

THE WRONG WAY CONGRESS

How the Democratic Majority Took America in the Wrong Direction with the Wrong Bills in the Wrong Way at the Wrong Time



DAVID DREIER ★ LINCOLN DIAZ-BALART ★ PETE SESSIONS ★ VIRGINIA FOXX



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When historians try to encapsulate the 111th Congress, they will likely find that the Democratic Majority pursued the wrong policies in the wrong way and at the wrong time. The items that the Members of the Democratic Majority count as successes are widely regarded as unwanted, unpopular, and extreme. They have pursued their agenda at the expense of the House as a basic institution of our democracy. While the economy floundered, they ignored budgeting and appropriations work, Congress' most basic responsibility. Four years ago, the then-Minority Democrats promised a "new direction." Today, they have made this the "Wrong Way Congress."

The Democrats on the House Rules Committee have been in the driver's seat through it all, planning and executing the strategy. They have rewritten much of the major legislation passed by this Congress, sometimes in the middle of the night. They engineered the exclusion of opposing viewpoints. They steered around the regular legislative process to support a majority driven by partisan concerns. The Democrats on the Rules Committee protected the Majority's record-setting spending increases by virtually eliminating the opportunity to amend spending bills.

The 111th Congress is the first in 221 years that has not allowed one bill to be considered under an open amendment process. This fact makes the "Wrong Way Congress" the most closed Congress in history.



THE BIG THREE BILLS

In the House, the Rules Committee is known as the "traffic cop," creating a path for consideration of bills on the House floor. With its supermajority ratio of 9 Majority members and 4 Minority members, the Rules Committee does just about whatever it wants, from deciding which amendments are debated to actually rewriting bills. Because of this power, the Rules Committee has always been the arm of the Speaker. The current Democratic Majority has effectively used the Committee to limit opportunities for debate and smooth the path for highly unpopular legislation. It could be argued that many of these bills would not have passed without the Rules Committee's extreme procedural machinations.

The way the Majority Democrats considered the failed "stimulus," the ultimately unsuccessful Cap and Trade

The "Stimulus"

- Final version available for fewer than 24 hours
- Rewritten in the Rules Committee
- No legislative hearings
- Gallup approval/disapproval: 43 / 52 (9/13/10)

legislation, and the Government takeover of the Nation's health care has earned them the moniker as the "Wrong Way Congress." When the big decisions were made on these measures, the American people weren't in the room. The Speaker might as well have posted a "Do Not Enter" sign on the front of the Capitol. It was her Rules Committee that did the dirty work of keeping the American people out of the loop.

The "Stimulus" Bill. At the very outset, the Speaker's team pursued its ill-fated "stimulus" at warp speed, ignoring pleas for bipartisanship and regular order. The bill never went through the committee process. Although both the House and Senate appointed Members to a conference committee, they never formally debated the legislation.

When the final version of the bill reached the Rules Committee, it had been available for only an hour. Fewer than 18 hours later, Members were on the House floor voting on the bill. This happened despite a unanimous House vote just two days prior demanding that the bill be made available for 48 hours so that Members and the public had the opportunity to read the bill. (See roll call vote 111-54, 2/10/2009.)

They insisted that their high speed race to finish was necessary to keep the unemployment rate below 8 percent. The Speaker promised that "of course we will go forward under regular order." (CQ Today, 2/6/09.) It never happened. Nearly two years later, their "stimulus" experiment has clearly failed as the unemployment rate is stuck at a painful 9.6 percent.

"Cap & Trade"

- Final version available for fewer than 24 hours
- Rewritten in the Rules Committee at 3 am with 300 page amendment
- Awaiting action in the Senate.

“Cap & Trade” Energy Legislation. Next up was “Cap and Trade” legislation. In order to drag this controversial bill across the finish line, they were forced to draft a last minute “manager’s amendment.” It was composed of backroom deals designed to ensure that the votes would be there when the gavel came down. Just how last minute was this package of deals?

