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Suspension of the Rules in the House of Representatives

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Summary

Suspension of the rules is a procedure the House of Representatives uses frequently to debate and pass measures on the floor. After a Representative moves to suspend the rules and pass a particular measure, there can be 40 minutes of debate on the motion and the measure. No floor amendments to the measure are in order. However, the Member who offers the suspension motion may include amendments to the measure as part of the motion. In that case, the Member moves to suspend the rules and pass the bill or resolution as amended. At the end of the debate, the House casts a single vote on suspending the rules and passing the measure. There is no separate vote on the measure or on any of the amendments to it that are included in the suspension motion. Each suspension motion requires a vote of two-thirds of the Members present and voting, a quorum being present.

The Speaker determines which suspension motions the House will consider. The Speaker has discretion to recognize Members to offer suspension motions, which usually are in order only on every Monday and Tuesday. The Speaker also may postpone electronic votes, and requests for them, on suspension motions until later on the same day or on the following day, and then cluster those votes to occur one right after the other.

The suspension procedure is well-suited for expeditious action on relatively non-controversial measures. Between one-third and one-half of the bills and resolutions the House has passed in recent Congresses have been considered in this way. The House also sometimes agrees to suspension motions for other purposes, such as to agree to Senate amendments to a bill the House already has passed.

In early Congresses, motions to suspend the rules were used primarily to give individual bills priority for floor action. When considered, these bills were debated and amended under the House's regular legislative procedures. Gradually during the 19th century, the suspension motion was transformed into a procedure for taking up and acting on a bill by one vote. Also originally, Members claimed the right to be recognized for the purpose of offering whatever suspension motions they wished. Late in the last century, the Speaker asserted the authority to decide which Members would be recognized to make suspension motions and the purposes for which these motions would be offered.

This control by the Speaker transformed suspension of the rules into a useful and well-regulated device for the majority party leadership to schedule floor action on measures that enjoy support by more than a simple majority of the House. As the legislative business of the House increased, so too did the opportunities to offer suspension motions, which now are in order every Monday and Tuesday, and at other times by unanimous consent or pursuant to a special rule the House has adopted.

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Introduction

The legislative procedures of the House of Representatives strike a balance between two requirements: that the House act with reasonable dispatch, but that it act only after adequate deliberation, with an opportunity for differing positions to be considered. The most appropriate balance between these requirements varies from one measure to the next. Many bills and resolutions are relatively routine; they evoke little controversy and disagreement, and the House passes them quickly. Others provoke more interest and debate among Members, so the House usually considers them at greater length. The rules and practices of the House take these differences into account, providing a necessary flexibility in the procedures by which individual measures are considered on the House floor.

Measures to which there is virtually no opposition may be called up and passed by unanimous consent, generally with little discussion and no floor amendments. By contrast, the most important measures are considered in Committee of the Whole, and are debated and amended under the terms of resolutions—or special rules—reported by the Committee on Rules and adopted by the House. In specifying the number of hours for general debate and perhaps imposing restrictions on the amendments that Members may offer in Committee of the Whole, each such resolution is adapted to the nature of and circumstances surrounding the measure it proposes to make in order. Consideration of measures in the House (under the one-hour rule) or in the House as in Committee of the Whole (as opposed to consideration in Committee of the Whole and then in the House) impose different conditions and restrictions on floor action.

An alternative to these procedures for considering measures on the House floor is a special set of procedures known as suspension of the rules. This mode of consideration limits opportunities for debate and amendment, and, consequently, is generally reserved for measures that are relatively non-controversial. This report summarizes the current rules and practices governing House floor action under suspension of the rules and then discusses the evolution of these procedures.

Current Procedures

The House considers measures under suspension of the rules pursuant to clause 1 of Rule XV.[1] (Until the House recodified its rules by adopting H.Res. 5 on the first day of the 106th Congress, rules governing suspension procedures were found in the first two clauses of Rule XXVII and in several other provisions of House rules.)

A Representative usually makes a motion to suspend the rules and pass a bill or resolution; agreement to the motion also constitutes passage of the measure. Rule XXVII provides for a maximum of 40 minutes of debate on both the motion and the measure, and it precludes all floor amendments. Passage of a measure under suspension of the rules requires a two-thirds vote of the Members voting, a quorum being present.

Motions to suspend the rules may be considered, at the discretion of the Speaker, on Monday and Tuesday of each week, during the last six days of a session, and at other times by unanimous consent or pursuant to a resolution reported by the Rules Committee and adopted by the House.[2] The Speaker is authorized to entertain such motions at these times, but he is not required to do so.[3] If a Member is to make a suspension motion, it must have the support, or at least the acquiescence, of the Speaker. Representatives consult with the Speaker before they are recognized for this purpose; no Member has the right to make such a motion.

When the Speaker intends to entertain a suspension motion, the majority party leadership normally gives advance notice to all Members through published whip notices. Also, during the last floor session of each week, majority and minority party leaders usually engage in a discussion on the floor about the anticipated floor schedule for the following week, including whatever measures are likely to be considered under suspension. At this and other times, Members sometimes refer to the "suspension calendar." By this they mean the unofficial list of measures that are scheduled for consideration under suspension. There is no official list of these measures, as there is for measures that have been placed on the Union, House, or Corrections Calendar.

The Speaker may recognize any Member to offer a suspension motion. Almost always, however, these motions are made by the chairman of the committee or subcommittee with legislative jurisdiction over the measure in question. A Representative recognized for this purpose usually states, "Mr. Speaker, I move to suspend the rules and pass the bill H.R. 000," and, in a few words, summarizes its principal purposes or provisions. The suspension procedure also may be used for

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[1]References in this report to the current rule are to Rule XV; references to rules that governed suspension motions before the 106th Congress are to Rule XXVII or to other House rules as they were then numbered.

[2] *Deschler's Precedents of the United States House of Representatives*, vol. 6, chapter 21, section 21.10 (hereafter cited in the form of *Deschler*, 6, 21.10).

[3] *Deschler* 6, 21.11.4-6.

other purposes—for example, to concur in a Senate amendment or to agree to a conference report.[4]

The House may consider a measure under suspension of the rules even though it has not been reported from committee or even if it has not already been introduced and referred to committee.[5] More often than not, bills and resolutions are considered under this procedure only after they have been reported favorably from committee. However, if a committee expects the House to consider one of its bills under suspension, there is no need for the committee to satisfy the requirements of House rules for reporting it (*e.g.*, securing the presence of a majority quorum to vote on approving the measure, and preparing a written committee report to accompany it). Furthermore, House Republican Conference rules direct the Speaker not to permit a bill to be considered under suspension if it would authorize or appropriate funds, or provide direct or indirect loan commitments or guarantees, in an amount greater than $100 million in any fiscal year, except with the approval of a majority of the party's elected leadership.

Because suspension motions require two-thirds votes for passage, they usually are not offered unless the measures they propose to pass enjoy significant bipartisan support, especially on the committees with legislative jurisdiction over the measures in question. In fact, Republican Conference rules also direct the Speaker not to entertain a motion to pass a measure under suspension unless that bill or resolution "has been cleared by the ranking minority member and was not opposed by more than one-third of the committee members reporting the bill." A majority of the party's elected leaders also can vote to waive this requirement.

The House cannot vote against considering a suspension motion.[6] Once the motion is made, the Speaker typically announces that the 40 minutes for debating it will be equally divided between the chairman and the ranking minority member of the committee or subcommittee with jurisdiction over the measure in question.

However, clause 1(c) of Rule XV provides that the 40 minutes is to be divided between those "in favor of" and those "in opposition to" the motion, not merely between members of the majority and minority parties. Consequently, another minority party member may inquire if the ranking minority member opposes the motion. If he or she does not, which usually is the case, the Speaker assigns control of half the debate time to a Member who is opposed.[7] Such challenges are rare because opponents usually can obtain sufficient time to present their case from the ranking minority member, whatever his or her personal position may be.

The House then debates the suspension motion for a maximum of 40 minutes, with the allocation of time being at the discretion of the two Members controlling it.

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[4] *Congressional Record*, December 16, 1981, pp. 31668, 31743; *Deschler*, 6, 21.9.5.

[5] *Congressional Record*, December 16, 1981, pp. 31668, 31743; *Deschler*, 6, 21.9.5.

[6] As discussed in later sections, Members once could decline to consider some or all suspension motions by voting against ordering seconds on them. This opportunity was restricted in 1979 and eliminated in 1991.

[7] *Congressional Record*, May 4, 1981, pp. 8323-8324.

Each of them usually makes an opening statement on the measure in question, and then yields to other Members who wish to participate in the debate. After the 40 minutes have elapsed or after all requests for debate time have been satisfied, the House votes on the motion to suspend the rules and pass the bill. There is one vote on both parts of the motion; it is not divisible.

Measures considered under suspension of the rules are not subject to amendment from the floor, not even pro forma amendments offered for purposes of extending the debate.[8] However, amendments to the measure can be included in the motion to suspend the rules. More often than not, these amendments are committee amendments.[9] In such a case, the majority floor manager moves to suspend the rules and pass the bill "as amended." No separate votes on the amendments are permitted; after debate, the House casts one vote on the motion and on the measure as amended.[10]

Moving to suspend the rules and pass a measure has the effect of waiving all rules of the House (including provisions of the Budget Act) under which Members might otherwise make points of order against the measure, any of its provisions, or the amendments included in the motion.[11] Points of order may be made against the motion itself—for example, if it is offered on a day not permitted by Rule XV—but the $100 million ceiling imposed by Republican Conference rules cannot be enforced on the floor because it is not a rule of the House.

Clause 1(b) of Rule XV states that, "[p]ending a motion that the House suspend the rules, the Speaker may entertain one motion that the House adjourn. After the result of such a motion is announced, the Speaker may not entertain any other motion until the vote is taken on the suspension." Consequently, it is not in order to move to postpone, recommit, refer, or table either the motion or the measure.

Passage of a measure under suspension of the rules requires support by two-thirds of the Members present and voting, a quorum being present. The vote may be taken by voice, by division, or by electronic device or roll call. Clause 8 of Rule XX permits the Speaker to postpone and cluster record votes on suspension motions until a later time on the same day or within two legislative days. This procedure is for the convenience of the Members, who might otherwise have to cast a series of record votes at intervals of no more than 40 minutes.

If a number of motions to suspend the rules are scheduled for consideration on the same day, and especially if record votes are expected on several or all of them, the Speaker usually announces before the first suspension motion is offered that he or she will “postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to” because of the absence of a quorum. He also announces when the postponed votes will take place—either later on the same day or at some other time

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[8] *Deschler*, 6, 21.14.

[9] *Deschler*, 6, 21.14.1

[10] *Deschler*, 6, 21.15.5.

[11] *Deschler*, 6, 21.9.8.

within two legislative days. For example, the House sometimes debates suspension motions on Monday, but the Speaker defers any electronic votes on them until Tuesday.

