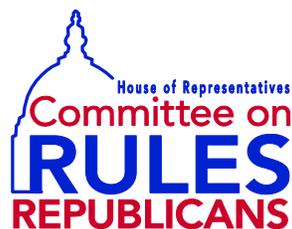




# **The Breakdown of Debate, Decorum, and Deliberation in the House at the Hands of the Rules Committee**

*A report by the*



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## Table of Contents

Table of Contents.....	ii
Introduction .....	1
Breaking Their Promises.....	2
The Rules Committee Takes the Lead in Shutting Down Debate and Diminishing Deliberation.....	4
A Closed Process.....	4
The Closed Door Policy.....	4
No Time Left for You .....	6
What is an “Open Rule” Exactly? .....	6
Conference Committee Concerns No Longer Concerning.....	7
The Art of Abusing Power .....	8
Emergency Parachute Provision .....	8
The Rules Committee as Ghostwriter .....	8
Sunshine Roll Back.....	9
Swatting at the Motion to Recommit .....	9
Conclusion — Why it Matters.....	11

*Note: All statistics (unless otherwise noted) were computed by the Committee on Rules Republican staff and are current through September 21, 2007.*

Updated October 1, 2007

## Introduction

Huge bills being rewritten in the middle of the night. Closed rules. Minority amendments rejected again and again. Earmarks automatically included in appropriations bills with no vote or debate. A vote under investigation. Broken voting machines. Repeated abuse of power from the Speaker's Chair.

These sound an awful lot like Democratic talking points from a year ago. But as the first session of the 110th Congress nears its conclusion, it's the new Majority that's having to answer for their abuses of power.

Nearly a year into their Majority status, they have achieved little legislative progress and have failed to live up to their promise to conduct the "most open and honest Congress in history" again and again. Add to that a scandal with the electronic voting machines in the House, significant tax increases, cuts in Medicare benefits, and out of control spending, and their accomplishment balance sheet appears to be firmly in the red. Americans have clearly taken notice: the approval rating of Congress bottomed out at an historic low of 11% in the latest Reuters/Zogby polling.

A critical cog in the legislative wheel of the House of Representatives, the Speaker-appointed Rules Committee, is at the center of the Majority's management problems, their long list of broken promises, and the partisan and contemptuous treatment of members on

both sides of the aisle. By closing down the legislative process, rushing through legislation, and preventing members from even submitting amendments for consideration, the Majority Leadership's Rules Committee has established new lows in the legislative process.

They promised "New House Principles" and their pledges for more openness remain on the website of the Speaker. The truth is, they have abandoned these principles altogether and chosen political power instead. Despite all their protests to the contrary, it seems they valued Minority rights only when they were in the Minority.

It's time to measure this Majority by their own standards. They have become everything they campaigned against, and in some cases, they have become worse. One can only talk so much about reform. At some point, you have to deliver on it.

This report describes the discrepancy between the new Majority's rhetoric, and the reality of this 110th Congress. Far from being open and honest, this Congress is on track to become one of the most closed and legislatively inept Congresses in recent history. And as they argued when they were in the Minority, this new Majority is trampling on the rights of the American people. As we have seen, their cavalier attitude toward regular order has consequences.

With the Rules Committee taking the lead, the House is clearly "Out of Order."



*In the end, the 110th Congress headed for its August recess with civility in shreds and achievements sparse ... That's no way to do business, and Democrats know it.*

— [Washington Post Editorial, "The Congress So Far", August 5, 2007](#)



## Breaking Their Promises

In a document still available on the web site of the Speaker, the Democratic Leadership lays out their promises for a more civil, more open, and more transparent House. Entitled *The New Direction for America*, it lays out clear guidelines for how legislation should move through the House. The reality of the last nine months is that they have not followed their own advice. By their own standards, they have left the House “Out of Order.”

