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## Playing by the Rules: The Use of Special Rules in the Contemporary United States House of Representatives

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Playing by the Rules:  
The Use of Special Rules in the Contemporary United States House of Representatives

A thesis submitted in partial fulfillment of the requirement  
for the degree of Bachelor of Arts in Government from  
William & Mary

by

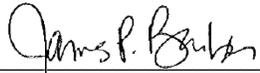
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Accepted for \_\_\_\_\_ Honors

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Playing by the Rules: The Use of Special Rules in the Contemporary US House of  
Representatives

It's January 2017 and Donald John Trump has just taken the oath of office and Republicans enjoy a unified government for the first time since the end of the 109<sup>th</sup> Congress in 2006. The GOP had spent the last few years campaigning on a repeal and replace of the Affordable Care Act (ACA), otherwise known as Obamacare. Several points of the Democratic president's plan had drawn Republican resentment since its passage, and they had unsuccessfully voted countless times to repeal the plan, but now they were finally in a position to repeal the law and install their own health care plan. The only problem was they did not have a plan. In fact, the Republican party was sharply divided on what should be included in any potential plan, whether or not it should be a full repeal and replace, and many of the specifics and timetables surrounding a new healthcare law. To make matters worse, when Paul Ryan ascended to the speakership in the House of Representatives, he promised a return to regular order, with open amending and bipartisanship in the 115<sup>th</sup> Congress (DeBonis 2015). Still, Ryan knew that he was unlikely to bring Democrats to the table to negotiate a repeal of a hugely popular Democratic policy and any attempt to have an open process would result in Democratic stonewalling and a dragged-out process that would cheapen the new president's claim of being an expert deal maker. Ryan was forced to quickly abandon his quest for an open process, opting instead for the 'smoke filled rooms' that have become commonplace, much to the chagrin of pundits, political scientists, and casual observers of Congress, in order to produce a bill that the House could pass, which they ultimately did.

This example of legislating and coalition building behind closed doors surrounding the creation of the American Health Care Act (AHCA) in 2017 is not an outlier in the contemporary

US House of Representatives. In recent years, political scientists and commentators alike have panned the transition away from so called “regular order” towards special and closed rules in the House of Representatives as greatly contributing to the partisan gridlock that has become synonymous with the United States Congress (Sinclair 2016). Before any significant piece of legislation can be debated on the House Floor, rules must be passed by the Rules Committee. In previous Congresses, most legislation was brought up under open rules, allowing for any member to debate and amend the underlying legislation. Increasingly, legislation is brought up under special rules, which can dictate exactly how many and which amendments may be debated on the floor. In fact, in the 115<sup>th</sup> and 116<sup>th</sup> Congress, and so far in the 117<sup>th</sup>, there was not a single piece of legislation brought up under an open rule.

In a frequently stated view, as the House has moved away from an open, committee-led, amending process for major legislation, it has become more polarized, less effective, and less functional (Sinclair 2016). This is due to a variety of institutional reforms in the 1970’s, such as giving the House leadership more control over the Rules Committee, that were subsequently followed by an increase in partisan politics and polarization in the 1980’s. Indeed, much media coverage and scholarly conjecture states that a return to regular order is a significant key to fixing Congress. Certainly, at least in the public commentary, legislators seem to believe this is the case. Paul Ryan, in the opening of the 115<sup>th</sup> Congress promised a return to regular order, a promise that Speaker John Boehner made before him and Speaker Nancy Pelosi made after (DeBonis 2015).

This narrative, however, is based on the assumption that an increase in structured and closed rules, or what Sinclair calls “unorthodox procedure” is the cause, or a cause, of partisan gridlock in Washington. This assumption has been questioned by several scholars recently (e.g.

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Curry and Lee 2020), who find that in the modern day, the rules process can be a way for leaders to navigate the political climate. Additionally, in doing his recent press tour for his new memoir, former Speaker John Boehner has been especially harsh of the so-called “noise makers” in Congress who appear to not actually want to legislate, rather they make noise and get media coverage to raise money and win re-election (Colbert 2021). Combining these perspectives, it’s not hard to imagine how special and closed rules could actually enable the leadership to overcome the gridlock and bring substantial legislation the floor in a way that an open amending process could not. The only way to know how and why special rules are increasingly used in the contemporary US House of Representatives is to ask how exactly they are used in our increasingly polarized time.

In this paper, I begin with the question of how special rules are used in the contemporary House of Representatives. As I have explained, closed and structured rules have become the dominant force in the House, but how do these rules help the leadership achieve their legislative agendas? Additionally, why are rules used in the way they are? What does the leadership gain from choosing closed rules over structured rules, or structured rules over closed rules, and simply special rules over open rules? I will look at this through the framework of two general types of legislative theories of Congress, leadership driven party politics models and theories that emphasize the impact of the force of the chamber median on legislation. Using data from the 115<sup>th</sup> and 116<sup>th</sup> Congresses as a study, I will attempt to mitigate the two buckets of theories and show how Congressional leaders are using rules to their advantage (or their opponents’ disadvantage) in the modern day.

The paper proceeds in three main sections, separated in the following manner: section one begins with a discussion of the history and evolution of the Rules Committee from being a

select Committee used mostly for Constitutional procedure to being a driving force for legislation and an arm of the House leadership. It transitions to a discussion on the relevant literature and legislative theories surrounding party control, as well as recent trends in the amending process. In section two, I will dive into an original dataset of all special rules and amendments on key bills in the 115<sup>th</sup> and 116<sup>th</sup> Congress to outline what is going on with legislation and the use of rules by the majority party. It begins with a look at the types of rules issued in each of the Congresses, before transitioning to track the progression of amendments by member ideology. Finally, section three will use examples from three case studies in the 115<sup>th</sup> and 116<sup>th</sup> Congress to show, on a micro level, the nuances of what the leadership and Rules Committee are doing to move legislation. This will be followed by a discussion on the findings and a conclusion outlining what potential this has for future research, and what should be included as more study into the rules and amending process is conducted.

### **Section One: The Rules Committee and Legislative Theories**

The Rules Committee was established on the second day of the First Congress in 1789 (Committee on Rules). At the time of its establishment, it was a select committee that met at the beginning of each Congress to establish the general rules and then resolve. It was not until the 1880's that the committee became permanent, with the Speaker serving as chair, mostly for the purposes of scheduling legislation. Almost immediately after this change occurred, Speakers seized the opportunity to dominate control over the debate surrounding legislation, and regularly passed special rules on preferred bills to control the process. Keep in mind, the 1880's were a period of high polarization in Congress, following the end of the Civil War and reconstruction, and the legislature was very sharply divided. As such, leaders regularly felt the need to maintain

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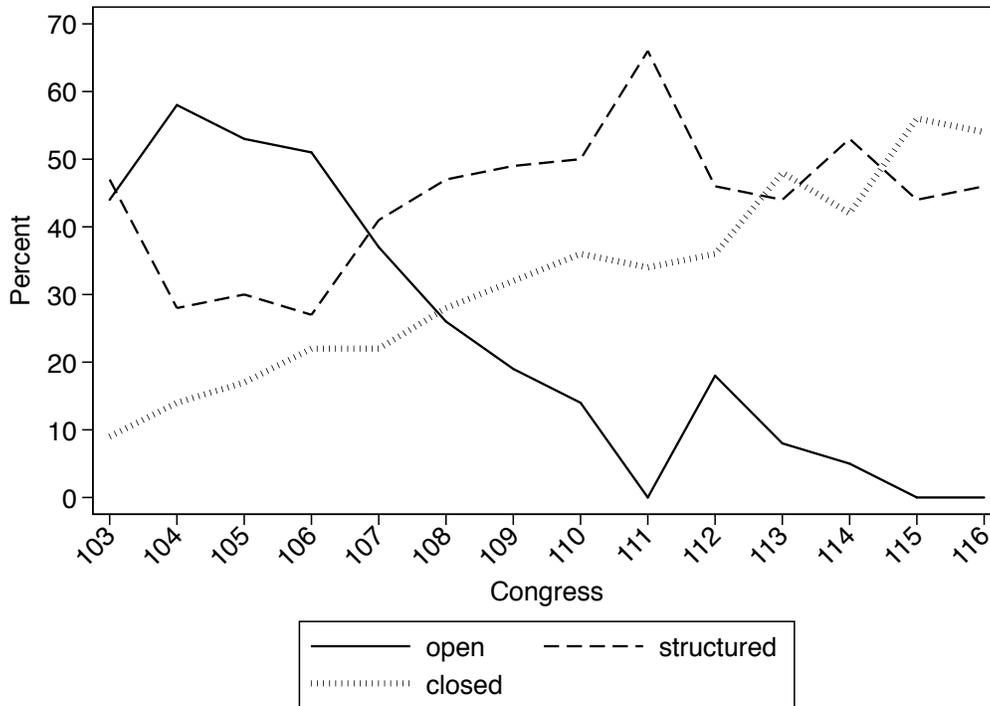
an iron grip over the legislative process and ensure passage of their preferred pieces of legislation.

This all changed when the House revolted against Speaker Joseph Cannon in 1910, who had ruled in his speakership using almost authoritarian tactics to limit debate and pass his preferred legislation. Cannon is infamous in scholarly work on Congress and is often regarded as one of the most powerful and influential Speakers of all time, however his domination over the chamber was also the reason for the revolt against him, as his disregard for some rank-and-file members led to discontent. As a result, the House removed the Speaker from the Rules Committee and ended his ability to place members on the Committee. This began a period of independent governance over the Rules Committee (Oleszek et al 2016, Committee on Rules n.d.). The Committee would frequently use its powers to refuse to pass rules on legislation, prevent debate on bills, and pass rules on their ideal schedules. Much of this was a result of the southern Democrats, or Dixiecrats, who frequently clashed with other Democrats in their caucus over civil rights legislation. In fact, during the 1960's, the Democrats saw quite a large caucus, but many cleavages existed within the party, and the Rules Committee often worked against the desires of the party leadership and primarily passed open rules.

By 1975, as a product of a multitude of institutional reforms in Congress, the Democratic Caucus returned the Speaker's ability to appoint members to the Rules Committee, followed by the Republican minority re-instating their leader's ability to appoint members. This change started the period of party leadership control over the rules process and began the trend of increasingly restrictive rules. Indeed, during the period of 1975-1976, more than 84% of House rules were open, while 11% were restrictive in some way and 4% were closed to amendments (Smith 1989). Moving to the end of the 1980's, however, the number of open rules dropped to

around half. Since then, the Rules Committee has devolved further away from autonomy and into an arm of the leadership, with various Speakers in the modern period using their power to stack the Rules Committee with party loyalists and impose their will over the Committee (Oppenheimer 1977).

Figure 1. Rules types by Congress, 1993-2020



This trend of increasingly restrictive rules has continued in the modern day. As figure 1 shows, the proportion of open rules has decreased substantially in the past 20 years alone. Indeed between 1993 and 2000 (103<sup>rd</sup>-106<sup>th</sup>) the proportion of open rules generally hovered between 45 and 60 percent. Beginning in the 106<sup>th</sup>, however, the proportion of open rules begins to drop dramatically, which is consequently followed by an uptick in closed and structured rules. The number of open rules plummets to zero by the 111<sup>th</sup> Congress (2009-2010), which also resulted in a bump in structured rules. In the 112<sup>th</sup> Congress (2011-12), the proportions return to about where they were in the 110<sup>th</sup> (2007-08), but the trends continued in the same direction they had

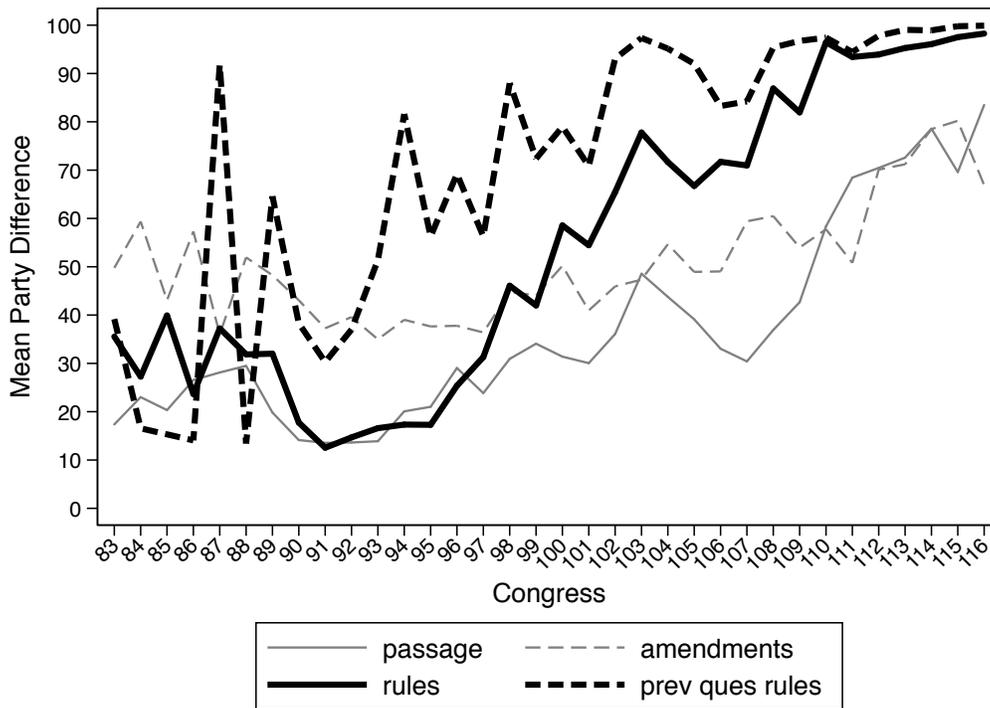
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been going in, and the 115<sup>th</sup> and 116<sup>th</sup> Congresses had no open rules. In fact, the Committee on Rules has not reported on open rule since an appropriations bill in May of 2014 (Committee on Rules). While in 1993-94, around 46% of rules were structured and only 9% were completely closed off, if we flash forward to 2019-20, the highest proportion of rules are closed (55%), followed closely by structured rules (48%).

