

# LEGISLATING UNDER RESTRICTIVE RULES IN THE UNITED STATES HOUSE OF REPRESENTATIVES

by

JORDAN MATTHEW MCKISSICK

(Under the Direction of Anthony J. Madonna)

## ABSTRACT

In the modern era the United States House of Representatives has become a hollow chamber, absent of debate, where rank and file members vote in favor of restrictive rules. These restrictive rules strip them of their power and ability to legislate, debate, and amend legislation. This work seeks to understand the tools party leadership uses to build winning coalitions to pass restrictive rules, and why rank and file members vote for those rules, as well as the effect those rules have within the chamber's committees. More specifically, this dissertation takes an in-depth look at the utilization of managers' amendments in an era of Congress that began the most notable transition to an increasingly closed process. I find that manager's amendments can be utilized by party leadership as a tool for intraparty bargaining to incentivize members to vote in favor of restrictive rules. However, the data show the use of manager's amendments for this purpose is inconsistent and suggests more exploration on the topic is needed. This dissertation also provides insight into the effect restrictive rules have on committees' use of power, a long-standing debate in the field. The data show that under restrictive rules members are willing to utilize their committee power by holding more hearings as their work is theoretically more protected from changes on the floor of the chamber.

INDEX WORDS: restrictive rules, structured rules, managers' amendments, US Congress,  
congressional committee, committee power

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REPRESENTATIVES

by

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## TABLE OF CONTENTS

|  | Page |
|--|------|
| ACKNOWLEDGEMENTS .....   | iv   |
| LIST OF TABLES .....   | ix   |
| LIST OF FIGURES .....  | x    |
| CHAPTER  |      |
| 1 INTRODUCTION .....   | 1    |
| Building Intra-Party Coalitions Under Restrictive Rules in the U.S. House: A<br>Case Study .....   | 4    |
| Structured Rules: A Closer Look at Managers' Amendments Functions Under<br>Restrictive Rules ..... | 5    |
| Legislating in a Post-Debate Congress: How Restrictive Rules Affect Committee<br>Action.....       | 7    |
| 2 BUILDING INTRA-PARTY COALITIONS UNDER RESTRICTIVE RULES IN<br>THE U.S. HOUSE: A CASE STUDY ..... | 9    |
| Abstract .....   | 10   |
| Introduction.....  | 11   |
| Regular Order.....   | 12   |
| The House Committee on Rules and Managers' Amendments .....  | 14   |
| The Appropriations Process .....   | 17   |



|   |  |    |
|---|--|----|
|   | The Beginning of the End for Open Rules: The Case of the Commerce-Justice-<br>Science Appropriations Bill .....  | 18 |
|   | Data .....   | 22 |
|   | Results: Evidence in the Managers .....  | 25 |
|   | Appendix 2.1: Theoretical Framework .....  | 44 |
|   | Appendix 2.2: Breakdown of Votes on Restrictive Rules .....  | 45 |
| 3 | STRUCTURED RULES: A CLOSER LOOK AT MANAGERS' AMENDMENTS  |    |
|   | FUNCTIONS UNDER RESTRICTIVE RULES .....  | 47 |
|   | Abstract .....   | 48 |
|   | Introduction .....   | 49 |
|   | The House Committee on Rules .....   | 51 |
|   | Managers' Amendments .....   | 52 |
|   | Intra-Party Bargaining .....   | 55 |
|   | Data .....   | 56 |
|   | Results and Future Work .....  | 59 |
|   | Appendix 3.1: Example of the Manager's Amendment Offered by Mr. Shimkus to<br>H.R. 2273 in the Congressional Record (Congressional Record, 112th Congress,<br>October 14, 2011, H6945) ..... | 74 |
|   | Appendix 3.2: Example of the Summary of the Manager's Amendment Offered<br>by Mr. Shimkus to H.R. 2273 on the Rules Committee's Website .....  | 79 |

|   |  |     |
|---|--|-----|
| 4 | LEGISLATING IN A POST-DEBATE CONGRESS: HOW RESTRICTIVE RULES<br>AFFECT COMMITTEE ACTION..... | 80  |
|   | Abstract .....   | 81  |
|   | The Tax Cuts and Jobs Act .....  | 82  |
|   | Curry vs. Krehbiel.....  | 86  |
|   | Regular Order and the Committee on Rules .....   | 88  |
|   | Literature Review.....   | 89  |
|   | Committee Hearings and Rule Choice.....  | 91  |
|   | An Increasingly Restrictive Rules Process .....  | 93  |
|   | Examining Committee Hearings and Rule Choice in the Contemporary Era .....                   | 94  |
|   | Conclusion .....   | 96  |
| 5 | CONCLUSION .....   | 100 |
|   | REFERENCES .....   | 102 |

## LIST OF TABLES

|  | Page |
|--|------|
| Table 2.1: Amendments Submitted and Accepted for Democrats and Republicans .....                                     | 30   |
| Table 2.2: Submission, Acceptance, Agreement Rates for Republicans/Democrats with DW-Nominate Scores .....           | 31   |
| Table 2.3: Provisions and Members' Amendments .....  | 32   |
| Table 2.4: Examples of Matching Submitted Amendments to the Provisions in the Managers' Amendments .....             | 33   |
| Table 2.5: How Members Included in Managers' Amendments Voted on the Rule.....                                       | 38   |
| Table 3.1: Managers' Amendments in Context: Technical Only or Substantive .....                                      | 61   |
| Table 3.2: Submitted Amendments under Structured Rules that include a Manager's Amendment in the 112th Congress..... | 62   |
| Table 3.3: Rules Committee Submitted Amendments by Status and Party.....   | 63   |
| Table 3.4: Floor Acceptance Rate of Amendments Made in Order .....   | 64   |
| Table 3.5: Matching Submitted Amendments to Provisions in the Manager's Amendment .....                              | 65   |
| Table 4.1: House Special Rules by Rule Type, 1905–2018 .....   | 97   |
| Table 4.2: Committee Hearings by House Passage, 2007–2016 .....  | 98   |
| Table 4.3: Committee Hearings by Floor Consideration Type, 2007–2016.....  | 99   |

## LIST OF FIGURES

|  | Page |
|--|------|
| Figure 2.1: Frequency Distribution of the House of Representatives Using Nominate Scores.....                        | 39   |
| Figure 2.2: Frequency Distribution of the House of Representatives Using Nominate Scores.....                        | 40   |
| Figure 2.3: Frequency Distribution of Amendments Made in Order Using Nominate Scores.....                            | 41   |
| Figure 2.4: Frequency Distribution of Majority Party Members Using Nominate Scores .....                             | 42   |
| Figure 2.5: Frequency Distribution of Amendments Included in Managers' Amendments Using<br>Nominate Scores .....     | 43   |
| Figure 3.1: Frequency Distribution of all Amendments Submitted during the Preprinting Using<br>Nominate Scores ..... | 66   |
| Figure 3.2: Frequency Distribution of all Amendments Made in Order Using Nominate Scores.                            | 67   |
| Figure 3.3: Frequency Distribution of all Amendments Not Made in Order Using Nominate<br>Scores .....                | 68   |
| Figure 3.4: Frequency Distribution of all Majority Party Amendments Made in Order Using<br>Nominate Scores .....     | 69   |
| Figure 3.5: Frequency Distribution of all Majority Party Amendments Not Made in Order Using<br>Nominate Scores ..... | 70   |
| Figure 3.6: Frequency Distribution of all Minority Party Amendments Made in Order Using<br>Nominate Scores .....     | 71   |
| Figure 3.7: Frequency Distribution of all Minority Party Amendments Not Made in Order Using<br>Nominate Scores ..... | 72   |

Figure 3.8: Frequency Distribution of all Amendments Withdrawn Using Nominate Scores .....73

## CHAPTER 1

### INTRODUCTION

The modern era of the United States House of Representatives has increasingly been a victim to a legislative process that is closed off to rank-and-file members through the utilization of closed and restrictive rules. These restrictive rules severely affect members' ability to debate and amend legislation on the chamber floor, and in many cases shut them completely out of the process, denying representation to their constituents in the process. This work seeks to provide a greater understanding of the effects restrictive rules have on the legislative process. The modern legislative process has been described as an era in which party leaders craft legislation in the dark without influence of rank-and-file members by exploiting time constraints and controlling the flow of information (Curry 2015). Through the three essays in this dissertation, I seek to provide evidence that members are still able to effectively implement legislative by analyzing a new and unique data set that uncovers members' ability to bargain with leadership to affect policy. I also use a combination of existing data to provide some evidence that restrictive rules increase the power of congressional committees and allow members to leverage their specialization to create well thought out legislation.

In recent history the appropriations bills considered in the 111<sup>th</sup> Congress saw an unprecedented, closed process. Every appropriations bill under consideration was reported to the floor for debate under a restrictive rule. A few years later during the 115<sup>th</sup> Congress newly elected Speaker Paul Ryan (R-WI) had made the promise to restore regular order and open the floor back up for amending, a similar promise that was made and not kept by his predecessor

Speaker John Boehner (R-OH) (DeBonis 2015). The 115<sup>th</sup> Congress went on to break the record for the most closed rules in a single congress, a record previously set under Boehner in the 113<sup>th</sup> Congress (McPherson 2018).

The increasing use of closed rules has many implications for policy as well as the way scholars study the field of political science. Some argue that an open amendment process allows for spontaneity, for free-flowing ideas and debate on the floor of the chamber. To proponents of floor amending, its ideal state is a beautifully chaotic and unpredictable process that lacks controllability. Though admittedly much of the debate does not change the outcome of policy, it does allow members to take positions and claim credit. It allows for members' constituents to have a better understanding of what their representative has done and is doing to serve them and their interests. It also allows for the creation of a lot of public data which scholars of American Politics utilize to study the institution. The closed process the chamber operates under today is somewhat shrouded in mystery, or as Curry (2015) puts it, the chamber is simply "legislating in the dark".

The speaker of the House and party leadership are not alone in the blame for a closed process. Rank-and-file members play a large role in the process as well. Once the Rules Committee crafts a rule and reports it to the House floor for consideration it takes a majority of the chamber's support to adopt the rule. Moreover, a majority is also needed to order the previous question on the rule, which is necessary to end debate. If the previous question motion fails, the minority is afforded the opportunity to amend the rule (Finocchiaro and Rohde 2008). It is extremely rare for a special rule reported out by the Rules Committee to be defeated on the floor or for the previous question motion to be defeated, as they usually have the vast support of the majority party (Oleszek, Oleszek, Rybicki and Heniff 2020).

In the first two chapters, this dissertation utilizes a unique data set of preprinted members' amendments and managers' amendments, an area of the field that has been overlooked and understudied that I believe will help to explain how party leadership is building winning majority coalitions to vote in favor of restrictive rules that hinder their individual ability to legislate. I posit that leadership utilizes managers' amendments as a way to buy votes in favor of restrictive rules. The data also show contrary to conventional wisdom that managers' amendments are utilized not only to make technical changes to legislation but more often than not to make substantive changes. It is my hope that the field will take a closer look at these phenomena in the wake of an ever-increasing restrictive process.

In chapter three, this dissertation seeks to find evidence that restrictive rules have brought strength back to congressional committees. These restrictive rules have allowed committee members to utilize their specialization without fear of hostile amendments on the chamber floor dismantling their work. The framework of this chapter is influenced by the competing theories brought out in Keith Krehbiel (1991) and James Curry's (2015) work. I utilize a combination of existing data to show that under restrictive rules committees do in fact hold more committee hearings on average.

In general, this dissertation seeks to better understand how Congress functions under an increasingly restrictive process. It seeks to provide new evidence of coalition building and vote trading through the use concessions via manager's amendments. In addition, this work also tests the effects restrictive rules have on committees' willingness to use their power.



## **1.1. Building Intra-Party Coalitions Under Restrictive Rules in the U.S. House: A Case Study**

The first essay in this dissertation takes an in depth look at a pivotal moment, when the United States House of Representatives began to see increasing use of restrictive rules on the chamber floor during the appropriations process. Specifically, leadership was able to build coalitions to pass rules that restrict rank-and-file members' ability to affect the legislative process, essentially stripping them of their power. This work is unique as it utilizes managers' amendments in conjunction with the preprinting requirement attached to structured rules to expand the field's knowledge on vote buying and trading.

This work sees the 111<sup>th</sup> Congress as a pivotal moment due to the fact that all of the appropriations bills considered were done so under a restrictive rule. After this unprecedented appropriations process, the use of restrictive rules sees a major shift. From the 60<sup>th</sup> Congress to the 111<sup>th</sup> Congress about thirty percent of appropriations bills were debated under a restrictive rule. Following the restrictive process witnessed during the debate of the appropriations bills of the 111<sup>th</sup> Congress and through the 115<sup>th</sup> Congress about ninety percent of appropriations bills were reported to the floor under a restrictive rule.

In this examination of submitted amendments to the Rules Committee that are rejected by the Rules Committee for floor consideration, I assume that members' submitted amendments are their preferred policy outcome. From there I analyze the provisions of the corresponding manager's amendment to each bill for evidence of the inclusion of rejected amendments submitted during the preprinting process along with how those members voted on the floor in relation the structured rule. I find evidence of rejected amendments that were submitted to the Rules Committee under the preprinting requirement within the managers' amendments that are

ideologically disproportional to the amendments that were made in order by the Rules Committee for floor consideration. I find that members' amendments that were included in the manager's amendment are on the ideological periphery of the majority party's ideological median, while amendments that were made in order for floor consideration are centered around the median. This chapter makes important contributions to the field of political science by offering new insights into coalition building and bargaining research in an era of shrinking data. These new insights call for more research on the functions of managers' amendments across time in crafting legislation.

## **1.2. Structured Rules: A Closer Look at Managers' Amendments Functions Under Restrictive Rules**

The second essay in this dissertation expands on the anecdotal evidence found in the previous chapter that demonstrates party leadership can and does use managers' amendments as positive agenda control to provide concessions or "side payments" to majority party centrists. This, I argue, is done to secure winning majority coalitions to report bills to the floor under restrictive rules. This chapter also seeks to provide evidence that managers' amendments can be used to vote en bloc on amendments that would split the party by combining amendments proposed by members on the periphery of both sides of the party's ideological median.

This chapter's data comprise all amendments to bills submitted under structured rules via the attached preprinting requirement that also include a manager's amendment during the 112<sup>th</sup> Congress. The list of submitted amendments are found buried on the House Rules website and provide a unique insight into members' policy preferences prior to the debate of the bill and without the use of floor amendments. Each submitted amendment that is not made in order by the Rules Committee is analyzed in conjunction with each provision of the corresponding bill's

manager's amendment. Matching submitted amendments to the manager's amendment and controlling for ideology will provide evidence that party leadership provides concessions via access to rank-and-file members who would suffer policy loss in voting for a restrictive rule.

The purpose of this chapter is to examine the use of managers' amendments as a coalition building tool to provide further evidence that they are utilized to bargain in favor of majority party centrists. This would help explain why those centrists vote in favor of restrictive rules that would move the status quo closer to the majority party median and away from their ideological ideal point. The results of this chapter differ from the evidence found in the previous chapter of this dissertation. In contrast to the previous chapter, there is limited evidence found of the inclusion of submitted amendments within managers' amendments. This work, in conjunction with the previous chapter, does however provide valuable new insights on new ways to study Congress. The vast amount of congressional research uses final passage votes or amendment votes. This work provides a new lens through which party leaders and rank and file members can bargain to obtain outcomes that favor them both. Party leaders are able to create winning coalitions in a way that reduces the frequency of votes that would split their party and bring the status quo closer to their preferred ideal point than would be possible under open rules. The members who receive these concessions are in return given floor access via amendments that have a higher rate of passage.

The contradictory results found between chapters one and two suggests that much more work needs to be done in this area. The importance of this work lies in the inverse relationship between the frequency of restrictive rules and frequency of final passage, roll call votes, and amendment data. As restrictive rules become more frequent, the floor data political scientists rely

on will become more and more scarce. This work provides an insight into where that data may be hiding, though seemingly inconsistent given current data limitations of this study.

### **1.3. Legislating in a Post-Debate Congress: How Restrictive Rules Affect Committee Action**

The final essay in this dissertation focuses on committee power in the modern era under restrictive rules through the lens of two competing theoretical frameworks: Keith Krehbiel's *Information and Legislative Organization* (1991) and James Curry's *Legislating in the Dark* (2015). I focus on Krehbiel's theoretical framework which centers around members' need to delegate power to leaders due to information asymmetry and, in return, members are rewarded via restrictive rules for their specialization. Krehbiel asserts the occurrence of a restrictive rule protects the work of committees by limiting or eliminating the possibility of hostile amendments. Therefore, he asserts restrictive rules increase the power of committees to promote well thought out legislation for the sake of good governance. In contrast, James Curry argues the relationship of informational asymmetry disproportionately favors congressional leaders allowing them to craft legislation in the dark without the influence of rank-and-file members. This is done by exploiting members' time constraints, strategically limiting the information they provide and exploiting their staffing advantages (Curry 2015).

In this chapter I test the competing theories by analyzing committees' use of power under restrictive rules. I measure a committee's use of power by quantifying the number of hearings the committee has on a specific bill and control for restrictive and non-restrictive rules. Under restrictive rules, I find loose evidence that committees do spend more time holding committee hearings. There is more work to be done in this area through the control of other variables such as unified government, committee jurisdiction, and importance of legislation. However, the

importance of this work is that it expands on how we can utilize new and unique data to greater understand how we can effectively study an increasingly restrictive congressional era.

## CHAPTER 2

### BUILDING INTRA-PARTY COALITIONS UNDER RESTRICTIVE RULES IN THE U.S.

#### HOUSE: A CASE STUDY<sup>1</sup>

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<sup>1</sup> McKissick, J. To be submitted to *Journal of Politics*.

**Abstract**

This chapter examines a case study of the appropriations process during the 111<sup>th</sup> Congress, which was shrouded in contention over the use of restrictive rules on all legislation considered in an omnibus bill. The purpose of this case study is to build on intra-party bargaining scholarship by analyzing majority party leadership's use of managers' amendments. I argue these managers' amendments are used as a tool to build winning coalitions on restrictive rule votes by providing side payments. Specifically, the side payments take the form of access to centrist majority party members who suffer policy loss in lieu of their vote in favor of restrictive rules. I find anecdotal evidence that majority party leadership includes members' amendments within the provisions of managers' amendments. The amendments that are buried within managers' amendments disproportionately favor majority members outside of the majority party's ideological median.

