

EXTENSIONS OF REMARKS

ADOPTING THE RULES OF THE HOUSE FOR THE 105TH CONGRESS

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SOLOMON. Mr. Speaker, during the debate on House Resolution 5, adopting House Rules for the 105th Congress, my good friend from Michigan [Mr. DINGELL] inserted a statement in the RECORD complaining about the provision in the rules packages that reduces from 3 days to 2 days after a measure or matter is approved by a committee, the time for filing additional, supplemental or minority views. To quote from his statement:

I find it ironic indeed that during the 40 years of control by the Democratic Party, we never considered limiting this fundamental right of the minority to file views on legislation. Yet after just 2 years in control of the House, the Republicans have found the granting of 3 whole days to the minority to file its views as somehow being too onerous.

Mr. Speaker, I am responding to that inserted speech by inserting my own rebuttal under the general leave granted to Members to revise and extend their remarks on House Resolution 5.

I only regret that the gentleman from Michigan [Mr. DINGELL] was apparently not on the floor to hear my opening statement on the rules package in which I explained that the proposal for 2 rather than 3 days to file views was originally made by Rules Committee Chairman JOE MOAKLEY before the Joint Committee on the Organization of the Congress in the 103d Congress. Moreover, when the joint committee did not include that proposal in its recommended bill (H.R. 3801, Representative HAMILTON, Feb. 4, 1994), the chairman inserted it in his chairman's mark or substitute for the joint committee's bill.

We did not object to the proposal when Mr. MOAKLEY testified in support of it before the joint committee on May 20, 1993. Nor did we object to it when he included it in his chairman's mark of August 1, 1994. Nor did we present an amendment to the Rules Committee to delete it during the committee markup of H.R. 3801 on August 4, 1994—even though we did file with the committee a rather lengthy package of other amendments we intended to offer.

Although the markup was suspended on August 4 by Chairman MOAKLEY over the prospect of a repeal of proxy voting, after only one majority amendment had been disposed of, it should be made quite clear that the suspension of the markup was not caused by any Rules Committee Republican opposition raised or noticed on the 2-day rule for filing views.

Indeed, if that had been even a minor factor in the chairman's reasons for suspending markup, I doubt very much that he would have included the very same 2-day rule in his subsequent chairman's mark of September 19, 1994.

As I indicated to the House in my opening remarks on this rule package for the 105th

Congress, we were offering the Moakley 2-day rule for filing views in the spirit of bipartisanship, giving him full recognition for being the author of the proposal, and full support for the Moakley rule. So the gentleman from Michigan is just factually, dead wrong in asserting that such a rule was never proposed by the Democrats in all of its 40 years of control of the House. In fact it was, and came very close to being adopted just prior to the 1994 elections when we gained control of the House.

As Mr. MOAKLEY made clear in his testimony before the joint committee in 1993, it was his hope that by shortening the period for filing views, it would be less necessary in the future for the Rules Committee to waive the 3-day requirement for reports to be available to Members before they can be considered by the House. We share that same hope.

Mr. Speaker, with that I insert at this point in the RECORD the testimony of Mr. MOAKLEY before that joint committee in 1993, as well as the relevant text of his rule from his August 1 and September 19, 1994, chairman's marks for H.R. 3801, which also included the automatic filing authority for committees on the second day.

The materials follow:

STATEMENT OF THE HONORABLE JOHN JOSEPH MOAKLEY, CHAIRMAN, COMMITTEE ON RULES, U.S. HOUSE OF REPRESENTATIVES BEFORE THE JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS, MAY 20, 1993

Mr. Chairman, I would like to thank the Joint Committee for the opportunity to appear before you today to talk about committee and floor procedures in the U.S. House of Representatives. As Chairman of the House Rules Committee, I realize I am an obvious spokesperson for the procedures by which bills are considered in the House. I do not come before you today to blindly defend our current practices. Rather, I view this as a valuable and essential opportunity to take an objective, critical look at our rules and procedures and to comment on what areas might possibly be improved.

Before getting to specifics, I would like to briefly express my gratitude to the Joint Committee for the work it has done to date. I commend the Committee for both its diligence and the seriousness with which it has undertaken its work. Yours is not an easy task, I know. Change is always difficult, particularly when it is uncertain whether the proposed changes will actually improve the status quo. I can appreciate the enormity of your assignment and hope that my comments today assist you with your comprehensive evaluation of the Institution.

Reflecting upon the atmosphere in Congress of late, I must confess that I am almost relieved that we have reached this juncture—it is time for us to confront our problems, either real or perceived, and resolve them one way or another. In my twenty-one years in Congress, I have never experienced partisan tensions as aggravated and sustained as they have been over the past couple of years. While a certain amount of sparring between the parties is unavoidable, healthy even, I believe we have far surpassed the level of disagreement that characterizes a healthy democracy.

I am most concerned with the element of distrust that seems to pervade our daily

interactions. We cannot do our jobs well when we distrust those with whom we work. We were sent here to make sound, well-reasoned policy decisions on behalf of our constituents, our country and the world. I am deeply concerned that the public good is being compromised in the conflicts of our rival parties.