The 300 page amendment was unveiled in the Rules Committee just before 3 a.m. on the very day of the final vote. The outrage was palpable among Democrats and Republicans. Republican Leader John Boehner used his leadership privilege to take an hour on the floor just to walk Members and the American people through the provisions of the amendment. In the end, the bill barely passed and its handling is considered to have launched the “Read the Bill” movement. It certainly cemented the view of many that the Democratic Majority arrogantly cared more about its own objectives than the will of the American people. At the end of the day, the entire episode was most likely for naught, as the Senate has been unable to consider the legislation.

Health Care. It was the handling of their signature item — health care “reform” — that dismayed the American people the most. President Obama may have promised that the negotiations would be carried on C-SPAN, but the Democratic Majority would not be so limited. Rules Committee Chairwoman Louise Slaughter set the tone early on in the debate when she said of the committee she leads: “We can do anything up there.” (CQ Today, 7/24/09).

Figure 1: Increased discretionary spending and appropriations amendments

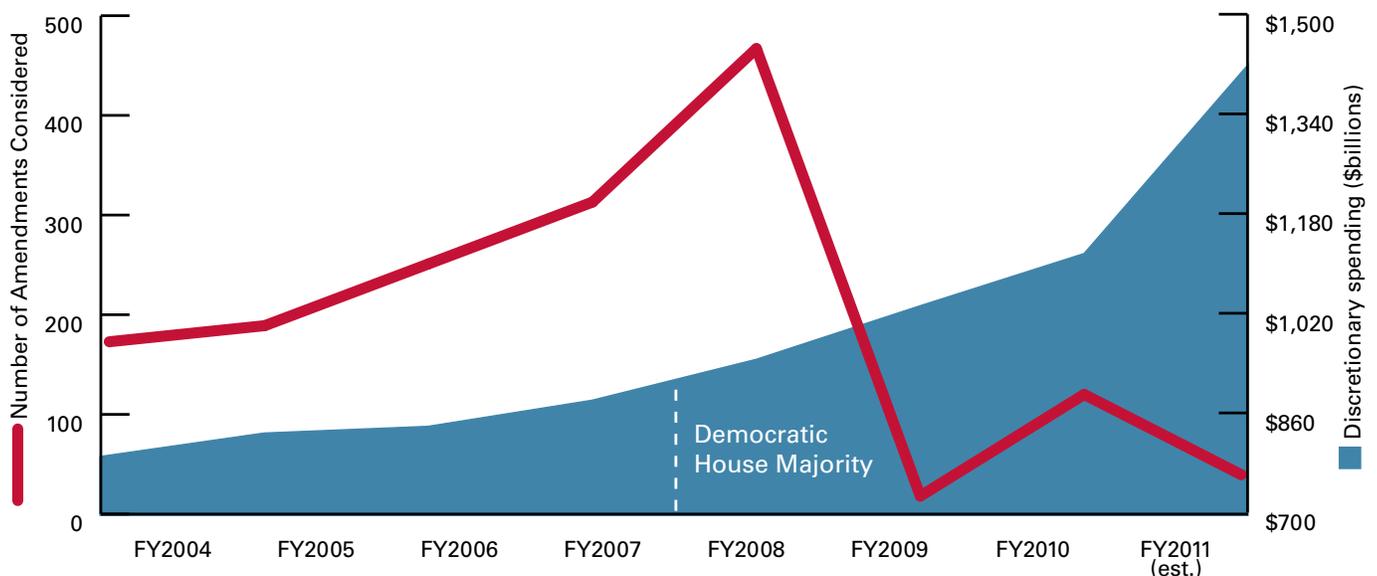
Health Care

- Rewritten in the Rules Committee
- No amendments allowed on final version
- No conference committee
- Gallup approval/disapproval: **39 / 56** (9/13/10)

Rather than proceed through regular order, they chose to “ping-pong” the legislation, eliminating the need for a conference committee between the House and Senate and removing all opportunities for amendments in the House. They then manipulated the reconciliation process, typically reserved for budget matters, in order to try to pass it. When the Senate passed their “reform” bill on Christmas Eve 2009, it was once again the product of backroom deals. The Senate-passed version became the vehicle on which everything was riding. If this bill was going to be enacted, it would have to be based on the Senate’s version. It was so wildly unpopular that the Speaker and her lieutenants frantically searched for ways to avoid a direct vote on the poisonous Senate-passed bill.