## 2.1 Introduction

The United States Congress is tasked every year with funding the government through the annual enactment of twelve general appropriations bills. In the contemporary Congress, the appropriations process has seen a major procedural shift in which these bills are debated, setting precedents that are contrary to the historic nature of the institution: open debate. This shift can clearly be seen in the 111<sup>th</sup> Congress, in which all appropriations bills considered were subjected to a restrictive rule. A restrictive rule is one that prohibits all or some members of Congress from offering amendments to legislation on the floor of the chamber. Prior to the 111<sup>th</sup> Congress only 30 percent of appropriations bills were debated under restrictive rules in the House of Representatives. Between the 111<sup>th</sup> and 115<sup>th</sup> Congress, the percent of appropriations bills debated under restrictive rules increased to about 90 percent.<sup>2</sup> These restrictive rules subvert “regular order” and traditional norms by limiting debate and amendments, shutting rank-and-file members out of the process.

This work provides a case study on the unprecedented process in which the appropriations bills of the 111<sup>th</sup> Congress were enacted. It seeks to provide evidence on how party leaders were able to build winning intra-party coalitions of rank-and-file members to obtain a majority of support for rules that restrict their own ability to legislate. These rules can bias legislation away from the floor median and away from the policy preferences of the majority party’s moderate members, whose vote is essential for the passage of these restrictive rules. A preprinting requirement during the enactment of the appropriations bills of the 111<sup>th</sup> Congress permits this work to uncover members’ policy preferences prior to debate. By uncovering the policy preferences of these members this work reveals that party leadership gave concessions to

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<sup>2</sup> These data were generated using Lynch et al. (2020)’s rules data spanning from the 50<sup>th</sup> to the 115<sup>th</sup> Congress.



moderate members within their respective party by inserting some of their policy preferences within a manager's amendment in return for voting in favor of the restrictive rule.

## **2.2. Regular Order**

“Regular order” is an ambiguous term frequently used to reference the traditional way in which a bill or legislative action moves through the legislative process. It is commonly viewed as a process that fosters debate and allows members to offer amendments in an effort to craft well thought out legislation. Regular order is not “explicitly defined in House or Senate rules” but is instead rooted in “procedural rules, precedents, and traditions designed to promote legislative benefits” and was the dominant process between the 1950s through the 1980s (Oleszek et al. 2020, p. 15).

The process starts with a piece of legislation being introduced in the House or Senate.<sup>3</sup> The bill is then referred to the appropriate congressional committee, usually a committee with subject matter experts on the substantive content of the bill. The committee in which the bill is referred would then have the power to mark-up the text of the bill. Mark-ups allows members of the committee to debate and amend the text of the bill in an effort to create more thoughtful legislation. It is a place where members, who are more likely to be familiar with the subject matter of the bill's text, can work through and debate the merit of proposed changes. After mark-up the committee can vote to report the bill to the floor of the chamber. The report is then numbered by Congress and assigned to the appropriate calendar for organization purposes. The committee stage is also notable for inaction, which essentially kills the bill, stopping it from

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<sup>3</sup> Article I, Section 7, Clause 1 of the U.S. Constitution states, “All Bills for Raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.” However, in the contemporary Congress, the Senate has used procedural tactics to put revenue raising legislation on the Senate floor by taking up a previously passed House bill via an amendment to strike the text of the bill and then substitute their own language.

making any more forward progress on its way to becoming law. This inaction is also known as negative agenda control.

Once the bill reaches the chamber floor, it is read, and all the members of the respective chamber are then allowed to debate and offer amendments to the text. In the House however, members' amendments must be germane to the text of the bill for the amendment to be in order. Once the bill is voted on, it is sent to the other chamber, where it will follow a similar process. Sometimes the process happens simultaneously with both chambers acting on a measure concurrently.

The House and Senate versions of the bill must be identical prior to being sent to the president's desk. A conference committee is sometimes formed to resolve the differences between the two chambers bills. The conference committee is usually composed of members from the committees of jurisdiction who are most familiar with the text and subject matter of the legislation. After both chambers pass the conference committee's version of the bill, the bill would be sent to the president and signed into law.

Though there are a lot more nuances to the rules and procedures under the process of "regular order" than described in the brief synopsis above, the take away is that it is a process in which all members have the power to debate and offer amendments to legislation. It provides as a catalyst for the institution to function as a deliberative body and allows members who represent every corner of our nation to voice their ideas and concerns in order to craft legislation that serves all of our society. However, it is noted in the field that regular order is a fluid process based not only on procedural rules but also precedents and traditions. Accordingly, members are usually acting in self-interest when they make claims to return to it when the process at hand

does not deliver their preferred policy outcome (Lynch et al. 2020; Oleszek 2014; Wolfensberger 2013).

### **2.3. The House Committee on Rules and Managers' Amendments**

The House Committee on Rules, or as it is often referred, the Rules Committee, is a distinguishing feature of the House. It is comprised of a 2 to 1 ratio of majority party members to minority party members. It plays an integral role outside of regular order providing for the most common procedural mechanism to get major bills from their respective committees to the floor of the United States House of Representatives, by granting a bill privilege.<sup>4</sup> Without a special rule granted by the Rules Committee, important legislation would likely never reach the floor as its fate is determined by the chronological order in which it is placed on one of the chamber's calendars (Oleszek et al. 2020).

Once a committee reports a bill, the chair of the committee submits a written request for a rule to the Rules Committee. Should the Rules Committee decide to proceed with moving the legislation forward, the committee provides a hearing on the rule allowing for members to debate the nature of the rule. The rule is drafted and voted on by the members of the Rules Committee. The rule then reported out by the committee grants the bill privileged status and gives it access to immediate floor consideration.

Special rules not only serve as a procedural mechanism to get the bill to the floor of the House but also govern the provisions for the length of general debate and the nature of the amending process. Regarding amendments, the rule takes on one of three types: open, closed, or modified/structured. The open rule allows for floor amendment proposals by any member of Congress and encourages debate. Only amendments deemed non-germane are prohibited from

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<sup>4</sup> Non-controversial legislation is often brought to the floor under a suspension of the rules, a procedural mechanism that require a two-thirds vote. See Oleszek et al. (2020, p. 153) for a detailed explanation.

the floor under an open rule. A closed rule operates to the contrary and prohibits any member from offering amendments. This forces members to vote on the bill “as is” without any mechanism for amendment or change, making the closed rule the most restrictive of the special rules.<sup>5</sup> Modified or structured rules allow the Rules Committee to decide who has the authority to offer amendments as well as how many amendments can be offered. Under a structured rule the committee will usually allow members a timeframe to submit amendments for consideration, then the committee will act as gatekeeper to ascertain which amendments will be allowed on the floor. This essentially protects the policy goals of majority party leadership (Lynch et al. 2016).

Often included in the amendments that are granted floor access are a manager’s amendment. Managers’ amendments are often offered by either the majority or minority ranking members who are highly involved in the legislative process regarding the legislation at hand and also are tasked with ensuring a bill’s passage. Managers’ amendments can be either technical or substantive in nature and usually provide several provisions to be voted on en bloc.

The Rules Committee therefore acts as a powerful gate keeper for legislation, not only by exerting negative agenda control of what bills reach the floor but also positive agenda control on what changes can be made to the legislation once it reaches the floor. Selected by the Speaker, the Chairman of the Rules Committee often acts at the behest of the Speaker of the House as their party loyalty usually earns them their position (Oleszek et al. 2020). Specific to the House, there is no comparable Rules Committee in the Senate. Senate leadership instead has increasingly relied on a process known as filling the amendment tree<sup>6</sup>, a procedural tactic used

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<sup>5</sup> This is unless the majority allows for a motion to recommit with instructions.

<sup>6</sup> Filling the amendment tree is a tactic used by the Senate Majority Leader in which his or her right of first recognition allows them to fill all available positions on the amendment tree preventing other members from offering amendments. For an example see: <https://www.legbranch.org/how-mcconnell-blocked-amendments-on-the-defense-bill/>

by the majority leader to block amendments to the bill. This procedure functions as the closest equivalent to a Rules Committee.

In the modern era of Congress, scholars have seen a shift from regular order to an increasingly closed process spearheaded by the Rules Committee and party leaders which has increasingly seized legislative power from individual members of Congress (Curry 2015). Specifically, party leaders have utilized the Rules Committee to take away rank-and-file members' power to debate and offer amendments to legislation via floor amendments, curtailing "regular order" by passing legislation under closed or restrictive rules.

Scholarly research has argued that party leaders are not taking power away from rank-and-file members. It is argued, validly, that rank-and-file members delegate this authority to the party leadership as special rules require a majority of support for passage. Therefore, members would vote against the restrictive rules if they did not like them (See Aldrich and Rhode 2000; Cox and McCubbins 2005). Prior research shows evidence that moderate members, who may vote against the rule, are given concessions via the structured rule process by allowing their amendments on the floor in return for their support for the restrictive rule (Lynch et al. 2016). Other works suggests rules have an effect on institutional behavior and show that an increase in amending occurs in the Senate on bills which were considered under restrictive rule in the House (Madonna and Williamson 2023).

Members may also influence legislation by withholding key votes on either the underlying rule crafted by the Rules Committee or on a bill's final passage vote. Majority party leaders can only control the floor agenda if they are able to build intra-party coalitions giving them the votes need to subvert the traditional process.

## **2.4. The Appropriations Process**

The president is tasked every year with submitting an annual budget proposal to Congress on or before the first Monday in February.<sup>7</sup> The president's budget is viewed as a wish list and is also used as political messaging to the public. In response Congress then adopts its own budget resolution. The congressional budget is a nonbinding document that does not become law, but it is used both as a guide for various budget-related bills for both chambers and their committees and as a way to set spending ceilings (Tollestrup and Saturno 2014).

The congressional process for constructing appropriations bills has varied over time. Traditionally the House of Representatives would consider their version of the regular appropriations bills then the Senate would amend the House passed bills. The House could then pass the Senate's version, however more often the House and Senate would utilize a conference committee to resolve the differences in the chambers' measures. Another method utilized involves both chambers' committees and subcommittees simultaneously considering the measures (Tollestrup and Saturno 2014).

Until the 94<sup>th</sup> Congress (1975-1976), all appropriations bills had generally been considered under an open rule allowing members to offer amendments to the measure. On September 1, 1976, Democrats brought H.R. 14238, the Legislative Branch Appropriations Bill, to the floor under a modified-closed rule. The rule was meant to limit all amendments except those recommended by the Committee on Appropriations, ensuring the committee could act as a gatekeeper. The Democrats argued the modified-closed rule was necessary due to the increased frequent use of messaging amendments by the Republicans (Lynch et al. 2020). Despite this,

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<sup>7</sup> 31 U.S.C. § 1105(a)

appropriation measures would still generally be considered under open rules until recent congresses.

## **2.5. The Beginning of the End for Open Rules: The Case of the Commerce-Justice-Science Appropriations Bill**

The Commerce-Justice-Science Appropriations Bill was the first bill of a six-bill appropriations package to be enacted in 2009 during the 111<sup>th</sup> Congress. The bill allocated \$68.2 billion towards the Commerce and Justice Departments, as well as major science programs such as NASA. This bill sets the start of the spending debate the year following the 2008 financial crisis and is the turning point in which appropriations bills are debated in the contemporary congress. The sponsor, Rep. Alan Mollohan (D-WV), the chairman of the Subcommittee on Commerce, Justice, Science, and Related Agencies, reported H.R. 2847 from the House Committee on Appropriations on June 12<sup>th</sup>, 2009 in which it was subsequently placed on the calendar.

Prior to debate, the House Rules Committee attached H. Res. 544 to the bill outlining the special rule which passed via roll call almost along party lines, with one member of each party defecting, along with 12 not voting. H. Res 544 is classified as a modified-open rule and provided for one hour of general debate as well as a pre-printing requirement, which stipulates all amendments to the bill must be printed in the record on June 15<sup>th</sup> or prior. The use of a modified-open rule allows more control over the process by forcing members to pre-print their amendments. Opponents argued the pre-printing process stifled floor debate by not allowing members to spontaneously amend other members' amendments on the floor.

The pre-printing requirement was not received well amongst the House Republicans. Rep. Lincoln Diaz-Balart (R-FL) argued that it “continues the precedent the majority set last year

when they decided to no longer allow the House to consider appropriations rules with open rules and instead use a restrictive rule that requires members to preprint any proposed amendments in the Congressional Record” (Congressional Record, 111th Congress, June 16, 2009, H6855).

Rep. Diaz-Balart’s claim seem to be warranted, given that from the 104<sup>th</sup> Congress up until the 2<sup>nd</sup> session of the 110<sup>th</sup> Congress in which the congressman is referencing only two other appropriations bills received a special rule denoting it as open with a pre-printing requirement (See Table 2: Tollestrup 2015, p. 12). Quoting from a 2004 report written by Rule Committee Chairwoman Louise Slaughter (D-NY), he argued this was a restrictive rule, as “a preprinting requirement blocks any amendment proposal that might emerge during the course of debate” (Congressional Record, 111th Congress, June 16, 2009, H6856). In the end 127 amendments were pre-printed in the record, 104 of which were submitted by minority party members.

The House dissolved itself into the Committee of the Whole on June 16<sup>th</sup> at 6:36 p.m. to debate the bill. When debate on amendments began at 7:51 p.m., Rep. Mollohan (D-WV) and Rep. Aaron Schock (R-IL) offered separate amendments which were both agreed to by voice vote. Shortly after at 8:13 p.m., less than two hours after debate on the bill began, Mr. Mollohan moved that the Committee of the Whole rise and by 9:01 p.m. the motion was adopted by a roll call vote of 179-124.<sup>8</sup> Accordingly, the Committee of the Whole rose, leaving H.R. 2847 as unfinished business.

In the middle of the night a new structure rule, H. Res. 552, was reported to the House to override H. Res. 544. The new rule ended general debate and only allowed 33 amendments to the floor. Of those 33 amendments the rule allowed consideration of 23 specific amendments and specified 21 amendments the ranking member of the Appropriations Committee could chose ten

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<sup>8</sup> Roll Call No. 350 (Congressional Record, 111<sup>th</sup> Congress, June 16, 2009, H6898)



of (see H. Res. 552, 2009). Of the 23 specific amendments, 9 were offered by majority party Democrats and 14 were offered by minority party Republicans. The rule was voted on the House floor at 3:20 p.m. the following day and passed via a roll call vote of 221-201<sup>9</sup>, with all Republicans and 27 Democrats voting against the resolution.

Rep. Frank Wolf (R-VA), the ranking member on the Appropriations Committee made a floor speech denouncing the rule change stating:

[Twenty-one] minutes into the amendment debate, the chairman of the Committee pulled the plug on that process and on the Members who, really, in good faith, followed the instructions of the preprinting. They went up; they did everything that was asked of them. The rules, Mr. Chairman, were then changed in the middle of the night. (Congressional Record, 111th Congress, June 16, 2009, H6921)

Citing time constraints and the number of amendments pre-printed for consideration, Committee Chair David Obey (D-WI) responds to Mr. Wolf's concerns by detailing the decision to change the rule which is as follows:

The hard fact is that everyone says they want appropriation bills to be finished individually, not collectively, in an omnibus. And yet, we only have 6 weeks to accomplish that. We have to **pass 12 major appropriation bills in 6 weeks** and still leave enough time on the calendar to deal with health care, to deal with climate change, to deal with the military authorization bill, and several other crucial issues. So Mr. Hoyer, the majority leader, and I, went to our friends on the Republican side of the aisle, went to both the minority leader and the ranking member of the Committee, and asked whether or not we could reach agreement that would enable us to meet that schedule.

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<sup>9</sup> Roll Call No. 352 (Congressional Record, 111<sup>th</sup> Congress, June 17, 2009, H6910)

And we pointed out that the schedule that we have set requires that we **set aside no more than about 8 or 9 hours to debate each of the bills** with all of the amendments thereto.

We asked Members to prefile amendments so that every Member of this House would know what they were expected to vote on. We confronted the fact that 127 amendments were filed. That will take at least 23 or 24 hours, just to debate those amendments. And that blows the entire schedule for the entire 6 weeks. One Member today said, “Well, what’s wrong if it takes 40 hours to pass this bill?” The fact is that that would be one-third of the time remaining on the schedule for all 12 appropriation bills.

We have the impression that somehow appropriation bills have always been considered in open rules. The fact is, I have a sheet here which shows 25 previous occasions where appropriations have been continued under structured or modified, or even closed rules. And this is only when Republicans were in control. This does not count the more than a dozen times under Democratic control, when we had significantly limited rules for appropriation bills, including the Foreign Operations bill, D.C., the Defense Bill, Interior and the Legislative Appropriations bill.

But we are giving—there are going to be 33 amendments offered to this bill under the rule, and only nine of them are Democratic amendments. The rest are Republican amendments.

Let me take back my time. Let me simply say that this is the third year that we’ve been in this situation where we’ve been filibustered by amendment, and we recognize a filibuster by amendment when we see it. (Congressional Record, 111th Congress, June 16, 2009, H6922)

What follows is a detailed case study of the Consolidated Appropriations Act of 2010, an omnibus bill passed in the 111th Congress in which the Hiring Incentives to Restore Employment Act (H.R. 2847) gets folded into along with other appropriations measures during this Congress. This bill sets the tone for the restrictive process that encompasses the remaining appropriations bills during the first session of the 111<sup>th</sup> Congress, and that has become standard procedure in the contemporary era. The purpose of this case study is to assess how congressional leadership was able to build intra-party coalitions during this contentious process which allowed for the restrictive appropriations process in the 111<sup>th</sup> Congress. Building upon vote trading work in the field, I posit that majority party rank-and-file members are given concessions by bill managers by including their amendments within the managers amendments.