In present day, the Rules Committee is perhaps the most partisan committee in Congress (Oleszek et al 2016). Recorded votes that are held in Rules are almost always fully party line votes, allowing the majority leadership to retain tight control over the entire amending process and Floor activity. In addition, the makeup of the Rules Committee is unusually weighted towards the majority, with 9 majority members and only 4 minority members in the 115<sup>th</sup> and 116<sup>th</sup> Congresses. This ensures that even if members of the majority are not present or are uncomfortable casting specific votes, the majority party still has more than enough members to pass the rules that it wants to, make in order the amendments it sees, and maintain an iron grip over floor activity. In the present day, the leadership's control over the Rules Committee is unquestionable, and the leadership very rarely, if ever, faces losses within the Rules Committee.

Once rules are passed out of the Rules Committee, the leadership frequently expects, and receives, a higher level of party loyalty on procedural votes (Roberts and Smith 2003, Theriault 2008). This is precisely what figure 2 shows. The x-axis shows each Congress from the 83<sup>rd</sup> Congress (1953-54) to the 116<sup>th</sup> Congress (2019-20), while the y-axis shows the average party difference in vote share for each type of roll call vote. The mean party difference is calculated by taking the absolute value of the percent of Democratic support minus the percent of Republican support, so a higher percentage on the y axis indicates unity in the party's voting record and difference with the opposing party.

Figure 2. Average party difference by vote type and Congress, 1953-2020



As you can see, the highest proportion is for previous question votes followed extremely closely by rules votes. This is a product of a generally increasing trend since the 1950's, and in the present day, the parties are essentially unified on procedural roll call votes. Parties do enjoy an increasing degree of loyalty on other roll call votes, with about 83 and 64 percent support on passage and amendments, respectively. The general trend is clear; in the modern day, rank and file members are increasingly loyal to their party on roll call votes in the contemporary Congress, but the highest degree of loyalty by far comes from procedural questions where the majority rarely faces party defections. Looking back to the 1950's, this trend is very different than what we find. In the 83<sup>rd</sup> Congress, the highest mean party difference on a roll call vote type was roll call votes on amendments, which had an average party difference of about 50%. This is still 14% lower than we find in the modern day, yet at the time, this was the type of vote with the highest degree of loyalty. The fairly sharp rise in roll call vote loyalty on rules can likely be attributed to

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the invention of electronic voting which made it far easier to cast roll call votes. Previously, due to the time and inefficiency of casting roll call votes, votes in the Committee of the Whole were often voice votes (Lynch, Madonna, Vick 2019). As roll call voting became easier, however, members realized that they could use roll call voting to get other members on the record about issues, which could potentially be beneficial in elections. This spawned a boom of amending activity and forced roll call votes, and fairly quickly, leaders began demanding a higher level of party loyalty on the less traceable procedural votes.

As a result, a popular scholarly narrative is that the leadership has a cartel style monopoly over procedure. These theories highlight the majority party power and separate the procedural outcomes from the underlying substance of legislation, yet Evans and Kirk (2021) find that the majority's wins on procedural questions are not necessarily a given and are in fact a product of massive coalition building efforts by the leadership. It seems that while the leadership does have an iron-grip over the dealings of the Rules Committee, they are forced to do it with an ear to the ground relating to their members, and tactically use rules to build coalitions and buy support. This finding questions the models of strong parties that emerged out of the period of polarized Congress following the aforementioned institutional reforms. The most notable theories that fall into this category are Conditional Party Government theory (CPG) (Aldrich and Rhode 2000) and the party cartel model (Cox and McGubbins 2005). Both theories posit an idea of strong party leadership that maintains an iron control over procedural matters. According to these theories, in times of party unity, specifically when the parties are internally homogeneous and sharply opposed to the other party, the rank-and-file members will centralize power in the leadership allowing them to create non-median outcomes. When political scientists refer to median and non-median outcomes, they mean that when all members of Congress are plotted on

a one-dimensional line, with liberal ideology on the left and conservative ideology on the right, a median outcome would be wherever the median member of Congress is on the line, while a non-median outcome would be to the left or right of that, depending on who is in power. When developing CPG, Aldrich and Rhode noted the institutional reforms of the 1970's on the heels of Watergate, including giving the speaker back the ability to choose the Rules Committee, as well as the uptick in partisan politics of the 1980's, and believed the reforms were causal to the partisan polarization. As we are currently in a time of heightened polarization within Congress (Curry and Lee 2020), and at a time when the parties are closer together internally than they have been in the past, CPG would predict that the conditions around conditional party government have been met, and the leadership will use positive agenda control to achieve non-median outcomes that the majority party supports. In such a time, legislation would be moving away from the middle.

It should be noted that although they are quite similar theories, CPG and the cartel model do differ slightly in the way that power will be used, with CPG predicting positive agenda control and coalition building, while cartel theory predicts negative agenda control wherein the majority party uses their power to block unpalatable and minority party proposals. This is not a substantial distinction, and Finocchiaro and Rhode (2008) find that this distinction is far easier theoretically than it actually is in practice. If we accept these theories, we expect that in the highly polarized time we find ourselves in, the majority leadership would be passing more partisan pieces of legislation and the presence of non-median outcomes in the House would be substantial. Curry and Lee (2020) find the opposite, and propose that in the present day, Congress acts in no more of a partisan manner than it ever has. They also find that Congress is no less productive than it ever has been, with less bills being passed into law, but larger bills with

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more substance being enacted. They throw serious doubt on models of party leadership and argue that the outcomes of Congress have not changed dramatically or substantially over time.

Still, Curry and Lee (2020) do not speak to the amending process. They do not look at the bills that do not become laws or the amendments that do not get engrossed. They make a point about partisan behavior in Congress having no distinct change over time through an analysis of legislation, but they make no claim about the importance of parties in Congress or the factors that strengthen or weaken Congressional leadership. Most of their analysis deals with majority vs. minority party, not Democrats vs. Republicans, and therefore, in my view, they have the potential to miss critical differences in the parties. Grossman and Hopkins (2014) show that parties in the contemporary United States have distinctive trends and features that make them fundamentally unique from one another in terms of constituency and elite behavior. Sometimes, as well, the leadership is unable to fully control the rank-and-file party members who are a part of their caucus. Especially on the Republican side of the aisle, with the tea-party caucus of the early 2010's, the leadership under John Boehner found it particularly difficult to control the House Freedom Caucus, with one aide telling Politico during the fight surrounding Obamacare “[the party] may need a [government] shutdown just to get it out of their system.” (Grossman and Hopkins 2014, 16). As such, it seems odd that parties would not have distinctive features in how the leadership handles floor activity, and merely looking at the outcomes of legislation would not necessarily reveal such a fact. To truly note any differences, the amending process demands more attention.

This analysis can potentially vindicate CPG and the cartel model, or it can sink them further. In fact, several counter theories popped up around the same time, which posited the exact opposite: that parties do not make a difference. Mayhew (1991) argued in *Divided We Govern*

that the parties in the United States do not really matter due to the institutional nature of Congress. He found that Congress faces the same levels of productivity, or unproductivity, in times of unified government, meaning one party controls both chambers of Congress and the White House, as they do in divided government. Keith Krehbiel (1998) later developed a theory inspired by Mayhew's work, but building on it and digging down into the idea that parties in Congress really do not matter all that much. Instead, Krehbiel poses that moving legislation through Congress depends on a number of pivot points, hence his title of pivotal politics. These pivot points include each chamber's median, the policy preferences of the President, the point which can overcome a veto, and the point in the Senate that can overcome a filibuster. As part of the theory, there is a "gridlock zone" in the middle of a one-dimensional spatial model. This zone changes based on who the president is and exists in a range where the importance for signature is the distance between the default status-quo of existing legislation and the president's position compared to the distance between proposed legislation and the president's position. His theory is well-known to congressional scholars, and variations of this theory include names such as majoritarian politics and median voter theory, but it can be a bit tough and dense for those not particularly well versed in Congressional studies, and even for some who are, to imagine all of these points on a one-dimensional spatial model. As such, I will leave it fairly basic and include the key points that are important to our analysis.

The main takeaway is that according to pivotal politics and median voter theory, the most important factor in passing legislation is the proximity of legislation to the middle of Congress. Because we are dealing with the House of Representatives in this analysis, I will use the term median voter theory as a simplified version of Krehbiel's pivotal politics. The implications of the entire pivotal politics model are important for figuring out if a bill will pass both chambers and

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be signed into law, but in this analysis of special rules in the House of Representatives, we are only looking at bills in the House, and their ultimate outcome is not significant. From only the view of the House of Representatives, the median voter is the single most important pivot point. If she finds legislation unpalatable, it will not pass the chamber and be enacted, but if she is on board, it will move to the next part of the legislative process. A simplified version of the spatial model is below, featuring a theoretical House of Representatives not unlike the 115<sup>th</sup> Congress, with the median voter and the median of the wings of each party shown.

Figure 3. Theoretical One-Dimensional Spatial Model

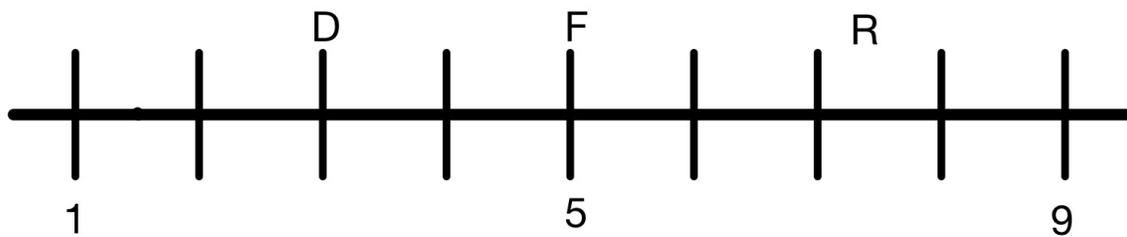


Figure 3 shows a hypothetical spatial model consisting of 5 Democratic markers and 4 Republican markers. F represents the floor median, which is where the median voter will be. Because the Democrats have the majority, the median voter will be a Democrat. Still, her views do not necessarily reflect the whole party, and a separate party median, D, is labeled. For reference, the Republican median, R, is also labeled. According to median voter theory, when considering legislation, the force of the median voter is the gauge of if the bill will pass or not. Imagine a piece of legislation coming out of a Republican Congress that leaves the status quo for law at 6. The Democrats want to change this policy and bring it closer to D, which is at 3. According to median voter theory, they will be unable to do this, because the median voter, at 5,

is only 1 tick away from the status quo, while she is two ticks away from the Democratic proposal. As such, she would not want the Democratic majority to prevail, because her policy preferences are closer to the existing law. If, instead, the status quo was where the Republican median is, at 7.5, she would want the legislation moved to D because it is closer to her preferred policy preference. As such, median voter theory would predict that the amending process is used to build support from the median voter and move legislation closer to her.

Conversely, cartel and party theories of legislating would argue that the Democratic leadership has power and influence over the median voter as a member of their caucus. They have jurisdiction over committee assignments, office assignments (Cox and McGubbins 2005, Lynch, Madonna, Vick 2019), and a host of other benefits that they can use to buy off support (Lynch, Madonna, Roberts 2016). Additionally, procedural questions lack “traceability” in that they are relatively unknown to most voters, often hard to understand, and do not carry the same weight that substantive votes do (Arnold 1990). As such, the leaders would be able to maintain party support on procedural questions while still pulling legislation closer to the party median, at least according to this school of thought.