If a Member then obtains a record vote on a suspension motion, or if he or she objects to a voice or division vote on the ground that a quorum is not present (and makes a point of order to that effect), the Speaker announces that further proceedings on the motion will be postponed. If a point of no quorum has been made, this point of order usually is withdrawn by unanimous consent after the Speaker's announcement; otherwise a quorum call would occur and the purpose of postponing further action on the suspension motion would be lost. The House then proceeds to consider additional motions to suspend the rules, either taking final action on each by a non-record vote or postponing final action if a record vote is required.

When the time arrives for voting on the postponed motions, the votes occur one after the other, and in the order in which the motions had been offered. Before the first of these votes takes place, the Speaker may announce that the time available for the first vote will be 15 minutes, but that only 5 minutes will be allowed for the second and each succeeding vote. The practice of postponing and clustering votes reduces the number of times that Members have to come to the floor to vote on suspension motions, especially on Mondays when many Representatives have other commitments. Also, limiting the time for conducting most clustered votes to 5 minutes each reduces the total time devoted to voting when most Members already are on the floor.

If a measure is passed under suspension, a Member may move to reconsider the vote by which the House agreed to the motion; such reconsideration motions usually are laid on the table (and thereby killed). In practice, the Speaker often announces that, "without objection, a motion to reconsider is laid on the table." No motion to reconsider is in order if a suspension motion fails.

A bill that is considered but not passed under suspension of the rules is not necessarily dead. When the House rejects a suspension motion, it decides only that it is not prepared to pass the bill in question under the procedural constraints of the suspension procedure. The bill may be brought before the House again for further consideration, usually in Committee of the Whole under the terms of a special rule, at a later date during the same Congress.[12]

As the following sections of this report demonstrate, the procedures for suspending House rules originally were a useful device to supersede the regular order of business so that the House could take up the bills it considered most timely and important. During the 19th century, however, these procedures also became an attractive way for individual Members to bring matters of their choice to the floor, leading to criticisms that such motions often were disruptive and time-consuming distractions from the orderly consideration of legislation.

As a result, the House gradually imposed restrictions on suspension motions—limiting the days on which they could be offered, requiring majority votes

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[12] *Deschler*, 6, 21.15.8.

to consider them, and, finally, giving the Speaker control over them through his discretionary power of recognition. In addition, the House devised an alternative way to set aside the order of business: through resolutions that the Rules Committee reports and that the House adopts by simple majority vote.

During the 20th century, suspension motions came to be an increasingly established and accepted means for taking up and passing relatively noncontroversial bills that enjoy bipartisan support. Although the available data are incomplete and not always comparable from Congress to Congress, they do indicate that the use of suspensions has in fact increased during recent Congresses.

In part, these data reflect the fact that, at the beginning of the 93rd Congress, the number of suspension days was increased from the first and third Mondays of each month to the first and third Mondays and Tuesdays, and then, at the beginning of the 95th Congress, to every Monday and Tuesday (in addition to the last six days of each session). However, changes in the numbers of suspension motions undoubtedly are attributable as well to changes in congressional workload and to the success of committees in resolving legislative issues before they reach the floor.

The frequency with which the House has agreed to the suspension motions that Members have offered suggests that, in most cases, measures considered in this way would have passed if they had been considered under less restrictive procedures. On the other hand, there undoubtedly have been instances in which measures have been brought to the floor under suspension motions in order to minimize debate and especially to preclude amendments.

Some Representatives also have argued that considering measures under suspension, and then clustering votes on a series of such motions, discourages Members from informing themselves in detail about the measures and their probable effects. The very fact that a bill or resolution is considered under suspension may be taken by some as evidence that it does not require as much careful and skeptical scrutiny as other measures. Therefore, critics have argued, the increasing use of suspension motions to achieve efficiency and save time may have detracted from the care and deliberation with which the House should act.

In its legislative procedures, the House needs to strike a difficult balance between deliberation and dispatch. The history of the suspension procedure, to be discussed in the remainder of this report, offers clear evidence that the House has adjusted, and undoubtedly will continue to adjust, its rules and practices as they affect this balance in response to the changing pressures and circumstances the House confronts.

Suspension Motions[13]

Congress	Considered	Passed	Not Passed
77	12	10	2
78	10	10	0
79	9	8	1
* * * *			
89	212	205	7
90	167	159	8
91	185	181	4
92	194	184	10
93	255	254	1
94	325	300	25
95	453	420	33
96	406	386	20
97	423	253	20
98	423	408	15
99	NA	349	NA
100	614	510	NA
101	583	502	NA
102	615	NA	NA
103	467	NA	NA
104	401	NA	NA
104	614	599	15
106	894	878	16

Historical Development

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[13] The data for the 77th-79th Congresses are presented in George Galloway, *The Legislative Process in Congress* (New York: Thomas Y. Crowell Company, 1953), pp. 537-539. Mildred Amer of the Congressional Research Service compiled the data on the 89th-92nd Congresses in a December 18, 1974, report on "Bills Considered Under Suspension of the Rules in the House of Representatives, 89th-92nd Congresses." Data for the 93rd-98th Congresses were obtained from the automated databases of the House and Senate LEGIS systems. Data on suspension motions *passed* during the 99th-101st Congresses were compiled by Donald Wolfensberger, then the minority staff director of the House Rules Committee, and include only suspension motions providing for initial House passage of bills and joint resolutions. Data on suspension motions *considered* during the 100-104th Congresses are taken from *Suspension of the Rules in the House: Measure Sponsorship by Party*, CRS Report for Congress 97-901, February 11, 1998, by Richard S. Beth, Jennifer Manning, and Faye M. Bullock. Data for the 105th and 106th Congresses were derived from the Legislative Information System.

Since at least the third decade of the 19th century, there has been some provision in the rules of the House for suspending the rules in order to facilitate the conduct of business. According to Hinds:[14]

> In the First Congress, where the membership was small, no limitation was put upon motions to change the rules; but on November 13, 1794, this rule was agreed to:
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> No standing rule or order of the House shall be rescinded without one day's notice being given of the motion therefor.

On December 23, 1811, the words "or changed" were added after "rescinded." Eleven years later, on March 13, 1822, the rule was modified by adding the following:[15]

> Nor shall any rule be suspended, except by a vote of at least two-thirds of the Members present.

On April 26, 1828, the rule was again amended:[16]

> 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.

Thus, by the 20th Congress, it had become established that an extraordinary majority of the House could set aside its rules temporarily, including the rules governing the order of business.

During the many Congresses that followed, these provisions developed into the procedures described in the preceding section. In this section, these developments are discussed under the following four headings: (1) For what purposes are the rules suspended: (2) When may the rules be suspended? (3) Who decides what suspension motions the House shall consider? and (4) Under what procedures are suspension motions considered?

For What Purposes Are the Rules Suspended?

Although the House needed to develop an order of business that imparted some regularity and predictability to its proceedings, it became equally necessary for the House to have some means to bypass this order of business on occasion. According to Alexander:[17]

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[14] *Hinds' and Cannon's Precedents of the House of Representatives*, vol. V, section 6790 (hereafter cited in the form *Hinds and Cannon*, V, 6790).

[15] Ibid.

[16] Ibid.

[17] DeAlva Stanwood Alexander, *History and Procedure of the House of Representatives* (Boston: Houghton Mifflin Company, 1916), p. 214.

> In 1811, the rules provided this order of business: (1) Prayer; (2) reading and approval of the Journal; (3) presentation of petitions; (4) reports from committees; (5) unfinished business; and (6) consideration of reports assigned to a future day, known as "orders of the day." The rapid increase of routine legislation, however, kept parliamentarians busy inventing new devices for the advancement of important measures. The practice of mortgaging the future with "orders of the day" became so unwieldy that the House cut off debate respecting the priority of such business and gave precedence to "special orders of the day." Subsequently it limited (1822) petitions and reports to a "morning hour" of sixty minutes, required a two thirds vote to suspend the rules, gave up Saturdays as well as Fridays to the consideration of private bills, and fixed a definite time for disposing of business "on the Speaker's table"—a parliamentary term indicating the temporary abode of certain messages from the President, communications from heads of departments, bills with Senate amendments, conference reports, and other matters which await the Speaker's presentation to the House.

The opportunity to suspend the rules was a particularly useful device "for the advancement of important measures." The commentary accompanying Rule clause 1 of Rule XV in the compilation of House rules for the 106th Congress referred to the 1828 rules change and noted that:[18]

> This provision 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.

The rules were suspended when the regular order of business impeded action that the House wished to take. For example, Hinds cites an instance in 1834 when the rules were suspended so that Representative James K. Polk could offer the following resolution.[19]

> 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; and that until the hour of 1 o'clock p.m. on each day, the business of the House shall proceed in the order prescribed by the rules of the House; but it shall be in order to present petitions and memorials on Mondays.

According to Hinds, "[s]pecial 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), and the index of the Journal shows a considerable number of them proposed and

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[18] *House Rules and Manual, 106th Congress*, p. 621.

[19] *Hinds and Cannon*, IV, 3156.

adopted."[20] Such special orders could only be arranged by unanimous consent or by suspension of the rules. Thirty-two years later, it was by suspension of the rules that the House considered and agreed to a resolution establishing procedures for debating the impeachment of President Andrew Johnson.[21]

During this period, motions were made to suspend the rules for a variety of purposes, such as dispensing with the reading of amendments.[22] However, suspension motions had their greatest impact on House procedures as a means for setting aside the regular order of business in favor of particular measures.

In the case of the 1868 motion regarding the Johnson impeachment, after Representative Washburne of Illinois moved to suspend the rules and agree to the resolution, Speaker Colfax overruled a point of order that the House had a right to vote separately on suspending the rules and then on agreeing to the resolution.[23] But the usual practice at that time was for a Member to move to suspend the rules to make consideration of a measure in order. The measure itself then would be considered under the regular procedures of the House. The use of the suspension motion for this purpose had the advantage of altering the normal order of business, but it also had the disadvantage of requiring a two-thirds vote. For this reason, an alternative procedure was developed for bringing measures before the House for consideration:[24]

> 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. . . .
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> It was in the second session of the Forty-seventh Congress, in 1883, that the method of adopting a special order by majority vote after a report from the Committee on Rules was first used. This method was not in great favor in the next three Congresses, but in the Fifty-first Congress it was used frequently, and since 1890 has been in favor as an efficient means of bringing up for consideration bills difficult to reach in the regular order

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[20] *Hinds and Cannon*, IV, 3158.

[21] *Hinds and Cannon*, IV, 3159.

[22] *Hinds and Cannon*, V, 5278.

[23] *Hinds and Cannon*, V, 6846; *Congressional Globe*, February 25, 1868, p. 1425.

[24] *Hinds and Cannon*, IV, 3152.

> and especially as 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.
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> Sometimes special orders are made yet by unanimous consent or under suspension of the rules, but only as to matters to which the opposition is not extensive.