It is out of these concerns that I admit certain changes are needed. On the procedural front, I think I can recommend several improvements which will not only enhance the quality of deliberation in the House of Representatives, but will also lessen some of the partisan jealousies which arguably consume too much of our time and energy. As I have not yet talked with the Speaker about these ideas, I in no way wish to imply that my remarks today reflect the sentiments of the Leadership.

First, I would like to note the Democratic Leadership's recent efforts to allow for more open, inclusive debate. By inclusive I mean providing for greater participation by both the majority and the minority. The views of the minority are a vital component of the legislative process, and within reason, should be accommodated. I say within reason because underlying the legislative procedures of the House is the general principle that a determined majority of members should be able to work its will on the floor without undue delay by the minority. While House rules and procedures generally recognize the importance of permitting any minority, partisan or bi-partisan, to present its views and prepare alternatives, the rules do not enable that minority to filibuster or use other devices to prevent the majority from accomplishing its objectives in a timely manner.

I think everyone would agree that it is the prerogative of the majority party leadership to both set the legislative agenda and to provide for the orderly consideration of legislation in the House. And while the role of the Rules Committee is to try to facilitate the Leadership's legislative agenda, its power is not without limitation. The Rules Committee can only recommend special rules to the House—it cannot impose its recommendations on the membership. It is for the House to decide, by majority vote, whether it is prepared to accept the ground rules, including any restrictions on amendments that the Committee proposes.

The Rules Committee structures its rules based not only on the views of its members, but also on its perception of what a majority—218 members—of the House is prepared to support. Ultimately, the House agenda is subject to control by a voting majority. This majority is not static, nor is it strictly partisan. Rather it is continually shifting and must be constructed and reconstructed from one issue to the next.

Unfortunately, bare statistics do not always reflect the considerations behind the types of rules reported by my Committee. The first ten rules reported by the Rules Committee in the 103rd Congress were indeed by definition "restrictive", that is, providing certain limitations on the number or types of amendments that could be offered. But while my friends on the other side of the aisle suggest that there amendments were arbitrarily rejected by the Rules Committee, this simply isn't true.

Before condemning the Democratic Leadership as callous or insensitive to the ideas

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

of the minority, one must examine the nature of the bills and the types of amendments offered. Interestingly, of the ten examples cited by the Republican Leadership Task Force on Deliberative Democracy as egregious examples of the Rules Committee unreasonably denying amendments for floor consideration, the first five amendments were not even germane to the measures being considered. It is common knowledge that House rules and precedents require all amendments to be germane to the text they would amend. Therefore, I see nothing unreasonable about the Rules Committee's decision not to make these amendments in order. Moreover, another two amendments cited by the Task Force would have been subject to other points of order. In sum, seven of the ten amendments cited by the Task Force would not even have been made in order under an open rule.

As for the restrictive rules that the Rules Committee has reported to date, let me say this: the baseball season is only one month old—just because the Tigers are now in the lead doesn't mean they're going to win the pennant. In other words, be patient. There is no rigid program governing the types of rules to be reported by the Rules Committee. Rather, each rule will be determined on a case by case basis.

As you know, the Rules Committee recently reported open rules on three bills—nobody should be surprised when such contentious issues such as reconciliation and campaign finance are considered under structured rules—but as the House moves further into its legislative season I anticipate more open rules being reported by my committee.

Another change I would recommend relates to the motion to recommit. The change would arguably strengthen the minority's ability to act as a constructive partner in the development of legislation. I endorse a modification of the plan proposed by Tom Mann and Norm Ornstein in one of their earlier reports to the Joint Committee.

I propose amending House Rule XVI, clause 4, so as to guarantee the minority a vote to recommit with instructions whenever a special order reported by the Rules Committee precludes the minority from offering amendments in the Committee of the Whole. This right would be subject to a couple of conditions. First, the motion would be guaranteed only if offered at the specific direction of the Minority Leader or his designee. Second, upon receipt of the motion, the Speaker would have the power to postpone debate and votes on the motion and final passage for up to two hours.

I consider these conditions to be reasonable as they would allow the minority a vote on its position on major issues and at the same time allow the majority a reasonable amount of time within which to prepare its response to the minority's alternative. Theoretically, limiting control of the motion to recommit to the Minority Leader or his designee would ensure that the motion would be used in a serious, constructive manner. Members with fringe views would be unable to make frivolous motions.

A third change I would recommend involves clause 2(l) (5) and (6) of House Rule XI which respectively provide for a three day period within which members may file supplemental, additional or minority views to be included in a committee's report, and an additional three day period for members to review the committee report before the measure is considered by the House. In his recent statement before the Joint Committee, Mr. Solomon expressed concern that the opportunity for members to review committee reports was too often being waived due to scheduling considerations. Let me say I empathize with Mr. Solomon and hope that my plan alleviates some of his concerns.