Clearly, median voter theory is directly opposed CPG and predicts widely different outcomes as a result of the legislative process. Krehbiel (1998) has argued that he focuses more on the outcomes of procedure than the actual process and procedures that lead to the outcomes, which I do think is problematic for his theory. Even if the outcomes are consistent with the expected outcomes of median voter theory, that does not necessarily mean that the median voter is the cause of the outcomes, or that the median result is a product of the parties cancelling each other out. Aldrich and Rhode (2000), meanwhile, argue that median outcomes are not fully inconsistent with their theory. Instead, they note that the median in Congress is a powerful force,

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but their theory describes the parties as a powerful *counterforce* to the force of the middle, and when the conditions of CPG are met, the parties will, at times, have the strength to move legislation away from the middle. Still, this is dependent on the size of the majority and the skills of the leadership, but under CPG we would expect *more* non-median outcomes, not *only* non-median outcomes. In the median voter theory, however, non-median outcomes are extremely rare, and are dependent on the spatial distance of the status quo of existing law rather than anything that the leaders do.

We also know from Evans (2018) that the leadership is extremely active in whipping votes for their preferred legislation, and the whip process reveals insights into general feelings of rank-and-file members. According to Evans, the leadership whips votes when three conditions are met: the issue is important to the party platform, the question has the potential to pass, and the outcome on the floor is unclear. Party cartel theorists would not expect rules to be whipped, because the leadership should have something resembling a monolithic procedural cartel that maintains unity on procedural votes. Certainly, figure 2 shows that party loyalty on procedural votes are higher. Yet, the leadership does regularly whip rules, and when they do, they often find that they are far below the total votes needed to pass the rule (Evans 2018, Evans and Kirk 2021). Seemingly, this could vindicate Krehbiel and Mayhew, and show that the leadership only has their perceived monolithic control because of moves that they make to buy support, not because they automatically have it. Lynch, Madona, and Roberts (2016) argue that the leadership does have to buy support for members that fall in a zone of majority party, ideological moderates, what they dub the “compensation” zone. This zone exists in relation to a “cut-point voter” who would not see policy differences and display a preference over open and closed rules.

The compensation zone, however, does not take into account those at the ideological extremes, who Evans (2018) finds often also is a threat to the leadership control on procedural matters.

Instead, it may make sense for party leaders to use their power over the amending process to appease both party extremists and party moderates. In this situation, those close to the party median would go more often overlooked, as their support is more of a given. I believe that this is likely what we will find. The leadership consists of real people dealing with other people to make decisions. They do not think of policy on the one-dimensional spatial model that political scientists use. The leadership instead thinks about policy in terms of votes and how they can build a winning coalition to pass legislation that the party at large prefers over the status quo. As such, on some issues the leadership will need to bargain with the moderates, on some they will need to bargain with the extremes of the party, and on some still they will need to talk to both and make policy concessions to grow their coalition. Therefore, I would expect the amendments that get to the floor to generally take a U shape, with the most amendments made in order coming from the furthest left and right of the party, while the middle would not see their policies represented in as many amendments.

To test this, we have to actually look at how the leader used the amending process, specifically, how they decide whose amendments are made in order. Are there particular wings of the party who are getting more amendments than others made in order, or does the leadership equally and randomly divvy up amending opportunities? I now turn to a look at the 115<sup>th</sup> and 116<sup>th</sup> Congresses to test exactly this, and to see how and why the leader is using their control over the Rules process.

## Section Two: A Macro Look at the 115<sup>th</sup> and 116<sup>th</sup> Congresses

### Data and Methodology

To analyze rules in the contemporary US House of Representatives, I first started with all of the rules that were passed in the 115<sup>th</sup> and 116<sup>th</sup> Congresses. In total, there were 316 bills that were considered under either structured or closed rules between the two Congresses. Some bills were considered under the same rule, but even when considered in a rule package, different bills can have different types of rules, differing number of amendments allowed, and different amendments roll called in the Rules Committee. The only thing that was definitely the same for rule packages were the votes on the floor surrounding adoption of the rule.

Still, 316 rules are too many to really do a deep dive into the rules process. Every bill that is not considered under a suspension of the rules or passed by unanimous consent has to have a rule attached to it to be considered, so even minor bills that only make slight changes to existing law have a rule attached to them. The leadership probably exerts little control over basic, non-controversial, low-substance bills, so it seems futile to go through all of these bills. Instead, it seemed like a better idea to pick out the major pieces of legislation emerging out of the House and try to glean what exactly is going on in the process. As such, I took the key votes in CQ Magazine published at the end of every Congress and trimmed the list down accordingly. According to CQ Magazine, a key vote is one that has one or more of three basic tenets: “a matter of major controversy, a matter of presidential or political power, and/or a matter of potentially great impact” (CQ staff 2020). Using CQ for the purpose of figuring out major legislation also has the added benefit of being easily applicable over time. Since 1945, when the magazine was founded, the process of selecting and publishing key votes every year was always

present and always used the same criteria. Therefore, not only is this method easily replicable for scholars looking at the 115<sup>th</sup> and 116<sup>th</sup> Congresses, but it could be extended all the way back to 1945 for a deeper, time series study.

By breaking down the 316 rules into a list of key votes, I managed to make the sample size of rules  $n=42$ . These 42 rules encompass 39 key bills. Additionally, five key votes were considered under either suspension of the rules or no rule at all. These were done in the case of Congress rushing against the clock, like in 2019 when a list of demands by President Trump forced Congress to stay in session right up against New Year's Eve. As such, these five cases have been omitted from the 42 cases that I looked closely into. From there, using each case, I assembled a list of all of the amendments roll call voted in the committee of jurisdiction (if any), all amendments submitted to the rules committee (if any), and any action on the Floor of the House. I also looked into the media coverage surrounding each bill at the time of its consideration. This allowed for a complete picture of the process that led to the ultimate version of each bill that was voted on for passage in the House and helped to get a window into the winnowing process that all of the proposed amendments went through before the final form.

I also used the Rules Committee website to assemble a list of all of the amendments that were submitted to the Committee in the 115<sup>th</sup> and 116<sup>th</sup> Congress, relating to these key bills. There were 1519 amendments submitted in total, with 1066 coming from the 115<sup>th</sup> Congress and 453 in the 116<sup>th</sup>. Once the amendments are submitted to the Committee, they can either be withdrawn from consideration, remain "submitted" and not see any floor action, be made in order and debated on the floor, or be considered as adopted, which means that they become a part of the bill and do not have to be separately debated and engrossed. These outcomes were coded for each amendment, as well as the lead sponsor who submitted the amendment, and in the

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case of a bipartisan amendment, the lead member of the opposing party. From there, DW-Nominate scores, which were developed by Rosenthal and Poole (2005) were used to measure the ideology of the Members. DW-Nominate scores have become the standard in Congressional scholarship for measuring Members' ideology and are used in a myriad of scholarly works. Additionally, I used data from Volden and Wiseman's Center for Effective Lawmaking to get information about each member including their race, gender, committee assignments, seniority and Volden and Wiseman's (2014) legislative effectiveness score. All of this information allows for an in depth look into the amendments based on who is offering the amendments and how they relate to the larger Congress, their party, and the leadership to test if the leadership appears to be exerting positive or negative agenda control.

### **115<sup>th</sup> vs. 116<sup>th</sup> by Bill Type**

Of the 42 key rules, only 28.6%, or 12, of them were brought up under structured rules, meaning some amendments were allowed on the floor, while the other 71.4% (30) were brought up under closed rules. Contrasting this with the original list of all 316 rules, there appears to be a significant difference in the proportion: 172 (54.4%) of the rules were closed, while 142 (44.9%) were structured. Additionally, two more rules were written as to adopt the underlying bill immediately after adoption of the rule, but both of these were in the 116<sup>th</sup> Congress, with none other than structured or closed in the 115<sup>th</sup>.

Table 1.A. Amendments submitted, accepted and passed on CQ key vote measures, 115<sup>th</sup> House, 2017-18

Bill	Rule	All amendments			Republicans			Democrats			Bipartisan		
		sub	acpt	pass	sub	acpt	pass	sub	acpt	pass	sub	acpt	pass
Farm bill	structured	112	49	41	89	46	41	10	0	0	13	5	3
Financial choice	structured	18	6	6	9	6	6	8	0	0	1	0	0
Med liability insurance	structured	25	5	4	15	5	4	9	0	0	1	0	0
Defense authorization	structured	440	210	5	127	77	4	212	81	1	101	52	0
FISA amendments	structured	12	1	0	7	0	0	3	0	0	2	1	0
E&W/leg/ milcon-VA approps	structured	189	78	54	55	26	10	123	48	32	11	4	3
Substance use disorder	structured	23	8	5	5	3	1	9	1	1	9	4	3
Disapproval/Stream protect Rule	closed	0	0	0	0	0	0	0	0	0	0	0	0
Health care	closed	36	0	0	32	0	0	4	0	0	0	0	0
No sanctuary for criminals act	closed	5	0	0	3	0	0	2	0	0	0	0	0
Financial protect reg veto	closed	0	0	0	0	0	0	0	0	0	0	0	0
Unborn child protection	closed	0	0	0	0	0	0	0	0	0	0	0	0
Tax cuts and jobs	closed	140	0	0	31	0	0	104	0	0	4	0	0
Concealed carry reciprocity	closed	25	0	0	5	0	0	19	0	0	1	0	0
Border security	closed	12	0	0	7	0	0	5	0	0	0	0	0
Securing America's future	closed	16	0	0	13	0	0	3	0	0	0	0	0
DOJ subpoenas	closed	0	0	0	0	0	0	0	0	0	0	0	0
Vets whistleblower protect	closed	0	0	0	0	0	0	0	0	0	0	0	0
Disapproval/Social Sec rule	closed	0	0	0	0	0	0	0	0	0	0	0	0
Econ growth reg relief	closed	4	0	0	1	0	0	3	0	0	0	0	0
Consumer bureau rule veto	closed	0	0	0	0	0	0	0	0	0	0	0	0
VA mission	closed	9	0	0	5	0	0	4	0	0	0	0	0

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Table 1.A shows all of the key bills for the 115<sup>th</sup> Congress included in my study. In addition to listing the bill name (or a shorter version of the name), the table also displays the type of rule that the bill was brought up under, as well as the amendments submitted to the Rules Committee, accepted by the Committee, and passed on the floor. The information about amendments is further broken down by party. For simplicity, bills that have multiple rules associated with them are collapsed into one row. For example, health care was brought up under three separate rules, but is only listed once on the table.

As you can see, of the 22 bills listed, 7 of them are structured rules, while the remaining 15 are closed. Still, even when a bill is closed, members are still submitting amendments. For example, notice the Tax Cuts and Jobs Act, a major part of the Republican majority's legislative goals for the 115<sup>th</sup> Congress and probably their biggest legislative victory. Though the bill was ultimately brought up under a closed rule, that did not stop members from submitting 140 amendments for consideration. Though most of this comes from the minority Democrats who were fairly uniformly opposed to the bill, importantly, not all of it is coming from Democrats, with Republicans submitting 31 (22%) potential amendments. This indicates that the choice of the majority to make this a closed rule was done to limit the number of amending opportunities on both sides and prevent the bill from being pulled in a direction that would split the party.

Of the 15 bills brought up under a closed rule, they generally fit into three categories: 1) they are a major bill to the party platform and controversial, 2) they originated in the Senate, or 3) they are a regulatory veto. Health care and Tax cuts and jobs fit into the first category, among other bills. These are bills that are very important to Republicans writ large, but are also very controversial. This is important, because the controversial nature of the bills indicates that from the outset, little to no Democratic support was expected or needed. Republicans were very firm

behind repealing Obamacare and creating a new tax code, even if some of the specifics on the matter were not so clear. The leadership chose to bring these up under a closed rule so that they can negotiate with their caucus privately but prevent Democrats from doing anything to potentially poison these top Republican priorities. Bills like the VA Mission act and Economic Growth through Regulatory Relief Act, among others, originated first in the Senate and were brought up under closed rules. It is likely that the leadership wanted to bring these up under closed rules as to make it easier for these bills to become law without having to go through the entire conference process with the Senate. Both of these bills did in fact become law. The only exception to this is the FISA amendments as part of their reauthorization in 2018. This bill did originate in the Senate, and carries the Senate label (S.139), but it was brought up under a structured rule. Still, this rule only allowed for one amendment, a Republican amendment proposed by Justin Amash (R-MI) with many co-sponsors from the House Freedom Caucus. This amendment was an amendment in the nature of a substitute and would have replaced the bill with another bill supposedly to protect American's Fourth Amendment rights. The amendment was defeated, and it is probable that the leadership made the amendment in order to appease the Freedom Caucus and get their support for the ultimate passage of the FISA Amendments, which was must pass and outlined in the opening day of the 115<sup>th</sup> Congress as something that they needed to approve. Finally, regulatory vetoes, like the disapproval of the stream protection rule and the disapproval of the Social Security rule were frequently brought up in the 115<sup>th</sup> Congress under closed rules. These regulatory vetoes were made possibly by the Congressional Review Act of 1996, as part of Newt Gingrich's Republican Contract with America. The CRA gives Congress 60 days to review any executive branch regulation and gives them the ability to veto it, effectively killing the rule and telling the federal agency to try again. The CRA had not been

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used since Gingrich in the late 90's, but in the 115<sup>th</sup> Congress, Republicans used it for the first time on a multitude of Obama-era regulations. Only some are listed as key bills, but the 115<sup>th</sup> Congresses use of the CRA was novel and a major part of their legislative work.