Key legislative standards laid out by the new Majority include:

- ★ “Bills should be developed following full hearings and open subcommittee and committee markups with appropriate referrals.”
- ★ “Bills should generally come to the floor under a procedure that allows open, full, and fair debate consisting of a full amendment process that grants the Minority the right to offer its alternatives, including a substitute.”
- ★ “Members should have at least 24 hours to examine bill and conference report text prior to floor consideration.”
- ★ “Rules governing floor debate must be reported before 10 p.m. for a bill to be considered the following day.”

On all the key bills considered by the 110th Congress, some or all of these guidelines have been completely ignored by the Rules Committee and the Democratic Leadership. For a sample, see Table 1—Major Legislation with Broken Promises and Figure 1—Minority substitute amendments made in order (through Sept. 15 of first session).



*Democrats believe in democracy.*

— Rules Committee Chairwoman Louise Slaughter, *The Hill*, September 7, 2007



Figure 1— Minority substitute amendments made in order (through Sept. 15 of first session)

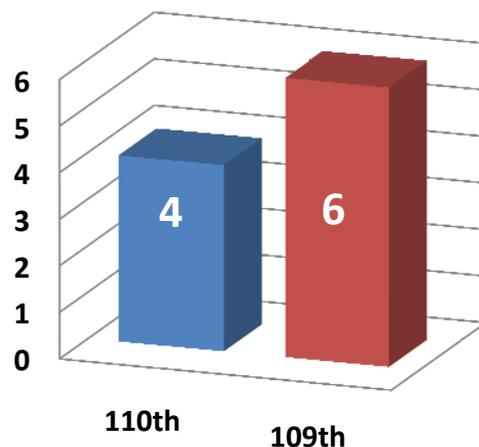


Table 1—Major Legislation with Broken Promises

Bill Number & Title	No Committee consideration	Rule Reported After 10pm	Considered < 24 hours after notice
<b>H.R. 1</b> - Implementing 9/11 recommendations*	✗		✗
<b>H.R. 2</b> - Fair Minimum Wage Act*	✗		✗
<b>H.R. 3</b> - Stem Cell Research Enhancement Act*	✗		✗
<b>H.R. 4</b> - Medicare Prescription Drug Price Negotiation Act*	✗		✗
<b>HR 1433</b> - District of Columbia House Voting Rights Act of 2007		✗	
<b>HR 1591</b> - U.S. Troops Readiness, Veterans' Health and Iraq Accountability Act		✗	
<b>H.R. 1905</b> - D.C. House Voting Rights Act	✗		✗
<b>H.R. 1906</b> - Estimated Tax Safe Harbor Act	✗		✗
<b>HR 2082</b> - Intelligence Authorization Act for FY 2008		✗	
<b>H.R. 2206</b> - Troop Readiness, Iraq Appropriations	✗	✗	✗
<b>H.R. 2206</b> - Troop Readiness, Iraq Appropriations (Concurring in Senate Amendment)	N/A	✗	✗
<b>H.R. 2207</b> - Agriculture Disaster Assistance	✗	✗	✗
<b>H.R. 2237</b> - Redeployment of troops from Iraq		✗	✗
<b>H. Res. 35</b> - Intelligence Oversight Authority*	✗		
<b>H. Con Res. 63</b> - Disapproving of the President's decision to deploy more troops to Iraq	✗	✗	✗
<b>H.R. 2956</b> - Responsible Redeployment from Iraq	✗		✗
<b>H.R. 3221</b> - New Direction for Energy Independence, National Security, and Consumer Protection	✗		
<b>H.R. 3162</b> - Children's Health and Medicare Protection Act of 2007	✗	✗	

\* Consideration provided for by H.Res. 6, the opening day rules package.