Once it became accepted that the House could temporarily put aside its order of business by adopting, by majority vote, a resolution reported by the Rules Committee, the use of motions to suspend the rules for this purpose fell into decline.[25] However, this usage did not immediately disappear altogether. In 1906, Representative Dalzell of Pennsylvania moved to suspend the rules to make a specific bill in order for consideration at any time. In response,[26]

> Mr. David A. De Armond, of Missouri, made the point of order that this proposition ought to go to the Committee on Rules, because it provided for precisely the same condition of things that existed when a measure was reported from the Committee on Rules. Suspension day was to dispose of things, not to provide for their disposal at some other time, and this was really in effect a special rule without having been referred to the Committee on Rules.

The Speaker overruled the point of order, saying:

> The Chair will state to the gentleman from Missouri that his point of order, in the opinion of the Chair, is not well taken. This is one of the Mondays in the month when it is in order to move to suspend the rules and do anything where a Member is recognized, providing two-thirds of the Members vote for the motion.

This ruling by Speaker Cannon indicates that motions to suspend the rules continued to be made for purposes other than to take up and dispose of measures. For example, in 1908, Representative Dalzell offered a resolution on which the House ordered the previous question. Another Member then demanded a division of the question into several parts, at which point Representative Dalzell moved to suspend the rules and agree to the resolution. A point of order was made against the motion but was overruled by Speaker Cannon.[27] Three years later, a point of order was raised against a conference report when it was called up for consideration. Before the Speaker ruled, Representative Burleson of Texas moved to suspend the rules and agree to the report. The Speaker overruled a point of order against the

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[25] *House Rules and Manual, 106th Congress*, p. 621.

[26] *Hinds and Cannon*, IV, 3154.

[27] *Hinds and Cannon*, VIII, 3418.

motion.[28] Notwithstanding these instances, however, the use of suspension motions was becoming more restricted, although not to the extent that it currently is.[29]

In general, then, during early Congresses, the rules were suspended when the House found it advisable to set aside the regular order of business in favor of particular measures. Of lesser importance, the rules also were suspended when the House wished to set aside another rule under special circumstances. After the practice developed of adopting special rules reported by the Committee on Rules, a change occurred in the primary use of suspension motions. They came to be used principally to enable the House to take up and dispose of measures that did not evoke substantial opposition, especially opposition that divided the House along partisan lines.

More recently, however, some Members contended that the suspension procedure was being used excessively and inappropriately, and especially to the disadvantage of the minority party. In March 1975, for example, the House Republican Task Force on Reform issued a series of proposals for changing House organization and procedure. Its statement on suspension of the rules included the following:[30]

> It is clear from the legislative record of the 93d Congress that the more the suspension procedure is used, the more it is abused, to the detriment of sound legislative practice and results. The fact that numerous bills were defeated under suspension and that some were even cynically brought up under suspension for the very purpose of defeating them, is sufficient evidence that this procedure must be modified and restricted ....
>
> While we do not favor the outright repeal of the suspension procedure and recognize its utility if limited to minor non-controversial legislation, we must strongly protest its increasing utilization for cynical purposes or on major, controversial bills. While our committees ordinarily do a thorough and responsible job on the legislation they report, their work should not be allowed to go unchallenged or unaltered on the House floor or to pass in substitute for the will of the House. The full and free working of the legislative process should not be sacrificed for the sake of expediency.

Representative Cleveland of New Hampshire made much the same argument at a 1978 hearing of the Rules Committee.[31]

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[28] *Hinds and Cannon*, VIII, 3422.

[29] See also *Hinds and Cannon*, VIII, 3421.

[30] John J. Rhodes, *The Futile System* (Garden City, NY: Doubleday and Company, 1977), p. 141.

[31] Statement of Representative James C. Cleveland before the Subcommittee on Rules and Organization of the House, House Committee on Rules, on H.Res. 1246, August 14, 1978, p. 4.

> At the same time . . . the legislation considered under suspension has more and more frequently included the highly significant. Already, dozens of non-routine measures have been identified on the suspension calendar *[sic]* during the present Congress. They were judged to be non-routine on the basis of such criteria as: amount of spending authorized, creation of new programs or expansion of existing ones, impact on the general public, known amendments desired to be offered, substantial negative vote in committee or subcommittee, opposing views in the committee report, an Administration position at odds with the legislation, etc.

Such concerns were not limited to Members of the minority party. During the autumn of 1978, the New Members Caucus of Democratic Representatives first elected to the 95th Congress supported a rules change to the effect that a "motion to suspend the rules and pass a bill or resolution shall not be in order if it makes or authorizes appropriations which may be in excess of $100,000,000 for any fiscal year."[32] Similarly, 58 percent of the Members of the House Democratic Study Group responded to a survey on possible changes in the House by supporting the general proposition that the House should "[e]stablish strict standards to restrict bills on suspension to those which are truly routine and which do not contain authorizations in excess of $1 million."[33]

The Democratic Caucus responded to these concerns, as well as to concerns about the sheer number of bills considered under suspension, when it held its organizational meetings after the 1978 congressional election.[34] Faced with the difficulty of establishing guidelines for measures that should be taken up under suspension of the rules, the caucus accepted a cost criterion. But instead of proposing an additional amendment to House rules, the caucus amended its own rules instead. The new caucus rule generally directed the Speaker not to schedule a bill or resolution for consideration under suspension if a legislative or executive branch cost estimate indicated that the measure would make or authorize appropriations of more than $100 million in a fiscal year. The same rule also provided that the Democratic Steering and Policy Committee could authorize exceptions to the rule. At that time, the Democratic Caucus could impose such a directive on the Speaker because, as the majority party, it nominated him for the election that occurs on the first day of each new Congress. However, the $100 million ceiling could not be enforced on the House floor because it was not a rule of the House itself.

The Republican majority has adopted Conference Rule 28 that imposes the same $100 million ceiling. The Republican party rule also includes another provision that recognizes that suspension motions almost always need some support

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[32] Statement of the 95th Congress New Members Caucus of the U.S. House of Representatives (undated).

[33] Memorandum dated October 3, 1978, to Democratic Study Group members from Representative Abner J. Mikva, chairman, on "Proposed Rules and Procedural Changes."

[34] *Congressional Quarterly Weekly Report*, September 30, 1978, pp. 2693-2695; *Congressional Quarterly Weekly Report*, December 9, 1978, pp. 3405-3406.

from Members of the minority party if the motions are to pass. To protect the House from investing time in considering suspension motions that are very unlikely to pass, because they confront significant minority party opposition, the rule directs the Speaker not to schedule any measure for consideration under suspension unless it "has been cleared by the ranking minority member [of the committee of jurisdiction] and was not opposed by more than one-third of the committee members reporting the bill." Both these directives may be waived by a majority of the elected Republican leadership.

When May the Rules Be Suspended?

Since the 1820s, there also have been changes in the days on which Members may move to suspend the rules. These changes first decreased, and then increased, opportunities for suspension motions. Originally, such motions were in order daily, and were made by leaders of the House in order to arrange the order of business, but also by other Representatives for their own purposes. It appears that individual Members made suspension motions so often that they eventually disrupted the orderly and timely consideration of legislation. Consequently, by 1847, the rules of the House had been amended to permit the motions only on Mondays and during the last 10 days of a session, except when made for specific purposes:[35]

> Except during the last ten days of the session, the Speaker shall not entertain a motion to suspend the rules of the House at any time except on Monday of every week; provided nothing herein contained shall be construed to alter so much of the 133d rule as provides as follows: "The House may, at any time, by a vote of a majority of the members present, suspend the rules and orders for the purpose of going into Committee of the Whole House on the state of the Union; and also, for providing for the discharge of the committee from the further consideration of any bill referred to it, after acting, without debate, on all amendments pending, and that may be offered."

Hinds quotes Representative Barringer of North Carolina as supporting this limitation because he had seen "week after week, and month after month, the whole morning hour, and perhaps two or three hours each day, consumed in making motions to suspend the rules, a motion which had become so common as to be considered almost a test vote."[36]

It seems likely that the opportunity to move to suspend the rules at the end of a session was used frequently by Members on behalf of measures of limited importance or parochial interest. As Follett wrote in 1895:[37]

> During the last 10 days of Congress, when the rules may be suspended at any time, the power of the Speaker is at its height.

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[35] *Congressional Globe*, December 18, 1847, p. 47.

[36] *Hinds and Cannon*, V, 6790.

[37] Mary Parker Follett, *The Speaker of the House of Representatives* (New York: Longmans, Green, 1902. pp. 253-254.

> Tremendous pressure is brought to bear on him. Day and night his room is crowded with members begging for recognition. The struggle on the floor is severe. The time is brief. Twice on March 3, 1887, Carlisle had the minute-hand of the clock turned back. The last moments often show a scene of disorder and confusion, but the able Speaker guides this tumultuous body to the accomplishment of his own ends.

In the general revision of the rules made in 1880, the rules affecting suspension motions were changed in four significant respects. First, the Committee on Rules recommended, and the House agreed to, an amendment providing that motions to suspend the rules should be seconded by a majority vote, taken by tellers, if a second was demanded. Second, the House also agreed to the committee's recommendation that motions to suspend the rules, when seconded, should be debatable for 30 minutes. These amendments are discussed under later headings of this report.

Third, the new rule regarding Committees of the Whole no longer included provision for the rules to be suspended at any time for the purpose of going into Committee of the Whole or discharging the committee from further consideration of a measure referred to it. (This provision had been part of the 1847 rule governing suspension of the rules, quoted above, but in 1860 was placed instead with other rules affecting Committees of the Whole.) The elimination of this provision seems to indicate that motions to suspend the rules were no longer being used as a primary means for structuring the order of business on the House floor.

This conclusion also is supported by comments made in debate on another amendment to the proposed new Rule XXVIII on suspension of the rules (formerly Rule 145). In this fourth major change in procedure, the House agreed to a proposal made by Representative Frye of Maine, on behalf of the Rules Committee, that motions to suspend the rules be allowed only on the first and third Monday of each month, instead of every Monday, with preference to be given to individual Members on the first Monday and to committees on the third Monday.

A theme of the 1880 debate was that Members were not using the opportunity to move to suspend the rules for serious legislative purposes. In support of limiting suspension motions to two days per month, Representative Frye argued:[38]

> It will at once be seen what this amendment will effect if adopted. It will leave all the Mondays but two in each month for useful business and legislation. Under the present rule motions for suspension of the rules can be made on every Monday. Now, few gentlemen in this House have failed to see what the effect of such a rule as that has been. . . . And since I have been in the Congress the result has been that two-thirds of the time on each Monday has been utterly and entirely wasted.
>
> In the first place, it is understood that any gentleman under the present rule may bring before the House any resolution he may see fit, and compel us to vote upon it. Political resolutions are in order, and to prevent their being offered to the House every now and then we adjourn

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[38] *Congressional Record*, February 27, 1880, p. 1195.