Thus, the “Slaughter Solution” was born. This extreme abuse of the House Rules, named after its author, Chairwoman Slaughter, would have allowed them to “deem and pass” the Senate bill, without an actual up or down vote. Speaker Pelosi boldly proclaimed, “... I like it because people don’t have to vote on the Senate bill.” (Washington Post, 3/16/10.) While the “deem and pass” procedure had

Appropriations Amendments Considered on the House Floor & Changes in Discretionary Spending



Source: House Committee on Rules Republicans; House Committee on Appropriations Republicans

been used in the House before, it had never been employed for something so large, so transformational, and so controversial.

Ultimately, the Democratic Majority abandoned the “deem and pass” strategy after an open rebellion from its own Democratic Members. One Democrat on the Rules Committee even proclaimed that “sanity” had eventually prevailed. (Buffalo News, 3/21/10.) But the damage had been done. Of their health care bill Speaker Pelosi famously declared, “We have to pass the bill so that you can find out what is in it.” (Pelosi remarks, 3/9/10.) The American people knew enough to know that they didn’t want it. But it was pushed through anyway.

These three bills are often hailed by the Democratic Majority as their signature achievements. The American people feel differently. According to a recent Gallup poll, more Americans disapprove of the stimulus and health care legislation than approve of them. (Opinion on the Cap and Trade legislation was not surveyed.) It’s clear that the American people don’t just disapprove of what the “Wrong Way” Congress did, they disapprove of *how* they did it.



BUDGET AND APPROPRIATIONS

The “Wrong Way Congress” has been one of the most spendthrift in history, with non-defense discretionary spending having increased 91 percent. Ironically, it has also been one of the least productive when it comes to doing actual appropriations work. How do these two seeming contradictions reconcile with one another? Sidetracked by its radical agenda of “stimulus,” Cap and Trade, and health care “reform,” the Democratic Majority all but abandoned the basic functions of budgeting and appropriations work. What’s more, the Majority shut down the traditionally open appropriations process, closing the road to those seeking to bring spending under control.

Beginning in the summer of 2009, the Rules Committee, at the direction of the Majority Leadership and the Appropriations Committee Chairman, locked down the entire appropriations process on the floor of the House for the first time in the history of the United States. Rather than

allow the spending bills to be considered under an open amendment process, which allowed any germane amendment to be considered, they decided to hand pick amendments for consideration. This meant there would be no real give and take on the Nation’s spending priorities. Instead, there would be an orchestrated process designed to protect their vulnerable members from politically painful votes. Their approach, as shown in figure 1, was to curtail amendments to spending bills precisely when Federal spending and the deficit began to skyrocket.

The shut down became complete in the spring of 2010. After expending all of their legislative energy to pass the unwanted “stimulus,” Cap and Trade, and health care “reform,” the Democratic Majority decided that it did not have the will or the ability to even consider a budget resolution. For the first time since the passage of the 1974 Budget Act, there was no Budget Committee markup and no floor consideration. At a time when the American people were being forced to tighten their own belts, the Democratic Majority decided it didn’t have the political courage or responsibility to actually produce a budget. (For a history of House consideration of budget resolutions, see figure 2.)

To make up for this historic failure, the Rules Committee again rode to the rescue. They tucked a “deeming resolution” into a rule providing for consideration of a bill meant to fund the troops. It was basically the “Slaughter Solution” redux — because they couldn’t pass a budget, and couldn’t even pass a “deeming resolution” on its own, they had to hide behind the troops to get it done. The Rules Committee didn’t even hear testimony on this fail-safe measure.