## **2.6. Data**

What makes this case study notable from a data standpoint is that each of the six individual appropriations bills that comprise the omnibus had a pre-printing requirement attached by the Rules Committee. This requirement, commonly used in conjunction with modified rules<sup>10</sup>, allows the Rules Committee to sort through proposed amendments to choose which of the amendments will be allowed in the rule and onto the floor for debate. The pre-printing requirement also allows the majority party leadership to suppress spontaneous amendments from reaching the floor. For the purpose of this case study, it assumes the pre-printing requirement reveals all members' (who submitted an amendment) preferred policy outcome, which is usually unknown in a closed process. Due to the House Rules Committee archiving this information in

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<sup>10</sup> Oleszek et al. 2020, p. 171; Lynch et. al. 2010 and 2016.

the modern era, I was able to include all of the pre-printed amendments to the omnibus bill in my data.<sup>11</sup>

The data in this chapter comprise all amendments submitted to the Rules Committee for the purpose of amending the six appropriations bills within the omnibus bill, including the omnibus itself. These data show which amendments were included in the special rule, which amendments reached the floor, as well as the floor outcome. This study hypothesizes that member ideology plays a key role in whether the amendment is accepted by the Rules Committee.<sup>12</sup> Therefore members' ideology, using Poole and Rosenthal's (2011) DW-Nominate scores, are used as a proxy for the ideology of each amendment.

The data in Tables 2.1 and 2.2 show that the minority party Republicans submitted far more amendments than the majority party Democrats; 351 and 108 respectively. It is notable that the Rules Committee accepted the Republicans amendments at a much higher rate, 26.7 percent, compared to the 16.7 percent of amendments accepted that were proposed by the majority party Democrats.

The starkest but unsurprising contrast is the acceptance rate amongst the parties. Only 12.8 percent of minority party amendments were agreed to on the floor of the House, while 88.9 percent of majority party amendments were agreed to. The acceptance rate of minority party amendments of 12.8 percent is somewhat consistent with the prior Congress, in which 15.6 percent of minority party amendments granted floor consideration under structured rules were agreed to on the floor (Lynch et al. 2010). However, the acceptance rate of majority party amendments is in contrast to the prior congress. In the 111<sup>th</sup> Congress the acceptance rate of 88.9

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<sup>11</sup> Pre-printed amendments can be found at [www.rules.house.gov](http://www.rules.house.gov). The 111<sup>th</sup> Congress data is no longer available at this time.

<sup>12</sup> Other works such as Lynch et. al. (2016) make the assumption that party plays a key role in the Rules Committee process.

percent of majority party Democrats' amendments is almost doubled compared to the 44.8 percent of amendments accepted in the 110<sup>th</sup> Congress (Lynch et. al. 2010).

The extremely low number of majority party amendments accepted by the Rules Committee in conjunction with the doubled rate of acceptance insinuates a procedural change in how the Rules Committee and party leadership bargain and build intra-party coalitions. The majority party acceptance rate of close to 90 percent on the chamber floor suggests party leaderships' goal in the 111<sup>th</sup> Congress's appropriations process is to limit majority party amendment failure as well as limit majority party roll rates. The limitation of majority party amendment failure is consistent with Rep. David Obey's (D-WI) floor speech quoting time constraints as a factor in limiting the amending process with the use of restrictive rules.

A closer look at the ideology of these members provided in the following figures provide anecdotal evidence of the Rules Committee's motivations in their process of choosing amendments for floor consideration. The following figures shows the distribution of ideology for the entire House of Representatives (Figure 2.1), the ideological distribution of members who submitted amendments (Figure 2.2), as well as the ideological distribution of the members' whose amendments were accepted by the Rules Committee for floor consideration (Figure 2.3). The distributions in Figure 2.2 show the ideology of majority party members who submitted amendments is somewhat flat across the majority party's ideological spectrum, while the minority party's amendments submitted skews heavily toward the party's ideologically extreme members.

In regards to the Rules Committee's preference for allowing amendments for floor consideration, Figure 2.3 shows the ideology of members' amendments accepted by the Rules Committee. At face value the ideological distributions in Figure 2.3 and Figure 2.4 show that the

Rules Committee favor including majority party member amendments that center around the majority party's ideological median. This suggests the majority party leadership were utilizing agenda control through special rules by allowing amendments on the floor that were unlikely to split the party and bias outcomes away from the chamber median and closer to the majority median, which is consistent with the literature (Oleszek 2014; Marshall 2005; Cox and McCubbins 1993; 2005; Dion and Huber 1996). This means the Rules Committee is exerting positive agenda control by allowing majority party amendments which are likely to reduce roll rates of the majority party while gaining support for special rules (see Lynch et al. 2016; Finocchiaro and Rohde 2008; Smith 2007; Cox and McCubbins 2005).

The minority party amendments accepted by the Rules Committee is in contrast to the ideological distribution of the minority party's submitted amendments. The accepted amendments disproportionately favor the minority party's ideological extreme. This is consistent with research showing that the majority party leaders actively allow floor amendments from the minority party ideological extremist which would split the party and increase minority party roll rates if a roll call vote were to occur as they are more likely to fail (Lynch et al 2016). These votes also put the minority party in difficult situations with the purpose of making them take votes that are not electorally beneficial.

## **2.7. Results: Evidence in the Managers**

Of the 459 amendments submitted to the Rules Committee, four were managers' amendments which correspond to four separate bills within the omnibus. In order to test this hypothesis, I separated each distinct provision outlined within the four managers' amendments. Each of the amendments was sponsored by the majority party bill manager. Of the 23 distinct provisions within the four managers' amendments, I was able to match 17 of those provisions to

members' amendments preprinted in the Rules Committee.<sup>13</sup> Examples of these matches can be seen in Table 2.4, all of which were sponsored by majority party members which voted in favor of the restrictive rule as shown in Table 2.5. It is also important to note that every one of the members' amendments that were matched to provisions in the managers' amendments were withdrawn by the member during the Rules Committee's consideration. Because this is all happening prior to the Rules Committee issuing the rule, one can make the assumption that there is a bargaining process between the member proposing the amendment and the bill manager.

The submitted and withdrawn amendments that were matched to the manager's amendment are ideologically distinctive from the amendments that were allowed floor consideration by the Rules Committee. The frequency distribution plots in Figure 2.4 and Figure 2.5 show the amendments included within the manager's amendment are disproportionately representative of the majority party's ideologically extreme members on both sides. One could assume if these amendments were considered on the chamber floor individually instead of en bloc within the manager's amendment they would likely split the majority party. It appears that the majority party leadership is utilizing manager's amendment side payments to reduce roll rates amongst their party.

The conventional wisdom surrounding managers' amendments is that they are in nature, non-controversial. In my analysis of the appropriations process surrounding this omnibus bill, I found that this notion does indeed hold up. In every instance of a majority party bill manager proposing a manager's amendment, the ranking member of the minority party took to the floor in support of the bill manager's amendment. This is evidenced in the following floor speeches:

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<sup>13</sup> Cuellar (D-TX) had an exact match show up in two separate managers amendments.

Rep. Emerson in response to the Serrano Amendment: “Mr. Chairman, while I don’t oppose the content of this amendment, I do oppose the process in which it was offered.” (Congressional Record, 111th Congress, insert date, H8233)

Rep. Tiahrt in response to the Obey amendment: “Mr. Chairman, I’m not opposed to the chairman’s amendment in substance, but I am opposed to the amendment in process. The amendment incorporates nine separate stand-alone amendments offered by Democrat Members of this body, thus ensuring that those Members would not have to go to the Rules Committee and plead just to have a perfectly legitimate amendment proposed on the floor.” (Congressional Record, 111th Congress, insert date, H8778)

Rep. Latham in response to the Olver amendment: “Let me just express my frustration in this amendment, and they’re all good projects. There are five amendments, all Democrat amendments, all of substance, that we could have agreed on. But also, looking through the list here: We have another four or five amendments that we could have agreed on, of substance, and we will agree on. Again, I go back to the fact that the Rules Committee, the process is just totally out of whack, and the fact that while I don’t oppose these—actually, one of the projects that Mr. Braley referred to is something that I started several years ago and has been very, very successful as far as using soybean grease as far as lubricants on railroads.” (Congressional Record, 111th Congress, insert date, H8638)

Rep. Kirk in response to the Lowey amendment: “I yield myself 4 minutes. I rise in reluctant opposition to this amendment. There are many parts of the amendment that I support, like moving funds away from accounts that received a significant increase in the stimulus bill in order to increase funds for safe drinking water and sanitation programs. Unfortunately, I oppose this amendment for what it represents. We are continuing the



movement away from bipartisan consideration of amendments because it appears that the new practice under the Rules Committee is to take a number of Democratic amendments and put them in one group under the chairman's aegis so that it looks like we have a balanced list of amendments offered but really a much larger number of Democratic amendments are being considered. This is a very troubling practice that has now entered into the appropriations bills. Once again, I would point out, under clause 2 of rule XXI, the only amendments that are allowed under our rules on the floor are money amendments that cut or rearrange funds, not policy amendments. That gives awesome power to the Committee on both sides to limit debate on this bill. It's very odd that in all the consideration of appropriations bills before, we haven't really made this a standard practice like is happening now." (Congressional Record, 111th Congress, insert date, H7877)

These excerpts of the record clearly show that the ranking members are in agreement with the context and purpose of the managers' amendments. It is also clear that the ranking members are extremely frustrated with the closed process that the Rules Committee, at the behest majority leadership, have implemented. The fact that the minority ranking members are in agreement with the content of the managers' amendments also show that process in which the bill managers decide which amendments to include serve the purpose of garnering support. First, it appears that leadership is paying off majority party members whom are ideologically distant from the majority party median in a way that reduces majority party roll rates, by lumping their proposed amendments into one manager's amendment. The second is it allows for en bloc voting on amendments that have minority party support. What is interesting and provokes further research is the acceptance of amendments by the majority parties most extreme members that

could be matched with provisions found within the manager's amendment. It is likely that the amendments found in Table 2.4 that seem to have negotiated figures belong to the more extreme members, bringing the policy closer to the floor median. What is certain is that managers' amendments play a substantive role, and in an increasingly closed floor process are likely to be an important tool in the legislative process.

Table 2.1. Amendments Submitted and Accepted for Democrats and Republicans

|           | Democrat<br>Submitted | Democrat<br>Accepted | Republican<br>Submitted | Republican<br>Accepted |
|-----------|-----------------------|----------------------|-------------------------|------------------------|
| H.R. 2847 | 24                    | 9                    | 101                     | 35                     |
| H.R. 3170 | 7                     | 6                    | 89                      | 16                     |
| H.R. 3081 | 27                    | 2                    | 61                      | 6                      |
| H.R. 3082 | 9                     | 3                    | 23                      | 5                      |
| H.R. 3293 | 21                    | 1                    | 14                      | 4                      |
| H.R. 3288 | 20                    | 2                    | 63                      | 28                     |
| Total     | 108                   | 18                   | 351                     | 94                     |

Table 2.2. Submission, Acceptance, Agreement Rates for Republicans/Democrats with DW-Nominate Scores

|            | Submitted | Accepted   | Agreed To  | Mean Ideology<br>(DW-Nom) |
|------------|-----------|------------|------------|---------------------------|
| Republican | 351       | 94 (26.7%) | 12 (12.8%) | .8695                     |
| Democratic | 108       | 18 (16.7%) | 16 (88.9%) | -.4280                    |

Table 2.3. Provisions and Members Amendments

|                                | Distinct Provisions | Number of Uncovered<br>Members Amendments |
|--------------------------------|---------------------|---|
| Serrano Amendment<br>H.R. 3170 | 3                   | 3   |
| Obey Amendment<br>H.R. 3293    | 10                  | 8   |
| Lowey Amendment<br>H.R. 3081   | 5                   | 4   |
| Olver Amendment<br>H.R. 3288   | 5                   | 3   |

Table 2.4. Examples of Matching Submitted Amendments to the Provisions in the Managers' Amendments

| Managers Provision   | Member Amendment   |
|--|--|
| transfer \$250,000 from the GSA's Federal Building Fund operations account to the National Credit Union Administration's Community Development Revolving Loan Fund   | (Withdrawn) transfer \$250,000 from the GSA's Federal Building Fund operations account to the National Credit Union Administration's Community Development Revolving Loan Fund   |
| prohibit the use of funds for first-class travel for employees of agencies funded by the bill, in contravention of Federal regulations   | (Withdrawn) prohibit the use of funds for first class travel for employees of agencies funded by the bill, in contravention of Federal regulations   |
| increase funding for the Careers Pathways Innovation Fund by \$5 million, offset by a \$5 million decrease to the funding for the Green Jobs Fund, both within the Training and Employment Services account in the Department of Labor | (Withdrawn) increase funding by \$25 million for the Career Pathways Innovation Fund for the purposes of energy job training, offset by a reduction of \$25 million in funding for activities that prepare workers for careers in energy efficiency and renewable energy as described in section 6 171(e)(1)(B) of the WIA |
| increase funding for the Health Resources and Services Administration by \$1 million for the Emergency Medical Services for Children program, offset by a \$1 million decrease to the  | (Withdrawn) provide \$5 million in additional resources for the Emergency Medical Services for Children program, offset from the   |

|   |  |
|---|--|
| <p>funding for Department of Labor Departmental Management</p>  | <p>Department of Labor's general administrative account</p>  |
| <p>increase funding for Mathematics and Science Partnership program in the School Improvement Programs account of the Department of Education by \$5 million, offset by a reduction to the Fund for the Improvement of Education in the Innovation and Improvement account of the Department of Education (Obey-WI)</p> | <p>(Withdrawn) increase funding for the Mathematics and Science partnerships program which helps train our nation's math and science teachers at the elementary and secondary schools level by \$21,022,000 to \$200 million. The increase is offset by an equal reduction in the Department of Labor Departmental Management salaries and expenses account and CBO has scored as a net reduction of \$12 million in outlays</p> |
| <p>provide \$6.965 million for the Reach Out and Read program within the Fund for the Improvement of Education in the Innovation and Improvement account of the Department of Education</p>   | <p>(Withdrawn) increases funding for the Reach Out and Read Program by \$2 million within the funds available for Title V of the ESEA under this account</p>   |
| <p>increase by \$10 million the funding that may be used for grants to charter management organizations to replicate successful charter models within the Charter School program</p>  | <p>(Withdrawn) increase the amount of funds for subpart 1 of part B of title V of the ESEA that the Secretary of Education may reserve for the replication and expansion of successful charter school models from \$20 million to \$30 million.</p>  |

|   |   |
|---|---|
| under the Innovation and Improvement Account in the Department of Education   |   |
| provide \$1 million for Modeling and Simulation programs authorized under section 891 of the Higher Education Act in the Higher Education account in the Department of Education, offset by a reduction to the Fund for the Improvement of Education in the Innovation and Improvement account of the Department of Education | (Withdrawn) transfer \$1,000,000 from the Department of Education's Administrative Functions Account to the Department's Higher Education Account to allow the Department to begin implementing Title VIII, Section 891 (Modeling and Simulation) of the High Education Opportunity Act (P.L. 110-315). |
| include a prohibition on the use of funds in this Act to purchase light bulbs unless the light bulbs are "Energy Star" qualified or have the "Federal Energy Management Program" designation  | (Withdrawn) prohibit funds in the bill from being used to purchase light bulbs for office buildings funded by the bill unless the light bulb has, to the extent practicable, the Energy Star or Federal Energy Management Program designation   |
| include a prohibition on the use of funds in this Act for first-class travel by the employees of agencies funded by this Act in contravention of Federal travel regulations   | (Withdrawn) prohibit the use of funds for first-class travel for employees of agencies funded by the bill, in contravention of Federal regulations  |



|  |   |
|--|---|
| increase the Federal Railroad Administration's Railroad Research and Development account by \$3,000,000 and decrease the Financial Management Capital account by the same amount | (Withdrawn) increase the Federal Railroad Administration's Railroad Research and Development Account by \$5 million, offset by a reduction to the Financial Management Capital Account in the DOT. The intent would be to fund the feasibility studies listed in Division B: Sections 224, 404, and 405 of PL 110-432, the "Railroad Safety Enhancement Act of 2008." |
| increases funding for safe water and sanitation programs by \$25 million   | increase funding for improved access to safe water and sanitation by \$90 million, offset with an equal reduction in the Foreign Military Financing Program   |
| implementation of the U.S.-Brazil Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality by \$300,000  | transfer \$300,000 within the Department of State Diplomatic and Counselor Programs Account (D&CP) to provide 1-3 additional Foreign and Career Service Officers with expertise in combating racism and discrimination to staff the U.S.-Brazil Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality (JAPER).                         |

|  |  |
|--|--|
| <p>[Increase] maternal health programs by \$10 million</p> | <p>provide an increase of \$16 million to improve maternal health and reduce global maternal mortality rates in developing countries, offset by reducing the increases to the Capital Investment Fund (\$11 million) and the Millennium Challenge Accounts (\$5 million)</p> |
|--|--|

Table 2.5. How Members Included in Manager's Amendments Voted on the Rule

| Member   | Bill       | Yea | Nay | NV |
|----------|------------|-----|-----|----|
| Cuellar  | H.R. 3170  | X   |     |    |
| Hastings | H.R. 3170  | X   |     |    |
| Blumenau | H.R. 3081  | X   |     |    |
| Cuellar  | H.R. 3081  | X   |     |    |
| Hastings | H.R. 3081  | X   |     |    |
| Johnson  | H.R. 3081  | X   |     |    |
| Moore    | H.R. 3081  | X   |     |    |
| Cuellar  | H.R. 3293  | X   |     |    |
| Holt     | H.R. 3293  | X   |     |    |
| Matheson | H.R. 3293  | X   |     |    |
| McGovern | H.R. 3293  | X   |     |    |
| Polis    | H.R. 3293  | X   |     |    |
| Scott    | H.R.. 3293 | X   |     |    |
| Teague   | H.R. 3293  | X   |     |    |
| Braley   | H.R. 3288  | X   |     |    |
| Cuellar  | H.R. 3288  | X   |     |    |