> immediately after the call of States has been completed, and the remainder of that Monday is wasted.
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> * * * * * * * *
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> It seems to me that we have been sent here for some useful purpose, to do some good, not to be compelled to go upon the record on foolish propositions, on propositions the majority of which are mere humbug propositions—simply, thin attempts at demagogy. That is true of two-thirds of the individual resolutions which have been offered on Monday.

Representative Harris of Virginia agreed with Frye and stated that he had "prepared an amendment which will cut off on every Monday these resolutions looking alone to mere expressions of opinion, and not leading to any useful legislation for the country."[39] Other Members asserted that the time of the House should be protected by permitting the rules to be suspended only for consideration of measures that had been reported favorably by committee and distributed to the Members in printed form—requirements that also would protect against precipitate passage of legislation at the end of congressional sessions.

Speaking against these proposals, Representative Gillette of Iowa contended that the motion to suspend the rules "is the only door open, if it is open, to an individual who is in the minority in this House and wishes to bring some measures before this body for action...."[40] However, the majority evidently concluded that suspension motions had become a nuisance and embarrassment that should be curtailed. Although no limitations were placed on what suspension motions might be offered, the House did reduce from four days to one day per month the opportunity for individual Members to make such motions. The third Monday of each month was reserved for Members, acting on behalf of committees, to offer suspension motions for consideration of measures that had been reported favorably.

When the newly revised House rules were published in June 1880, Rule XXVIII, on change or suspension of rules, read as follows:[41]

> 1. No standing rule or order of the House shall be rescinded or changed without one day's notice of the motion therefor, and no rule shall be suspended except by a vote of two-thirds of the members present, nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month after the call of States and Territories shall have been completed, preference being given on the first Monday to individuals and on the third Monday to committees, and during the last six days of a session.
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> 2. All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers, if demanded.

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[39] Ibid.

[40] Ibid., p. 1196.

[41] *House Rules and Manual, 46th Congress, 2d Session* (June 1880), pp. 184-185.

> 3. When a motion to suspend the rules has been seconded, it shall be in order, before the final vote is taken thereon, to debate the proposition to be voted upon for thirty minutes, one-half of such time to be given to debate in favor of, and one-half to debate in opposition to, such proposition, and the same right of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.

Until 1973, the rule governing the suspension procedure continued to give preference to committees on the third Monday of each month. In 1890, Speaker Reed ruled that a motion to suspend the rules and pass a measure could be made on behalf of a committee only if the measure had been referred to that committee.[42] In the same year, he also ruled that a Member offering a suspension motion on behalf of a committee had to be formally and specifically authorized to do so by the committee.[43] Eleven years later, Speaker Henderson ruled that, on third Mondays, measures considered under suspension could only carry amendments authorized by the committee of jurisdiction.[44] By 1921, however, the distinction in the rule between first and third Mondays was no longer being observed consistently.[45] Although the distinction remained until 1973, it came to have little significance, as the expectation became firmly established that most measures considered under suspension would first have been reported from committee.

In 1890, the time for debating a suspension motion was extended from 30 to 40 minutes, and the reference to "the call of States and Territories" was stricken because of a change in the order of business. Four years later, the first provision of the rule regarding rescissions or changes of House rules was eliminated as well, having been rendered obsolete by the development of the Rules Committee's jurisdiction over proposed rules changes. And during the 54th Congress, the number of votes necessary to adopt a suspension motion was changed from "two-thirds of the Members present" to "two-thirds of the Members voting, a quorum being present."[46] But with these few exceptions, Rule XXVIII as adopted in 1880 was identical to Rule XXVII adopted by the 92nd Congress in January 1971.

During the 19th century, the trend in the House was to limit the opportunities for moving to suspend the rules. By contrast, during the late 20th century, the trend has been in the opposite direction. This change in sentiment most likely reflected changes in the purposes for which such motions have been made, which in turn resulted partly from changes in the Speaker's power of recognition on the floor. In brief, as the Speaker's power of recognition increased, suspending the rules became a more limited and disciplined procedure to be used on occasions and for purposes acceptable to the majority party leadership. Once the procedure was brought under the firm control of the Speaker, it became a useful vehicle for expediting House

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[42] *Hinds and Cannon*, V, 6813; *Congressional Record*, August 18, 1890, pp. 8772-8773.

[43] *Hinds and Cannon*, V, 6805.

[44] *Hinds and Cannon*, V, 6812.

[45] *Hinds and Cannon*, VIII, 3410; *Congressional Record*, February 21, 1921, p. 3585.

[46] *Hinds and Cannon*, V, 6790.

action. As the workload of the House has grown, there has been increasing pressure for the House to act with dispatch. The result has been an increase in the opportunities for using the suspension procedures.

On January 7, 1909, Representative Olmsted of Pennsylvania inserted in the *Congressional Record* an article by Hinds on the "Order of Business in the House," part of which read:[47]

> There does exist an arbitrary recognition on the motion to suspend the rules. Formerly the Speaker was compelled to recognize any Member who first got his attention on the motion to suspend the rules. The result was that the motion was greatly abused. Men would prepare resolutions on subjects of no practical standing in the House, sometimes so artfully worded as to be political traps, condemning many Members to political danger in their districts, whether they voted for or against them. Members therefore did not naturally like to run the risk of such pitfalls or to be put on record upon questions not of practical moment to the United States or which might involve local prejudices in their homes, and thus destroy their usefulness without any compensating good. So it happened that frequently the House on suspension days adjourned in order to escape this snare, and in 1880 the number of suspension days were reduced to two a week *[sic]*, so as to make the dangers of the day as little as possible.
>
> About that time Mr. Speaker Randall, without complaint of the House, began to exercise the right to determine when he would recognize for the motion, thus still further placing it under control. If the motion to suspend the rules were essential to the business of the House, this usurpation by Mr. Speaker Randall would have had bad consequences, but in 1883 and in 1890 the rules were improved by enlarging the functions of the Committee on Rules and by improving the rule for the order of business, so that bills in an unfavorable position might be gotten out by a majority vote, without recourse to the older and clumsier method of suspending the rules. And today the motion to suspend the rules is used two days in the month to supplement the proceeding by unanimous consent. There are many bills which cannot get through by unanimous consent, because two or three Members may be opposed. In such cases the motion to suspend the rules affords a convenient and easy method of dealing with them.

Between 1880 and 1909, the House elected forceful Speakers, such as Randall, Carlisle, Reed, and Cannon. According to Hinds, it was their assertion of control over recognizing Members to move to suspend the rules that eventually transformed the suspension motion into a well-regulated device for considering relatively noncontroversial measures.

Once this transformation had taken place, ad hoc adjustments and eventually formal changes in House rules were made to permit suspension motions at times

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[47] *Congressional Record*, January 7, 1909, p. 589.

other than the first and third Mondays of each month and the last six days of each session.

Motions to suspend the rules have been made on other days by unanimous consent.[48] On February 23, 1906, not a suspension day, a Member asked unanimous consent to move to suspend the rules and agree to a concurrent resolution amending an enrolled bill. Representative Dalzell made the point of order that it was improper to suspend the rules on a day other than those specified in the rules.[49]

> I do not wish to be misunderstood with respect to the merits of the bill. I am not talking about that now. I am talking about the question of the rules; and it seems to me that it was the intention of the rule to place a limitation upon the power of the House by placing a limitation on the power of the Speaker. It says that he shall not entertain a motion to suspend the rules. It is very much like the case of the rule that prohibits the Speaker from entertaining a motion to permit parties not permitted by the rule to come upon the floor of the House.

Speaker Cannon overruled the point of order, replying:[50]

> But that rule, the gentleman will recollect, prohibits the Speaker from submitting a request for unanimous consent. This rule does not. The Chair could not and would not entertain a motion on any except the two Mondays specified, but this comes by a request for unanimous consent that the Speaker shall entertain a motion to suspend the rules under the terms of Rule XXVIII. It seems to the Chair that the House may under the rule, if it sees proper to do so, give unanimous consent.

Eight years later, in 1914, Representative Underwood of Alabama asked and received unanimous consent that motions to suspend the rules might be made on the following Monday, the fifth Monday of the month.[51]

More recently, under emergency conditions, the House has granted unanimous consent to consider a measure on other than a regular suspension day. On April 10, 1967, Representative Albert sought such permission for considering a bill relating to a threatened rail strike.[52] On two other occasions, in 1964 and 1969, unanimous consent was granted to consider, on other than a suspension day, certain measures that the House lacked time to consider on the Monday for which they had been

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[48] *Deschler*, 6, 21.10.2-6.

[49] *Hinds and Cannon*, V, 6795.

[50] Ibid.

[51] Chiu Chang Wei, *The Speaker of the House of Representatives Since 1896*. (New York: Columbia University Press, 1928), pp. 219-220.

[52] *Procedure in the U.S. House of Representatives, 97th Congress*, chapter 21, section 11.4 (hereafter cited in the form *Procedure*, 21.11.4); *Congressional Record*, April 10, 1967, p. 8729; see also *Deschler*, 6, 21.9.22-24.

scheduled.[53] In the 1964 case, the Speaker and the two floor leaders were authorized to agree on a day for considering the remaining bills.[54] Also, several days before the 1959 session was expected to end, the majority leader, Representative McCormack of Massachusetts, asked unanimous consent to authorize the Speaker to recognize Members to make suspension motions during the remainder of the session. In supporting this request, Minority Leader Halleck of Indiana explained.[55]

> It is understood of course, that any suspensions of the rules would be agreed to by me as the minority leader before they are put on. Again may I say that I shall consult with the members of the committee involved before any suspensions are agreed to.

The House also has agreed by resolution to permit suspension motions on days other than those specified in the rules.[56] During the first session of the 60th Congress, according to McCall, the minority adopted a "policy of obstruction" by demanding "an almost endless succession of roll-calls." In response, the House adopted a resolution making suspension motions in order on every day and providing for the House to agree to such motions by simple majority vote.[57] Hinds commented on this situation in the article quoted above:[58]

> In the last session of Congress a peculiar situation arose, caused by the determination of the entire minority side of the House to obstruct the public business, and immediately a form of martial law was declared in the House, and the motion to suspend the rules was used daily and upon the arbitrary recognition of the Speaker. But this was only a temporary condition, brought about by urgent necessity in order that the public business might be transacted. Such an occasion had not arisen before for five years, and then only for a very limited time, and in all probability will not arise again for another five or ten years.

The House also has increased the number of suspension days when a deadline for congressional action has approached. During the last week of June 1973, for example, the House adopted a resolution authorizing the Speaker to entertain suspension motions at any time during the week. Representative Martin of Nebraska

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[53] *Deschler*, 6, 21.10.5-6.

[54] *Procedure*, 21.11.6-7; *Deschler*, 6, 21.10.5; *Congressional Record*, August 17, 1964, pp. 19943-19944; *Congressional Record*, December 15, 1969, p. 39046. See also *Procedure*, 21.11.3, and *Congressional Record*, August 21, 1961, pp. 16562-16563.