The bills brought up under structured rules are more complex. These are bills that needed amending opportunities to build support, such as the Defense Authorization or the omnibus appropriations package. Bills like this frequently see a large number of amendments, and they are specifically the target of debate on how the amending process changes legislation.

Additionally, some smaller bills were brought up under structured rules, like a bill to address the opioid epidemic and the Financial CHOICE Act. These bills are generally less controversial (the substance use disorder bill passed the House 396-14) than some of the ones brought up under closed rules, and the more controversial measures passed with some Republican opposition, meaning that the structured rules were in place to build a winning coalition to pass the bill, and it was probably unlikely that they would have passed without this type of rule.

Table 1.B. Amendments submitted, accepted and passed on CQ key vote measures, 116<sup>th</sup> House, 2019-20

Bill	Rule	All amendments			Republicans			Democrats			Bipartisan		
		sub	acpt	pass	sub	acpt	pass	sub	acpt	pass	sub	acpt	pass
Bipartisan background checks	structured	48	4	3	36	1	0	12	3	3	0	0	0
For the People Act	structured	181	72	46	78	9	1	96	58	40	7	5	3
Climate Action Now	structured	91	30	26	44	3	1	45	26	26	2	1	1
Terminating emergency declar	closed	0	0	0	0	0	0	0	0	0	0	0	0
Prohibit discrimination	closed	35	0	0	27	0	0	6	0	0	2	0	0
Emergency approps for border	closed	11	0	0	5	0	0	5	0	0	1	0	0
Senate amdt emergency approps	closed	11	0	0	5	0	0	5	0	0	1	0	0
Condemning Trump's comments	closed	0	0	0	0	0	0	0	0	0	0	0	0
Impeach Trump	closed	1	0	0	1	0	0	0	0	0	0	0	0
Withdraw US forces from Iran	closed	1	0	0	1	0	0	0	0	0	0	0	0
Auth remote voting by proxy	closed	1	0	1	0	0	0	1	0	1	0	0	0
Emergency supp approps/COVID	closed	23	0	0	12	0	0	11	0	0	0	0	0
George Floyd Justice in Policing	closed	22	0	0	8	0	0	13	0	0	1	0	0
Make DC a state	closed	9	0	0	8	0	0	1	0	1	0	0	0
Senate Amdt Great Am Outdoors	closed	29	0	0	27	0	0	0	0	0	2	0	0
Senate amdt HEROES act	closed	1	0	0	1	0	0	0	0	0	0	0	0
Defense Authorization Override	closed												

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As you can see in table 1.B, there were less structured rules, with only three bills allowing amendments, and the other fourteen being closed off. Still, this did not stop members from submitting amendments. These members were typically the minority Republicans, but like we saw in the 115<sup>th</sup> Congress, not all of them were and some majority Democrats submitted amendments on bills that were later closed. The criteria for a bill to be closed is similar in the 116<sup>th</sup> Congress to the 115<sup>th</sup> Congress, however there is a slight difference. In the 116<sup>th</sup> Congress, a bill appears to be brought up under a closed rule if: 1) it is a major bill to the party platform and controversial, 2) it originated in the Senate, or 3) if it deals directly with the personality or actions of President Trump. The difference here largely comes from two factors. First, House Democrats did not take up any regulatory vetoes like their Republican counterparts did previously. It is likely that they did not feel the need to do this because they knew it would not pass the Republican Senate, or maybe they felt that Congress did not need to take that course of action, as was the norm before the 115<sup>th</sup>. Secondly, House Democrats largely ran on and were elected on opposition to Donald Trump. He certainly gave them a lot of ammunition to use against him, like his comments telling Rep Ilhan Omar (D-MN) to go back to her country, which sparked the condemnation of his comments under a closed rule. The Democratic led House took several actions that went directly against President Trump, on personality, not policy, which is something that is unusual, and the Republican led House simply would never do. The other two criteria mirror the 115<sup>th</sup> Congress. The George Floyd Justice in Policing Act and making Washington DC a state were both quite large Democratic measures that unified their caucus and drew sharp opposition from Republicans, while various Senate amendments to bills that previously passed the House were all brought up under closed rules as well. It seems that those

two criteria may be a common feature of leadership use of Rules, while each Congresses third element was more unique to the time.

Similarly to the 115<sup>th</sup> Congress, bills brought up under structured rules are more complex. Each are large bills that are controversial and a part of the party platform, but there were varying levels of intraparty disagreement on the content of these bills. Additionally, they each had very little hope of passing the Senate and becoming law, which may be another reason they were brought up under structured rules. This may seem counterintuitive, but because the leadership knew that the bills were not going to go further than the House, they do not appear to be substantive bills, even though they have a lot of substance to them. Rather, they appear to be messaging bills. Messaging bills are bills that are not going to become law, so the leadership allows for many amendments so that members can get their fingerprints on the bills and claim to their constituency that they are trying to do something, but the opposing party will not let them move forward. These bills saw quite a large rate of passage for Democratic amendments, with two of three having all Democratic amendments pass. There are hints of these messaging bills in the 115<sup>th</sup> Congress, with the Financial CHOICE bill and medical liability insurance both having a large proportion of Republican amendments pass, but no Democrats, yet with the Senate and the White House being controlled by Republicans, it's not clear that the leadership thought these would not or could not become law. Perhaps this is why there were much less amendments allowed on the Republican messaging bills than the Democratic messaging bills. Democrats could afford for anyone to have their voice heard, while Republicans needed to keep the bill relatively palatable in case it became law. It may seem somewhat surprising, then, that the George Floyd Justice in Policing Act was not a structured rule and a messaging bill, however, I feel as though Democrats legitimately thought that there was a workable policy end in police

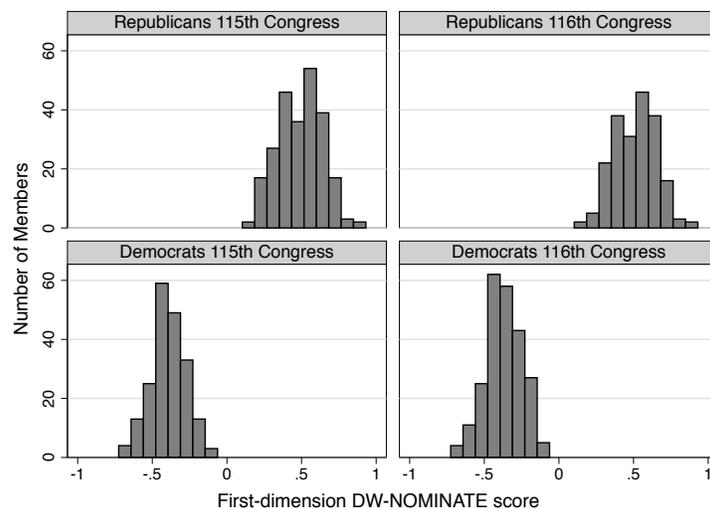
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reform if it had been taken seriously by all branches of government. The Senate Republicans at the time were also passing around their own version of police reform, and while it did not go quite as far as the Democratic bill, there was certainly enough overlap for a workable piece of legislation. This never materialized, but Democratic leaders likely wanted to leave the option on the table, and the George Floyd Justice in Policing Act was not simply a messaging bill. This is further evidenced by its reemergence in the 117<sup>th</sup> Congress.

### Amending by Ideology

The 2010's have been characterized by high degrees of polarization in Congress. Figure 4 shows the ideological distributions of Members of the House of Representatives for the 115<sup>th</sup> and 116<sup>th</sup> Congresses. The measure of ideology is first-dimension DW-NOMINATE scores, developed by Rosenthal and Poole (2005) and is the traditional measure in scholarly literature for ideology. In the figure, as in their measure, -1 represents liberal ideology, 1 represents conservatism, while 0 represents moderates. The y-axis is simply the number of members in that ideological range.

Figure 4. Distribution of DW-NOMINATE scores by party, U.S. House, 115<sup>th</sup> Congress (2017-18) and 116<sup>th</sup> Congress (2019-20)



Notice that no member can claim to be a true moderate with a 0 on first-dimension DW nominate scores. Both parties are squarely on their respective sides of the ideological spectrum, and there is no overlap between the parties. This means that not only do we not see much moderation in the contemporary Congress among members, but we also do not see ideological commonality among moderate Democrats and moderate Republicans. In less polarized times like the 1960's, the most conservative Democrat would often be to the right of the most liberal Republican, and the distribution of DW-NOMINATE scores were more spread out. Instead, in the modern day we find that the most conservative Democrat is still more liberal than the most liberal Republican, and ideologically, the parties are similar and clustered.

It also appears that the Democrats are more clustered than the Republicans, who have a wider distribution. This is due to the fact that the Democratic distribution is taller and thinner than the Republican distribution. The Democratic distribution looks roughly the same in the 115<sup>th</sup> and 116<sup>th</sup> Congress, with slightly more members in the middle of the Democratic group, while the Republican shape appears to show less members falling towards the middle of the party in the 116<sup>th</sup> Congress. Notice also that on the Democratic side, the trend in member ideology is a smooth upside-down U shape, albeit with slightly more members closer to 0. We would expect a party's distribution to look something like this. On the Republican side, the shape is not as clean, and the middle section of the party dips down fairly noticeably, to form an upside-down W rather than a U. This means that the Republican party should have a deeper ideological division between the various wings of the party and may indicate the potential for more interparty conflict. Conversely, there should be more internal unity among Democrats, as they are more ideologically similar to their colleagues than Republicans are. Additionally, the Republicans are more shifted to the right than Democrats are to the left. The most liberal

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Democrat is still only about a -.75 on first-dimension DW Nominate, while the most conservative Republican is almost at the maximum for the scale in both Congresses.

For further analysis, the parties were equally divided into three categories: moderates, mainstream, and extremists. Each of these groups has an equivalent number of members within their party, however, the majority party in each congress will have more members per category than the minority party. Moderates are defined as members who are in the third of the party closest to zero on the ideological spectrum. Extremists are the most liberal Democrats and the most conservative Republicans, those closet to -1 and 1, respectively. As such, extremism is associated with a high DW-NOMINATE score for Republicans, and a low DW-NOMINATE score for Democrats. Finally, the mainstream is the remaining middle third who are in between the other two wings. The median first dimension DW-NOMINATE score for each group is shown in Table 2, divided by party and Congress.

Table 2. Party ideological factions, average DW-Nominate value

	115 <sup>th</sup> Congress		116 <sup>th</sup> Congress	
	GOP	Democrats	GOP	Democrats
Party Moderates	.319	-.267	.349	-.236
Party Mainstream	.493	-.391	.513	-.372
Party Extremists	.649	-.512	.662	-.498

This information is revealing. The so-called moderates in the Republican party are fairly further to the right than the moderates in the Democratic party for the 115<sup>th</sup> Congress, with a difference in absolute value of about .052. This is the smallest gap in the chart, however. The absolute value distance between Democrats and Republicans is almost two times higher (.102) for mainstream members and more than two and a half times higher (.137) for extremists. This trend matters. Not only are Republicans further to the right than Democrats are to the left, but as

you move along the party, the Republicans get even further to the right than the Democrats do to the left. The trend is even more pronounced in the 116<sup>th</sup> Congress. In fact, Democrats moved closer to the middle in every category, while Republicans moved further to the right in every category. As a result, the absolute value in the ideological differences between party extremists is .164 in the 116<sup>th</sup> Congress, quite a bit larger than it was in the 115<sup>th</sup> Congress. Democrats in the 116<sup>th</sup> Congress also have a slightly wider distribution of .262 than they did in the 115<sup>th</sup> (.245), but even this is still far smaller than the Republican distribution in both Congresses, with the Republicans actually being more widely dispersed in the 115<sup>th</sup> (.33) than the 116<sup>th</sup> (.313). A wider distribution indicates that the party represents a wider range of ideologies, and the Republicans having such a high distribution implies that they should be less ideologically united than the Democrats. What's more, Democrats in the 116<sup>th</sup> Congress are the most ideologically similar and the most moderate, which should theoretically make it easier for them to pass legislation as they do not have as many ideological hoops to jump through or movement for legislation to make. To prove if this is true, however, we must look at how they moved legislation, specifically, who's voice was heard in the amending process.