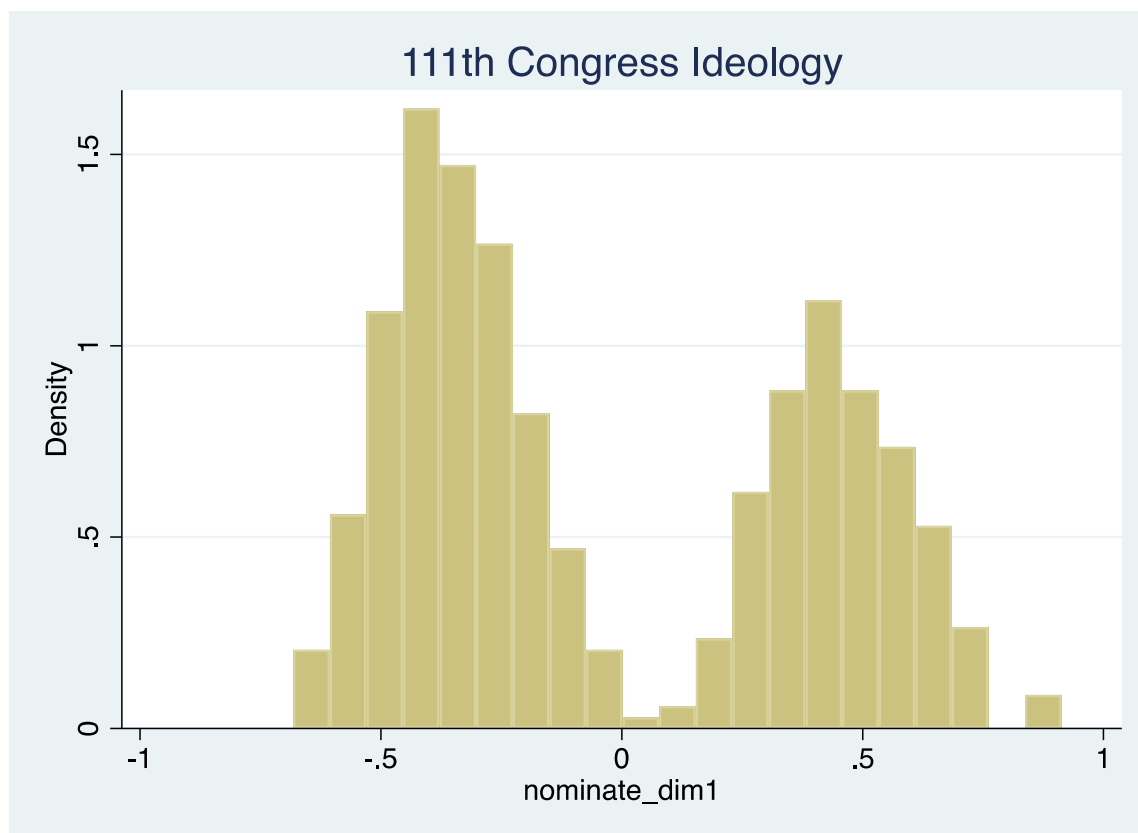


Figure 2.1. Frequency Distribution of the House of Representatives Using Nominate Scores

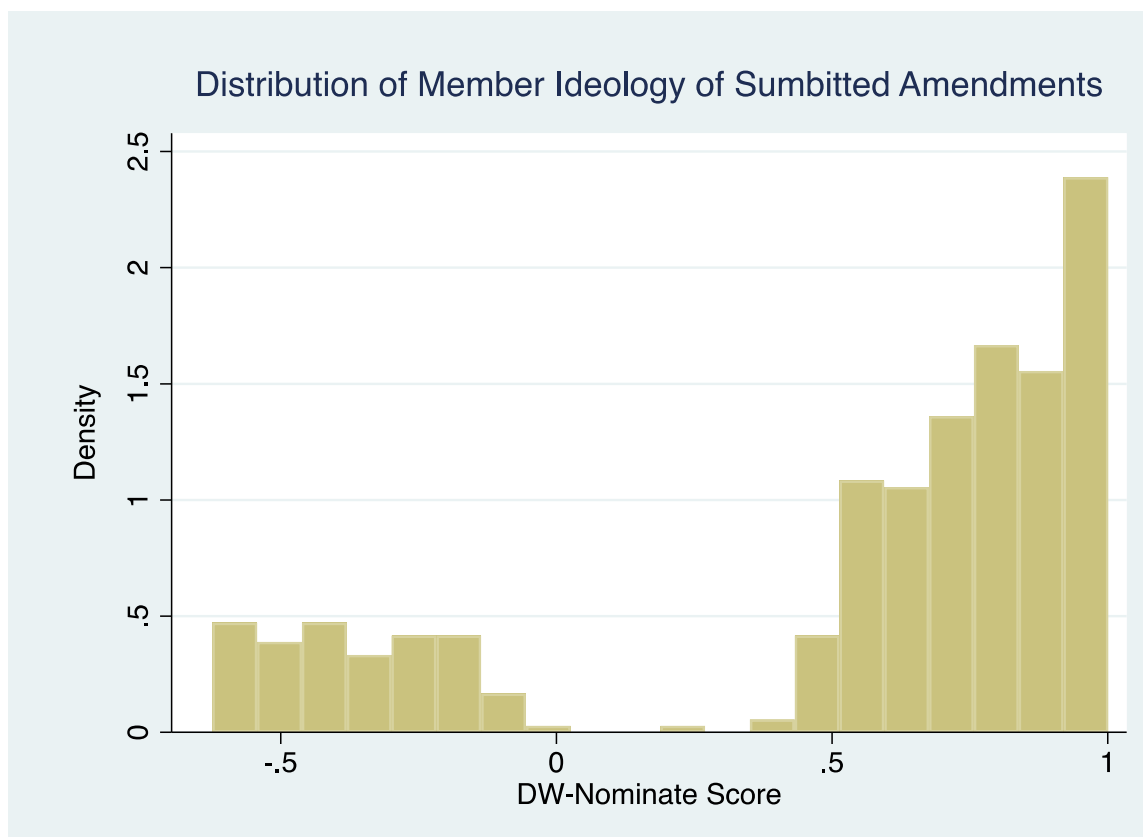


Figure 2.2. Frequency Distribution of Submitted Amendments Using Nominate Scores

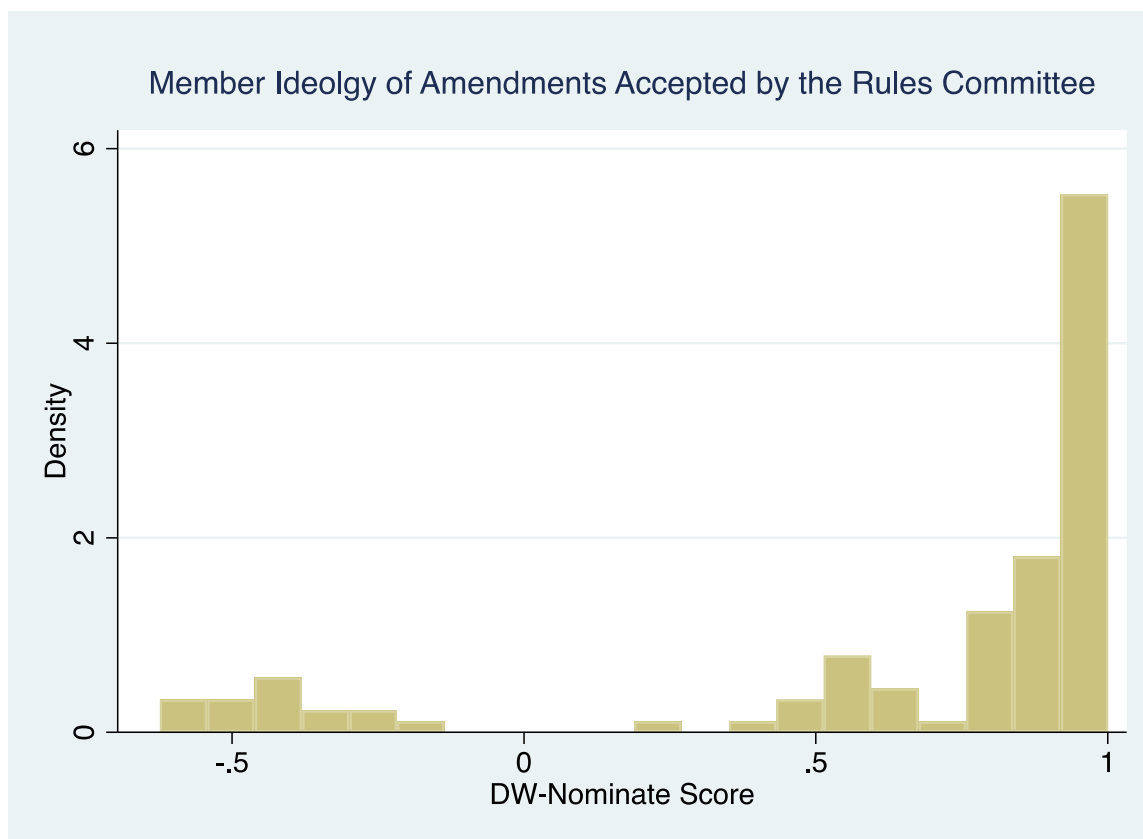


Figure 2.3. Frequency Distribution of Amendments Made in Order Using Nominate Scores

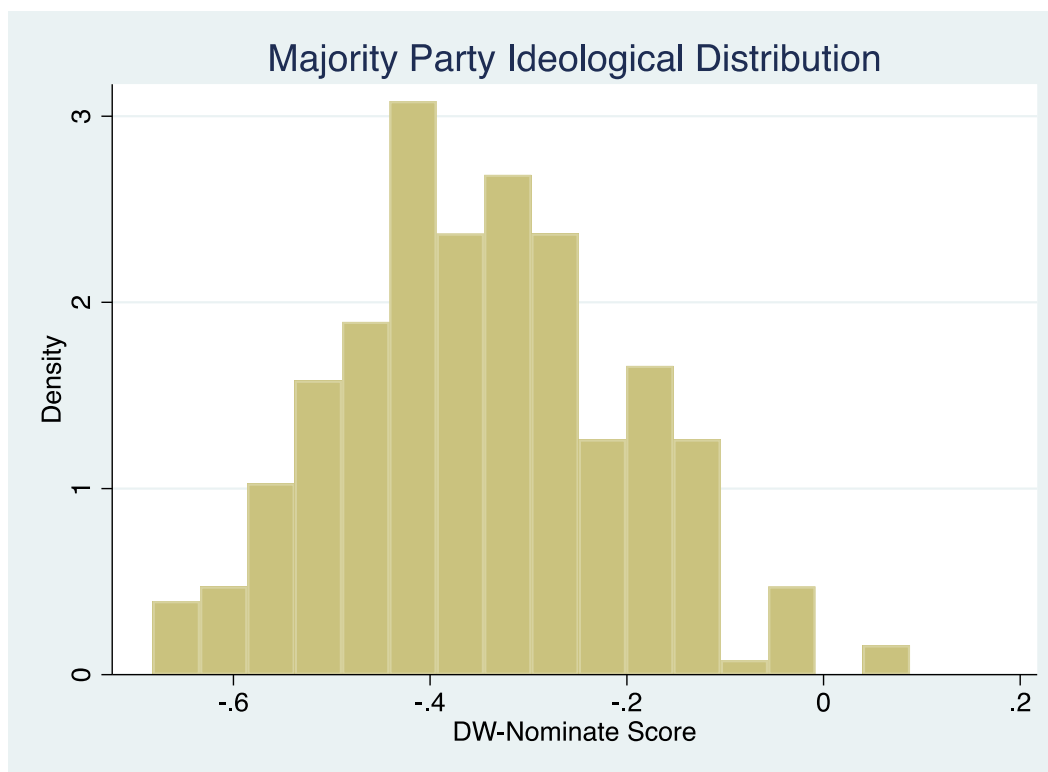


Figure 2.4. Frequency Distribution of Majority Party Members Using Nominate Scores

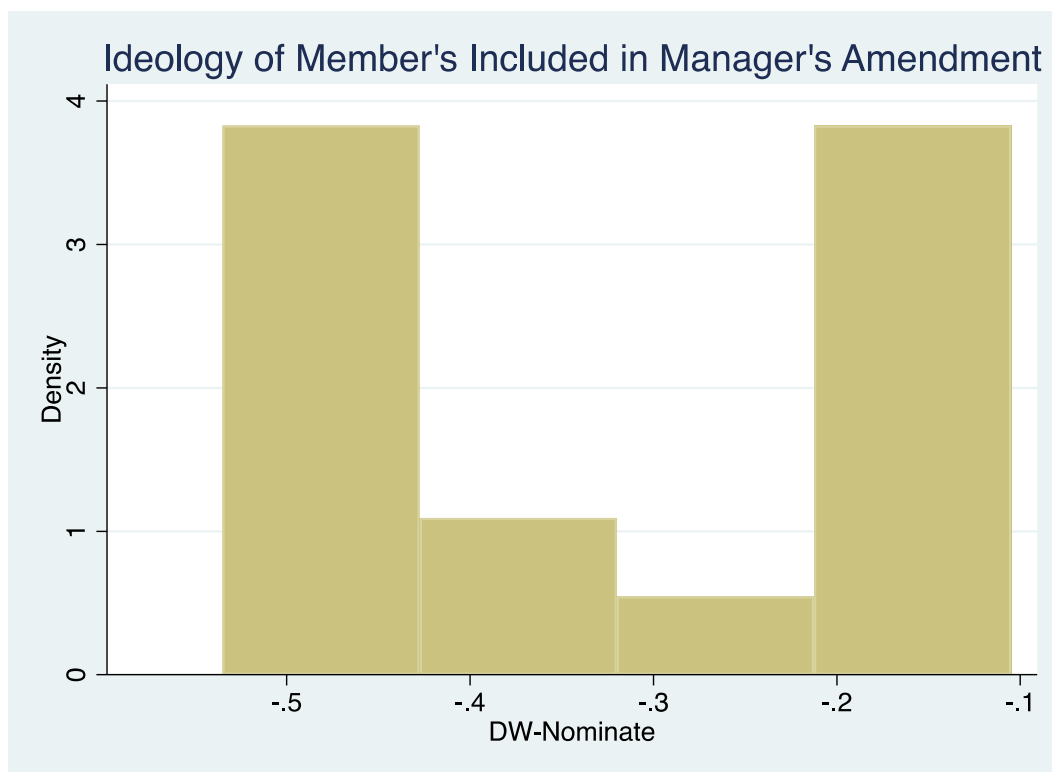


Figure 2.5. Frequency Distribution of Amendments Included in Manager's Amendments Using Nominate Scores



## APPENDIX 2.1

## THEORETICAL FRAMEWORK

|  | Included in Manager's                          | Included in Rule                 | Excluded                            |
|--|--|----------------------------------|-------------------------------------|
| Majority Party<br>Offered<br>Amendment | A floor vote would split<br>the majority party | Majority Party Agrees            | Majority Party would<br>be split    |
| Minority Party<br>Offered<br>Amendment | Expected value=0                               | Minority Party Would be<br>Split | Minority Party would<br>be cohesive |

## APPENDIX 2.2

## BREAKDOWN OF VOTES ON RESTRICTIVE RULES

|  | Democrat<br>Yeas | Democrat<br>Nays | Democrat<br>NV | Republican<br>Yeas | Republican<br>Nays | Republican<br>NV |
|--|------------------|------------------|----------------|--------------------|--------------------|------------------|
| <b>Hiring<br/>Incentives Act<br/>(H.R. 2847 – H.<br/>Res. 552)</b>   | 221              | 27               | 7              | 0                  | 174                | 4                |
| <b>Financial<br/>Services (H.R.<br/>3170 – H. Res<br/>644)</b>       | 216              | 39               | 1              | 0                  | 174                | 4                |
| <b>State-Foreign<br/>Operations<br/>(H.R. 3081- H.<br/>Res.617)</b>  | 223              | 24               | 7              | 0                  | 176                | 2                |
| <b>VA-Military<br/>Construction<br/>(H.R. 3082- H.<br/>Res. 622)</b> | 241              | 8                | 5              | 0                  | 171                | 7                |

|  |     |    |   |   |     |   |
|--|-----|----|---|---|-----|---|
| <b>Depts of Labor,<br/>Health and<br/>Human<br/>Services, and<br/>Education, and<br/>Related<br/>Agencies (H.R.<br/>3293 – H. Res<br/>673)</b> | 232 | 15 | 8 | 0 | 172 | 6 |
| <b>Transportation-<br/>HUD (H.R.<br/>3288 – H.<br/>Res.669)</b>  | 235 | 13 | 7 | 0 | 170 | 8 |

### CHAPTER 3

#### STRUCTURED RULES: A CLOSER LOOK AT MANAGERS' AMENDMENTS

#### FUNCTIONS UNDER RESTRICTIVE RULES<sup>14</sup>

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<sup>14</sup> McKissick, Jordan M. To be submitted to *Journal of Politics*.

**Abstract**

This chapter of my dissertation builds on the case study of the previous chapter to provide a greater understanding of how managers' amendments are utilized in coalition building to pass restrictive rules. I expand the data to include all bills which include a structured rule and a manager's amendment in the 112<sup>th</sup> Congress. This chapter seeks to find evidence that party leadership is using managers' amendments provisions as side payments to vote en bloc on members' amendments that would split the majority party if voted on individually. The results of this chapter are in stark contrast to the evidence found in Chapter Two. The data finds very few instances of members' amendments being included in managers' amendments, provoking the need for further examinations of the phenomenon in future work with included controls.

### **3.1. Introduction**

The vast majority view the House of Representatives as a chamber in which the representatives of the people of the United States gather to craft legislation in an open process in which the exchange of ideas can flourish through debate by offering changes to the legislation via amendments until a majority of the chamber is in agreement. In the modern era, the chamber has become a body in which party leaders increasingly implement a process in which the ability to debate and amend legislation is either gatekept or completely stifled through the party leaderships use of closed or restrictive rules via the Rules Committee. This work seeks to analyze the role bill managers and their amendments play in creating winning coalitions to pass restrictive rules, specifically during the 112<sup>th</sup> Congress.

The increase of restrictive rules in the amending process has inhibited rank-and-file members from offering their proposed policy preferences via floor amendments. Under structured rules rank-and-file members have to rely on a shadowy process in which the Rules Committee acts as a gate keeper by allowing or disallowing pre-submitted amendments for floor consideration. The Rules Committee then filters through the pre-submitted amendments and chooses which will be added to the accompanying committee report and made in order for debate on the floor of the House. In order for the bill to be brought to the floor for debate under a rule, the rule must receive support of the majority of the House. Though some majority party members are greatly inhibited by this restrictive process, majority party members almost always vote in favor of rules, including votes in which moderate majority members vote against their preferred policy outcomes and their ability to offer position taking amendments.