[55] *Procedure*, 21.11.5; *Congressional Record*, September 11, 1959, pp. 19128-19129.

[56] In at least one instance, the House has suspended the rules for the purpose of making suspension motions in order on another day. On July 24, 1984, Representative Perkins of Kentucky, chairman of the Committee on Education and Labor, moved to suspend the rules and agree to a resolution that proposed to make in order on any day thereafter two suspension motions to concur in the various titles of a Senate amendment to a House bill. *Congressional Record* (daily edition), July 24, 1984, pp. H7668-7669.

[57] Samuel W. McCall, *The Business of Congress* (New York: Columbia University Press, 1911), pp. 88-90.

[58] *Congressional Record*, January 7, 1909, p. 589.

explained that the resolution was the means chosen by the party leaders to waive the requirement of House rules that conference reports lie over three days before being considered on the floor. This waiver was sought because of the impending end of the fiscal year (then on June 30) and the need to complete action on a bill affecting the public debt ceiling.[59]

Toward the end of congressional sessions, the suspension procedure has been a useful means for completing action on a number of measures without extended debate.[60] But the provision of what now is clause 1(a) of Rule XV permitting suspension motions during the last six days of a session is not triggered until both houses have agreed to a concurrent resolution setting the date for adjournment.[61] When the date of adjournment has remained unsettled, the House has adopted resolutions making suspension motions in order during what is expected to be the last week of the session. In 1974, the House agreed to a resolution permitting suspension motions during the last two weeks of the session in the expectation that the Rockefeller vice-presidential confirmation debate would occupy the final week.[62]

As Follett described in the passage quoted earlier, competition among Members to offer suspension motions could become intense during the closing days of a session. It was under such circumstances that Speaker Longworth made the following comments:[63]

> The Chair agrees that suspension of the rules is not a normal legislative procedure. In a sense, it is a trifle unfair in that it limits debate and does not permit the right of amendment. If anybody thinks that the Chair covets the right to recognize or not to recognize motions to suspend the rules in the last six days of a session, he is far from being correct. It is one of the most burdensome, unpleasant duties that can fall to the lot of a Member of Congress. It is always unpleasant for the present occupant of the Chair to say no four out of five times, as he is compelled to do.
>
> But there are times when suspension of the rules is vitally necessary to dispatch public business. It is going to be vitally necessary in the next few hours because very few hours remain before adjournment, and the Chair must use his discretion, when he believes it is in the interest of a large majority of the House to use the right of suspension.
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> I think the Chair is safe in saying that not more than three or four times since his incumbency of this office for the past six years has the motion to suspend the rules, out of hundreds of cases, received less than

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[59] *Congressional Record*, June 25, 1973, pp. 21180-21182.

[60] Chiu, pp. 223-225. In 1909, the House voted that, during the remainder of the session, suspension motions would require only a majority vote and that a second, if demanded, would be considered as ordered. *Congressional Record*, February 26, 1909, pp. 3310-3311.

[61] *Hinds and Cannon*, VIII, 3397; *Procedure*, 21.11.8.

[62] *Procedure*, 21.11.3; *Congressional Record*, December 4, 1974, pp. 38169-38170.

[63] *Congressional Record*, March 2, 1931, p. 6735.

> the necessary two-thirds; in other words, the Chair was in fact aiding the House to carry out its will.

Longworth's concluding observation indicates the extent to which suspension of the rules had become a procedure used almost exclusively for one purpose: for expeditious floor consideration of measures enjoying the support of more than a majority of House Members. By unanimous consent or by resolution, the restrictions of the rules have been, and continue to be, set aside temporarily when floor action on such measures could not be accommodated on the regular suspension days. In addition, the House voted on two occasions during the 1970s to change what was then Rule XXVII so as to make suspension motions in order more often.

On January 3, 1973, the House adopted its rules for the 93d Congress, including two changes in its suspension procedures. First, motions to suspend the rules were made in order on the first and third Mondays and Tuesdays of each month, as well as during the final six days of a session. Second, the rule no longer gave preference to motions by individual Members on some days and to motions made at the direction of committees on others. Four years later, when the House adopted H.Res. 5, making rules changes for the 95th Congress, suspension procedures were again changed to allow the rules to be suspended on every Monday and Tuesday.

During the 1973 debate, members of the minority party opposed increasing the number of suspension days on the ground that it would permit too many bills—including bills of considerable cost and significance—to be considered with only limited debate and without opportunity for floor amendments. Illustrative of these concerns was the following statement by Representative Gerald Ford of Michigan, the minority leader:[64]

> As I understand the historical justification for suspension, it was for the purpose of considering relatively unimportant legislation or legislation where there was little or no controversy, and the net result was the rules of the House said that on every first and third Monday we should have suspension, and in addition during the last 6 days after the date of an adjournment has been set. I think that is a good rule.
>
> But now Mr. Speaker, to double, to increase by a hundred percent, the days on which we can have suspensions, in my judgment, is going too far, because suspensions, as all of us who have been here know, mean that you can take a bill involving billions of dollars, involving literally hundreds of thousands of words, and put it on suspension and you could not amend a dollar and you could not amend a word. And I do not believe that is the way to legislate.

In response, the majority leader, Representative O'Neill of Massachusetts, argued that increasing the number of suspension days would permit a more even

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[64] *Congressional Record*, January 3, 1973, p. 18.

distribution of workload on the floor, and that measures were only brought up under suspension with the prior knowledge and consent of the minority:[65]

> Mr. O'NEILL. They have complained because on one day we had 46 suspension bills, which made for a long night session.
>
> Is this a way to legislate? Why should we not have quit at 8 o'clock that night and brought up the remaining suspensions the next day?
>
> That is what we have in mind. That is what we would like to do. We do not want to go until 2 or 3 o'clock in the morning.
>
> How does a bill get on the Suspension Calendar, the gentleman from New Hampshire [Mr. Cleveland] wants to know. I am sure the minority leader knows. Although the chairman of the committee goes to the Speaker, he always clears the legislation with the minority member of the committee.
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> * * * * * * * *
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> Mr. GERALD R. FORD. If the chairman of the committee gets permission from the Speaker to be recognized, it does not make any difference whether the ranking minority member or the minority leader is consulted at all.
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> Mr. O'NEILL. I appreciate that, but I will say to the gentleman, I think we have always been extremely fair along the line. When the majority whip organization calendar is made up, the Speaker inevitably says to the chairman: Is this bill going to be a controversial matter? After all, as the gentleman from Michigan knows, it takes a two-thirds vote of this Congress to pass a bill on the Suspension Calendar.
>
> Why, if the minority member of the committee is opposed to it, rare is the occasion when a suspension goes on the calendar.

During debate on the rules for the 95th Congress, opposition focused principally on the fact that the resolution to adopt the rules was not open to amendment. The minority leader, Representative Rhodes of Arizona, inserted in the *Record* a summary of amendments that would have been offered if the parliamentary circumstances permitted, including the following:[66]

> Suspension of the Rules — clause 1 of rule XXVII is amended to prohibit bringing up any matter under suspension of the rules unless authorized by rollcall vote of the committee having jurisdiction or by joint request of the chairman and ranking minority member. Under the present

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[65] Ibid., p. 21.

[66] *Congressional Record*, January 4, 1977, p. 58.

> procedure the chairman may unilaterally request bringing a matter up under suspension.

The minority leader's insertion also included this critique and proposal by the House Republican Task Force on Reform:[67]

> At the beginning of the 93d Congress, the use of the suspension motion was increased from 2 to 4 days per month. A majority of the Republican members opposed such an expansion of the suspension procedure as detrimental to sound legislative practice. Although assurances were given by the Democrat leadership that the suspension rule would be used sparingly and be limited to minor, noncontroversial legislation, what has occurred is an abuse of suspensions with bill after bill being considered under an essentially closed rule procedure—limited debate with no amendments. The end result—debasement of the legislative process. The Task Force on Reform has recommended strongly that:
>
> 1. No bill be brought up under suspension unless the chairman and ranking minority member of a committee so request.
>
> 2. A dollar ceiling amount be placed on bills which may be brought up under suspension.
>
> 3. At least three calendar days advance notice be given to any bill which is to be brought up under suspension.
>
> 4. Prior to scheduling a bill under suspension, the majority party leadership would consult with the minority leader.
>
> Even with these safeguards, expanded use of suspensions is simply an invitation to further abuse.

Notwithstanding these objections, the rules for the 95th Congress were adopted by a rollcall vote of 256 to 142, with no opportunity for floor amendments.

The Republican minority continued to seek changes in the suspension procedure that would have required formal notice to all Members of the suspension motions the Speaker intended to entertain. As part of their package of rules changes proposed in 1991 on the opening day of the 102nd Congress, there were several proposed changes in suspension procedures, including the following:[68]

> It shall not be in order to entertain a motion to suspend the rules and pass or agree to any measure or matter unless written notice is placed in

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[67] Ibid.

[68] *Congressional Record* (daily edition), January 3, 1991, p. H12. See also H.Res. 127, submitted by Representative Edwards, et. al., on April 17, 1991, *Congressional Record* (daily edition), p. H2374. For proposals in earlier Congresses, see H.Res. 205 (1979), H.Res. 47 (1987), H.Res. 599 (1988), and H.Res. 61 (1989).

> the Congressional Record of its scheduled consideration at least one calendar day prior to its consideration, and such notification shall include the numerical designation of the measure or matter, its short title, and the text of any amendments to be offered thereto, and the date on which the measure or matter is scheduled to be considered.

The Democratic majority resisted such proposals as unwelcome intrusions on the majority party leadership's control over arranging the floor schedule, and the Republican majority thus far has not instituted any pertinent rules changes of its own. The result is that members of both parties remain dependent on effective but informal and discretionary notification practices to alert them to the propositions on which they will be asked to vote through suspension motions.

Who Decides What Suspension Motions the House Shall Consider?

Until the closing decades of the 19th century, Speakers did not exercise as much discretion as they do now in recognizing Members to offer motions to suspend the rules. Consequently, such motions could be used, especially by minority party Members, to raise issues for parochial or partisan advantage. During the 20th century, on the other hand, it became the accepted, if not invariable, practice of the House to suspend the rules to expedite action on relatively noncontroversial legislation. Nonetheless, there were occasional charges during recent decades that specific measures were brought up under the suspension procedure in order to avoid the possibility of floor amendments.[69]

Although the rules are now suspended most often to pass a House or Senate measure reported from committee, this is not always the case. At the beginning of the 91st Congress, for instance, a bill was brought up under suspension even before the standing committee of jurisdiction was organized to consider it.[70] The House also has suspended the rules to take from the Speaker's table a House-passed bill with Senate amendments and agree to the amendments (or agree to them with House amendments). To cite just one example from the 1970s, Representative Staggers of West Virginia, then chairman of the Committee on Interstate and Foreign Commerce (now the Commerce Committee), moved to suspend the rules and agree to a resolution to concur in a Senate amendment to a House amendment with a further House amendment in the nature of a substitute. After this motion failed to receive a two-thirds vote, Staggers offered a second suspension motion that, if adopted, would have changed the proposed new House amendment in one significant respect.