Table 3. Factional origination of amendment requests, 115<sup>th</sup> Congress

	GOP	Democrats
Party Moderates	29.3% (135)	37.0% (217)
Party Mainstream	25.4% (117)	34.6% (203)
Party Extremists	45.3% (209)	28.5% (167)
Total submissions	461	587

*Note: Cell entries are the percent of amendments from that party originating with the relevant faction.*

Let us begin with the 115<sup>th</sup> Congress. Table 3 shows where the amendments that were submitted to the Rules Committee came from in each party. On the Republican side, the majority

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of the amendments that were submitted, by a fairly substantial margin, are from the party extremists (45.3%). The moderates are a distant second at 29.3%, followed closely by the mainstream group at 25.4%. This shows that extremists are putting the most out to the Rules Committee and trying the hardest to get their fingerprints on legislation. This is not what we find on the minority Democrats side, with extremists having the lowest percent of submissions (28.5%), mainstream having the second highest (34.6%) and moderates having the highest proportion and number of submissions (37%). This is a negative linear progression, with those closest to the middle on the ideological spectrum submitting the most amendments, and this number decreases steadily as we move throughout the party. This linear progression contrasts starkly with the GOP's check mark shaped progression, but all of this information should be caveated with the fact that any member is allowed to submit an amendment. All this really shows is who is trying to get in on the amending process, not how often they are succeeding.

Table 4. Percent amendments made in order by party faction, 115<sup>th</sup> Congress

	GOP	Democrats
Party Moderates	51.4%	30.0%
Party Mainstream	53.0%	29.6%
Party Extremists	35.9%	20.4%

*Note: Cell entries are the percent of amendments from that faction that were made in order by the Rules Committee*

That is precisely what table 4 shows. If table 3 painted an image of a check mark shape for the GOP distribution, table 4 shows its exact mirror image. While party extremists are submitting the most amendments by far, they are having the least made in order on the Republican side by far. The mainstream of the party is having the most success in amending, even though they submitted the least, although their success is not all that different from the

moderates. Still, we should keep in mind that these are percentages, the actual number of amendments paints a very interesting picture. Extremists had 75 amendments made in order, followed by 69 amendments for moderates and 62 for the mainstream. This U shape is exactly what we may expect from a leadership trying to appease each wing of its party and build coalitions. That is not to say that the moderates went unheard in the process; they still had 62 amendments made in order. However, they did not have as many as either extreme of the party. This finding is consistent with findings of leadership bargaining using the rules process and shows that the leadership tried to bring in the voices from each wing of the party.

On the Democratic side, we find the same negative linear trend we did with submissions, with the most amendments made in order coming from the moderates and the least from the extremes. This is somewhat surprising. Though it may be intuitive that leaders could want minority party extremist amendments brought to the floor to publicly defeat them, this is not what I find they did in the 115<sup>th</sup> Congress. Perhaps this is due to the fact that the liberal extremists are not as extreme as the conservative ones, and therefore there is a higher probability if an amendment is made in order that it will be palatable, and even preferable, for the House at large, so the leadership does not want to take that risk. Still, a fairly substantial number of amendments were made in order for Democratic moderates and mainstream, albeit less than their majority party counterparts. As such, it seems that Democrats were not completely shut out of the amending process like we may expect, and the amendments that should theoretically be more palatable to Republicans, the amendments from moderates and mainstream Democrats, are the amendments that they end up allowing to go to the floor.

Table 5. Factional origination of amendment requests, 116<sup>th</sup> Congress

	GOP	Democrats
Party Moderates	16.9% (43)	38.3% (74)
Party Mainstream	20.0% (51)	32.6% (63)
Party Extremists	63.1 % (161)	29.0% (56)
Total submissions	255	193

*Note: Cell entries are the percent of amendments from that party originating with the relevant faction.*

Before we look at how these amendments fared on the floor, let us compare the findings from the 115<sup>th</sup> Congress to the 116<sup>th</sup> Congress. Interestingly, the Democrats, now in the majority, do not change their amendment submission behavior at all. We see the same linear trend as we saw throughout the 115<sup>th</sup> Congress among Democrats, with the percentages for amendment requests being almost the same in the 115<sup>th</sup> and 116<sup>th</sup> Congresses. This indicates that when they were in the minority, Democrats did not act any differently regarding their submitted amendments than they did when they claimed the majority. This shows that there was not a particular group that felt emboldened once Democrats took the majority, which is somewhat surprising, though theory does not necessarily show who that group would be, or that there would even be one in the first place. Still, one would expect party extremists, for example, to flood the majority with non-germane and very liberal amendments when they were in the minority, which they clearly did not.

The Republicans are a somewhat different story. Once again, we see that extremists are putting forward the most amendments, however this difference is significantly higher when Republicans are in the minority than it was when they were in the majority. Fully 63% of amendments submitted by Republicans came from the extremists, more than three times the number from the mainstream and almost four times as high as the moderates. This is fairly in line with what I would expect. When a party is in the minority, they often will simply throw

amendments at the majority party, just to slow the process and see if anything passes through.

The extremists would be the most likely candidates to do this, and that is what we see. The Republican’s actions in the minority make more sense than the Democratic actions, after all, the minority party throwing many amendments at a bill to try to get something passed is one of the reasons why special rules became more common in the first place. Further still, Republicans were the ones who started this activity. It lines up well that the extremists would act in this manner.

Table 6. Percent amendments made in order by party faction, 116<sup>th</sup> Congress

	GOP	Democrats
Party Moderates	4.7%	46.0%
Party Mainstream	0	54.0%
Party Extremists	7.5%	51.8%

*Note: Cell entries are the percent of amendments from that faction that were made in order by the Rules Committee*

When we look at the percentages for amendments made in order, some really surprising information comes to light. I’ll begin with the Republicans, because the findings on them are truly extraordinary. In short, Democrats hardly made any of their amendments in order. Of the 51 amendments submitted by Republican mainstream members, not a single amendment was passed on to the floor. Not one. The moderates barely fared better, with two of their 43 amendments moving on to floor consideration, and the extremists had the most success. Still, this “success” is only about 12 of their proposed 161 amendments. It seems that of the 255 amendments that Republicans proposed for floor consideration, the Democrats only brought 14 of them to the floor, a measly 5.5%. Granted, this should be caveated by the fact that it is a smaller sample, with only three structured rules allowing for amendments, but this caveat should once again be

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caveated by the fact that this particular use of rules was a decision by the Democrat majority, so it does not let them off the hook for their shutting the minority Republicans out of the process.

Obviously, Democrats were much kinder to their own amendments. Rather than the linear progression that we have seen thus far, Democrats make their amendments in order in bell curve, with the most coming from the party mainstream. Converting the percentages to numerical values, we can see that party leaders made roughly the same number of amendments, 34, in order for both moderates and the party mainstream. Extremists only received consideration of 29 amendments. This indicates that the leadership was more concerned with moving legislation towards the middle and appeasing the party moderates than they were with the most liberal members of the caucus. Still, extremists submitted the least number of amendments and still had 51.8% of those amendments made in order, so while the number of amendments may be smaller, they are certainly not acting discriminately against the party extremists. This indicates that the leadership was concerned with making sure every voice was heard in the amending process, and we do not see the U shape that we would expect from a leadership concerned with coalition building. Perhaps, this is also due to the small sample size. Recall that the three bills that were considered under structured rules were shown to be messaging bills. As such, it seems that the leadership wanted to allow every member to use their messaging abilities and reap the collective benefits of the bills, because they were not really concerned with the policy impact due to the little likelihood of these bills becoming laws.

Now let us turn to action on the floor to see what became of all of these amendments made in order. Being as the entire chamber votes on amendments, it is safe to infer that amendments coming from the moderates and mainstream members will have a higher chance of garnering enough support from both sides of the aisle to pass. Recall that the average party

difference in votes on amendments is the lowest of the roll call vote types. This means that amendments more often receive opposition party support than do other types of roll call votes, and more often have member defections from within the party offering the amendment. As such, passage of amendments is likely going to be the key to pushing legislation towards the chamber median, if in fact legislation moves to the chamber median. This precisely what we find on the Republican side in the 115<sup>th</sup> Congress, shown in table 7.

Table 7. Percent of amendments passed on floor by party faction, 115<sup>th</sup> Congress

	GOP	Democrats
Party Moderates	96.3% (26)	51.6% (16)
Party Mainstream	78.1% (25)	44.0% (11)
Party Extremists	50.0% (17)	66.7% (10)

*Note: Cell entries are the percent of amendments originating from the relevant faction that were passed on the House floor.*

The Republican majority managed to pass a quite substantial proportion of amendments, especially those amendments originating from the wing of the party closest to the median in the chamber (96.3%). This is not surprising, and aligns well with the above stated hypothesis, as does the fact that the mainstream members of the party have a fairly high success rate of amendment passage (78.1%). What is surprising is how rarely the extremist amendments are passed. Their success rate of 50% is about on par with the Democratic moderates, and surprisingly much less than the success rate for Democratic extremists (66.7%). This implies that although the leadership is allowing party extremists to have their voice heard in the amending process, they are still not particularly keen on passing their amendments into the underlying legislation. Or, at the very least, the majority of the rest of the chamber is not keen on allowing these amendments into the bill. Recall that the extremists in the Republican party for the 115<sup>th</sup>

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Congress have an average first-dimension DW-NOMINATE score of .649, well further right than the Democratic extremists are to the left. As such, their policy stances are not as reflected throughout the chamber as Democratic extremists' positions may be. With this in mind, it does then seem fairly intuitive that they would have a much lower success rate on passage than amendments that originated from the party moderates.

Regarding Democratic amendments, those that made it to the floor actually passed more often than one might expect for a Republican controlled chamber. Most surprising is the number of amendments from party extremists that ended up passing on the floor. Extremists submitted the least number of amendments, and had the smallest proportion made in order, yet they had the highest success rate of any of the Democratic groups, and a higher success rate than Republican extremists. This is certainly an odd and counterintuitive finding, but the actual number of amendments that they had passed were the least of any of the groups, so perhaps the proportion is more misleading than informative. Beyond that, the moderates having the most amendments passed on the floor, followed by the mainstream in the party makes a lot of sense. This should theoretically pull legislation closer to the chamber median, and amendments coming from these groups should be more palatable than amendments coming from extremists. In summary, the 115<sup>th</sup> Congress seems to align well with the aforementioned legislative theories, and it seems that in the 115<sup>th</sup> Congress, legislation was generally pulled to the middle.

Table 8. Percent of amendments passed on floor by party faction, 116<sup>th</sup> Congress

	GOP	Democrats
Party Moderates	16.7% (1)	95.7% (22)
Party Mainstream	0	100% (23)
Party Extremists	21.4% (3)	100% (24)

*Note: See Table 7*

Before I dive into the 116<sup>th</sup> Congress, let me once again reiterate the caveat that the sample of structured rules for the 116<sup>th</sup> Congress is notably smaller than the 115<sup>th</sup>, granted, this is due to the choices of the leadership. With that in mind, the results from the 116<sup>th</sup> Congress are both shocking and informative. Simply put, Democratic amendments always passed on the floor, with perhaps one or two exceptions for the party moderates. On this point, however, I am not sure that my caveat holds up. The 116<sup>th</sup> Congress did have less structured bills, but the number of amendments that ended up passing on the floor for the Democrats is almost exactly the same as the number for Republicans in the 115<sup>th</sup>, and in fact, one more Democratic amendment passed in the 116<sup>th</sup> than Republican amendments in the 115<sup>th</sup>. So, while less amendments are present in the sample for the Rules Committee and less were up for consideration on the floor, they passed a surprisingly large number of amendments with an almost perfect record on passage. This is informative. The implication is that Democratic leaders in the 116<sup>th</sup> Congress had an especially tight ear to the ground regarding the amending process and chose amendments to be made in order that they either knew or suspected they could pass. This seems to show some very impressive skills on the part of the leadership, and a really impressive amount of party control and unity, which was to be expected given the distribution of DW-NOMINATE scores. This strong party unity theory is further shown in the fact that very little Republican amendments passed on the floor. Keep in mind, Democratic leaders did not make many Republican amendments in order, but they passed very few as well. Republican mainstream members had no amendments in order, so they of course had no amendments, pass, but the moderates and extremists both see a much smaller proportion of passage than Democrats did when they were in the minority. It appears that the trend in amendments passed follows the trend of

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amendments made in order on the Republican side, with more coming from the extremists than the moderates (3 to 1). It would appear that the Democratic leadership maintained an extremely tight control over both Rules Committee activity and floor activity, something that the Republican leadership cannot claim in the same way.