## The Rules Committee Takes the Lead in Shutting Down Debate and Diminishing Deliberation

### A Closed Process

It was a major cornerstone of the Democrats’ proposal to win control of the Congress: they assured the public and the press that they would “usher in the most honest and ethical Congress in history” and an “open process” for the consideration of legislation. After they won the Majority, they continued to promise that the “corrupt practices” they argued against would be “eliminated.” Rules Chairwoman Slaughter told the *New York Times* that “We are going to have a much more open process.” (*New York Times*, December 27, 2006)

By now it is clear that the House — and the Rules Committee in particular — has either forgotten those pledges or is simply refusing to honor them. The facts are clear:

- ★ Thus far in this Congress, the Rules Committee has rejected about 4 out of 5 Minority amendments (see Figure 2— Minority amendments made in order in the 110th Congress).
- ★ To date, the Rules Committee has issued more closed rules than the

previous congress. (See Figure 3— Closed rules in the 110th and 109th Congresses.)

These restrictive and closed rules don’t seem to bother some of the House’s most influential chairmen. As Education and Labor Chairman George Miller (D-CA) recently told the Rules Committee, “*I’m perfectly happy with a closed rule.*” (Rules Committee Hearing on H.R. 2831, July 27, 2007; emphasis added.)

### The Closed Door Policy

A new amendment policy at the Rules Committee epitomizes just how the Committee contributes to the breakdown of deliberation in the House of Representatives. Beginning with the Department of Defense Authorization bill (H.R. 1585), Rules Committee Chairwoman Slaughter admitted publicly that Members were being denied even the opportunity to have their amendments considered by the Rules Committee, turning them away at the door. In essence, Members are being denied the right to have their amendments denied by the Rules Committee.

When Congressman Todd Akin (R-MO) attempted to submit a 2nd degree amendment to an amendment that had already been filed, he was told *no*, he could not submit the amendment be-

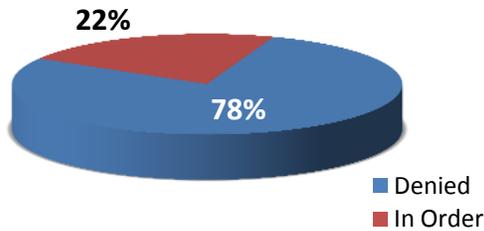


*It is our goal to use Rules responsibly, opening up the workings of the House and using it to usher in the most honest and ethical Congress in history. An open process will mean that more common-sense legislation written in the national interest will get to the House floor and be voted on.*

— Rules Committee Chairwoman Louise Slaughter op-ed, *Rochester Democrat and Chronicle*, November 12, 2006



Figure 3—Minority amendments made in order in the 110th Congress through Sep. 21 of 1st session



cause he had missed the deadline. But a 2nd degree amendment is written to amend an amendment, so it could not possibly have been drafted until the initial amendment was made public, hence the delay.

This incident prompted Minority members of the Rules Committee to question how many Members' amendments had been turned away at the door of the Committee. When asked if Mr. Akin's amendment was the only one turned away, Chairwoman Slaughter's response was clear – *"I'm sure we probably turned away more than that."* (Rules Committee hearing on H.R. 1585, May 15, 2007.)

In addition to turning Members

away at the door, the new Majority has taken to shutting out Members of their own party. According to the *Kansas City Star*, Congressman Emanuel Cleaver (D-MO) had trouble getting his amendment to H.R. 2771, the Legislative Appropriations Bill past his own leadership. The Newspaper reported: "Democrats in the House of Representatives lost a chink in their good-government armor Friday, pressuring a fellow Democrat to drop an eco-friendly effort to restrict taxpayer-funded congressional car leases." The paper went on to write "Cleaver would not say who pressured him to drop the amendment, other than to say 'people in leadership.'" (*Kansas City Star*, June 23, 2007.)

His amendment would have required Members to lease hybrid or alternative-fuel vehicles if they were to use taxpayer funds to lease a vehicle. His amendment was offered as the Minority's motion to recommit on H.R. 2771, but was defeated by the Majority.