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[69] Writing in 1928, Chiu asserted that some "[m]easures, such as appropriations, public buildings and rivers and harbors are brought up under the suspension of the rules with the distinct purpose of shutting off amendments or unnecessary 'riders'...." Chiu, p. 217. On November 15, 1983, Representative Rodino of New Jersey, chairman of the Judiciary Committee, moved to suspend the rules and pass a joint resolution proposing an Equal Rights Amendment to the Constitution. The motion was rejected by a vote of 278 to 147. Also see *Deschler*, 6, 21.9.21.

[70] *Congressional Record*, January 6, 1969, pp. 172-176; *Deschler*, 6, 21.9.1.

This motion also failed, as did a third successive suspension motion which proposed simply that the House agree to the Senate amendment.[71]

Thus, the House may suspend the rules to consider measures at various stages of the legislative process—for example, House or Senate bills coming to the House floor for the first time or bills returned to the House with Senate amendments.[72] The question remains: who decides whether a measure, at whatever stage of the process, will be considered under suspension of the rules? To put it differently, to what extent is the consideration of suspension motions controlled by the House or its majority party leadership?

The suspension procedure was amended in 1880 to provide that:

> All motions to suspend the rules shall, before being submitted to the House, be seconded by a majority by tellers, if demanded.

According to Hinds, this requirement "was intended to prevent the offering of 'buncombe' resolutions, the idea being that a proposition which could not receive such a second should not take the time of the House."[73] In addition to conserving time, the opportunity for a majority of the House to vote against ordering a second on a suspension motion enabled Members to avoid taking positions on "resolutions on subjects of no practical standing in the House, sometimes so artfully worded as to be political traps, condemning many Members to political danger in their districts, whether they voted for or against them."[74]

A similar provision had been adopted in 1874 but abandoned two years later. Whereas the House agreed to the 1880 rules change without controversy, an extended and informative debate took place when the House first voted to require that suspension motions be subject to a demand for a second.

This requirement was first debated on the floor in December 1873. The Committee on Rules had recommended unanimously that Rule 145 be amended to read as follows:[75]

> No standing rule or order of the House shall be rescinded or changed without one day's notice being given of the motion therefor; nor shall any rule be suspended, except by a vote of at least two-thirds of the members present; nor without the motion therefor being seconded by a majority, as in the case of the previous question.

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[71] *Congressional Record*, December 21, 1973, pp. 43251-43288.

[72] *Deschler*, 6, 21.13-17.

[73] *Hinds and Cannon*, V, 6797.

[74] See note 49.

[75] *Congressional Record*, December 18, 1873, p. 314.

This language had the same effect as requiring a teller vote on ordering a second because, at that time, a rollcall vote could not be demanded on a vote to second the demand for the previous question.[76]

Proponents of this change in the rules argued that it would expedite floor activity by enabling House Members to decide by majority vote whether they wished to consider a suspension motion. Although motions to suspend the rules were not then debatable, they were subject to demands for rollcall votes. Members of the Rules Committee believed that such motions had often been offered, and rollcall votes demanded, merely for purposes of delay. In other cases, they asserted, Members had offered suspension motions, especially to adopt resolutions, without any expectation that the motions would be approved. Instead, these motions were drafted and proposed only to create political embarrassment. The demand for a second, if rejected by an unrecorded majority vote, would enable Members to avoid having to go on record as being for or against such "political conundrums" that do not "affect one single item of the legislation of the country."[77] On behalf of the Rules Committee, Representative Maynard of Tennessee contended:[78]

> Now, then, if any gentleman has a measure which he regards as of such consequence that the rules of the House should be suspended and immediate action had upon it, let him appeal to the House, in the first place, and see whether he can get a majority vote; because if he cannot it is utterly idle to suppose that he could ever get two-thirds to vote with him.
>
> This is a proposition that will save time and will protect the rights of minorities. It will prevent our Monday mornings and the last ten days of the session from being consumed upon impracticable measures when there are measures of real importance upon which, if the House could get at them, it would act favorably. It seemed to the committee (and they were unanimous on this question) that this was a wise provision, calculated to facilitate the public business and protect the rights of everybody while interfering with the just privileges of none.

On the other hand, opponents of the proposal contended that suspension motions offered individual Members—and especially Members of the minority party—their only opportunity to raise issues of their choice on the floor and to force votes on them. This opportunity would be eliminated if the House could vote to refuse to consider these motions, and do so by unrecorded teller votes.

The two positions were summarized aptly in the following exchange between Representative Maynard and Representative O'Brien of Maryland:[79]

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[76] *House Rules and Manual, 46th Congress, 1st Session* (March 1879), p. 282. A second no longer may be demanded on a motion to order the previous question.

[77] *Congressional Record*, December 18, 1873, p. 318.

[78] Ibid., p. 315.

[79] Ibid., p. 314.

> Mr. O'BRIEN. I desire to illustrate the effect of this proposed rule. Under the existing rule I may have a resolution—for instance, a resolution of inquiry—upon which I desire the action of the House; and, moving a suspension of the rules to adopt the resolution, I can demand the yeas and nays upon the motion, and even though I know the resolution will be defeated, yet if one-fifth of the members present should consent to order the yeas and nays, I can obtain a record in that form. But if the rules be amended, as proposed by the gentleman from Tennessee, then, in such a case as I have stated, unless I can get a majority of the House to second the demand for the previous question *[sic]* so that my resolution can be entertained, I can get no information as to who are and are not willing to order the inquiry proposed by the resolution. I ask the gentleman from Tennessee whether that is or is not a practical illustration of the operation of this proposition?
>
> Mr. MAYNARD. Mr. Speaker, it is not presumed that gentlemen come here for the purpose of wasting public time upon questions and propositions which they know have nothing in them, which can be interposed only for the sake of delay—propositions which have no practical vitality, but which merely seek to ventilate or air the opinion of those submitting the propositions. No gentleman, I suppose, will for a moment maintain that such is the object for which his constituents have sent him here....

In view of the opposition that arose, the resolution to change the rules was recommitted, without objection, to the Rules Committee for further study. A month later, in January 1874, the proposal again was reported, in a slightly different form, and the debate resumed.

Representative Butler of Massachusetts described how the legislative business of the House had been delayed and disrupted by Members offering suspension motions on one subject while the House was in the midst of considering more pressing legislation on another. By contrast, Representative Holman of Indiana characterized such ploys as a necessary means for obstructing "the plundering schemes which have from time to time been sought to be rushed through this House in the closing hours of the session."[80]

Representative Holman also argued that the proposal for unrecorded teller votes violated the constitutional rights of one-fifth of the Members present to demand the years and nays on any question. Representative Potter of New York, among others, supported this position, even though he disapproved of many of the measures considered under suspension:[81]

> In some cases...they attach preambles to their resolutions, preambles which are absolutely true, while the resolutions appended are entirely objectionable.... The practice is, I concede, an abuse and an evil, but it

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[80] *Congressional Record*, January 30, 1874, p. 784.

[81] Ibid., p. 785.

> does not, after all, mislead the country or do very much harm. We have, to be sure, during this very session, seen the House upon a Monday putting itself, by the adoption of conflicting resolutions, in two or three different positions on the same day, each one inconsistent with the others. But such votes only have the effect of showing the country how little the buncombe action of the House on Mondays amounts to.

The constitutional argument was rejected by Butler and others who sought to distinguish between a question and a motion for a question:[82]

> The difference is this: when any question is put for the action of the House, in legislation or otherwise, the members have the right to record their votes on the demand of one-fifth of those present; but when the motion comes up, will we have this subject up to-day or shall we take the other up tomorrow, then they have no right to invoke this constitutional provision in their behalf, because it is on the order of business.

Butler also recalled that, under the existing rules, the House sometimes had adjourned rather than vote on measures brought up under suspension:[83]

> How did it operate yesterday? We voted on two or three things which were mere matters of theoretical politics; and to prevent those things being sprung in the House the only protection that the majority of the House had was to adjourn. So we adjourned about three o'clock, or at that hour we began to vote on the question of adjournment; and that is the only protection that the majority of the House have....

By changing the rules, he argued, Members would be protected against being compelled to vote on whatever measures were offered under suspension without the benefit of debate or time for thought. The case for changing the rules was well summarized by Representative Garfield of Ohio:[84]

> The plain purport of this rule is, that it shall not be the right of one member, or one-fifth, not of the political minority only, but of the majority, to push aside the business of this House and by the help of one-fifth compel every other man in this House to vote on any subject he pleases without a word of debate and without a chance of amendment. Any one man, with one-fifth of the House at his back, can put the House through its paces on any question on earth that he pleases. This rule only provides that before any one member shall be empowered to do this he shall show that a majority of the members are willing that the question shall be brought before them and disposed of without amendment or debate in the precise words he pleases to use.

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[82] Ibid., p. 792.

[83] Ibid., p. 785.

[84] Ibid., p. 790.

The resolution to change the rules was finally adopted by a vote of 123 to 101. Before the vote took place, Garfield noted that "we sometimes need a suspension of the rules in order to fix a day for considering some measure."[85] But the 1873-1874 debate and vote, and the vote in 1880 to reinstate the provision for demanding a second, illustrates to what extent the use of suspension motions had changed from an effective means for organizing the business of the House to an equally effective means for accommodating individual Members and interfering with the planned schedule of legislative activity.

According to Riddick, "if no question of second is raised, the bill will not be debated, but the vote will be taken immediately."[86] However, it became routine practice in the House for a second to be demanded by the ranking minority member of the subcommittee or committee with jurisdiction over the measure, and for the second to be considered as ordered without objection.

Contrary to this general practice, however, the House refused to order a second on two suspension motions during the 95th Congress. On November 1, 1977, Representative Solarz of New York moved to suspend the rules and pass H.R. 9282, deferring the effective date of future congressional salary adjustments and making out of order provisions of appropriations bills or budget resolutions, or amendments thereto, rescinding such adjustments. By a vote of 167 to 233, the House refused to order the second on the motion, reportedly because Members objected to considering the bill under circumstances that would have compelled them to vote for or against both of its provisions.[87]

Five months later, on March 20, 1978, the House again refused to order a second, this time on a motion to suspend the rules and pass the "Middle Income Student Assistance Act." Although no debate is permitted before a second is ordered or refused, Representative Evans of Delaware explained the reason for his opposition immediately before the suspension motion was offered:[88]

> Assistance for middle-income taxpayers to meet increasing educational expenses is one of the most important issues facing the Congress. To bring such an important measure up under a suspension of the rules is a simple attempt by the administration to "ramrod" this approach through the Congress without adequate opportunity for full and open debate. American families need relief from mounting educational costs, but in not providing the opportunity for full discussion, we are further corrupting the deliberative legislative process.

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[85] Ibid., p. 791.