Often under the pretense of a structured rule, a bill manager will submit what is known as a manager's amendment to the Rules Committee. The bill manager's role is to shepherd the bill

through the legislative process and hammer out any underlying issues with the bill. The purpose of their amendments is often described as a mechanism to offer technical changes to the bill, items that are essential but offer no substantive changes to the legislation. For example, often when an amendment changes the wording to a passage it will be necessary to ensure the reading surrounding that passage is still in its intended nature. However, the following exchange by Rep. Markey (D-MA) and Bill Manager Rep. Hastings (R-WA) regarding a manager's amendment to the Strategic Energy Production Act of 2012 show that managers' amendments can also be utilized to change the substance of a bill:

Mr. Chairman, when manager's amendments making technical changes to legislation are presented, such amendments are accepted and we move on to amendments making substantive changes to the bill. In this instance, however, among the technical changes made by this manager's amendment is a controversial provision flatly overturning an EPA ruling in Alaska. This change should not be made at all, but it certainly should not be made as part of a manager's amendment. (*Congressional Record*, 112<sup>th</sup> Congress, June 20, 2012, H3895)

Hastings' response confirms that the manager's amendment does indeed offer a substantive change to the bill:

Mr. Chairman, just briefly, there are technical amendments in here which I acknowledge and the gentleman did acknowledge, and there are two substantive changes, and I acknowledge both of those. (*Congressional Record*, 112<sup>th</sup> Congress, June 20, 2012, H3895)

### **3.2. The House Committee on Rules**

Scheduling legislation for floor debate in the United States House of Representatives is complex process spearheaded by the Speaker of the House. In order to organize day-to-day business, the House maintains five legislative calendars, each with a specific purpose. The daily order of business of these calendars is often disturbed by “privileged interruptions” which grant certain legislation priority and supersede the scheduled business outlined by the corresponding calendar for that day (Oleszek et al. 2020). These privileged interruptions are granted by the House Committee on Rules, otherwise known as the Rules Committee, through the use of unanimous consent agreements, suspensions of the rules, or special rules. The former two procedural mechanisms are used when minor and noncontroversial legislation is in question due to the nature of support needed in the chamber for passage. A suspension of the rules procedure requires a two-thirds vote to suspend the rules and pass the bill, along with a quorum of 218 members, while a unanimous consent agreement requires agreement among all present members.

The most common mechanism for major legislation to reach the floor of the House is through a special rule designated by the Rules Committee. Without the Rules Committee granting a piece of legislation a special rule, a bill would be at the mercy of the chronological order of operations laid out in the House calendars (Oleszek et al. 2020). These special rules are designated as open, modified-open, structured (also commonly denoted as ‘modified-closed’), or closed. The rules are also often dichotomized into categories of restrictive and non-restrictive rules. Open rules are designated as non-restrictive as the rule allows any member to offer any amendment and allows for debate under the 5-minute rule, so long as the amendment complies with the rules of the House. Modified-open, structured, and closed rules fall into the category of restrictive rules as they restrict members’ ability to offer amendments by their nature. Modified-



open rules are the least restrictive of the restrictive rules, often including a pre-printing requirement in which members must submit their amendments to the Rules Committee prior to floor debate and include a time limit on overall debate. Structured rules allow the Rules Committee to act as a gatekeeper by implementing a pre-printing requirement and only allowing certain pre-printed amendments to be considered on the floor. Under a closed rule only the committee reporting the bill is allowed the opportunity for amendment, restricting members from offering any floor amendments.

The ability of the Rules Committee to exert agenda control allows the body to act as a powerful gatekeeper over the process of debating and amending legislation. Given the amount of power the Rules Committee chair has over controlling the party's agenda via positive or negative agenda control, it is not surprising that the chair's party loyalty is one of the largest factors the speaker considers when bestowing this position (Oleszek et al. 2016). The chair often acts in sync or at the request of the speaker and party leadership in order to advance the party's agenda. With a ratio of 2 to 1 majority party to minority party members, the minority party has very little influence within the committee.

### **3.3. Managers' Amendments**

Bill managers, who usually comprise the ranking minority and majority member of a bill's corresponding committee of jurisdiction, help to guide the bill through the legislative process. The managers are highly involved in the process of crafting legislation in a way that will provide for a majority of support to ensure success on the chamber floor. As Oleszek et al. puts it, "The fate of a bill can depend on the skill of the floor managers" (2020, p. 212). Managers and their staff act as a vital resource to provide legislative updates, justifications of amendments, and a liaison to party leaders.

Bill managers can also offer what is known as a manager's amendment to the legislation in question, which often includes several different individual amendments. Often managers' amendments are used for technical purposes that do not make substantive changes to the bill, such as changing titles or wording. An example of this can be seen in Rep. Doc Hastings' (R-WA) amendment to H.R. 6082, the Congressional Replacement of President Obama's Energy-Restricting and Job-Limiting Offshore Drilling Plan. These technical amendments are often not met with dissent and in the case of the Hastings' amendment passed via a voice vote:

Mr. Hastings: Mr. Chairman, I have an amendment at the desk.

The Acting Chair: The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 1, beginning at line 11, strike ``Proposed oil and gas leasing program (2012-2017)" and insert ``Proposed final outer continental shelf oil & gas leasing program (2012-2017)".

Page 1, line 14, strike ``plan" and insert ``program".

The Acting Chair: Pursuant to House Resolution 738, the gentleman from Washington (Mr. Hastings) and a Member opposed each will control 5 minutes. The Chair recognizes the gentleman from Washington.

Mr. Hastings: Mr. Chairman, I yield myself such time as

I may consume, and I will just take a few seconds here.

This amendment is very simple. It makes two small technical corrections to the way the plan is referred to in the bill, and I urge my colleagues to support this amendment.

I yield to the gentleman from Massachusetts.

Mr. Markey: I thank the gentleman.

The minority has no objection to the amendment by the gentleman, and we urge support of it. (Congressional Record, 112<sup>th</sup> Congress, July 24, 2012, H5174-H5175)

Bill managers can also utilize managers' amendments to include substantive amendments that make changes to the substance of the bill. These amendments can be utilized to group non-contentious amendments submitted to the Rules Committee to save time and speed up the legislative process.

Managers' amendments create a gap in the congressional literature, as they have not been a particularly strong focus in the field. Most work characterizes managers' amendments as amendments that are usually non-controversial (Oleszek et. al. 2020) and have a high rate of passage (Lynch et. al. 2010). Managers' amendments can be proposed by the both the majority and minority managers of a bill. They are amendments with multiple provisions ranging from policy change to technical or perfecting amendments. Prior work finds evidence during the 110<sup>th</sup> Congress, 26 of the 33 managers amendments were brought to the floor for a vote and of those all 26 were agreed to on the chamber floor (Lynch et. al 2010). What is most notable in Lynch et. al.'s more recent work is a footnote which states "In some cases we discovered that manager's amendments included the text of amendments that had been submitt[ed] by moderate members during the initial amendment consideration process" (Lynch et al. 2016, footnote 15). This insinuates party leadership could possibly be using managers' amendments as a bargaining tool in order to get moderate majority party members to vote in favor of restrictive rules while also reducing majority party roll rates by lumping all of these amendments into one and voting en

bloc. And because the managers' amendments are likely to include moderate members' policy preferences, bringing the bill closer to the chamber median, they are likely to garner majority support.

### **3.4. Intra-Party Bargaining**

Recent scholarship shows restrictive rules can successfully be utilized by majority party leaders to move the ideological position of legislation closer to the majority party median as opposed to an open process that allows for outcomes closer to the floor median's preferences (Monroe and Robinson 2008). Moving the policies closer to the majority party median however, can cause majority party centrists to incur policy loss as they would have been better off under the procedural mechanism of an open or modified-open rule. However, rule votes on the House floor are rarely ever defeated (Oleszek 2020). Majority party centrists often vote in favor of restrictive rules that net them a policy loss compared to the policies they would likely see under a more open process.

Work shows that party influence weighs heavily on closed rule votes and finds that members who oppose legislation will often vote in favor of a closed rule but against the final bill (Young and Wilkins 2007).<sup>15</sup> Research has found however that those members who would incur a policy loss are often given "side payments" from majority party leaders for voting for restrictive rules which would net them a policy loss. Scholarship for instance shows majority party leaders give more in political contributions to majority party centrists that are more likely to suffer from this policy loss (Jenkins and Monroe 2012). Recent scholarship on amendments submitted to the Rules Committee under structured rules show that majority party centrists are

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<sup>15</sup> This scholarship shows that this phenomena varies by party as Republicans are more likely to vote in favor of closed rules while voting against the final piece of legislation and Democrats are more likely to defect from their party on rule votes when they are not in favor of the legislation.

more successful in having their amendments made in order for floor consideration, alluding that leadership uses amendment access as a side payment and intra-party bargaining tool.

The previous chapter of this dissertation provides anecdotal evidence that under structure rules majority party leadership utilizes managers' amendments as a secondary way to provide floor access as a side payment. These side payments are disproportionately given to majority party centrists and extremists. This work seeks to find evidence to support the hypothesis that bill managers can and do utilize substantive managers' amendments as a form of bargaining amongst rank-and-file members to create winning coalitions to advance bills to the floor under restrictive rules. This work builds on the previous chapter's anecdotal findings that side payments via manager's amendment access are disproportionately given to majority party members outside of the majority party median in effort to avoid splitting the majority party on roll call votes.

### **3.5. Data**

The data for this chapter comprises all bills and their corresponding submitted amendments considered by the Rules Committee in the 112<sup>th</sup> Congress in which the Rules Committee adopted a structured rule and included a manager's amendment. Table 3.1 shows the dichotomy of whether the manager's amendment was substantive or purely technical. In order to test the hypothesis of this study the data needed to be constrained to a structured rule and the inclusion of a manager's amendment for the following reasons.

The nature of a structured rule gives a unique insight into individual members' preferences prior to floor consideration of the bill or legislation. A structured rule requires a pre-printing requirement in which members must submit their amendment request to the Rules Committee by a certain date. The Rules Committee, with a disproportionality made up of majority party members, acts as a gatekeeper or barrier to entry by deciding which amendments will be

allowed on the floor for debate, in either the full House of Representatives or the Committee of the Whole. Amendments that make it past this gatekeeping mechanism are then made in order and listed in the committee report which accompanies the corresponding bill. Amendments submitted to the Rules Committee were not made in order for purpose of debate or were withdrawn prior to the accompanying committee report are however not included in the report. The Rules Committee has been archiving special rules on their website in recent years which include all amendments submitted during the pre-printing process used for structured rules.<sup>16</sup>

The data archive published by the Rules Committee reports the version number of the amendment submitted, the sponsor(s) and their corresponding state and party, a summary of the amendment, and the status of the amendment.<sup>17</sup> The summary of the amendment also denote if the amendment was revised, withdrawn, or was submitted as a manager's amendment. The number of submitted amendments and their status reported by the Rules Committee are shown in Table 3.2. To ensure that all bills that both included a manager's amendment and were debated under a structure rule were included in the dataset, I did not rely on the amendment summary within the rules archived web data alone. Other sources were implemented such as [www.congress.gov](http://www.congress.gov) as well as amendment data collected by Dr. Michael Lynch and Dr. Anthony Madonna's The Congress Project (see also data published in Lynch et al. 2020).<sup>18</sup> Cross-referencing these sources in search for managers' amendments gave confidence in a complete set of data.

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<sup>16</sup> The list of special rules can be found at <https://rules.house.gov/legislation/special-rules>. However, when this work began the archived data on the website included Congress's prior to the 112<sup>th</sup>. As I write this in March of 2024 the only archived data available is the 112<sup>th</sup> through the 118<sup>th</sup> Congress.

<sup>18</sup> <https://www.thecongressproject.com/data-and-links>

Table 3.3 shows the percentage of amendments made in order, not made in order, and withdrawn by party. A total of 354 amendments were submitted by the minority party Democrats, over double the 169 amendments submitted by the majority party Republicans. Table 3.4 detailing House floor acceptance rate of amendments made in order show only 13% of majority party Republicans floor amendments failed compared the 47.3% failure rate of minority party Democrat amendments.

The frequency distributions in Figures 3.1 show the ideological distribution of all amendments submitted to the Rules Committee in our sample. Figures 3.2 and 3.3 show the ideological frequency distribution of all amendments made in order and not made in order by the Rules Committee. The distributions show a discrepancy in majority party member ideology, which members whose amendments were made in order seeming to center around the party median, consistent with the findings of Chapter 2 of this dissertation. The distributions of majority party amendments not made in order are equally spread across the ideological extremes and median. This can be seen more so in Figures 3.4 and 3.5. Figures 3.6 and 3.7 show the frequency distributions for minority party amendments that were made in order and not made in order. What is interesting is the frequency of amendments withdrawn, seen in Figure 3.8. There appears to be a much greater distribution of withdrawn amendments toward the majority and minority party centrists. This may signal bargaining and concession are being given to these members.

The content of the manager's amendments were pulled from two sources: the published list of submitted amendments on the House Rules website<sup>19</sup> and the amendment text in the *Congressional Record*<sup>20</sup>. The reason for pulling the text from two different sources is because the

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<sup>19</sup> <https://rules.house.gov/legislation/special-rules>

<sup>20</sup> Congressional Record text was found using <https://www.congress.gov/>

submitted amendments list published by the House Rules Committee website only lists the summary of the amendment, not the full text. Therefore, this study utilizes the inclusion of both the text of the summary of the manager's amendment and the actual amendment in question on the chamber floor to ensure all possible information is taken into account in testing if the manager's amendment includes any of the amendments submitted through the preprinting requirement that were not made in order by the Rules Committee.<sup>21</sup>

Analyzing the content of members' amendments submitted through the pre-printing requirement for matches to the provisions within the manager's amendment to the corresponding bill was an arduous task. In order to ensure as complete data as possible, each submitted amendment not made in order or withdrawn was compared to each provision within the corresponding bill's manager's amendment. This was also taken a step further as some provisions within the managers' amendment lacked context. For example, if a provision within the manager's amendment stated to strike a certain part of a section of the bill or an entire section that section was located to examine if the context of the section fit the context of the amendment submitted by the member in any way. Future works should control for the subjectivity by utilizing multiple coders to code the exactness of the match on a scale.

### **3.6. Results and Future Work**

The data found in this chapter show an inconsistency in party leadership's use of managers' amendments across two separate congresses. Throughout the 112th Congress the data only show two instances of direct matches between submitted amendments not made in order and provisions with the managers' amendments. Those two instances and their context are shown

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<sup>21</sup> The context of the pre-printed amendments listed on the House Rules Committee is inconsistent in other congresses. Some show a summary while others show the actual text of the amendment to be submitted to the floor. There were instances of this in the 111<sup>th</sup> Congress data.



in Table 3.6. What is most interesting about the data found in the 112th Congress is that the two provisions found within the manager's amendment belonged to minority party members who did not serve on the committee of jurisdiction.

The null data found in the 112th Congress in conjunction with the data found during the 111th appropriations process show an inconsistency in the use of managers' amendments. On face it appears that party may play a role in the discrepancy of the data given that the 111th Congress was led by a Democratic Speaker on the House and the 112th Congress was led by a Republican Speaker of the House.

Future work should expand the study of manager's amendment provisions across all congresses to get a better understanding of how managers' amendments have functioned over time. This would allow future studies to control for items such as unified government, party leadership, and committee jurisdiction. Further research would also be able to control for majority party control percentages to test if smaller majorities utilize managers' amendments at a greater rate than larger majorities given the increase of difficulty to create winning coalitions to pass restrictive rules.

The data found in the 112th Congress provides the field with more insight into how party control may play a role in the use of manager's amendment access as a bargaining tool. As restrictive rules become more prevalent it will be crucial for the field to find creative ways to analyze the bargaining process as the utilization of amendment data will become more scarce. Though the data found in this study were inconsistent with prior data, it does show a focus on the study of managers' amendments as a tool needed in the field to provide more insight into how members bargain under restrictive rules.