These practices completely undermine the role of the Rules Committee as the place where rank and file Members of the House are given a chance to offer

Figure 2—Closed rules in the 110th and 109th Congresses through September 21st of the first session



Includes 6 closed rules in opening day rules package.

their amendments. It is also a more severe mechanism of disenfranchisement than anything previously employed by the Rules Committee. Denying Members a chance to present their amendments for consideration denies them a chance to speak for their constituents at all. It's a new precedent and a dangerous one.

### No Time Left for You

The Rules Committee is best known for how it sets up debate for bills on the floor, but their handling of a bill before it gets there can have an even greater effect on a Member's ability to review legislation and propose amendments.

The Rules Committee under this Majority has made it a practice to reduce the amount of time between the availability of legislative text and the time which amendments *must* be submitted, or they cannot be considered.

So far this Congress, Members have had an average of 1.4 full business days to review legislation, write amendments and submit them to the Rules Commit-

tee. In previous Congresses, this time-frame was nearly a full day longer.

This diminished time frame is a disservice to Members on both sides of aisle. It's just another example of how this Majority has left the House "Out of Order."

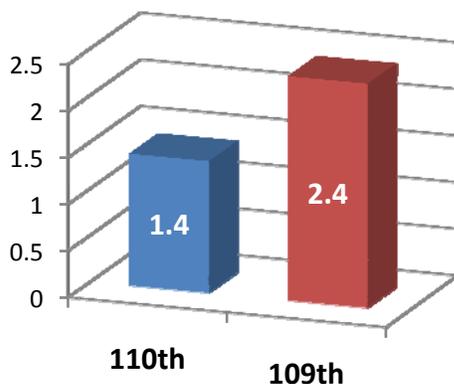
### What is an "Open Rule" Exactly?

The new Majority claims to have quadrupled the number of open rules reported by the Rules Committee from the same period in the 109th Congress, excluding appropriations bills. However, as Democratic Chairman Joe Moakley described in a Rules Committee document in the 103rd Congress "Open rules are silent on the amendment structure." (Committee on Rules Survey of Activities, 103rd Congress, H.Rept. 103-891, p. 20) Eight of the 9 rules that they claim as open actually *dictated that amendments be printed in the Congressional Record*, meaning that the rule was not "silent on the amendment structure." This has traditionally been called a *modified open rule*. With the exception of some of the regular appropriations bills, the Rules Committee has reported only 1 truly open rule this congress.

The Majority's Rules Committee has gone to great lengths to justify their new definition of an open rule. But when they were in the Minority the Democrats wouldn't accept the argument they are now making. In fact, Alcee Hastings (D-FL), the 3rd most senior member of the Committee on Rules, was adamant:

"I am, nevertheless, disappointed that the preprinting of amendments was even required. Despite the Majority's claims, this legislative procedure which they call

Figure 4—Full Business days between amendment announcement and deadline



open *is actually restricted*. It is not an open rule because every Member is not permitted to offer any germane amendment.” (Alcee Hastings; September 15, 2005; Rule providing for consideration of H.R. 889, Coast Guard and Maritime Transportation Act of 2005. Emphasis added.)

Altering long-accepted legislative definitions when it suits them is just another example of how the Rules Committee is “Out of Order.”

### **Conference Committee Concerns No Longer Concerning**

When in the Minority during the 109th Congress, the new Majority was very concerned about the integrity of the process of reconciling the differences between the House and Senate, commonly known as “conference committees.”

On page 24 of their [New Direction for America](#) document, the new Majority states that:

“House-Senate conference committees should hold regular meetings (at least weekly) of all conference committee Members. All duly-appointed conferees should be informed of the schedule of conference committee activities in a timely manner and given ample opportunity for input and debate as decisions are made toward final bill language.”