Figure 2: History of budget resolutions

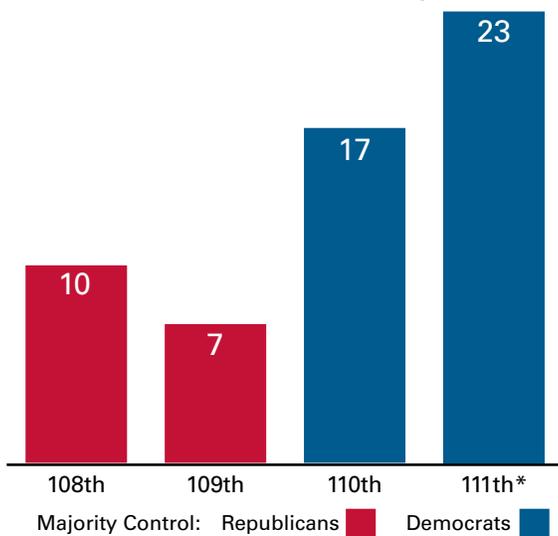
Fiscal year	Month of House passage
1976	May 1975
1977	April 1976
1978	May 1977
1979	May 1978
1980	May 1979
1981	May 1980
1982	May 1981
1983	June 1982
1984	March 1983
1985	April 1984
1986	May 1985
1987	May 1986
1988	April 1987
1989	March 1988
1990	May 1989
1991	May 1990
1992	April 1991
1993	March 1992
1994	March 1993
1995	March 1994
1996	May 1995
1997	May 1996
1998	May 1997
1999	June 1998
2000	March 1999
2001	March 2000
2002	March 2001
2003	February 2002
2004	March 2003
2005	March 2004
2006	March 2005
2007	March 2006
2008	March 2007
2009	March 2008
2010	April 2009
2011	—

Figure 3: Congressional work weeks where the Rules Committee provided for martial law and suspension authority

Monday	Tuesday	Wednesday	Thursday	Friday
May 2010				
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				
June 2010				
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30		
July 2010				
			1	2
5	6	7	8	9
12	13	14	15	16
19	20	21	22	23
26	27	28	29	30
August 2010				
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23	24	25	26	27
30	31			
Week with suspension authority only				
Week with martial law authority only				
Week with both martial law and suspension authority				
District work period				

Figure 4: Failed suspension bills

Comparison of Failed Suspension Bills 108th - 111th Congress



Source: House Committee on Rules Republicans

*Through September 24, 2010

Following this epic failure, the Democratic Majority ground the appropriations process to a halt, considering only two of the twelve spending bills. The two bills that were considered came to the floor under the same limited approach that the Majority had pioneered the previous year.

Budgeting and appropriations work is the most basic, fundamental responsibility of the Congress. The Democratic Leaders decided that “stimulus,” Cap and Trade, and health care “reform” were enough. They chose to ignore their constitutional duty by failing to pass a budget and the appropriations bills.



SUSPENSIONS AND MARTIAL LAW

The more its approval ratings dropped, the more the “Wrong Way Congress” sought to avoid accountability and real debate. How did it happen? It “suspended” the rules and implemented a procedure known as “martial law” 42 times through September 24, 2010, more than any recent congress. Additionally, the Majority Democrats put in place “unrestricted martial law” (the ability to consider any bill at any time with virtually no notice) twice as often as the last Republican-controlled Congress. Their abuse of these special procedures ensured that the debate in the House could go in only one direction — “left turns only.”

Normally, when a bill comes up for a vote in the House, it goes to the Rules Committee and then to the full House the following day. But the “Wrong Way Congress” has been anything but normal. In fact, the Democratic Majority began to create a “new normal.”

Bills considered under suspension of the rules cannot be amended, are debatable only for forty minutes, and must receive a two-thirds vote to pass. This process is typically reserved for non-controversial legislation or housekeeping items. Under the standing rules of the House, suspension authority is limited to the first three days of the week. But the Democrats on the Rules Committee felt it was their obligation to make any day a “suspension” day. As illustrated in figure 3, during what is normally the Congress’ busy season of dispensing with spending bills (June and July), the House enjoyed extra suspension and martial law authority every week but one.