Table 3.1. Manager's Amendments in Content: Technical Only or Substantive

| Bill        | Content of Manager's Amendment |
|-------------|--------------------------------|
| H.C.Res. 34 | Substantive                    |
| H.R. 658    | Substantive                    |
| H.R. 754    | Substantive                    |
| H.R. 1249   | Substantive                    |
| H.R. 1540   | Substantive                    |
| H.R. 1837   | Substantive                    |
| H.R. 2273   | Substantive                    |
| H.R. 2578   | Substantive                    |
| H.R. 3606   | Technical                      |
| H.R. 4089   | Substantive                    |
| H.R. 4310   | Substantive                    |
| H.R. 4480   | Substantive                    |
| H.R. 5544   | Substantive                    |
| H.R. 6082   | Technical                      |

Table 3.2. Submitted Amendments under Structured Rules that include a Manager’s Amendment  
in the 112th Congress

| Bill       | Made in Order | Not Made in<br>Order | Withdrawn | Total<br>Amendments<br>Submitted |
|------------|---------------|----------------------|-----------|----------------------------------|
| H.C.Res 34 | 6             | 18                   | 0         | 24                               |
| H.R. 7     | 23            | 247                  | 29        | 299                              |
| H.R. 658   | 33            | 7                    | 8         | 48                               |
| H.R. 754   | 9             | 5                    | 8         | 22                               |
| H.R. 1249  | 15            | 15                   | 9         | 39                               |
| H.R. 1540  | 152           | 52                   | 16        | 220                              |
| H.R. 1837  | 9             | 1                    | 0         | 10                               |
| H.R. 2273  | 6             | 8                    | 2         | 16                               |
| H.R. 2578  | 7             | 3                    | 2         | 12                               |
| H.R. 3606  | 17            | 6                    | 2         | 25                               |
| H.R. 4089  | 8             | 1                    | 1         | 10                               |
| H.R. 4310  | 142           | 79                   | 20        | 241                              |
| H.R. 4480  | 26            | 19                   | 2         | 47                               |
| H.R. 5544  | 5             | 0                    | 0         | 5                                |
| H.R. 6082  | 8             | 15                   | 0         | 23                               |
| Totals     | 465           | 477                  | 99        | 1041                             |

Table 3.3. Rules Committee Submitted Amendments by Status and Party

|                | Made in Order | Not Made in<br>Order | Withdrawn  | Total |
|----------------|---------------|----------------------|------------|-------|
| Majority Party | 108 (63.9%)   | 38 (22.4%)           | 23 (13.6%) | 169   |
| Minority Party | 182 (51.4%)   | 141 (39.8%)          | 31 (8.7%)  | 354   |

Table 3.4. Floor Acceptance Rate of Amendments Made in Order

|                | Accepted | Failed |
|----------------|----------|--------|
| Majority Party | 87%      | 13%    |
| Minority Party | 52.7%    | 47.3%  |

Table 3.5. Matching Submitted Amendments to Provisions in the Manager's Amendment

| Submitted Amendment  | Manager's Provision  |
|--|--|
| (Withdrawn) require the Patent Ombudsman Program for Small Business Concerns to include "independent inventors" to receive support and services relating to patent filings. (Cuellar D-TX) | Insert the following [...]<br>Using available resources, the Director shall establish and maintain in the Office a Patent Ombudsman Program. The duties of the Program's staff shall include providing support and services relating to patent filings to small business concerns and independent inventors. |
| (Withdrawn) require a coal combustion residual program to include protections for human health and the environment. (Jackson Lee D-TX)   | Page 20, line 11, insert ``in accordance with the requirement of such section that the criteria protect human health and the environment" after ``4010(c)".  |

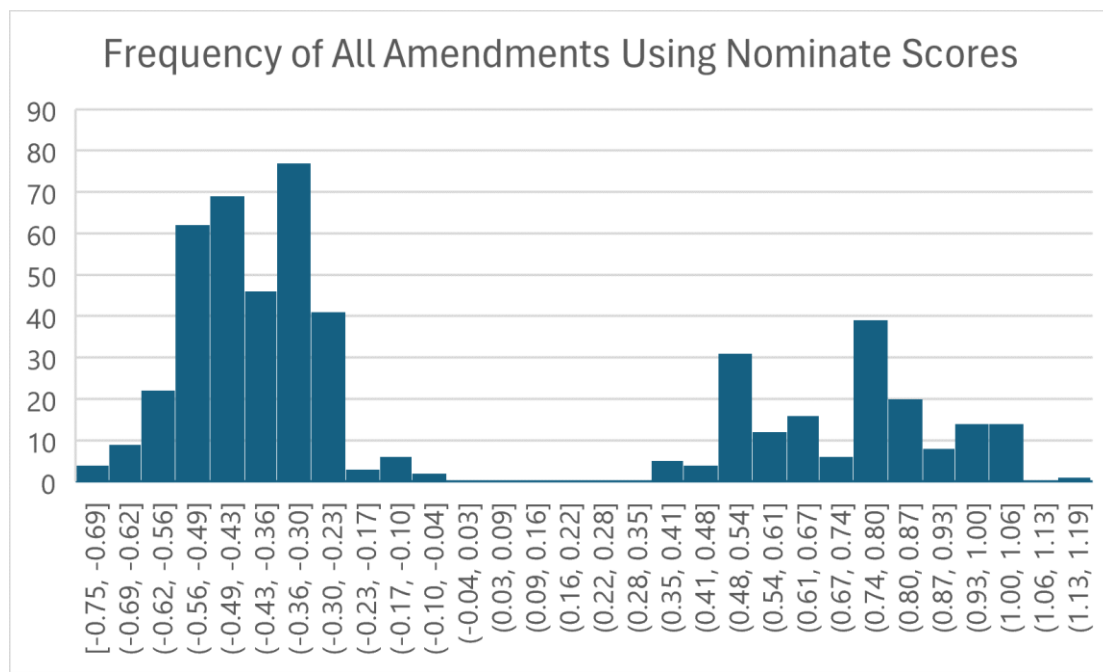


Figure 3.1. Frequency Distribution of all Amendments Submitted during the Preprinting Using Nominate Scores

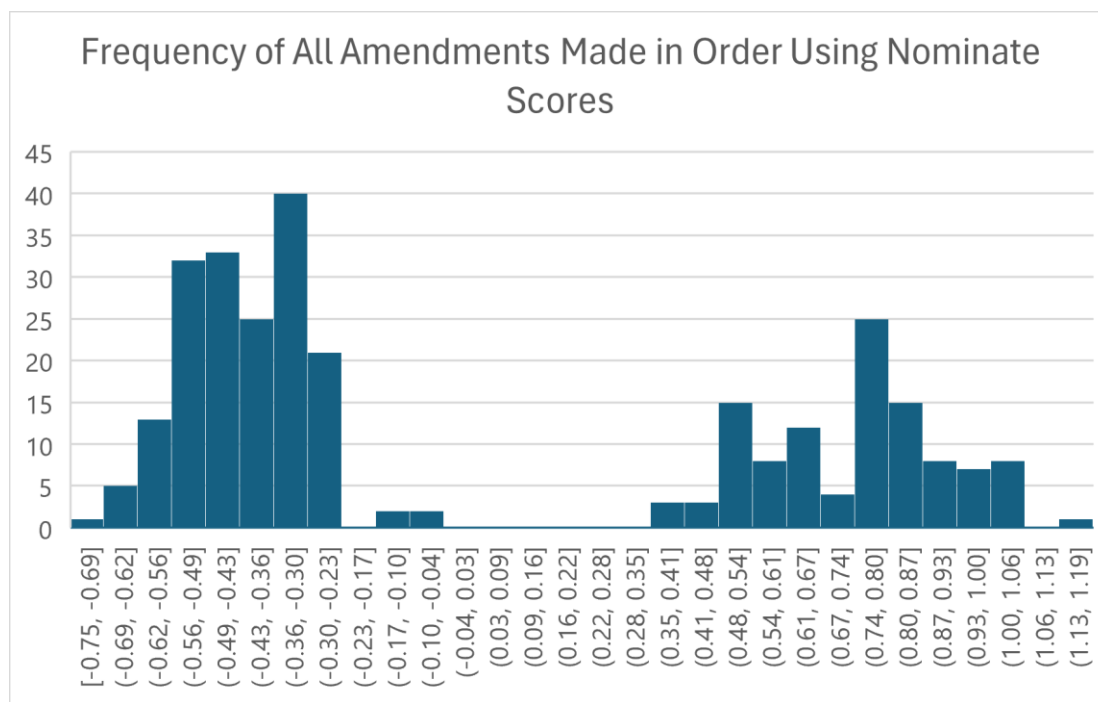


Figure 3.2. Frequency Distribution of all Amendments Made in Order Using Nominate Scores



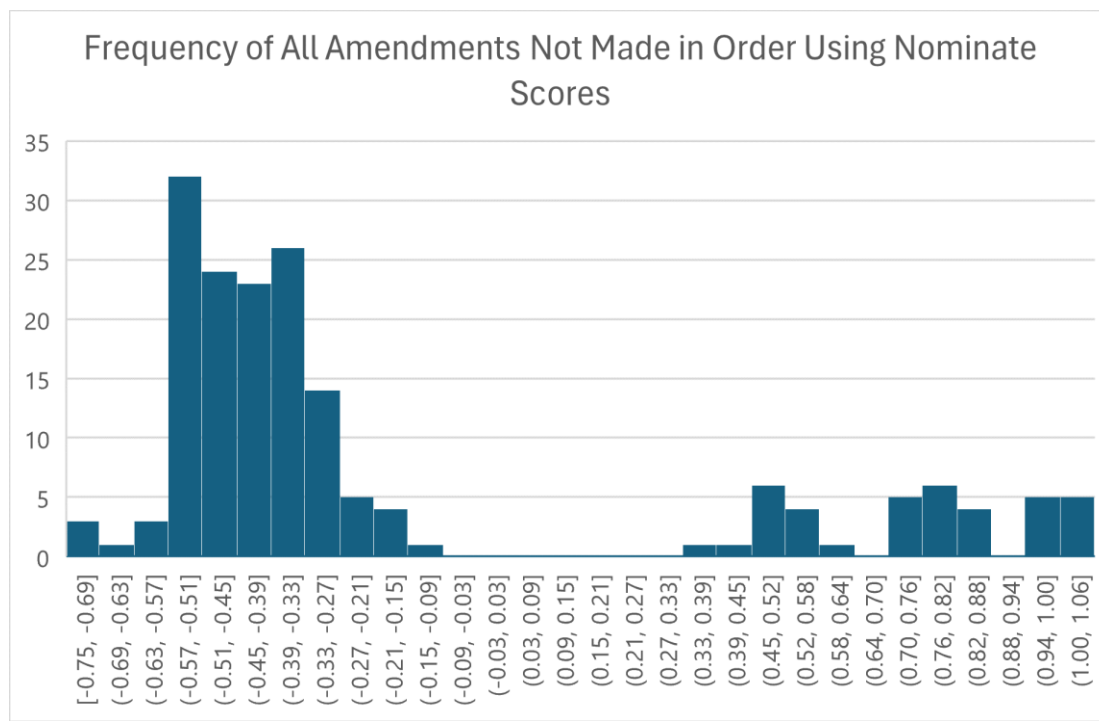


Figure 3.3. Frequency Distribution of all Amendments Not Made in Order Using Nominate Scores

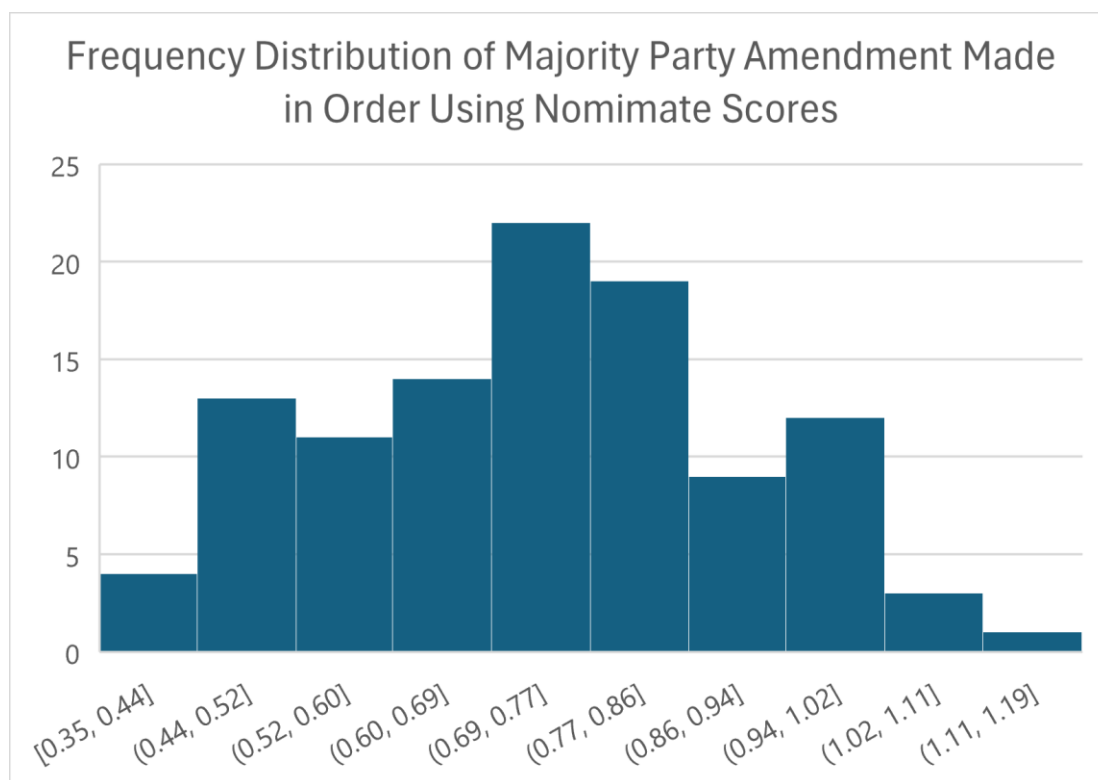


Figure 3.4. Frequency Distribution of all Majority Party Amendments Made in Order Using Nominate Scores

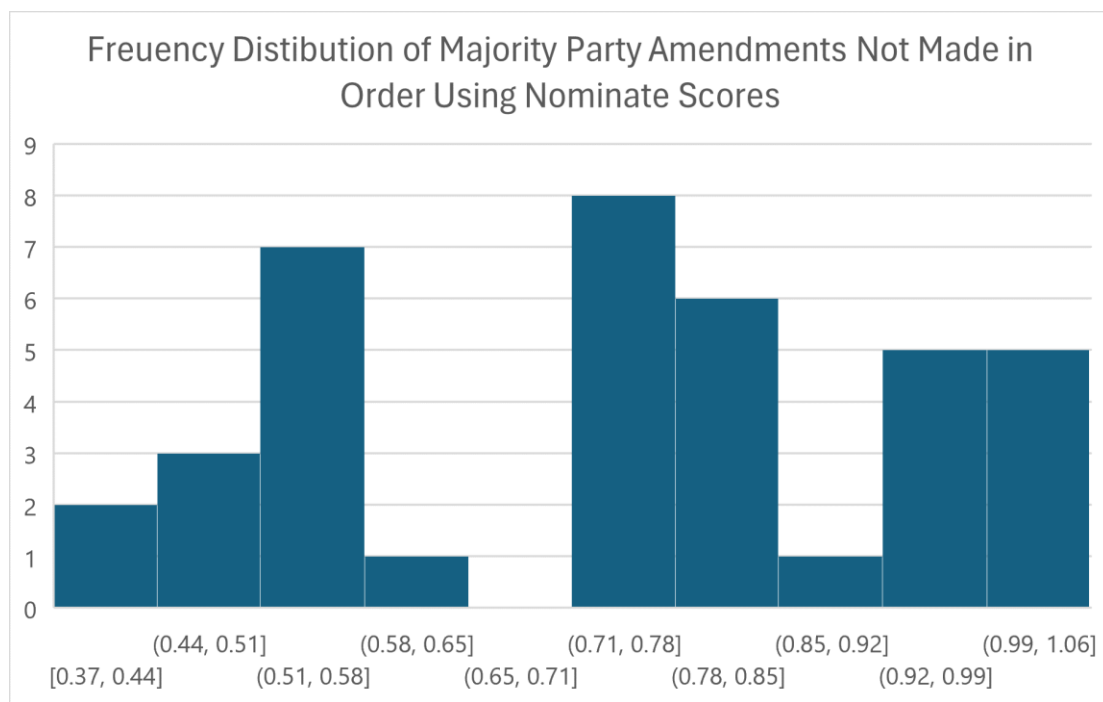


Figure 3.5. Frequency Distribution of all Majority Party Amendments Not Made in Order Using Nominate Scores

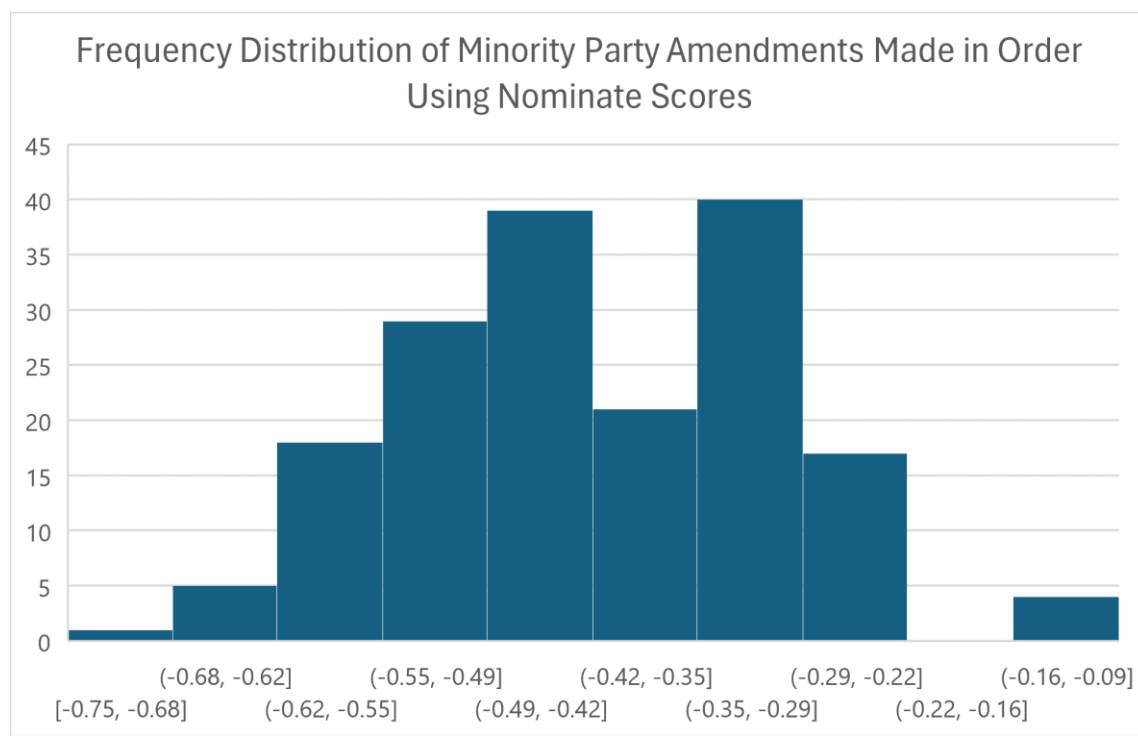


Figure 3.6. Frequency Distribution of all Minority Party Amendments Made in Order Using Nominate Scores