My proposal tries to balance the legitimate need for flexibility in scheduling legislation for floor action with the important right of members to express their alternative views and to review committee reports prior to debating a measure on the House floor. I don't believe the rule as it is presently written allows us to use our time efficiently. Presently, the three day period for filing views begins to toll the day immediately following the day on which a committee orders a measure reported and expires at midnight of the third day. Since presently there is no automatic authority for a committee to file immediately upon the expiration of this third day, it may be another day before the committee files its report, and yet another day before the report becomes available in the document room. Only then will the three day layover period for members' review of the report begin. Thus, more than two weeks may go by before a bill becomes available for floor consideration.

In the interest of both preserving this important right and using our time well I would recommend the following: tighten the way in which the three day period for filing views is calculated by starting the clock tolling immediately upon a committee's ordering of a bill reported. Often many valuable hours remain in a day on which a bill is ordered reported. Additionally, I would recommend giving committees automatic authority to file until midnight of the third day.

These changes arguably would achieve the dual goal of allowing for more efficient scheduling of legislation and insuring an adequate period for members to file and review views. While the Committee on Rules would still reserve its right to waive the three day layover requirement, I believe that if these changes were to be made the need for such waivers would be significantly reduced. In fact, I think it is safe to assert that had this proposal been in place earlier this Congress, none of the waivers of the three day layover period granted by my Committee would have been necessary.

My final recommendation is that the House, in some manner, implement the Oxford-Union style debate program proposed by Norm Ornstein and Tom Mann. Such a program strikes me as a useful vehicle for conducting thoughtful, substantive, and balanced debate on important national issues. Unlike one-minute or special orders which tend to be one-sided monologues free of contest or rebuttal, such a program would allow for a meaningful exchange of ideas between members and would serve as a valuable supplement to our regular debate time on major legislation.

In closing, I would like to add that I agree with the prevailing sentiment that procedural or mechanical changes alone will not cure the ailments of this Institution. Attitudinal change is as important an ingredient. I am encouraged by the progress that is already being made in this area and hope that we can sustain this spirit of cooperation throughout the 103rd Congress.

I again thank the members of the Joint Committee for this opportunity to testify before you today. I would be happy to answer any questions.

FROM MOAKLEY SUBSTITUTE FOR H.R. 3804,
AUG. 1, 1994

SEC. 112. AVAILABILITY OF LEGISLATIVE INFORMATION.

(a) VIEWS.—Clause 2(l)(5) of rule XI of the Rules of the House of Representatives is amended—

(1) in its first sentence, by inserting “and including the day the measure or matter is approved” after “holiday”; and

(2) after its second sentence, by inserting the following new sentence: “Upon receipt of all such views, the committee may (without permission of the House) file the report until midnight of the third such calendar day.”.

AMENDMENT TO H.R. 3801 OFFERED BY MR.
MOAKLEY, SEPTEMBER 19, 1994

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Legislative Reorganization Act of 1994”.

RESPONSES TO QUESTIONS AND COMMENTS ON HOUSE RESOLUTION 5, ADOPTING HOUSE RULES

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 21, 1997

Mr. SOLOMON. Mr. Speaker, since the House adopted House Resolution 5 on January 7, 1997, establishing the standing rules of the House for the 105th Congress, several questions and comments have been raised as to the application or interpretation of the new rules.

Let me first direct my colleagues to the debate on House Resolution 5 in the CONGRESSIONAL RECORD of January 7, 1997, during which additional materials were inserted in the RECORD for the benefit and guidance of Members and committees. The text of the resolution itself begins at page H8 of the RECORD. My introductory remarks explaining the rules package begins at page H10. Immediately after my remarks are a “Highlights and Section-by-Section Summary” (pp. H11–12), followed by a more detailed “Section-by-Section Analysis” (pp. H12–15), and a letter from Ways and Means Committee Chairman BILL ARCHER further explaining the more specific definition of income tax rate increases contained in House Resolution 5 with respect to the three-fifths-vote rule and the prohibition on retroactive income tax rate increases (p. H15). I have also included in the RECORD a press release and table on comparative legislative data for the 103d and 104th Congresses (pp. H15–16); and a brief history of how the process for adopting House rules at the beginning of a Congress has evolved over the last century (pp. H16–17).

Mr. Speaker, since the adoption of the rules on January 7, I have: First, responded to two letters from colleagues regarding the “truth-in-testimony rule”; second, responded to a letter from the minority leader forwarded to my Rules Committee office by the Speaker; and third, written to the Parliamentarian to further clarify the intent and application of the rules that allows for exceptions to the 5-minute limit in questioning hearing witnesses, copies of which have been sent to all committee chairmen and ranking minority members. In addition, I have inserted remarks elsewhere in this RECORD in response to Mr. DINGELL's inserted statement on the new rule on time allowed for filing views on committee reports.

Mr. Speaker, at this point in the RECORD, I include my exchange of correspondence with Representatives FROST and SKAGGS on the “truth-in-testimony rule”; the minority leader's letter to the Speaker on several provisions in the rules package and my response; and my