a motion to recommit with instructions. Thus, they tried trying to reject the previous question motion so they could amend the rule to allow for a motion to recommit with instructions. Rep. Jim Jeffords (R-VT): “And so if we want to have a motion to recommit with instructions to remove obnoxious provisions which we feel are obnoxious, as we discussed in the Rules Committee yesterday with respect to oil and the tax giveaways limited to six industries, then it will be necessary for us to vote down the previous question; is that correct?”

Appendix References

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