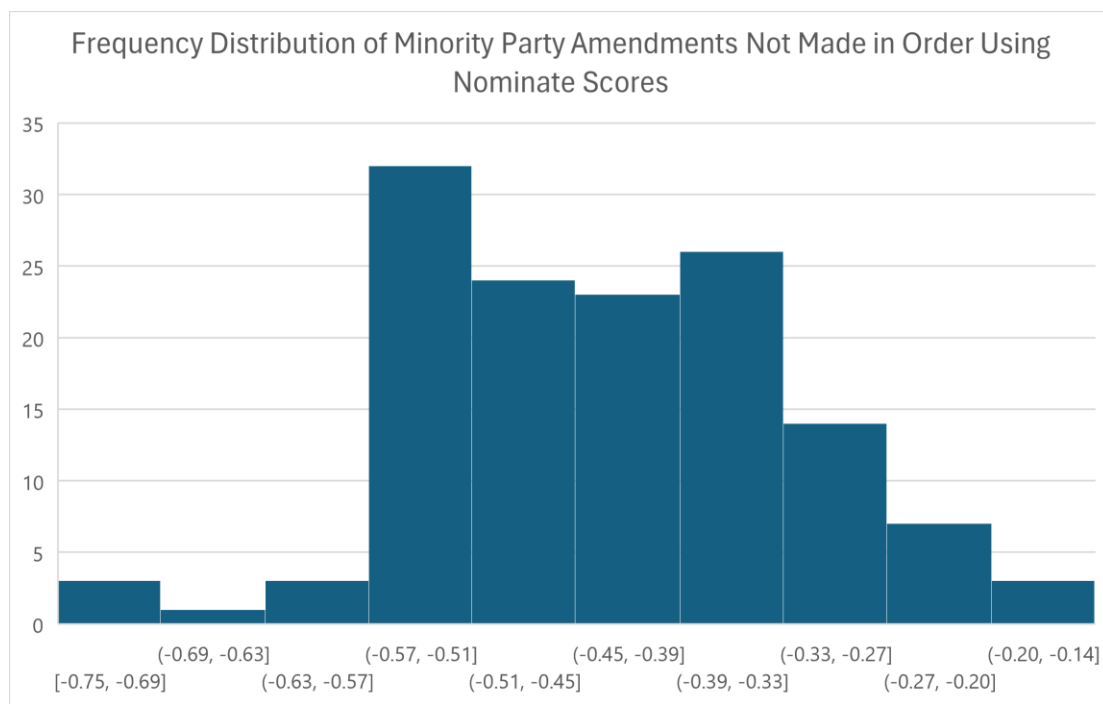


Figure 3.7. Frequency Distribution of all Minority Party Amendments Not Made in Order Using Nominate Scores

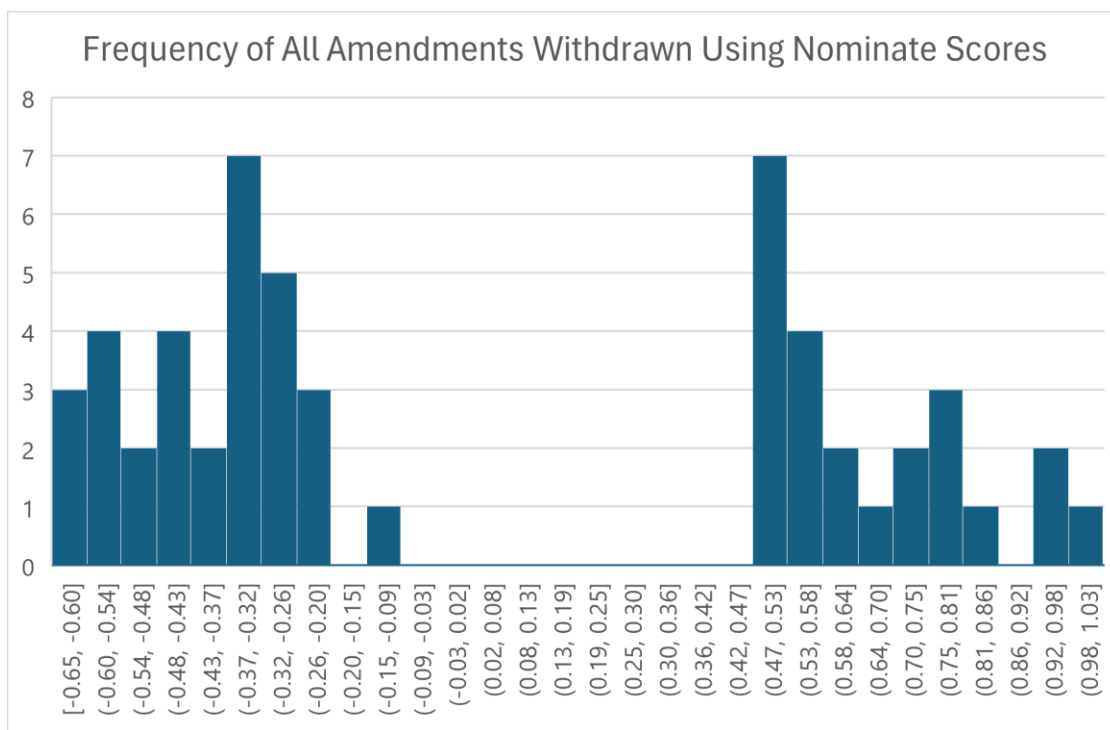


Figure 3.8. Frequency Distribution of all Amendments Withdrawn Using Nominate Scores

## APPENDIX 3.1

EXAMPLE OF THE MANAGER'S AMENDMENT OFFERED BY MR. SHIMKUS TO H.R.  
2273 IN THE CONGRESSIONAL RECORD (CONGRESSIONAL RECORD, 112TH  
CONGRESS, OCTOBER 14, 2011, H6945)

Amendment No. 1 Offered by Mr. Shimkus

The Acting Chair: It is now in order to consider amendment No. 1  
printed in House Report 112-244.

Mr. Shimkus: Madam Chairman, I have an amendment at the desk.

The Acting Chair: The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 5, line 2, strike the semicolon and insert the  
following: `` , including a description of the State's--  
``(I) process to inspect or otherwise determine compliance  
with such permit program;  
``(II) process to enforce the requirements of such permit  
program; and  
``(III) public participation process for the promulgation,  
amendment, or repeal of regulations for, and the issuance of  
permits under, such permit program;

Page 5, line 5, strike `` , regulations, or guidance" and insert ``or regulations".

Page 5, beginning on line 9, strike `` , regulations, and guidance" and insert ``and regulations".

Page 6, line 13, insert ``according to a schedule determined by such agency" after ``correct the deficiency".

Page 6, line 14, insert ``according to such schedule" after ``is not corrected".

Page 6, line 21, insert a comma after ``assurance, closure".

Beginning on page 7, line 1, strike subparagraph (D) and redesignate subparagraphs (E) through (G) as subparagraphs (D) through (F), respectively.

Page 7, line 17, insert ``according to a schedule determined by such agency" before the period.

Page 7, line 18, insert ``according to such schedule" before the comma.

Page 8, after line 5, insert the following new subparagraph:

``(G) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to address wind dispersal of dust from coal combustion residuals by requiring dust control measures, as determined



appropriate by the head of the lead State agency responsible for implementing the coal combustion residuals permit program.

Page 8, line 21, insert ``and corrective action" after ``groundwater monitoring".

Page 8, line 23, strike the semicolon and insert the following: ``, except that, for the purposes of this paragraph, such revised criteria shall also include--

``(I) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

``(II) for the purposes of assessment monitoring, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids;

Page 9, line 16, strike ``; and" and insert a semicolon.

Page 9, line 21, strike the period and insert a semicolon.

Page 9, after line 21, insert the following:

``(E) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for surface water described in section 258.27 of title 40, Code of Federal Regulations;

“(F) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for recordkeeping described in section 258.29 of title 40, Code of Federal Regulations;

“(G) for landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-on and run-off control systems described in section 258.26 of title 40, Code of Federal Regulations; and

“(H) for surface impoundments that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.

Page 17, line 23, strike “, in a schedule,”.

Page 17, line 24, insert “that establishes a deadline for completion and” before “that takes into account”.

Page 18, after line 20, insert the following:

“(C) Technical and enforcement assistance only upon request.--Upon request from the head of a lead State agency that is implementing a coal combustion residuals permit program, the Administrator may provide to such State agency only the technical or enforcement assistance requested.

“(3) Citizen suits.--Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.

Page 20, line 11, insert “in accordance with the requirement of such section that the criteria protect human health and the environment” after “4010(c)”.

## APPENDIX 3.2

### EXAMPLE OF THE SUMMARY OF THE MANAGER'S AMENDMENT OFFERED BY MR. SHIMKUS TO H.R. 2273 ON THE RULES COMMITTEE'S WEBSITE

**Revised** Manager's Amendment. Would provide additional detail to the certification requirements that States would provide to EPA; would add certain operating criteria from Part 258 of 40 CFR, would clarify that states may request technical assistance from EPA; would add a savings clause for citizen suits; would add additional constituents for groundwater monitoring; would reiterate in the definition of revised criteria that the criteria were promulgated to protect human health and the environment. The amendment would make other technical and clarifying changes to H.R. 2273.

## CHAPTER 4

LEGISLATING IN A POST-DEBATE CONGRESS: HOW RESTRICTIVE RULES AFFECT  
COMMITTEE ACTION<sup>22</sup>

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<sup>22</sup> McKissick, Jordan M. To be submitted to *Journal of Politics*.

## Abstract

The House of Representatives in the modern era has increasingly operated under closed and structured rules prohibiting rank-and-file members from effectively legislating while also limiting debate. This chapter examines the effect of restrictive rules in the modern era through the lens of two competing theories on committee power born from the works of Keith Krehbiel (1991) and James Curry (2015). This work seeks to answer if committees are utilizing their specialization to create well thought out policy under restrictive rules, rules that are meant to protect committees' work from hostile amendments on the floor as Krehbiel suggests (1991). Or does Curry's *Legislating In the Dark* paint a more accurate picture; that of a Congress where members who lack time and resources willingly delegate the legislative process to party leadership that constructs policy in the shadows (2015)? This paper uses the number of committee hearings on legislation in the 108<sup>th</sup>-115<sup>th</sup> Congresses to show that members increase their use of committee power by holding more hearings to effectively legislate when they anticipate leadership will implement closed rules.

#### **4.1. The Tax Cuts and Jobs Act**

On November 2, 2017, H.R. 1, the Tax Cuts and Jobs Act, was introduced in the United States House of Representatives and referred to the Ways and Means Committee. The bill was lauded by Republicans as a long awaited accomplishment for then Speaker Paul Ryan (R-WI) and President Donald Trump. Major legislative tax reforms had not taken place since 1986, nearly 31 years prior. Two weeks later, after only four days of committee markups and zero public hearings, the Committee on Rules in the United States House of Representatives (henceforth referred to as the Rules Committee) reported out special rule H. Res. 619, which closed the bill to amendments on the House floor. During debate it was noted that this would be the 51<sup>st</sup> closed rule of this session of Congress, a record number.<sup>23</sup>

The closed and rushed process was not without dissent from House Democrats, who were irate over the process. The biggest retort came from Rep. Alcee Hastings (D-FL), a member of the Rules Committee, who detailed the vast differences in the process between H.R. 1 and the tax reforms in 1986:

Not since the Republicans' failed attempt to strip healthcare away from millions of Americans have we seen a process that is this bad. Take, for example, the last time Congress passed major tax reform legislation in 1986 and what that process looked like. During that effort, the Ways and Means Committee held a month of public hearings and took testimony from over 450 witnesses. The legislation before us now has had no—zero—public hearings and testimony from no—zero—expert witnesses. During the last tax reform overhaul, the Ways and Means Committee spent 26 days marking up the framework of the legislation. This time around, Republicans spent only 4 days marking up the legislation.

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<sup>23</sup> CR, 115<sup>th</sup> Congress, Nov. 15, 2017, H9276.

The 1986 legislation framework was released a year before it was passed in the House. In contrast, the framework for this bill was released less than a month before they started today's process of jamming their final bill through the House. There were no hearings and no amendments made in order. From start to finish, there was less than a month of actual consideration. (CR, 115<sup>th</sup> Congress, Nov. 15, 2017, H9271)

The process through which Tax Cuts and Jobs Act and the 1984 tax reforms were considered are vast in difference. The process of legislating the tax reforms of 1986 were reminiscent of the "regular order" rarely seen in the contemporary Congress. "Regular order" is a freewheeling process where the outcome of bills is unknown and driven by floor debate after careful committee consideration. Though many members were concerned about the nature of the closed rule, the most prominent frustration amongst the opposition seemed to be the lack of public hearings, shown here by excerpts from the Congressional Record:

Ms. Titus: "Mr. Speaker, I rise today in opposition to the Republican's tax scam that has been jammed through this Chamber without normal order, without public debate, and without consideration for our Nation's future." (CR, 115<sup>th</sup> Congress, Nov. 15, 2017, H9268)

Mr. Hastings: "Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. Doggett), a member of the Ways and Means Committee. He happens to be a Democrat, so he didn't have much input here. He is the distinguished ranking member of the Ways and Means Subcommittee on Tax Policy."

Mr. Doggett: "Mr. Speaker, only 1 minute? Well, one minute is longer than all of the hearings that have been held by Republicans on this sham of a tax bill that is so very broad in impact and so shallow in analysis. Only one minute? That is more than all of the



Trump Administration officials who did not have the courage to come and face our committee and be questioned about this lousy proposal.” (CR, 115<sup>th</sup> Congress, Nov. 15, 2017, H9272)

Mr. Langevin: “Mr. Speaker, I thank the gentleman for yielding. Mr. Speaker, I rise, today, in strong opposition to this House Republican tax bill, which was developed in secret without a single public hearing.” (CR, 115<sup>th</sup> Congress, Nov. 15, 2017, H9275)

Mr. Welch: “What do you have against democracy? This bill was written in secret. There were no public hearings on this bill. Nobody had a chance to have any input. That is why, if you ask 435 Members of Congress, if they want to raise taxes on students, the answer from 435 would be “no.” But you have rigged this bill so that we have literally no opportunity to offer a single amendment. That is wrong.” (CR, 115<sup>th</sup> Congress, Nov. 15, 2017, H9272)

The rushed process is not without consequences and can be prone to causing legislative drafting errors. Errors of which can be exacerbated by unified control of Congress and inexperienced committee members (Lewallen 2016). For example, Rep. Peter Welch (D-VT) highlights above a provision dealing with students in higher education, which prompted the director of governmental relations for the American Council on Education to state, “Congress is sending a clear message that they’d rather use that money for corporate tax breaks” (Green 2017). This provision in the House-passed version of the bill eliminated several individual tax breaks, one of which eliminated a tax break on student stipends and tuition waivers, drastically increasing the tax burden on college graduate students. The implication of which caused interest paid on student loans to no longer be tax deductible. Ted Mitchell, president of the American

Council of Education stated the House bill “would discourage participation in post-secondary education” and “make college more expensive for those who enroll” (Sarlin 2017).

These provisions were not included in the Senate’s version of the bill and were ultimately scrapped in conference committee. Nonetheless they provided a flurry of talking points for the opposition and strengthened their argument that the Tax Cuts and Jobs Act disproportionately favored corporations and top earners. Had the bill gone through regular order with appropriate committee hearings and mark ups the Republican Party and its members supporting the measure could have been spared from these negative talking points.

Not all errors in the Tax Cuts and Jobs Act were resolved prior to passage. One drafting error meant to ease the tax burden on restaurant renovations increased them drastically. The prior law allowed for a 50% immediate deduction on renovations with the other 50% being deducted over 15 years. The new law was meant to increase the 50% immediate deduction to 100%, however due to error the 100% immediate deduction was left out and the 15-year depreciation period increased to 39 years (Rodrigue 2019). Legislative drafting errors such as these are not easy to resolve. Since the legislation was rushed through just prior to a new congress it would have to be resolved in a bipartisan manner with the Democrats now in control of the House.

The closed process used to quickly usher the Tax Cut and Jobs Act through the House is supposed to be an exception to the rule. However, in the modern era of Congress, party leaders have increasingly been able to usurp legislative power from individual members. More specifically, party leaders have taken away members’ ability to debate and offer changes to legislation via floor amendments. In the House, leadership curtails “regular order” and the traditional norms by passing legislation under closed or restrictive rules. These rules are granted by the Rules Committee, frequently under instruction of the Speaker (Oleszek et al. 2016). In the

115<sup>th</sup> Congress alone 55% of bills came to the floor under a closed rule, and zero bills received an open rule.<sup>24</sup> Similarly in the Senate, leadership has increasingly utilized a closed process by relying on a procedural tactic used by the majority leader to block amendments to the bill known as filling the amendment tree.<sup>25</sup>

This work seeks to fill in the gap and to expand on the existing work in the field by analyzing how members legislate in committee under the contemporary closed or restrictive process. On face one may posit that majority party leadership's stronghold on preventing legislation from being amended and or debated on the floor of the chamber has increased the diminishing value of committees. The literature on the nature of closed rules suggests that committees should be more protected in this era (Krehbiel 1991) and this study should show an increase the number of hearings per bill as their work is protected from alterations on the chamber floor. Though closed rules were meant to reward committees who take their job seriously by protecting their work from floor action it may be that the saturation of closed rules in conjunction with an increasingly powerful party leadership in the modern era has in turn disincentivized committee members to take their job seriously and promote well thought out policy. I seek to examine if committee members are using closed rules to their advantage to promote well thought out policy or if the strength of party leadership has disincentivized members and led to shirking of committee duties.

#### **4.2. Curry vs. Krehbiel**

The inspiration for this work is born from competing theories laid out in Keith Krehbiel's *Information and Legislative Organization* (1991) and James Curry's *Legislating in the Dark*:

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<sup>24</sup> <https://www.legbranch.org/special-house-rules-explained/>

<sup>25</sup> Filling the amendment tree is a tactic used by the Senate Majority Leader in which his or her right of first recognition allows the majority leader to fill the branches of the amendment tree, blocking amendments from other members.

*Information and Power in the House of Representatives* (2015).

Krehbiel lays out several hypotheses in his book *Information and Legislative Organization*, the most pertinent to this work is located in Chapter Five in which Krehbiel tests informational theories regarding the use of restrictive rules and committee power (1991). In Krehbiel's third hypothesis of Chapter Five he hypothesizes that the more specialized a committee becomes the greater the probability it will receive a restrictive rule. The basis for his hypothesis is that "informed decision making" is crucial to good governance and committee specialization is crucial to informed decision making. When legislation is brought to the floor under an open rule it allows uncertainty to flourish as amendment behavior is unpredictable. The occurrence of unwanted or hostile amendments disincentivizes committees and their respective members from specializing as they feel their work is unprotected. To combat the uncertainty brought about through the traditional process, the Rules Committee utilizes restrictive rules (Bach and Smith 1988). Krehbiel asserts that these restrictive rules protect committee members' work therefore incentivizing committee members to act in good faith and good governance.

Relying heavily on interviews with thirty-two anonymous legislators and staffers, James Curry makes the argument that leadership in the contemporary Congress is able to subvert regular order and control legislation by operating under a system of asymmetric information where leadership makes legislative decisions in the dark, away from rank-and-file members, prior to entering the formal legislative process (Curry 2015). Curry paints a picture of a Congress in which rank-and-file members lack the time, resources, and power to contribute to well thought out and debated policy. His work argues the formal legislative process, also known as regular order, is sped up at a rate in which rank-and-file members do not have the time to read and/or process the legislation which leads those rank-and-file members to rely on leadership for

information regarding how they should vote. In conjunction with closed rules, these processes limit member participation and provide less venues for members to credit claim.