The senior Democrats on the Rules Committee went even further during their service in the minority. In legislation introduced by Chairwoman Slaughter during the 2nd half of the 109th Congress and cosponsored by the 3 other Minority members of the Rules Committee at the time, nearly 1/3 of the

provisions addressed the conduct of conferences. In particular, section 4 of the bill went so far as to require a roll call vote on the final version of a conference report. ([H.Res. 686, 109th Congress](#))

While it was surprising to find that some senior committee chairs ignoring these principles, the Rules Committee Majority’s apparent indifference to regular order is particularly disturbing. During the hearing on the conference report to accompany H.R. 2669, the College Cost Reduction and Access Act, Education and Labor Ranking Member McKeon pointed out that the Minority Members of the conference committee never saw the final text of the conference report until they were asked to sign it, a fact confirmed by the committee’s Chairman during his testimony before the Rules Committee.

That means the conference committee’s sole public meeting was little more than a forum for opening statements and debate on a nonexistent text. It is a little hard to have an “ample opportunity for input and debate as decisions are made toward final bill language” *when you are not allowed to see the language until it is final*.

One of the roles of the Rules Committee is as the enforcer of these kinds of principles, whether they constitute violations of the rules of the House or are simply standards to which committee chairs need to be held. However, the indifference to this kind of abrogation of the rights of the Minority demonstrates once again that the new Majority’s Rules Committee is content to leave the legislative process “Out of Order.”

## The Art of Abusing Power

Veteran observers of Congress remember the last time the Democrats were in the Majority and their inventive tactics for stifling Minority input and participation in the legislative process. According to their own words, their heavy handed tactics weren't supposed to be employed once they regained Majority status. But it took just weeks for the old dog to return to its old habits, but with new tricks. Nine months into their new Majority, they have come up with new and inventive ways to shut out the voices of millions of Americans.

### Emergency Parachute Provision

When the Majority was suddenly confronted with the possibility of an uncomfortable vote on the D.C. House Voting Rights Act in March of this year, they chose not to allow the vote to go forward. They were able to do so because of a “parachute provision” they included in the Rule that allows the Speaker to postpone consideration of a bill. Put simply, if they see trouble ahead, they can just yank that cord on their parachute and “eject.”

This provision has been used in prior congresses when legitimate scheduling concerns were at play, such as the conclusion of business before a district work period. During the same period in the previous Congress, this provision was included in only 4 rules.

But the this Majority has included it in virtually every rule they have sent to the floor. (See Figure 5—Number of rules which included “Emergency Parachute” authority) Why? So that they have the ability to do what they did when the DC Voting Rights Act was on the floor – change the rule and bring the bill back to the floor under a more restrictive process. Not exactly “open and honest,” is it?

### The Rules Committee as Ghostwriter

Just as they have reported more and more closed rules, Speaker Pelosi's Rules Committee has rewritten more and more bills at the last minute. With no extra debate, no deliberation, and no vote, the rules they report on key bills automatically alter legislation in substantive ways. Among the rewrites they have pushed through this year are multiple job-killing tax increases and out of nowhere earmarks.

This rewriting practice has become routine for the new Majority's Rules Committee. So far this year they have reported 23 rewrite rules, whereas only 37 were reported for the entire 109th Congress (putting the new Majority on track to eclipse the 109th Congress by the first months of the second

session). Why? Because the legislation brought to the floor cannot withstand scrutiny or debate. Table 2 represents a list of every bill rewritten at the Rules Committee so far this year.



*We intend to have a Rules Committee ... that gives opposition voices and alternative proposals the ability to be heard and considered on the floor of the House.*

— House Majority Leader Hoyer, *Congress Daily PM*, December 5, 2006



### Sunshine Roll Back

In one of their first acts as a Majority, the Democrats on Speaker Pelosi's Rules Committee rolled back sunshine requirements put in place by the GOP more than a decade earlier. The rules approved for the 110th Congress exempted the House Rules Committee from a requirement that they print in the Congressional record all recorded votes taken in the Committee. This exemption is unnecessary and disconcerting.

