

Suspension of the Rules, the Order Of Business, and the Development Of Congressional Procedure

The legislative procedures of Congress are the result of two centuries of continuity and change. This study illustrates this process in the House of Representatives by examining the development of the procedure now known as suspension of the rules. A series of changes in the House's standing rules and precedents during the nineteenth century combined to transform the suspension procedure from a means for the House to escape from the rigidities of its regular order of business into a device by which representatives could secure floor votes on issues of their choice and finally into a well-regulated way in which the House now acts on much of its annual legislative workload.

From 1975 through 1986, during the 94th through 99th Congresses, the House of Representatives passed 6,122 bills and joint resolutions, of which 1,990 or almost one-third were considered on the House floor under the procedure known as suspension of the rules (Bach 1986, 1988).¹ The House uses the suspension procedure so often because it enables members to act expeditiously on legislation that enjoys overwhelming support on the floor. In brief, on any Monday or Tuesday the Speaker has discretionary authority to recognize representatives (usually committee or subcommittee chairs) to make motions to suspend the rules and pass a bill, even if the bill has not yet been reported from committee.² The House then debates both the motion and the bill for no more than 40 minutes, during which members cannot offer any floor amendments.³ After the debate, they cast a single vote on suspending the rules and passing the bill, with a two-thirds vote required for passage.⁴ The suspension motion also has the effect of waiving any points of order that members otherwise could make during the bill's consideration.

This procedure is well established, well known, and well used. Yet it involves two anomalies. First, the House's standing rules include a rule to govern how the House conducts its business when its rules are suspended. Second, this rule takes effect as soon as a representative

moves to suspend the rules, not after the House has voted for that motion. The explanation for these anomalies lies in the development of the House's legislative procedures during the nineteenth century. The suspension procedure that all members recognize today is quite different in form and purpose from the original procedure. And the development of this procedure has been inextricably linked to the more general issue of how the House arranges its order of business by deciding what matters it will consider and when. Moreover, the changing relationship between suspension of the rules and the order of business also sheds some light on other important aspects of the history of the House as a legislative body, including the powers of the Speaker and the prerogatives of individual representatives.⁵

Nineteenth-Century Changes

The rules the House adopted during the 1st Congress did not explicitly provide for an order of business. According to McCall (1911, 67), "There was ample time in those days for the transaction of all business that was offered, and it was not necessary for the House to discriminate between measures." "To avoid favoritism," Alexander (1916, 182) concludes, "all bills were considered in the order of their introduction unless otherwise specially directed." But the House could not sustain this approach for long. Initially, "the House being able to dispose of all that came before it, the question of order and precedence was not important"; but "as the business of the House enlarged and became more than could be comfortably transacted, order and selection became vital questions" (Hinds 1907, 4:142). "Certain simple usages" evolved by custom and practice until 1811, when the House adopted its first rule on the order of business.

Under this rule, the House first disposed of the Journal each day and any petitions that members presented from private citizens. Then it received and considered measures from its committees, after which it returned to any unfinished business from the previous day (Alexander 1916, 214). Instead of acting immediately on each bill its committees reported, however, the House often decided to make a particular measure an "order of the day" for consideration on another date. So the House could deviate from its rule on the order of business and decide for itself whether and when it would consider each of the measures from its committees. Over the following years, the House limited the time it devoted to measures its committees had reported that day and reserved more of its time for considering bills that it already had designated as orders of the day (Hinds 1907, 4:142-43).

One problem with orders of the day was that they evidently were arranged at first only by unanimous consent. This was probably one reason why the House decided in 1822 to permit its rules to be suspended by a two-thirds vote. The relationship between suspending the rules and creating an order of the day—or a special order, as it came to be known—was made more explicit six years later when the House again amended the same rule: “Nor shall the order of business, as established by the rules, be postponed or changed, except by a vote of at least two-thirds of the Members present” (Hinds 1907, 5:902). The House parliamentarian observes that this development “marks the great purpose of the motion, which was to give a means of getting consideration for bills which could not get forward under the rule for the order of business” (U.S. Congress 1987, 644).

Thus, in 1834, the House suspended its rule on the order of business, by a two-thirds vote, so that James K. Polk (D.-TN) could offer the following resolution: “Resolved, That the report of the Committee on Ways and Means on the removal of the public deposits from the bank of the United States, made on the 4th of March, 1834, and the resolutions thereto appended, be the standing order of the day for Tuesday next, at 1 o’clock, and on each succeeding day in every week, Saturdays excepted, at the same hour, until disposed of.” Hinds (1907, 4:193–94) also reports that “special orders for disposing of particular matters of legislation, such as appropriation bills and other important measures, began to be used quite frequently in the first session of the Twenty-fourth Congress (1836).”⁶ The requirement for a two-thirds vote protected the standing rule on the order of business from being set aside by a mere majority; on the other hand, a single member no longer could prevent the House from making special arrangements for individual bills.

In one important respect, then, the House used suspension motions during the first half of the nineteenth century for much the same purpose they are used today: to bring bills to the floor sooner than they would be reached (if reached at all) under the regular order of business. But there was an equally important difference. Before the Civil War, the usual purpose of a suspension motion was to make consideration of a measure in order, not to bring it to the House floor and pass it at the same time. After the House agreed to the motion, it then would act on the measure itself according to its regular legislative procedures. In 1868, however, Elihu Washburne (R.-IL) moved to suspend the rules and adopt, not merely consider, a resolution establishing procedures for debating the impeachment of Andrew Johnson. Speaker Colfax overruled a point of order that the House had a right to vote separately