

# Special Rules in the House of Representatives: Themes and Contemporary Variations

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The Committee on Rules became a standing committee of the House of Representatives in 1880. Shortly thereafter, a series of precedents established the authority of the committee to report resolutions affecting the order of business, to be adopted or rejected by the House by majority vote. Before that time, no accepted procedure existed by which a majority of the House could agree to a special order making a measure, otherwise not privileged, in order for floor consideration:

Special orders have been in use in the House from the early days, but the method of making them has not always been the same. Often they were made by unanimous consent, and sometimes this method is used at the present time. If there was objection they were made by a suspension of the rules, which was in order more frequently in the earlier years than at present. This method was cumbersome, since on any question which involved party differences the attempt was very likely to fail. In 1882, in the first session of the Forty-seventh Congress, it was the usage, and apparently the only method in a case where there was opposition, to offer under motion to suspend the rules a resolution providing for consideration of a bill at a given time. This required a two-thirds vote, and a minority would sometimes refuse consent to the order until they had exacted terms as to kinds of amendments that should be permitted, etc.<sup>1</sup>

In 1883, majority control over the order of business was enhanced when Speaker J. Warren Keifer overruled a point of order made against a resolution from the Rules Committee. Called up by Thomas Reed of Maine, the resolution permitted the House to consider and disagree to Senate amend-

<sup>1</sup> Asher Hinds, and Clarence M. Cannon, *Hinds' and Cannon's Precedents of the House of Representatives* (Washington, 1907, 1936), v. 4, section 3152, 191-92.

ments to a House revenue bill. Speaker Keifer ruled, in effect, that because the Rules Committee could report resolutions to make permanent changes in House rules, or suspend them for general purposes, the committee also could report resolutions changing or suspending these rules temporarily—i.e., for consideration of a particular measure:

In other words, a rule might have been reported from the committee, and properly, which would suspend or repeal or annul or set aside every rule of the House, standing or special; and if the House so decided to affirm that report by a majority vote it could do so. In this case, though it may apply to a single great and important measure now pending before Congress, it seems perfectly clear to the Chair that it would be a rule to the extent that it goes . . .<sup>2</sup>

This reinterpretation of the committee's authority gradually became accepted and established, and stands as one of the most important of those developments during the last decades of the nineteenth century that, collectively, helped to enable the House to work its will by majority vote.

During the almost one hundred years that have followed, the Rules Committee frequently has been embroiled in controversy over the exercise of its power to influence the order of business on the House floor. Under the authority of nineteenth century rulings that were later confirmed and codified in House rules, the committee gained the right to report privileged House resolutions, generally known as special rules or simply as "rules." These rules usually enable the House to take up a measure that otherwise would not be privileged for consideration, and establish the parliamentary conditions under which the measure is to be debated and amended in Committee of the Whole and then in the House. Other types of special rules may affect the consideration of privileged measures. They also may expedite or permit other forms of legislative action. In the process, the committee can affect significantly both the content and the fate of the legislation on which it acts or fails to act.

The manner in which the Rules Committee has exercised this power has led a number of changes in House rules and to two of the most dramatic confrontations that have occurred on the House floor during the twentieth century. From 1880 to 1910, the committee was chaired and dominated by the Speaker, who appointed its other members. Not surprisingly, it served party purposes as they were understood by the Speaker. In his commentary on House precedents, published in 1907, Hinds concluded that the use of special rules (or special orders, as they were called at the time) "since 1890 has been in favor as an efficient means of bringing up for consideration bills difficult to reach in the regular order and especially a means for confining within specified limits the consideration of bills involving important policies for which the majority party in the House may be responsible."<sup>3</sup>

<sup>2</sup> Quoted in *ibid.*, section 3160, 195.

<sup>3</sup> *Ibid.*, section 3152, 192.

The revolt against Speaker Cannon at the end of this period took the form of a resolution to remove the Speaker from the committee and to deny him the right to appoint its members. During most of the next three decades, the committee generally adopted a stance of independent cooperation with the majority party leadership, although several rules changes were made to impose some limits on its independence. As a result of a deadlock over the election of a Speaker for the Sixty-eighth Congress, a number of changes were made in House rules, three of which affected the Rules Committee. First, constraints were imposed on the power of its chairman to refuse to file reports on resolutions that the committee had ordered reported. Second, the committee was denied the right to call up special rules on the same day they are reported, except by a two-thirds vote of the House. Third, the discharge procedures then in effect were made applicable to House resolutions, including special rules, as well as to bills and joint resolutions.

From about 1937 to 1960, the Rules Committee was dominated by a voting majority of Republicans and conservative Democrats, described as a "conservative coalition," that either could prevent bills from coming to the House floor or extract substantive concessions from their proponents as a price for granting special rules. Although the coalition used this leverage selectively, it sometimes found itself at odds with a majority of the majority party and its leadership, except during the two Congresses controlled by the Republicans. The result was the 1961 contest in which, by a vote of 217 to 212, the House voted to increase temporarily the size of the committee—a change that was made permanent at the beginning of the next Congress. Since then, the Rules Committee gradually has developed into a generally consistent ally or agent of the majority party, through its elected floor leaders.

These developments have shaped and re-shaped the relationship between the committee on the one hand and both the majority party and the House membership as a whole on the other. But they have not fundamentally altered or diminished the importance of the committee's decisions for scheduling and organizing the legislative business to be considered on the floor. Its influence remains potent, although it is now being exercised in somewhat different ways and in response to a somewhat different set of institutional and political interests.

Most special rules make in order the initial floor consideration of a measure in Committee of the Whole. In addition, they limit and apportion control of the time for general debate, and may either expand or restrict the rights of members to offer amendments to the measure on the floor. The committee usually decides whether to grant such a rule, and what form it should take, after a hearing scheduled at the request of the chairman of the