[86] Floyd M. Riddick, *The Organization and Procedure of the United States Congress* (Manassas, Virginia: National Capitol Publishers, 1949) p. 262; *Congressional Record*, January 16, 1882, p. 431.

[87] *Congressional Record* (daily edition), November 1, 1977, pp. H11937-H11939; *Congressional Quarterly Weekly Report*, November 5, 1977, p. 2348.

[88] *Congressional Record*, March 20, 1978, pp. 7535-7537.

These instances were exceptional. The House usually agreed without objection (that is, by unanimous consent) to order seconds on suspension motions. However, the right of any Member to force the House to vote on ordering a second preserved the opportunity for the House to decide not to consider such a motion. On the other hand, the same right also created an opportunity for Members to demand rollcall votes, and thereby delay the work of the House, as a way of expressing their displeasure at some unrelated legislative development.

There were no votes at all on ordering seconds from 1973 to 1976. Then, between March and July of 1978, there were 13 such votes.[89] On June 28, 1978, alone, five votes on ordering seconds took place, all evidently unrelated to the merits of the bills at issue. In each case, a Member objected to the result of the teller vote on the ground that a quorum was not present, triggering an automatic roll call vote; but no more than five Members voted against seconding any one of the five suspension motions. Such events pointed to a concern among some Members that their time, and the time of the House, was being consumed needlessly by an increasing number of rollcall votes that were not seriously contested and that occurred on procedural questions which few, if any, Members opposed on their own merits.

On August 14, 1978, the Subcommittee on Rules and Organization of the House of the Rules Committee held hearings on H.Res. 1246, submitted by Representative Waggonner of Louisiana, to repeal clause 2 of Rule XXVII, and thereby eliminate the requirement for a second on suspension motions. In support of his proposal Waggonner argued that:[90]

> Clause 2 of Rule XXVII is about as useful as one's appendix. The time for its removal from the House Rules has arrived. It has long ceased to serve its original purpose of protecting the Members from considering a matter that they don't desire and is now a filibustering tactic used to thwart the leadership in its responsibility for programming the House's business—but more important it wastes the time of all of us without regard to how we stand on the merits of particular measures being considered from time to time on suspension. This is exactly what our predecessors aimed at preventing in 1880.

In reply, Representative Cleveland of New Hampshire contended that:[91]

> Without this protection, Members would face an increasing threat of being forced to record a simple "aye" or "nay" on legislation which may be

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[89] U.S. Library of Congress, Congressional Research Service, *Votes on Ordering the Second on a Suspension Motion Under Rule XXVII: 1973-1978*, by Stanley Bach, CRS Report (Washington: August 3, 1978).

[90] Statement of Representative Joe Waggonner, Jr., before the Subcommittee on Rules and Organization of the House, House Committee on Rules, on H.Res. 1246, August 14, 1978, p. 5.

[91] Statement of Representative James C. Cleveland before the Subcommittee on Rules and Organization of the House, House Committee on Rules, on H.Res. 1246, August 14, 1978, p. 2.

> highly significant, extremely costly, far more controversial than expected, and often hastily considered in committee—all without the possibility of obtaining needed information through adequate debate or of considering possible options through the amendment process. Thus, the resolution before you would strip us all of our flak jackets at the very time the risk of political land mines is growing. And the threat to the public interest is even more acute.

When the 96th Congress convened on the following January 15, the House agreed to a number of amendments to its rules that were proposed by the House Democratic Caucus. Several of these amendments were designed, according to Representative Wright of Texas, "to save the time of the House, to save the taxpayers waste of that valuable time, and to save Members the harassment that has sometimes come with procedural demands that they present themselves and vote on meaningless votes."[92] Among the amendments was one that waived the requirement for a second "where printed copies of the measure or matter as proposed to be passed or agreed to by the motion have been available for one legislative day before the motion is considered."[93]

On January 3, 1991, the House eliminated the seconding requirement completely when it adopted H.Res. 5, emanating from the House Democratic Caucus. Majority Leader Gephardt explained what this rules change would do, but felt no need to justify or defend it, nor did Republicans specifically oppose it.[94]

By eliminating the possibility of votes on seconding suspension motions, these rules changes removed an opportunity for dilatory tactics on the floor. At the same time, however, they also removed the ability of the House to vote against considering a suspension motion. This second effect concerned the Members who believed that the suspension procedure was being used with increasing frequency to pass bills that were too important and controversial to be debated for no more than 40 minutes and with no opportunity for amendment on the floor. Not coincidentally, therefore, the same 1978-1979 series of Democratic Caucus meetings that led to severely limiting votes on seconds also resulted in the caucus rule imposing the $100 million ceiling on the cost of bills the Speaker should permit to be considered under suspension—the same ceiling that the Republican majority now has included in its conference rules.

Thus, the Democratic Caucus limited the power of the Speaker to entertain suspension motions at roughly the same time that the House limited its own power to vote against considering them. Nonetheless, this restriction on the Speaker's discretion is less significant than the control which he retains over suspension motions. Each motion to suspend the rules still must have the Speaker's acquiescence or approval, and this requirement has had a significant effect on the development and use of the procedure, for reasons already discussed. Rule XV specifies when the Speaker may entertain motions to suspend the rules, but he is not

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[92] *Congressional Record*, January 15, 1979, p. 9.

[93] Ibid., p. 8.

[94] *Congressional Record* (daily edition), January 3, 1991, pp. 5-28.

required to do so at any time. Through his power of recognition, therefore, the Speaker controls which matters are considered under suspension and when they are raised for consideration.

In his article quoted earlier, Hinds states that, in the early 1880s, "Mr. Speaker Randall, without complaint of the House, began to exercise the right to determine when he would recognize for the motion...."[95] In the published precedents, the first cited instance of the Speaker's discretionary power occurred in 1880, when the following exchange took place:[96]

> Mr. ROBESON. The motion that I make is the regular order, it is in accordance with the rules; it is a motion to suspend the rules allowed by the rules, and cannot be denied to any member.
>
> Mr. CHALMERS. You must be recognized before you can submit the motion.
>
> Mr. ROBESON. I have the right to be recognized for this purpose, though, and I have submitted the motion.
>
> The SPEAKER. The gentleman is not recognized for such purpose.

Speaker Randall subsequently asserted that "[t]he rule is not compulsory on the Chair, and never has been so construed in regard to motions to suspend the rules during the last six days of a session." However, Hinds states that "before the time of Mr. Speaker Randall the Speakers do not seem to have exercised this control over the motion."[97]

Speaker Randall's claim to discretion was repeated by his successors on a number of occasions during the next several decades.[98] Speaker Crisp addressed himself to the question in 1893:[99]

> The Chair fully appreciates the fact that according to the practice which has always prevailed the motion to suspend the rules has been one depending on recognition; that is, it can not be made unless the Member is recognized to make it. The Chair, in speaking of this motion as one of the highest privilege, did not mean to convey the idea that necessarily when the day comes for motions to suspend the rules the Chair must recognize a gentleman to make such motion.

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[95] See note 47.

[96] *Hinds and Cannon*, V, 6791; *Congressional Record*, March 1, 1881, pp. 2296-2297.

[97] *Hinds and Cannon*, V, 6791, note 7.

[98] For an instance involving Speaker Carlisle, see Follett, pp. 262-265; see also McCall, pp. 137-138.

[99] *Hinds and Cannon*, V, 6794.

Speaker Henderson reached the same conclusion in 1900. On May 7 of that year, Representative Sulzer of New York rose to demand recognition for a suspension motion. The Speaker asked for what purpose the gentleman rose and, Sulzer having replied, Speaker Henderson declined "to recognize the gentleman from New York at this time.... The Chair must exercise his duty to this House and recognize Members upon matters which the Chair thinks should be considered."[100]

On February 21, 1921, Representative Alben Barkley sought recognition to offer a suspension motion. Speaker Gillett declined to recognize him, stating:[101]

> The Chair will not recognize any gentleman unless the Chair knows about the matter.
>
> The Chair will not recognize the gentleman unless he consults the Chair in advance.

To avoid such situations at the close of a session, Speaker Longworth made the following announcement in 1931:[102]

> When the session draws to a close ordinarily there are quite a number of requests to the Speaker for recognition to move to suspend the rules. Those requests are now coming in rapidly. It is impossible for the Chair to keep in mind all of the requests and the merits of the bills. At the close of the last session the Chair requested all Members desiring to move to suspend the rules to put their requests in writing and to accompany their requests with the bill and report. The Chair will again make that request for the remainder of the session. It worked very well last year, and the Chair hopes that it will this year.

Thus, by the 1920s, if not before, Speakers had come to exert effective control over what measures might be considered under suspension of the rules. But if the following statement by Speaker Clark is indicative, this power was not exercised arbitrarily:[103]

> If there is a pronounced sentiment in the House amounting to a majority or anywhere approximating two-thirds, in favor of the consideration of a particular bill, whether it be a big or a little bill, I believe it is the business of the Speaker to recognize some gentlemen, under the suspension of the rules, to call that bill up.

Speaker Gillett evidently adopted a similar policy. On August 28, 1922, he was asked what suspension motions were likely to be brought up. In reply, he stated that

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[100] *Hinds and Cannon*, V, 6792; for other instances, see Chiu, pp. 211-212.

[101] *Hinds and Cannon*, VIII, 3404; *Congressional Record*, February 21, 1921, p. 3585.

[102] *Hinds and Cannon*, VIII, 3402.

[103] Chiu, p. 216.

"he will recognize no motions for suspension without the consent of the gentleman from Tennessee," the minority leader, Representative Garrett.[104]

It appears, however, that during the 1920s, the minority leader was not always consulted in this way, and that there had not yet been developed a regular means for informing all Members about the suspension motions that the Speaker intended to entertain. In 1926, Minority Leader Garrett found it necessary to ask the Speaker on the floor, "Will there be any suspension today?"[105] By contrast, suspension motions are now routinely listed on the "whip notices" of expected floor activity each week. Moreover, when additional suspension motions are considered, advance notice usually has been given, in the House's recent practice. For example, on March 5, 1974, after Representative Gross of Iowa sought recognition to offer a suspension motion, the following occurred:[106]

> The SPEAKER. The Chair will state that the gentleman from Iowa has not consulted the Chair and the Chair is not going to recognize the gentleman from Iowa for that purpose. The Chair would like to state further that the request of the gentleman from Iowa violates the "Gross" rule whereby he has requested that notification of suspensions be given 24 hours in advance.
>
> Mr. GROSS. What kind of a rule is that?
>
> The SPEAKER. The Gross rule.

On occasion, such advance notice apparently was not given. On March 20, 1978, Representative Coughlin of Pennsylvania asserted that a suspension motion was offered without regard to the "so-called Gross rule, which is a tradition in which the House is required to have 24 hours advance notice...."[107] To ensure that all Members are adequately forewarned, the House Republican Task Force on Reform later proposed that "[a]t least three calendar days advance notice be given to any bill which is to be brought up under suspension."