### **Section Three: Legislating on a Micro Level**

In the following section, I will take the information learned from the previous sections and apply it to a few cases from the two Congresses. The cases should help to illuminate on a micro level what exactly is going on in some of these rules and bills in a way that a macro approach simply cannot. Though I have only selected a few cases from the list of key rules, they should be taken as representative of the sample. In order to be truly representative, I wanted to ensure that I selected one bill from the 115<sup>th</sup> Congress and one from the 116<sup>th</sup> Congress. This allows for a comparison in party behavior and show the differing ways that the leadership used their power.

I will start by looking at HR 1628, the American Health Care Act of 2017, which I mentioned in the introduction, as an example of the ways that parties will use the rules and amending process for coalition building and positive agenda control within the majority party. The AHCA was specifically chosen because it is truly an excellent example of coalition building. Though the AHCA never became law, the amount of work that Paul Ryan and the GOP put into producing a workable bill is both impressive and informative. Additionally, much of this work was done outside of the traditional Rules Committee process. For most bills, this would be extremely difficult to study because we do not know what is occurring behind closed doors, but due to the massive attention and media coverage that the AHCA received, we are able to get an inside look at what exactly happened in this process.

This will be followed by a discussion on HR 8, the Bipartisan Background Checks Act of 2019, as a converse example of negative agenda control and trying to force the minority's hand. The Bipartisan Background Checks Act was not as front and center in the 116<sup>th</sup> Congress as the AHCA was in the 115<sup>th</sup> Congress. Still, it is an informative piece of legislation. Gun control was a top priority for Congressional Democrats, and the passage of a gun control bill was fairly high on their legislative to-do list. Additionally, the bill faced strong opposition from Republicans, in a similar way that the AHCA did from Democrats. The Bipartisan Background Checks Act did go through the traditional Rules Committee process; however, the amending process yielded few amendments, making it an apt comparison to the AHCA.

Finally, I will conclude with HR 2, the Farm Bill of 2018. This bill was selected because I personally find it fascinating. There were a large number of amendments submitted and considered as part of the Farm Bill, and the Farm Bill was a major piece of legislation with significant impacts for the agriculture industry. The reason it is so interesting is because, along with traditional coalition building tactics that are different from the AHCA and the Bipartisan Background Checks Act, it utilized a very unique way that rules can be used by the majority and really highlights the strength of the Rules Committee with a simple chamber majority.

#### HR 1628: The American Health Care Act

As mentioned in the introduction, the passage of the American Health Care Act of 2017 (AHCA), was a very difficult process for Paul Ryan and the Republican leadership to pull off. Democrats were uniformly against a repeal of Obamacare, and much public opinion polling showed that even if the branding of "Obamacare" was not terribly popular, the Affordable Care Act and many of the policies contained within it were actually quite popular to Democrats, Republicans, and Independents. Within Congress, Republicans were very clear from the outset

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that they wanted to repeal and replace the plan, but the various wings of the party had sharp differences on what they thought that should include. The largest dispute came from the House Freedom Caucus, the more ideologically pure and conservative wing of the party responsible for the ousting of Speaker John Boehner before Paul Ryan. The Freedom Caucus wanted a full repeal of Obamacare and the provisions it contained, which the AHCA did not offer. In fact, the original plan, before any amending, left untouched six of the ten titles of Obamacare, including the ability for children to stay on their parents' insurance until 26 and protections for preexisting conditions (Jost 2017). Other members of the party in opposition to the AHCA were Members from states with Medicaid expansion under Obamacare (Petulla 2017). In their view, the bill would kick many of their poorer and newly covered constituents off of their healthcare plan, which would surely be unpopular and tough to explain back home. As such, even after the AHCA was unveiled, negotiations between Congressional Republicans, leaders, and President Trump were still ongoing and there was hardly a consensus on this plan.

The first rule that the AHCA was debated under was H Res 228. Even though plenty of members submitted amendments to the Rules Committee, the leadership wanted to keep a tight hold over the amending process, and H Res 228 was a closed rule. In total, 36 amendments were submitted to the Rules Committee, 32 of which were submitted by Republicans. All amendments submitted to the Rules Committee are listed in Table 9, along with their sponsor, party, DW-NOMINATE and group their sponsor belonged to.

Table 9, Amendments submitted to Rules Committee for the American Health Care Act of 2017

Sponsor	Description	Party	DW Nomina	Group	Status
Amodei	Exemptions from coverage surcharge	R	0.383	Moderate	Submitted
Amodei	Requires demonstration of cost reduction	R	0.383	Moderate	Submitted
Amodei	Requires demonstration of direct premium reductions	R	0.383	Moderate	Submitted
Babin	Allows members of HSM to establish HAS	R	0.703	Extremist	Submitted
Babin	Caps expansion of enrollment numbers	R	0.703	Extremist	Submitted
Babin	Repeals 5% bonus payment	R	0.703	Extremist	Submitted
Babin	Changes continuous coverage from mandatory to risk based	R	0.703	Extremist	Submitted
Barton	Requires medicaid expansion enrollees to be enrolled prior to 12/31/17	R	0.528	Mainstream	Submitted
Biggs	Allow states to opt out of all requirements	R	0.883	Extremist	Submitted
Biggs	Authorizes cross state purchase of health insurance	R	0.883	Extremist	Submitted
Brooks	Repeals ACA and all regulations in conjunction with the law	R	0.648	Extremist	Submitted
DeSantis	Prohibits Members from receiving FEHB contributions	R	0.663	Extremist	Submitted
Fitzpatrick	Strikes provision repealing remuneration	R	0.171	Moderate	Submitted
Fitzpatrick	Amends sunset of essential health benefits requirements	R	0.171	Moderate	Submitted
Fitzpatrick	Strikes change from 3:1 to 5:1 for age variation	R	0.171	Moderate	Submitted
Gibbs	30% continuous coverage penalty does not apply to HSM members	R	0.474	Mainstream	Submitted
Grothman	Changes dependent age from 26 to 23	R	0.608	Extremist	Withdrawn
Grothman	Eliminates enhanced federal match for able bodied adults	R	0.608	Extremist	Submitted
Herrera-Beutler and Costello	Amends Medicaid cap for kids	R	0.355	Moderate	Submitted
King	Repeals ACA in its entirety	R	0.613	Extremist	Submitted
King	Choice of full deductibility of health insurance premiums	R	0.613	Extremist	Submitted
Lipinski	Strikes provision for health insurers' tax deductions	D	-0.227	Moderate	Submitted
MacArthur	Allows states to waive essential health benefits	R	0.206	Moderate	Adopted
Palmer	Establishes a federal invidible high risk pool	R	0.751	Extremist	Submitted
Palmer and Schweikert	\$15 billion risk sharing program to help states lower premiums	R	0.751	Extremist	Adopted
Perlmutter	Healthcare providers disclose their lowest price accepted	D	-0.282	Extremist	Withdrawn
Radewagen and Gonzalez	Makes changes to how territories are funded for Medicaid	R			Submitted
Shea-Porter	Military parents can keep children up to 26 on Tricare	D	-0.315	Moderate	Withdrawn
Shea-Porter	Determination of affordability of employer-sponsored minimum coverage	D	-0.315	Moderate	Withdrawn
Upton, Long, Young, Valadao,	Increases patient and state stability fund by \$8 billion	R	0.333	Moderate	Adopted
Walden	Technical changes to amendment #5	R	0.333	Moderate	Adopted
Walden and Brady	Technical changes to conform with reconciliation	R	0.333	Moderate	Adopted
Walden and Brady	Inclusion of additional policies affecting Medicaid and tax code	R	0.333	Moderate	Adopted
Walden and Brady	Technical changes to amendment #4	R	0.333	Moderate	Adopted
Walden and Brady	Delays repeal of additional .9% medicare tax on high income earners	R	0.333	Moderate	Adopted
Webster	Exempts Medicaid nursing home beds from Medicaid caps	R	0.508	Mainstream	Submitted

Of the four submitted by Democrats, three were withdrawn from consideration by the sponsor of the amendments. This tells me what the media coverage and popular narrative have indicated about the AHCA: there was no internal consensus, and the Republican party was not aligned behind the proposal. Additionally, Democrats did not want any part in the process. They knew that they were not going to like or support the final bill, and they did not want their fingerprints on something that they were betting would be largely unpopular with the public. That did not matter to Ryan, however, because he could still pass the bill with 21 Republican

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defections and no Democratic support. His job at this point was to get his party on board with the plan and get it passed.

The bill came to the floor under H Res 228 before there was a full Congressional Budget Office (CBO) score of the bill. The CBO is a nonpartisan agency that scores every bill to estimate what the economic impacts of the bill might be. Within H Res 228 there were five amendments that were printed in the rule and considered as adopted. When an amendment is considered as adopted, it is automatically engrossed into the bill once the rule passes the Rules Committee and does not have to be separately debated and voted on. Usually, this only occurs for manager's amendments, that is amendments by the bills manager(s), to make small technical corrections to the bill. This was true, however, for only three of the five amendments, and two of them are fully substantive amendments that alter the underlying bill, a very rare happening in the contemporary Congress. These amendments altered the Medicaid and tax policies as well as delayed the repeal of a Medicaid tax on high earners (Jost 2017). This is a product of talks and negotiations between leadership, rank and file Members, and the White House, and was a way of getting those Members who were uncomfortable with the bill on board. In addition, H Res 228 provided for an astounding four hours of debate. For context, the typical length of time for a bill to be debated is one hour, with debate divided equally among both sides, and any amendments usually get ten minutes of debate. This rule provided for four hours. Now, this is not unheard of, and larger bills do typically have longer debate times, like the Defense Authorization or various appropriations bills, but the built in four hours of debate is yet another signal that the bill was not ready and there were substantive issues with the underlying text.

While the rule was being crafted and debate on the Floor began to play out, the CBO released their analysis of the bill. According to them, the bill would result in 24 million losing

health care coverage by 2030 (Jost 2017). This further scared rank and file members and led to a massive public push to kill the bill. Ryan and the GOP, however, remained undeterred and returned soon after with another rule, H Res 254, adding another amendment to be considered as adopted to the bill. This amendment created an invisible risk sharing pool of \$15 billion for health care costs. It did not add any more debate time, as debate under H Res 228 was still ongoing, but it did change the underlying bill after the party line vote in Rules around its adoption.

Even after four hours of debate, it was abundantly clear to Ryan and GOP leadership that they did not have a bill they could pass and did not have a consensus in their party. As such, the AHCA was shelved and reworked in backroom negotiations between the relevant stakeholders. It did not reemerge until the next month, when a new rule was brought up for the bill, H Res 308. H Res 308 contained within it the MacArthur amendments, named for their sponsor, Thomas MacArthur (R-NJ). The MacArthur amendments were an attempt to get support from the House Freedom Caucus by allowing for various state waivers to federal programs and policies under the AHCA. The waivers were fairly simple for states to enact and fulfilled the Freedom Caucus' desire for less regulation and mandates. The MacArthur amendments were likely the most consequential amendments offered in terms of policy, and though it did not allow insurers to deny coverage to those with pre-existing conditions, it did allow them to make costs higher for those patients (Newkirk 2017). Finally, Fred Upton (R-MI) added the final amendment, also considered as adopted and therefore not separately debated and voted on beyond the Rules Committee. This amendment created an \$8 billion fund for a risk pool in states that weaken coverage for high-risk patients. This was the final piece in the GOP's puzzle, and the combination of the Upton amendment and the MacArthur amendments gave the GOP just

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enough political coverage and votes to pass the AHCA. On May 4<sup>th</sup>, 2017, after months of coalition building, negotiations, and debate, both publicly on the Floor and privately in back rooms, the House voted to pass the AHCA by a vote of 207-203, with zero Democratic support and twenty Republicans voting against the bill.