Although they have not yet withheld vote totals from their committee reports, the fact that they have reserved the right to do so and have not restored the enforceability of the rule keeps the question alive. What do they want to hide, and why do they want to do it?

### Swatting at the Motion to Recommit

Since the beginning of the Congress, the Democratic Majority has been irked by the motion to recommit. They have dismissed the minority sponsored motions as meaningless yet they have also

Table 2  
Bills Rewritten by the Rules Committee in the 110th Congress

Bill Number & Title
<b>H.Res. 20</b> – Committee expense resolution
<b>H.R. 1433</b> - District of Columbia House Voting Rights Act of 2007
<b>H.R. 1591</b> - Making emergency supplemental appropriations for the fiscal year ending September 30, 2007
<b>H.R. 1592</b> - Local Law Enforcement Hate Crimes Prevention Act of 2007
<b>H.R. 1294</b> - Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2006
<b>H.R. 2206</b> - U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007
<b>H.R. 2207</b> - Agricultural Disaster Assistance and Western States Emergency Unfinished Business Appropriations Act, 2007
<b>H.R. 2317</b> - Lobbying Transparency Act of 2007
<b>H.R. 65</b> - Lumbee Recognition Act
<b>H.R. 986</b> - Eightmile Wild and Scenic River Act
<b>H.R. 3162</b> - Children's Health and Medicare Protection Act of 2007
<b>H.R. 1362</b> - Accountability in Contracting Act
<b>H.R. 1227</b> - Gulf Coast Hurricane Housing Recovery Act of 2007
<b>H.R. 1361</b> - Relief for Entrepreneurs: Coordination of Objectives and Values for Effective Recovery Act of 2007
<b>H.R. 2669</b> - College Cost Reduction Act of 2007
<b>H.R. 1851</b> - Section 8 Voucher Reform Act of 2007
<b>H.R. 2419</b> - Farm, Nutrition, and Bioenergy Act of 2007
<b>H.R. 3161</b> - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2008
<b>H.R. 3221</b> - New Direction for Energy Independence, National Security, and Consumer Protection Act
<b>H.R. 1427</b> - Federal Housing Finance Reform Act of 2007
<b>H.R. 2881</b> - FAA Reauthorization Act of 2007
<b>H.R. 2761</b> – Terrorism Risk Insurance Revision and Extension Act of 2007
<b>H.R. 1852</b> – Expanding American Homeownership Act of 2007

been in search of ways to limit, or even eliminate, the Minority’s ability to offer them.

It all began in March, when Roll Call reported that Majority Leader Hoyer, “angered over recent Republican success in forcing difficult votes on the House floor,” said, ‘we’re going to address that.’ (Roll Call, March 28, 2007.)

In May, the Majority attempted to “address” the problem, only to be thwarted by the Minority. They were ready to include in the rule for the budget resolution an alteration to the germaneness rule, which has been unchanged since 1822. According to emails exchanged amongst Majority leadership aides and reported by Roll Call on May 17, 2007, this potential change was described as a “major thing” and a “BIG deal.” From the report —

“Also, putting House Rules changes in the budget conference rule is a major thing — the R’s will certainly go nuclear tomorrow — but we will have to suffer through that,” wrote Rob Cogorno, a senior Hoyer aid in an email obtained by Roll Call ... ‘I

totally concur that this is a BIG deal,’ wrote Jerry Hartz, a senior aide to Pelosi.”