The Majority used this additional authority in two distinct ways. First, it made up for the lack of action on spending bills by filling the House schedule with mundane legislation like congratulatory measures and the naming of post offices and other Federal facilities. It also recognized special calendar designations such as “National Pollinator Week.” Second, it began to bring up more and more controversial legislation as “suspensions.” An indicator of this strategy is the number of failed “suspensions.” As illustrated in figure 4, there were ten or fewer failed suspensions in both the 108th and 109th Congresses. In the 110th Congress, there were seventeen. The “Wrong Way Congress” has seen 23 suspensions fail so far.

Beyond granting themselves the extra suspension authority, the Rules Committee Democrats also implemented unrestricted “martial law” rule at an unprecedented rate during the “Wrong Way Congress,” as shown in figure 3. Unrestricted “martial law” is the ultimate tool to avoid accountability.

This authority allows the Majority to consider any bill at any time with as little as an hour’s notice. While same-day authority is sometimes necessary in the waning days of a legislative session, it’s typically limited to a small number of specific bills. In contrast, the “Wrong Way Congress” used it as a crutch. As figure 5 shows, from the end of May 2010 through August 2010, the House operated under a form of “martial law” for every week but one.

The Democratic Majority’s excessive use of extra suspension and unrestricted “marital law” authority, executed by the Rules Committee, was designed to stifle debate, rush legislation through with little or no scrutiny, and keep the American people out of the loop.

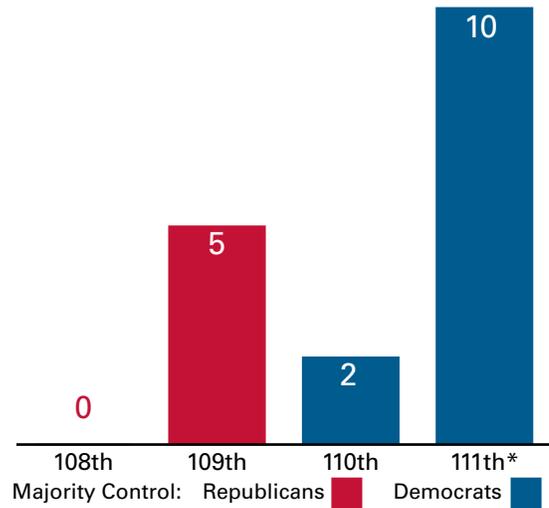


TO A DEAD END

Rather than focusing on job creation, the “Wrong Way Congress” pursued an agenda based on reckless spending, increased regulation, and higher taxes. It did so by employing heavy-handed tactics, parliamentary maneuvering, and by ignoring the will of the American people. It has sadly led the American people to a “Dead End.”

Figure 5: Recent use of unrestricted martial law provisions

Unrestricted “Martial Law” Rules 108th - 111th Congresses



Source: House Committee on Rules Republicans

*Through September 24, 2010

The unemployment rate has risen from 7.7 in January 2009 to 9.6 percent today. The national debt has climbed to an astounding \$13 trillion. Congressional disapproval is at an average of 73 percent. The “Wrong Way Congress” may consider itself accomplished but that is not what the American people think.

There is little dispute that its agenda has caused real economic damage. It has also inflicted real institutional damage that must be reversed. The People’s House can return accountability to the legislative process by opening it up to real transparency. The House needs to put cameras in the Rules Committee hearing room and allow a 3-day layover period for any bill. The House must establish spending priorities by debating and passing a real budget. It also needs to re-open the spending process to real debate and amendments. As the “Wrong Way Congress” has shown, closing the process down only ensures that spending will go up. Until the legislative practices of the “Wrong Way Congress” are stopped, the economic and institutional damage will only continue.

There are important lessons to be learned from the “Wrong Way Congress.” Stifling debate does not convey more credibility. Attempts to micro-manage the legislative process create bigger problems than they solve. Fundamentals, like budgets and spending priorities, matter. The American people deserve and expect a say in how the Congress conducts its business. Important decisions still lie ahead before the conclusion of the 111th Congress. It’s not too late for them to make a U-turn and take these lessons to heart.