The AHCA is an example of the Rules process being used for positive agenda control and coalition building. Though the avenue of making three different rules with substantive amendments considered as adopted is a bit unorthodox, the way that rules were used in this context is entirely in line with theories of positive agenda control and non-median outcomes. Instead of focusing on the House median as a whole, Ryan's comfortable majority meant that he only had to focus on his party and simply getting enough votes to pass, not building broad support. Paul Ryan used his scheduling ability as Speaker to prevent the AHCA from coming up for a vote until he was confident that they had the votes to pass. This confidence came from a variety of sources. First, though the whip counts are a closely held card of the leadership, it is certain that the question of the AHCA and the various amendments within it were whipped extensively by the whip network. Evans (2018) finds that the leadership activates the whip network when three criteria are met: legislation is important to the party platform, it is in play to pass, and the outcome on the floor is unclear. Clearly, with all of the issues and debate surrounding the AHCA, as well as the long-term high-profile nature of the attempts to repeal Obamacare, the AHCA fits these criteria. Second, the very background negotiating that was mentioned earlier as a reason that observers cite for gridlock greatly contributed to Paul Ryan's ability to bring the AHCA to the Floor. Curry and Lee (2020) found in interviews that backroom legislating in the contemporary Congress is a necessary step to getting a bill passed, and the AHCA proves this to be the case. Due to the controversial nature of a repeal of the ACA, it is

almost impossible to imagine a workable bill being brought to the floor under a more open legislative process. The negotiations in the background allowed for Congressional leaders and the White House to talk with the rank-and-file members who did not like the bill to figure out how to get them on board, including the party moderates, and the very vocal and conservative House Freedom Caucus. Finally, the AHCA demonstrates why the leader would want such tight control over the Rules process. Once the negotiations were dealt with and a plan could be made that would bring enough of the GOP caucus on board, the Rules Committee and Ryan's control over it allowed for the amendments to be immediately folded into the bill with a simple majority in the stacked Rules Committee. Had these amendments been made in order instead of considered as adopted, they would have to be debated and voted on the Floor, and their passing was not a foregone conclusion. In fact, the MacArthur amendments realistically would probably have been killed by moderate rank and file Republicans, while many of the other amendments would have a hard time passing in the face of the Freedom Caucus. By considering them as adopted and engrossing them into the bill in the Rules stage, the leadership ensured that its splintered membership could not pick and choose what to allow in the bill, which would have probably led to the AHCA being defeated. Instead, they had a choice between fulfilling a long-time campaign promise or killing the entire proposal, something that most of them did not want to do. Ryan's use of the Rules Committee in the case of the AHCA allowed him to build enough interparty support behind a controversial proposal that was also a major campaign promise, thus allowing him to pass the bill and make good on his word, even though the bill was far from palatable in the Senate and never became law.

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### H.R. 8: Bipartisan Background Checks Act of 2019

The Bipartisan Background Checks Act of 2019 was introduced in the Democratic controlled House of Representatives on January 8, 2019 with five Republican co-sponsors. Though it carries the term “bipartisan” in the name, there is very little about the process and product that appear bipartisan, and HR 8 serves as an excellent example of leadership use of negative agenda control and keeping the minority party out of the amending process. Additionally, the Bipartisan Background Checks Act shows the shortcomings of relying on the Rules process and demonstrates how even in the face of stonewalling, the minority can at times get its preferred policy into legislation.

Gun control was a legislative priority in the newly Democratic House and H.R. 8 was a top priority in the chamber. H.R. 8 would require a background check for every firearm sale in the United States, although certain exceptions were built into the bill for transfers as gifts between family members and in the cases of hunting. H.R. 8 was a companion of H.R. 1112, a bill designed to close the so-called “Charleston loophole”, and the joint package was praised by Democrats as signifying the new majority’s willingness to tackle gun control and protect Americans from gun violence. H.R. 8 received strong opposition from the NRA, who said that the bill would not keep guns out of criminal hands, rather it would prevent law abiding Americans from exercising their Second Amendment right. The bill ultimately passed on a mostly party line vote, with eight Republicans joining all Democrats except two. After passage in the House, H.R. 8 was never taken up in the Senate, and the White House signaled that Trump would use a veto if it got to his desk.

H.R. 8 was originally referred to the Judiciary Committee, chaired by Jerry Nadler (D-NY). After the committee markup, Nadler criticized Republicans on the committee for choosing

“to obstruct and stall the markup” by offering “non-germane amendments” over the course of 11 hours (Congressional Record 2019). During the markup period, there were 11 roll call votes on amendments, with ten coming from Republicans and failing on party line votes. The only amendment passed on roll call was a Democratic amendment to change the effective date of the bill from 180 to 210 days, which also received a party line vote. In the Rules Committee, 48 amendments in total were submitted, with 36 amendments submitted by Republicans and 12 by Democrats. Of these 48, only four were made in order, and of those four, three were submitted by Democrats and one by a Republican. Six amendments to H.R. 8 received a roll call vote in the Rules committee. These were all defeated along a party line vote, however some of these amendments were offered in another form and made it to the floor. The amendments submitted to the Rules Committee are below in Table 10.

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Table 10, Amendments submitted to the Rules Committee for the Bipartisan Background Checks

## Act of 2019

Sponsor	Description	ICPSR	Party	DW Nomina' Group	Status
Green, Al (TX)	Prohibits the transfer of a firearm at a gun show	20529	D	-0.438 Extremists	1 Submit
Brown (MD)	Requires that individuals must be 21 years of age to purchase a semiautomatic rifle	21707	D	-0.335 Moderates	1 Submit
Brown (MD)	Prohibits those who are subject to a domestic violence restraining order from possessing a firearm.	21707	D	-0.335 Moderates	1 Submit
Dean (PA)	Clarifies great bodily harm would apply to someone who is at risk of committing suicide.	21915	D	-0.514 Extremists	2 MIO
Delgado (NY)	Allows for loan and bona fide gift transfers between legal guardians and wards.	21916	D	-0.217 Moderates	0 Withdrawn
Delgado (NY)	Allows for loan and bona fide gift transfers between step-parents and step-children.	21916	D	-0.217 Moderates	0 Withdrawn
Horn (OK), Murphy (FL)	Clarifies that "great bodily harm" includes domestic violence	21933	D	-0.169 Moderates	2 MIO
Van Drew (NJ), Brindisi	Adds sales to the list of family exceptions such as loans and gifts.	21980	D	-0.147 Moderates	1 Submit
Van Drew (NJ), Brindisi	Clarifies that the exception applies to step-parents and step-children.	21980	D	-0.147 Moderates	2 MIO
Rush (IL)	Establishes trafficking in firearms and straw purchasing of firearms as criminal offenses	29346	D	-0.478 Extremists	1 Submit
Rush (IL)	Provides for the implementation of a system of licensing for purchasers of certain firearms	29346	D	-0.478 Extremists	1 Submit
Scalise (LA)	Allows the transfer of a firearm to certain groups	20759	R	0.563 Extremists	1 Submit
Gosar (AZ)	Exempts individuals who possess a valid gun permit from universal background check	21103	R	0.679 Extremists	0 Withdrawn
Gosar (AZ)	Provides notice to Homeland Security of firearm transferees that are illegally in the United States.	21103	R	0.679 Extremists	1 Submit
Gosar (AZ)	Prohibits the ATF from creating a database	21103	R	0.679 Extremists	1 Submit
Gosar (AZ)	Prohibits any person who is mentally incapacitated according to VA from being considered as a mental defective	21103	R	0.679 Extremists	1 Submit
Duncan (SC)	Removes suppressors from the purview of the National Firearm Act	21174	R	0.732 Extremists	1 Submit
Collins, Doug (GA)	Exempts transfers of firearms to a victim of domestic violence	21323	R	0.732 Extremists	0 Withdrawn
Collins, Doug (GA)	Exempts transfers of firearms to or from museums or historical displays.	21323	R	0.732 Extremists	1 Submit
Collins, Doug (GA)	Establishes a fusion center at the FBI to prevent mass violence	21323	R	0.732 Extremists	1 Submit
Collins, Doug (GA)	Allows a transfer to the spouse of an active-duty member of the military.	21323	R	0.732 Extremists	1 Submit
Collins, Doug (GA)	Permits the transfer of a firearm if the transferee has presented a qualifying valid permit	21323	R	0.732 Extremists	1 Submit
Hudson (NC)	Provides reciprocity for concealed carry permit holders when crossing states lines.	21346	R	0.58 Extremists	1 Submit
Byrne (AL)	Strikes the text of the bill and provides for concealed carry reciprocity among the states.	21376	R	0.61 Extremists	1 Submit
Palmer (AL)	Ensures that state laws and regulations related to private party transfers are not pre-empted	21500	R	0.71 Extremists	1 Submit
Buck (CO)	Prohibits the creation of a national firearms registry	21510	R	0.751 Extremists	1 Submit
Buck (CO)	Includes transfers between additional kinds of family members	21510	R	0.751 Extremists	1 Submit
Buck (CO)	Allows the temporary transfer of a firearm to prevent anyone who is suicidal	21510	R	0.751 Extremists	1 Submit
Gaetz (FL)	Makes it illegal for a dealer to sell a firearm to anyone they believe has entered the US illegally	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Amends the bill to include those that have served in the military	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Creates an exemption for current and former servicemembers who have any commendation for their marksmanship.	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Creates an exemption for individuals who have completed firearm/marksmanship safety or training classes.	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Creates additional exclusions for former law enforcement officers	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Adds an additional exclusion to those with security clearances.	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Removes the time limitation on the term "imminent bodily harm"	21719	R	0.622 Extremists	1 Submit
Gaetz (FL)	Creates an exemption for individuals who have recieved orders of protection against others such as restraining orders	21719	R	0.622 Extremists	1 Submit
Gianforte (MT), Hurd (T)	Clarifies that transferring firearms from a property owner to a ranch hand is permitted.	21751	R	0.431 Mainstream	1 Submit
Lesko (AZ)	Allows for the transfer of a firearm to a victim of domestic violence	21757	R	0.604 Extremists	1 Submit
Lesko (AZ)	Allows the transfer of firearms to individuals who are participants in the Global Entry Program.	21757	R	0.604 Extremists	1 Submit
Lesko (AZ)	Allows the transfer of firearms to individuals who have a valid permit to purchase a firearm.	21757	R	0.604 Extremists	1 Submit
Lesko (AZ)	Allows the transfer of firearms to individuals who have a security clearance.	21757	R	0.604 Extremists	1 Submit
Lesko (AZ)	Allows the temporary transfer of firearms to individuals which take place on the property of the firearm owner.	21757	R	0.604 Extremists	1 Submit
Lesko (AZ)	Allows the transfer of firearms to individuals who participate in the TSA Pre-Check program	21757	R	0.604 Extremists	2 MIO
Armstrong (ND), Hurd (T)	Adds ranching and farming to the list of exempted activities	21901	R	0.464 Mainstream	1 Submit
Cline (VA)	Requires that ICE is notified of firearm transfer denials by reason of illegal presence in the United States.	21908	R	0.704 Extremists	1 Submit
Reschenthaler (PA)	Allows an individual who thinks they may be a danger to immediately transfer their firearm	21956	R	0.36 Moderates	1 Submit
Steube (FL), Buck (CO),	Requires ICE Notification if a person illegally in the US is attempting to receive a firearm.	21971	R	0.661 Extremists	1 Submit

Notice that of the Republican amendments submitted to the Rules Committee, the vast majority of them came from GOP extremists. This is telling and may indicate why so few Republican amendments made it to the floor. Many of these amendments are germane and add varying exceptions to the bill in the same way the underlying legislation does, albeit in a way that was clearly unpalatable to Democrats, however not all of the amendments are. Some are simply eye opening, for example an amendment by Rep Gosar (R-AZ) that prevents the VA from deeming someone mentally incapacitated to own a firearm. It is not hard to understand why the Democratic majority passed on this amendment.

Of the four amendments made in order by the Rules Committee, three passed. The one amendment that failed was the only Republican amendment, an amendment by Rep. Lesko (R-AZ) that would exempt individuals who participate in TSA pre-check from the regulations of the bill. Further, two of the three amendments were passed by voice vote. These included an amendment to clarify that the gift exception applies to stepparents and stepchildren and an amendment that would allow a temporary transfer of a firearm if a person were at risk of committing suicide. The final amendment clarifies that the exemption for “great bodily harm” applies to victims of domestic violence. This amendment is particularly interesting, because after passage by voice vote, Rep Nadler (D-NY) demanded a recorded vote, where the amendment passed again, 310-119.

Finally, the motion to recommit with instructions was introduced by Republican Doug Collins (R-GA). The amendment would add a section that would require the national instant criminal background check system (NICS) to notify US Immigrations and Customs Enforcement of anyone suspected of being in the country illegally trying to obtain a firearm. After a brief

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debate, the question was ordered on the motion to recommit with instructions. The chair announced the noes had it, however after Collins demanded a recorded vote, the motion passed 220-209. 26 Democrats joined all Republicans except one in voting for the motion.