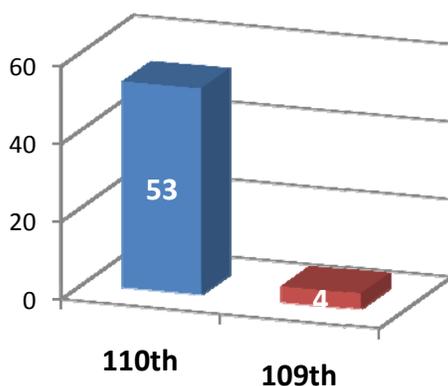
It was indeed a BIG deal, which is why the Minority protested and the Majority relented. But recent reports indicate the Majority hasn’t given up in their quest to thwart this key minority right. Roll Call reported on September 6, 2007 that the Democratic Majority is tired of taking tough votes on the motion to recommit, so they’re looking for ways to “inoculate” their members from pressure in the future. Roll Call reports—

“Neither Clyburn nor Hoyer would provide details for any potential proposal, including whether the measure would be a new law or a non-binding resolution. We’re talking about a lot of options and I don’t want to prejudge what options we’re going to choose,” Hoyer said.

Given the Rules Committee’s poor performance in providing the Minority with the kind of meaningful opportunity for debate they promised, the motion to recommit remains vital to the Minority’s ability to participate in the legislative process. That’s why the motion to recommit was permanently granted to the Minority in 1995.

Ultimately, the right of millions of Americans to be heard shouldn’t be a nuisance to the party in power. Yet, to this Majority, it apparently is.

Figure 5—Number of rules which included “Emergency Parachute” authority through September 21 of the 1st session



## Conclusion — Why it Matters

It is widely accepted that process in the House holds the key to the substance. While each of the examples presented in this report are troublesome in their own right, they take on new importance when examined in the context of one another. For instance, giving Members an average of only a day and a half to draft amendments to legislation while at the same time turning them away at the door if they miss the deadline by as little as 20 minutes makes it clear that they are trying to provide the illusion of openness and fairness while the reality is far different.

The alleged stolen vote controversy leading up to the August recess was simply the culmination of a Majority unconcerned with regular order and unable to manage the House successfully. As this report has demonstrated, the Majority's Rules Committee is mishandling legislation and mistreating Members — on both sides of the aisle. They are short circuiting the legislative process in new, unprecedented ways and as a result, it's costing the American people.

For example:

- ★ The Rules Committee rewrote the Farm Bill, H.R. 2419, to include a \$4 billion tax increase that threatens nearly 5 million jobs.

- ★ The Rules Committee denied an amendment to their Energy Bill, H.R. 3221, that would have reduced the price of gas by increasing domestic refinery capacity.
- ★ The Rules Committee rejected an amendment to the Defense Authorization Bill, H.R. 1585, that would have forced the Department of Defense to focus on the health care needs of female veterans.
- ★ The Rules Committee refused to allow a bipartisan amendment to the Farm Bill, H.R. 2419, that would have sensibly limited the amount of

benefit programs, allowing wasteful spending to continue unchecked.

- ★ The Rules Committee rewrote the Children's Health Insurance Bill, H.R. 3162, at 1 a.m. to force 3.2 million seniors off of their Medicare Advantage coverage.

If the House of Representatives is to be restored to its rightful purpose as the voice of the American people, and the

new Majority is to live up to its promises, the Rules Committee must do a better job of allowing open and honest debate on behalf of the American people. A true marketplace of ideas relies on openness and transparency. This Rules Committee has provided neither.

Sadly, if the last nine months are any guide, this Congress will remain "Out of Order" for some time to come.

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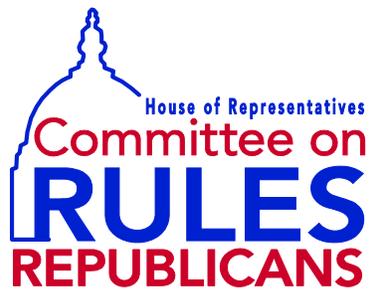
*Democratic promises to restore civility and regular parliamentary procedure by allowing the minority party a larger role in deliberations have foundered. The number of restrictive rules for debate has increased, and the conference process has been short-circuited on various occasions.*

— Thomas Mann op-ed, *New York Times*, August 26, 2007

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