In a few notable lines Curry states, “without an invitation from a committee chair or the majority leadership, helping to draft most major legislation is simply not possible” (Curry 2015, pg. 197). On committee chair power and resources, Curry posits, “Committee chairs, for instance, can use their impressive staff resources in combination with their procedural powers to gather information about the moods of rank-and-file committee members, draft or redraft legislation entirely within their offices, then sell the bill to committee members ahead of the markup, emphasizing information that may encourage support” (Curry 2015, pg. 30).

Under Curry’s theoretical framework of understanding the operation of the contemporary Congress, restrictive rules are seen as a veil for leadership to operate in the shadows away from rank-and-file members’ input and debate, essentially shutting the vast majority of members out of the legislative process. This stands in contrast to Krehbiel’s theories that assert leadership is in good faith strategically utilizing and implementing restrictive rules to protect the work of specialized committees from hostile amendments and bad faith actors. This in turn promotes well thought out legislation and policy. In relationship to this works hypothesis under Curry’s theoretical framework, we should see less committee hearings under restrictive rules as leadership is opting to write legislation “in the dark” away from the normal process, while Krehbiel’s theories would suggest an increase in committee hearings as the purpose of the restrictive rule is to protect the hard work of the committee.

#### **4.3. Regular Order and the Committee on Rules**

“Regular order” is ambiguous term. However, it is frequently used in reference to the traditional process in which a bill moves through the legislative process by first being introduced

and referred to the appropriate committee. The sole committee then would have the sole power to mark-up and report the bill out to be placed on the appropriate legislative calendar to one day be brought to the floor. On the floor of the chamber the bill is then debated and members are able to offer amendments. Once amended, it is sent to the other chamber, where it will follow a similar process. It is common after the bill passes for both chambers to form a conference committee, usually composed of members from the committees of jurisdiction, to work out the differences between the House and Senate versions of the bill. From there the bill would be sent to the President's desk after both chambers pass the conference committee's version of the bill.

In the modern Congress, most major legislation is brought to the floor under special rules reported out of the Rules Committee. These rules are classified as open, modified, structured, or closed.

#### **4.4. Literature Review**

Scholarly research would argue that party leaders are not taking power away from rank-and-file members, and instead rank-and-file members delegate this authority to the party leadership. Arguing that if a majority dislikes the restrictive process they can vote against the restrictive rules, forcing the process of regular order to take place. (see Aldrich and Rhode 2000; Cox and McCubbins 2005). The thought process behind this is that in order for the Rules Committee to bring a bill to the floor under a restrictive rule, it must be agreed to by a majority on the chamber floor. If the rule is not in the best interest of moving the legislation towards the moderate majority party member or members, they would opt to vote against the rule. However, research shows that those moderate members are often given concessions via the ability to offer amendments by party leadership in turn for their support for the restrictive rule (Lynch et al. 2016). This suggests a majority would vote against the restrictive rule, however because of

coordination problems they lack the ability to overcome the power of party leadership. This research only applies to restrictive rules that are structured or modified-closed, which allow for amendments that are vetted by the Rules Committee or only allow certain members to offer floor amendments. Other work shows when restrictive rules are implemented in the House an increase in Senate amending occurs, suggesting rules do influence institutional behavior (Madonna et al 2019).

The process of regular order gives great advantages to committees and their members. One of the greatest of those advantages is being able to act as the sole gatekeeper. When legislation is referred to only one committee it then has the sole power to advance the legislation by reporting it out or simply letting it die. This allows the committee of jurisdiction to control the legislative agenda in their specialized area. However, it should be noted that there are procedures to get around the committees' gatekeeping power such as suspension of the rules, discharge petitions, and special rules (Smith and Deering 1990). The committees' gatekeeping power has diminished in the contemporary Congress due to process reforms that increased the usage of multiple referral, a process in which a bill gets referred to multiple committees opposed to only one (Curry 2019). This lessened individual committees' gatekeeping power.

Traditionally committees also were advantaged by the use of conference committees. Scholars argued this gave committees an ex-post veto by allowing them the ability to make legislative changes post chamber debate (Shepsle and Weingast 1987). The ability to gatekeep and make post changes gave committees great legislative influence and power. Conference committees in the contemporary congress are however rare, lessening committee power in the legislative process.

#### **4.5. Committee Hearings and Rule Choice**

If party leaders control all points of legislative amending in the full chambers, then how/where can members effectively influence the legislative process? According to scholars, the next logical place for members to exert positive agenda power would be in the committee process. In the absence of regular order, Krehbiel suggests the use of restrictive rules and a restrictive process are meant to reward committee members by protecting their work from hostile amendments, in turn increasing their power to affect legislation (1991). When members are guaranteed that their work in committee will stay unchanged on the floor, they are more inclined to specialize and take their committee assignment seriously (Gilligan and Krehbiel 1990, Krehbiel 1991). This suggests committee activity should increase given the closed nature of the contemporary Congress.

Member participation in committees is divided into two distinct types: formal and informal (Hall 1987). Richard Hall defines formal participation as attending markup, voting, offering amendments, speaking during markup debate, and setting the agenda, while he defines informal participation as actions that do not produce written record of members' involvement (1987). Members participate in committees, just as they do in the full chamber, to promote their goals, such as making good public policy, and securing influence in the chamber (Fenno 1973). Participating in committee mark ups and hearings are also a great way for members to credit claim, one of Mayhew's three pillars to congressional electoral success (1974).

Committee hearings are legislative instruments used by members for educational and fact-finding purposes. Committee chairs are the sole authority on whether a hearing should take place, as well as the subject matter of the hearing, though chairs are often influenced by internal or external factors, such as party leadership (Oleszek 2016). Party leadership influence is



probably more relevant in today's polarized and centralized process. Oleszek et al. note the decision to hold hearings is a critical point in the legislative process for a bill and bypassing this process is likely to draw sharp criticism, which can be seen in the Tax Cut and Jobs Act (2016).

Previous work on committees argue hearings are mostly pro-forma venues, a place where members' frame of reference is constructed prior to the hearing and facts challenging that frame are "discounted, not perceived, or ignored" (Huitt 1954). Members are also perceived to strategically select witnesses in order to strengthen the frame in which their ideals lie (Leyden 1995; Talbert, Jones, and Baumgartner 1995) as well as prepare questions in which they have an expected answer (Oleszek et al 2016). Nonetheless these instances give members avenues to credit claim.

Current studies show an increasing amount of bills bypass the formal committee processes such as hearings and mark-ups, further distancing members from the legislative process, the most recent of which only spans the 93<sup>rd</sup> to the 112<sup>th</sup> Congresses, in which the number of passed bills reported by committee increase in the 112<sup>th</sup> Congress (Bendix 2016; Sinclair 2016; Curry 2019). This is consistent with my theory, as the frequency of restrictive rules seems to increase starting around the 111<sup>th</sup> Congress. Even if less legislation uses the traditional committee processes, it should increase the value of expertise of the legislation that does go through those normal processes.

I seek to examine if committee members are using closed rules to their advantage to promote well thought out policy or if the saturation of closed rules has disincentivized members and led to the shirking of committee duties. I expect to find that legislation passed in the absence of traditional norms have an increased number of hearings compared to legislation passed under open rule. This however may not be consistent across Congresses.

#### 4.6. An Increasingly Restrictive Rules Process

As highlighted by the debate over the Tax Cuts and Jobs Act, the usage of restrictive special rules on important legislation is increasingly commonplace in the contemporary political era. Using data from the University of Georgia Congress Project, Figure 1 plots the rising usage of special rules on “important” legislation from 1905 to 2018.<sup>26</sup> The data include all enactments listed as landmark by Stathis (2003; 2014), Petersen (2001), Mayhew (1991; 2005) and *CQ Almanac*, the ten most important bills per Congress as coded by Clinton and Lapinski (2006) and at least two “routine” appropriation bills per Congress (see Lynch and Madonna 2020). The data tracks how each measure was initially considered on the House floor.

The figure demonstrates a huge increase in both the percentage of measures receiving any rule on the House floor and the percentage of those measures that were considered under restrictive rules. “Restrictive rules” are defined to include closed rules, modified-closed rules and structured rules. It is worth noting that a number of important measures are considered on the House floor under processes that do not include special rules (especially in the early congresses). A lowess smoothing line was included to highlight the growth in measures considered under restrictive rules (Lynch et al. 2020).<sup>27</sup>

Data on all special rules—not just those restricted to important enactments—further highlights the increased use of restrictive rules. Lynch et al. (2020) gather data on all House special rules considered on the chamber floor from the 59<sup>th</sup> (1905-1907) to the 115<sup>th</sup> Congress (2017-2018). Their dataset includes 7,329 House resolutions considered on the floor that provide special rules for legislation.<sup>28</sup> Of these, 494 of them provided special rules for multiple bills,

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<sup>26</sup> Further discussion of the coding of “important bills” can be found in Lynch and Madonna’s (2020) online Appendix A.

<sup>27</sup> The data include Calendar Wednesday, suspension of the rules and the House discharge petition.

<sup>28</sup> The authors note:

resulting in 8,036 rule-bill level observations. They then collected the text of these rules and coded them into twelve rule types. These are listed in Table 4.1. The full dataset (“House Rules, 59th (1905-1907) - 115th (2017-2018) Congresses”) and a codebook are available online.<sup>29</sup>

The data show an increase in restrictive rules over time (Lynch et al. 2020, pg. 18). It should be noted that these data exclude waiver-only rules, martial law and suspension rules, rules covering consideration of a conference report, those providing for a conference committee and a few rules classified as either special orders or miscellaneous. Of the 6,571 special rules, 2,428 of them were restrictive.

#### **4.7. Examining Committee Hearings and Rule Choice in the Contemporary Era**

In order to evaluate the relationship between committee hearings and rule choice, I employed data from the Policy Agendas Project’s Congressional Hearings dataset on the number of committee hearings attached to each bill (Baumgartner and Jones 2020) from the 110<sup>th</sup> (2007-2008) to the 114<sup>th</sup> Congresses (2015-2016). As some hearings reference multiple bills, I pulled out all the bills referenced in the descriptions. I then merged the dataset with the data on bills and public laws made public by Adler and Wilkerson (2019) and the data on special rules made public by Lynch, Madonna and Vick (2020). This analysis is however preliminary, further

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Special rules for the 93rd Congress (1973-1974) through the 115th Congress (2017-2018) were downloaded from congress.gov. Specifically, we downloaded all House Resolutions that were subject to House floor actions. This resulted in 9,913 resolutions. Through key word searches of the resolution descriptions we were able to distinguish between the 4,467 of them that provided special rules and the other 4,846 simple House resolutions. For congresses prior to the 93rd, we built off and extended data collected by Roberts (2010). The Roberts (2010) data ended in 1937. Using the *Congressional Record* index, we then expanded this list through the 92nd Congress (1971-1972). A graduate student coder went through the “House Resolutions” subsection of the History of Bills and Resolutions and checked each resolution that received floor consideration. This resulted in additional 3,279 special rule resolutions from 1905 to 1972 or 7,746 for the full the dataset. Of those, 417 were coded but it was later determined they did not receive floor consideration (Lynch, Madonna and Vick 2020, 17).

<sup>29</sup> <https://www.thecongressproject.com/s/HouseRules1905-2018.xlsx>

research could implement pairing data from the important enactment dataset above with the hearings data.<sup>30</sup> Then restricting the data to important legislation will make pairing bill specific information with hearing information more manageable as well as weed out inconsequential legislation and legislation not considered on the House floor. Pairing these with specific content codes in addition to expanding on the hearing dataset to identify bills through congress.gov and other legislative tracking sources.

Of the 1,821 bills in my dataset, just 654 of them (35.76%) passed the House floor in each Congress. This is not surprising, given that many important measures necessitate a large number of hearings and congresses before they are adopted. House passage was coded by Adler and Wilkerson (2019). Table 4.2 plots House passage by Congress.<sup>31</sup>

An examination of the relationship between both hearings and total days of hearings per each bill and special rule choice is presented below. In an effort to ensure my data are not biased by measures that did receive House floor consideration, I present the average number of hearings and total days of hearings for the 652 bills that passed the House floor. Those numbers are presented in Table 4.3.

The data presented in Table 4.3 suggests a weak link between the presence of a special rule and the number of hearings and the total number of days of hearings. In both instances, special rules are associated with more committee activity. However, these data are highly preliminary. Also, almost 90% of the 177 special rules are restrictive, therefore I cannot definitively link rule type with committee activity.

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<sup>30</sup> Hearings data where bill numbers were not made available were dropped. Of the 20,076 hearings in the Baumgartner and Jones (2020) dataset, bill information was extracted for 1,821 of them. These were all merged into the Adler and Wilkerson (2019) data. Some of the measures received multiple hearings.

<sup>31</sup> Most of the bills listed in Table 2 received one hearing and one total day of hearings. While the total days variable ranged from 1 to 26 (26 corresponding to the National Defense Authorization Act for 2013), 90% of the bill in both the hearings and total days variables received one hearing and one total day of consideration. This is likely a function of missing data.

#### **4.8. Conclusion**

In the era of an increasingly restrictive legislative process, this study finds a weak link between the presence of a special rule and the number of hearings and the total number of days of hearings. This suggests Krehbiel's theory may loosely hold up in the contemporary Congress. However, this study is only preliminary and opens the door for further research. It fails to control for many factors that may influence committee activity such as unified government and multiple referrals, the implementation of these referrals would help strengthen future studies. It will be interesting to see the effect divided vs unified government has on committee action in relation to restrictive rules as well. I would expect a greater increase in committee action during unified government due to the increased chances of enacting legislation. During divided government I would expect less committee action due to the cost outweighing the likelihood bill passage. I would also expect an increase in hearings to occur amongst bills in which only one committee was referred. Future iterations of this work should implement such controls.

Further scholarship may also account for data issues such as matching hearing by topic to bills. As mentioned in the Tax Cuts and Jobs Act there were no specific hearings attached to the bill, however GOP members claimed there were many hearings held on tax reform. Taking into account hearings by topic and matching them to bills would reduce bias in the study and provide a more reliable measure.

Table 4.1. House Special Rules by Rule Type, 1905–2018

| <b><u>Rule Type</u></b>     | <b><u>Count</u></b> | <b><u>Category</u></b> |
|-----------------------------|---------------------|------------------------|
| Closed                      | 782                 | Restrictive            |
| Modified-Closed             | 580                 | Restrictive            |
| Structured                  | 782                 | Restrictive            |
| Open                        | 3,976               | Open                   |
| Modified-Open               | 168                 | Open                   |
| Waiver Only                 | 301                 | Other                  |
| Conference Report           | 519                 | Other                  |
| Senate Amendment            | 283                 | Restrictive            |
| Go to Conference            | 52                  | Other                  |
| Special Order/Miscellaneous | 184                 | Other                  |
| Martial Law                 | 169                 | Other                  |
| Suspension of the Rules     | 240                 | Other                  |
| <i>Total</i>                | <i>8,036</i>        |                        |

Table 4.2. Committee Hearings by House Passage, 2007–2016

| <u>Congress</u>               | <u>Fails</u><br><u>House</u> | <u>Passed</u><br><u>House</u> | <u>Total</u> | <u>Percent</u><br><u>Passed</u> |
|-------------------------------|------------------------------|-------------------------------|--------------|---------------------------------|
| 110 <sup>th</sup> (2007-2008) | 150                          | 75                            | 225          | 33.33%                          |
| 111 <sup>th</sup> (2009-2010) | 275                          | 169                           | 444          | 38.06%                          |
| 112 <sup>th</sup> (2011-2012) | 261                          | 101                           | 362          | 27.90%                          |
| 113 <sup>th</sup> (2013-2014) | 264                          | 143                           | 407          | 35.14%                          |
| 114 <sup>th</sup> (2015-2016) | 219                          | 164                           | 383          | 42.82%                          |
| Total                         | 1,169                        | 652                           | 1,821        | 35.80%                          |

Table 4.3. Committee Hearings by Floor Consideration Type, 2007–2016

|            | <b><u>No Special Rule</u></b> | <b><u>Special Rule</u></b> | <b><u>All</u></b> |
|------------|-------------------------------|----------------------------|-------------------|
| Hearings   | 1.07<br>(475)                 | 1.29<br>(177)              | 1.13<br>(652)     |
| Total Days | 1.09<br>(475)                 | 1.55<br>(177)              | 1.21<br>(652)     |



## CHAPTER 5

### CONCLUSION

Congress in the modern era has been painted as an institution in which party leadership has the majority of control and their procedural tactics have left rank-and-file members out of the legislative process. The use of these restrictive rules in the modern era has led to a decrease in floor amending activity making it increasingly difficult to study members and their motivations. Future work in political science will need to utilize other methods and measures to better understand the legislative process, intra-party power dynamics, and bargaining tools. These essays provide some evidence and insight into the legislative process under restrictive rules.

The first two essays utilize pre-printing requirements to understand members' preferred policy preferences on legislation up for debate. Those policy preferences in conjunction with manager's amendment provisions provide some evidence of a bargaining process that strengthens party leadership's ability to debate bills under restrictive rules. Though the data is inconsistent, this work serves as a foundation for the study of managers' amendments, an area in the field of political science that has long been overlooked and understudied. There is much work to be done on the topic as it underscores the importance of enhancing our understanding of how managers' amendments function as a tool other than providing technical changes to legislation.

Future iterations of the study of managers' amendments should focus on their use over time. This will allow for the control of many different factors that this work was unable to consider. As structured rules become more prevalent, I foresee party leadership will be more likely to utilize managers' amendments as a bargaining tool to build coalitions. Future work

should take into account the subjective nature of the data collection process and utilize multiple coders when matching preprinted amendments to manager's amendment provisions.

The third essay utilizes the combination of existing datasets to test competing theories of power in regard to committees and restrictive rules. The data provides some evidence that committees are willing utilize their specialization and exploit the legislative advantage they receive under restrictive rules. The work shows a loose connection between the use of restrictive rules and the frequency congressional committees hold hearings. Future work in this area should control for things like committee jurisdiction, unified government, party, etc.

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