This issue also was addressed in Democratic Caucus Rule 39, on "Guidelines on Suspensions of House Rules," which stated in part that:[108]

> In scheduling any bill or resolution for consideration under the suspension of the Rules of the House, the Speaker of the House shall provide notice to all Members of the House of Representatives by at least three calendar days (excluding Saturdays, Sundays, and legal holidays, but including the day on which such bill or resolution is considered under the suspension of the Rules of the House) that said bill or resolution has been

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[104] Chiu, pp. 212-213.

[105] Chiu, p. 213.

[106] *Congressional Record*, March 5, 1974, p. 5316.

[107] *Congressional Record*, March 20, 1978, p. 7536.

[108] *Preamble and Rules of the Democratic Caucus*, 102nd Congress, January 9, 1991, p. 14.

> scheduled for consideration under the suspension of the Rules of the House.
>
> The Speaker of the House of Representatives shall provide sufficient time for Members of the House to receive copies of the Whip Advisory regarding any bill or resolution for consideration under the suspension of the Rules of the House, or a comparable analysis of such bill or resolution. In no case shall such time be less than two calendar days (excluding Saturdays, Sundays, and legal holidays, but including the day on which such bill or resolution is considered under suspension).

Again, however, these provisions were not rules of the House and so were not enforceable on the floor. Although Republican Conference rules do not contain such a provision, the need for it is largely obviated by the conference's insistence that each suspension motion have the concurrence of the ranking minority member of the appropriate committee.

In sum, motions to suspend the rules were once offered by individual Members at their own discretion and for various purposes. Gradually, though, the suspension procedure evolved into a regular and relatively routine procedure that usually is used for acting on measures reported by committee and favored by the Speaker. Until recently, Rule XXVII (now Rule XV) permitted the House to refuse to consider a suspension motion by voting not to order a second. This opportunity rarely was exercised and has now been eliminated altogether. Yet it remains unusual for the House to consider a bill under suspension that does not enjoy at least majority support. Through consultation with minority party and committee leaders, the Speaker usually is in a position to entertain only those suspension motions that are likely to be supported by the necessary two-thirds majority.

Under What Procedures Are Suspension Motions Considered?

Each suspension motion is debatable for a maximum of 40 minutes, and the measure or proposition it brings up for consideration is not subject to floor amendments during that time. While the House is acting on a suspension motion, the only other motion that is in order is one motion to adjourn. Measures considered under suspension are protected against points of order that might otherwise be made against them. At the end of the debate, Members cast a single vote on suspending the rules and passing the bill or taking whatever other action is proposed. To pass, the motion must be supported by two-thirds of the Members present and voting, a quorum being present.

Each motion to suspend the rules may be debated for a maximum of 40 minutes even if the question to be decided under the motion would not be debatable under other parliamentary circumstances. For example, in 1893, debate was permitted on a motion to suspend the rules and table a motion to reconsider. Although a motion to table ordinarily is not debatable, Speaker Crisp ruled, according to Hinds, that the provision allowing debate on suspension motions "applied to all propositions sought

to be passed under suspension of the rules, whether the main question was debatable or not under the ordinary rules of the House."[109]

Before 1880, motions to suspend the rules were not debatable; House precedents cite rulings to this effect in 1842 and 1846.[110] At that time, however, suspension motions related primarily to the order of business on the House floor. In the 1842 case, for example, Representative Fillmore of New York moved that the House suspend the rules and proceed to consider a resolution affecting House action on another measure. Speaker White ruled that the motion was not debatable but that, if the motion was agreed to, the resolution thereby made in order then would be subject to debate.[111]

As the practice developed of acting by a single vote on motions to suspend the rules and dispose of measures, the prohibition against debate precluded discussion of the issues considered in this manner. Hinds cites three significant examples:[112]

> On November 5, 1877, the House, on motion of Mr. Richard D. Bland, of Missouri, passed, under suspension of the rules, without any debate being possible, a bill providing for the free coinage of silver. On January 28, 1878, the House in the same way and against the protest of Mr. James A. Garfield, of Ohio, passed a concurrent resolution from the Senate declaring the coin bonds of the United States payable in a silver dollar of 412½ grains; and on February 24, 1879, the sundry civil appropriation bill carrying on appropriation of nineteen millions of dollars.

It certainly seems likely that bills of such importance were passed under suspension of the rules in order to preclude debate and amendment, not simply in order to expedite business. Debate on suspension motions continued to be prohibited even though the character and use of the suspension procedure had changed.

Consequently, during the rules revision of 1880, the House agreed, without discussion or opposition, to an amendment permitting 30 minutes of debate on each suspension motion, the time to be equally divided and controlled. In 1890, the period for debate was extended to 40 minutes. The time was reduced to 30 minutes during the next two Congresses, but again extended to 40 minutes during the 54th Congress and thereafter.[113] Additional time for debate has been permitted by unanimous consent.[114]

The time for debate is divided between, and controlled by, the majority party Member offering the motion and the ranking minority member of the committee or subcommittee of jurisdiction. However, if this minority party Member is not

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[109] *Hinds and Cannon*, V, 6822.

[110] *Hinds and Cannon*, V, 5405, 6820.

[111] *Congressional Globe*, January 12, 1842, p. 121.

[112] *Hinds and Cannon*, V, 6821.

[113] *Hinds and Cannon*, V, 6821.

[114] *Procedure*, 21.15.2-3.

opposed to the measure, another Member of his or her party who does oppose it may claim control of the time instead.

Once allocated, the Representatives controlling the time yield portions of it to other Members wishing to participate in the debate. The minority party Member controlling half the time generally yields at least some of that time to opponents of the measure even though he or she may support it. However, the Speaker does not assume responsibility for ensuring that time is equally divided, or divided at all, between proponents and opponents.[115] In 1882, for instance, Representative Hewitt of Alabama demanded a second but then indicated that he did not oppose the bill. During the discussion that followed, Speaker Keifer stated that "[t]hose who are opposed to a bill ought to have fifteen minutes of the time allowed for debate," but also that "[t]he gentlemen must appeal to the gentleman from Alabama for a fair division of the time, and not to the Chair."[116] More recently, in 1969, Representative Wolff of New York made a point of order that no time had been yielded to opponents of a bill. Speaker McCormack responded that "[t]hat is not within the province of the Chair."[117]

When measures are considered in Committee of the Whole, committee amendments are acted upon after general debate on the measure itself. Under the suspension procedure, on the other hand, the motion submitted to the House already includes any committee amendments or any other amendments that the mover incorporates in his or her suspension motion. No other amendments are in order.

In the 1840s, Speakers ruled that amendments were not in order to motions to suspend the rules that were offered to permit the introduction of bills or to set aside the one-hour limit on debate. But when a suspension motion only made a measure in order for consideration, the measure itself then might be subject to amendment under the regular procedures of the House.[118] The prohibition against amendments continued even after the practice developed of disposing of measures as part of suspension motions. Amendments may not even be offered by unanimous consent,[119] nor may Members offer pro forma amendments to secure time for debate.[120]

When a measure is considered by the House under suspension of the rules, it is protected against points of order that might otherwise be made against its consideration or provisions, or against any amendments to it that are proposed as part of the motion.[121] The suspension procedure sets aside the rules on which any such points of order would be based. For the same reason, consideration of a measure

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[115] *Procedure*, 21.15.7-8.

[116] *Hinds and Cannon*, V, 6824; *Congressional Record*, May 1, 1882, pp. 3476-3478.

[117] *Procedure*, 21.15.8; *Congressional Record*, December 15, 1969, p. 39034.

[118] *Hinds and Cannon*, V, 6856.

[119] *Deschler*, 6, 21.14.7.

[120] *Procedure*, 21.16.2-3; *Deschler*, 6, 21.9.11.

[121] *Procedure*, 21.10.1. However, the Speaker may decline to entertain a suspension motion to consider a bill against which a point of order otherwise would lie. See also *Hinds and Cannon*, VIII, 3424, 3426, and *Deschler*, 6, 21.7-12.

under suspension precludes Members from offering most of the procedural motions that otherwise would be in order. Clause1(b) of Rule XV, first adopted in 1868, provides that:

> Pending a motion that the House suspend the rules, the Speaker may entertain one motion that the House adjourn. After the result of such a motion is announced, the Speaker may not entertain any other motion until the vote is taken on the suspension.

Pursuant to this rule, a motion to recess was ruled out of order in 1877,[122] as was the call for a quorum after the defeat of an adjournment motion in 1892.[123]

Even before adoption of what is now Rule XV, clause 1(b), a motion to postpone indefinitely was ruled out of order by Speaker Hunter in 1840,[124] and in 1859, Speaker Orr ruled that it was not in order to move to table a suspension motion.[125] In 1901, Speaker Henderson ruled that a motion to recommit might not be offered,[126] and demands for a division of the question were ruled out of order at various times by Speakers Colfax, Blaine, and Cannon.[127] After debate on a suspension motion, a single vote occurs. If a suspension motion includes amendments to the measure, no separate vote may be demanded on the amendments.[128]

Until recently, the House debated and then disposed of each suspension motion as it was offered. On April 9, 1974, however, the House adopted H.Res. 998, making changes in a number of House procedures, including the procedures for voting on suspension motions.[129] The resolution added a new paragraph (b) to what was then clause 3 of Rule XXVII, authorizing the Speaker to postpone and then cluster recorded or rollcall votes on suspension motions.[130] There was little discussion of this change during the debate, as Members focused their attention instead on amendments to the rules governing quorums and recorded votes in Committee of the Whole. The provisions for postponing and clustering votes on various questions, including suspension motions, now are consolidated in clause 8 of Rule XX.

Sources of Additional Information

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[122] *Hinds and Cannon*, V, 5748.

[123] *Hinds and Cannon*, V, 5747.

[124] *Hinds and Cannon*, V, 5322.

[125] *Hinds and Cannon*, V, 5406.

[126] *Hinds and Cannon*, V, 6860.

[127] *Hinds and Cannon*, V, 6141-6143; see also *Deschler*, 6, 21.15.6.

[128] *Hinds and Cannon*, VIII, 3171; *Procedure*, 21.17.3; *Deschler*, 6, 21.15.5.

[129] *Congressional Record*, April 9, 1974, pp. 10181-10200.

[130] *Congressional Record*, April 9, 1974, pp. 10195-10196.

Much of this report is based on information derived from the published rules and precedents of the House. Readers who wish to refer directly to these sources should consult the following:

House Rules and Manual, 106th Congress: sections 885-891.
Hinds' and Cannon's Precedents of the House of Representatives: volume V, chapter 142; and volume VIII, chapter 272.
Cannon's Procedure in the House of Representatives: pages 454-458.
House Practice: A Guide to the Rules, Precedents and Procedures of the House, by Wm. Holmes Brown: pages 851-859.
Deschler's Precedents of the U.S. House of Representatives: volume 6, chapter 21, sections 9-15.