For a bill dubbed the “Bipartisan Background Checks Act”, everything from the substance, amending process, and final passage appear very partisan in nature. As mentioned earlier, 48 amendments were submitted to the Rules committee, including 36 from Republicans and 12 from Democrats, yet only four, three from Democrats and one from a Republican, were made in order. Put another way, 75% of the amendments submitted to the Rules committee came from the Republican minority while only 25% of the amendments that made it to the floor came from the GOP. Of the Republican amendments not made in order by the Rules committee, several appear more or less germane to the text of the bill and the underlying motivation behind the legislation, however they do come from the most conservative wing of the party. 25 of the 36 amendments relate to extending the exemptions in the bill or allowing for certain transfers of firearms. The subject of the exemptions includes victims of domestic abuse, those who are suicidal, and former and current service members and law enforcement officers, among others. It is worth noting that although the Democratic amendments dealing with domestic abuse victims, stepparents and stepchildren, and those at risk of suicide were made in order, each of these groups appears in at least one Republican amendment that was not made in order. In addition, two Republican amendments allowing for a temporary transfer of a firearm to domestic violence victims received a roll call vote in the Rules committee but were defeated. Therefore, it is quite interesting that substantively similar amendments were allowed on the floor under the sponsorship of Democratic representatives, but not from Republicans.

It is also odd that the one Republican amendment that was allowed on the floor was an amendment to allow the transfer of firearms to those who participate in TSA pre-check. This is not odd in the sense that it is not germane, rather it is odd that this is the only Republican amendment allowed. One would not argue that this particular exemption was vital to the bill, or any more important than the several other Republican amendments that were not allowed. So why was this the only Republican amendment allowed on the floor? To answer this question, we should first consider how it fits into the larger Republican agenda compared to other potential amendments. While several Republican amendments dealt with such hot button topics as domestic violence, members of the armed forces, and immigrants, TSA pre-check does not really fit with the overall Republican agenda and is generally non-controversial. Perhaps, Democratic leaders wanted to create the appearance of bipartisanship without handing the Republicans a win on their agenda or allowing them to claim victory over protections to certain groups. This seems to me to be the most logical explanation, although it is possible that the Rules committee thought there was a pressing interest in bringing this to a vote. Still, that does not explain why this was the only Republican amendment chosen instead of the amendments that cover substantively the same issue as Democratic amendments made in order. It would then appear that this is an attempt at suppressing the minority party's ability to claim a victory, and instead tossing them an amendment for appearance's sake. The fact that this amendment was later voted down on the Floor also shows that the substance of the amendment was not chosen for any legitimate policy reason, rather as a way to claim that the minority party was heard in the process.

When voting on amendments on the Floor, even after the Speaker announced that the Horn and Murphy (D) amendment relating to domestic abuse victims passed by voice vote, Nadler demanded a recorded vote. He voted for this amendment, so it is clear that his decision to

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request a recorded vote was not due to opposition. I instead, would argue that he did this to force Republicans to either vote with the Democratic majority, thus giving the appearance of bipartisanship on a partisan bill heavily touted as bipartisan, or vote against the second amendment rights of domestic assault victims. It's a false choice, and a "gotcha" vote aimed at forcing the minority's hand. Being as CQ, the ADA, and the ACU consider this bill a key vote, it seems clear that Nadler was using his prerogative to request a recorded vote in order to force Republicans into a corner, purely as a messaging stunt for appearances.

Still, for all of the majority Democrats' attempts to keep Republicans out of the amending process, they were unable to fully keep them out due to the motion to recommit with instructions. The motion to recommit with instructions is the final amending opportunity for a bill. After the Committee of the Whole rises and the full House is back in session, the minority party solely has the prerogative to request a motion to recommit with instructions. If this motion passes, the bill is immediately reported back to the committee of jurisdiction, wherein the instructions (or amendment) are immediately engrossed in the bill and reported back to the full House, where the final package receives an up or down vote on passage. In the context of HR 8, the motion to recommit with instructions was used successfully to give the minority one final chance at amending. Rep Collins (GA-9) offered instructions on the motion to recommit that would require the NICS to notify ICE about anyone that applies for a firearm and then is flagged for being in the country illegally. This motion is substantively similar to an amendment offered in the Judiciary committee by Rep Steube (R-FL). Rep Steube then added Representatives Horn and Buck (R) as co-sponsors and submitted essentially the same amendment in the Rules stage. This amendment also failed by roll call vote in the Rules Committee. All of this indicates that the GOP leadership very much wanted this amendment to be taken up by the House and be

incorporated into the legislation. During debate, Rep Collins argued that this amendment was vital to ensuring that guns aren't in the hands of criminals, but Rep Nadler countered that the amendment was a "red herring" forcing the issue of immigrants and immigration into a debate about gun control. Collins proclaimed that if a member voted "no" on the motion, they are saying to their constituents, "I guess some criminals can get away with trying to get a firearm."

(Congressional Record 2019, H2261)

This is another example of a false choice for members on a roll call vote, this time from the minority party. If a Democratic member voted for the motion, they were siding with the opposition and handing them a win on a topic that is important to the GOP base. If they voted "no", the vote could easily be spun in a myriad of ways against the member. In addition, the Democratic base is very against ICE and pro-immigration, so no matter how a Democratic member voted, it could be used against them either in a primary or general election. This is a clear example of procedure being used for messaging and creating a situation where no real legislative purpose was being served, but partisan players would be able to use votes for their benefit or their opponent's detriment. This is further evidenced by the fact that even after the motion to recommit with instructions passed, Rep Collins and Rep Steube did not vote for the bill on final passage. They clearly wanted this amendment to have a recorded vote to be used for messaging and "gotcha" style politics, not because they wanted the bill to pass. This is in line with much of the other bill's procedure being apparently manipulated by both sides of the aisle to create talking points and campaign fodder.

In general, the range of options and amendments presented by the majority and minority party do not have significant substantive divergence. In fact, many amendments presented at various stages of the process are mirrored by amendments on the other side of the aisle. The

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amendments that had a forced roll call vote in the Judiciary markup are substantively similar to amendments roll called in the Rules stage, which are also similar to Democratic amendments made in order later on. In particular, an amendment to allow a transfer of a firearm to domestic assault victims appears in every stage of the process, but it was only passed after it was offered by the Democratic majority and overwhelmingly passed on an unnecessarily forced vote. The same can be said about the other two amendments that passed on the Floor, while the only Republican amendment allowed on the floor seems like it was picked out of nowhere and only surfaces once in the process. Finally, the motion to recommit also appears in all stages of the process, but that particular amendment is the only one that feels somewhat non-germane to the purposes of the bill. Clearly, both sides of the isle had an agenda and utilized their prerogatives throughout the amending process for symbolic, partisan gestures on HR 8.

HR 8 was never taken up in the Republican Senate but is in fact fairly close to the House median. The majority was unable, or unwilling, to produce a truly major and non-median bill relating to gun control, but also likely did this with the knowledge in mind that it would not be taken up in the Senate. This allowed Democrats to claim that the Republicans were unwilling to take on the issue of gun violence and tout a “bipartisan” bill to prove their case, even though, as I have shown, the bill was not nearly as bipartisan as the name suggests. As such, HR 8 represents a great example of negative agenda control and what an already unified coalition in the House can do.

## HR 2: The Farm Bill of 2018

The Agriculture Improvement Act of 2018, more commonly referred to as the Farm Bill, was a must pass bill for Congress in the second session of the 115<sup>th</sup> Congress. The Farm Bill has to be passed every few years to extend much needed agriculture programs and benefits.

Typically, the Farm Bill is a bipartisan endeavor, as Democrats and Republicans alike represent farmers, and the agriculture industry has a large lobbying network, but 2018's Farm Bill was not normal for a variety of reasons. The passage of the Farm Bill and the Rules Committee process demonstrate two very interesting ways that the rules process can be used. The first reflects an earlier finding by Curry and Lee (2020) relating to coalition building, while the second shows how rules can be written to achieve goals that are entirely unrelated to the underlying bill.

When the Farm Bill was released to Congress early on in the second session, Democrats and Republicans alike had issues with the legislation. Democrats took issue with the Farm Bill's work requirements for recipients under the SNAP program, while more conservative Republicans did not like the bill's large price tag. This led to months of negotiations between leaders in both chambers and the White House, and consistent with the Hastert Rule of not bringing up legislation unless at least a majority of the majority party agrees with it, the leaders turned to the House Freedom Caucus to see how they could get them on board. In doing so, Paul Ryan and the Republican leadership made it almost a foregone conclusion that they would not grow their support among Democrats, and instead focused on getting enough Republicans on board. Negotiating with the Freedom Caucus, however, proved very difficult and Ryan was unable to bring something to the table that they could get behind. According to Curry and Lee (2020), in situations where a consensus cannot be formed within a party, the leadership may simply let the House decide for itself and make amendments in order that are likely to fail in order to show that wing of the party that their proposal is unpassable. This is exactly what Paul Ryan did, and after the original rule made 20 amendments in order, the Rules Committee passed a second rule that made another 21 amendments in order but did not add any debate time. These amendments were largely Republican amendments, with only five of the 51 coming from a

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bipartisan group and no amendments from Democrats being made in order. Many of these amendments come from the conservative wing of the party, and featured such proposals as phasing out agricultural subsidies and amending SNAP work requirements. Using the Rules Committee, Ryan allowed for a wide range of Republican proposals to come to the Floor, and while many of them did pass, some of the more controversial measures were defeated by a significant margin. For example, the aforementioned proposal to amend SNAP program work requirements failed on a recorded vote 83-330. I do not believe that this was a surprise to Paul Ryan and GOP leadership, but his allowing the amendments to come up for a vote was an attempt to appease the Freedom Caucus.

Ultimately, this use of the Rules process did not appease them. On passage, the Farm Bill was defeated, with 30 Republicans joining all Democrats in voting against the bill. These 30 Republicans are a combination of conservatives like Mark Meadows (R-NC) and Justin Amash (R-MI) and moderates like Brian Fitzpatrick (R-PA). Ryan just could not build the support needed for the bill, and this much needed bill was unable to pass the House on its first try. Still, Ryan immediately filed a motion to reconsider passage, which narrowly passed. He held off on reconsidering passage for a whole month, in which time he worked behind the scenes to whip votes and build enough support. The tipping point came when Ryan and GOP leadership agreed to schedule an unrelated immigration bill for a vote at the same time. This bill was popular among the Freedom Caucus, and in return for scheduling this bill, they agreed to support the Farm Bill. Eventually, on June 21, 2018, the Farm Bill did pass the House by two votes.

Still, the Farm Bill had to navigate through the Senate, and then a conference between both chambers had to be scheduled to work out the differences. This was a long, arduous process that saw Congress bring the much-needed Farm Bill well past the expiration date of many of its

key programs and into the month of December, where it was passed right before the Christmas break. Once the conferees produced a bill, it was fairly painless to get passed and was bipartisan, however the leadership still had a trick up its sleeve that really highlights how rules can be manipulated for entirely different purposes that cannot quite be captured on a macro level and do not really fit into any theories of legislative activity.

By the end of 2018, there was a great deal of controversy in Congress over Saudi Arabia's human rights violations, specifically the killing of journalist Jamal Khashoggi. As such, the Senate was about to use their prerogative under the War Powers Act to force the Department of Defense to end its assistance of Saudi troops in Yemen, where "one of the worst humanitarian crises in the world," according to ranking Rules Committee member Jim McGovern, was occurring. If the Senate passed their resolution, leadership in the House knew that they would have to take it up as well, which would likely pass through the House and go to President Trump's desk. Trump had touted his relationship with Mohammed bin Salman, the Crown Prince of Saudi Arabia, and wanted to protect their relationship, something that invoking the War Powers Act would certainly effect. As such, Republican leadership wanted to prevent anything relating to Yemen from coming up for a vote and turned to the Rules Committee to pull this off.

After the conferees for the Farm Bill produced legislation, another rule had to be passed in order to bring the bill up for further consideration. The resulting rule, H Res 1176, was a closed rule that allowed for an hour of debate and a motion to recommit. Section one is very standard and mirrors a myriad of other rules that govern the debate on a bill. Section two, however, states simply "The provisions of section 7 of the War Powers Resolution (50 U.S.C. 1546) shall not apply during the remainder of the One Hundred Fifteenth Congress to a

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concurrent resolution introduced pursuant to section 5 of the War Powers Resolution (50 U.S.C. 1544) with respect to the Republic of Yemen.” In other words, if the rule was passed, then for the rest of the 115<sup>th</sup> Congress, the War Powers Act could not be used in regard to Yemen. Keep in mind, the Farm Bill was an absolute must pass for the 115<sup>th</sup> Congress and farmers had already spent three months without some much-needed programs. Additionally, the War Powers Act has no relation to the Farm Bill, and this maneuver was entirely non-germane to the bill. Still, the leadership knew that this bill had to pass, and a defeat of the rule was unlikely, even with the War Powers language in there, and there was no rule that prevented the Rules Committee from passing such a measure. The rule only passed by three votes, with five Democrats voting in favor and 18 Republicans voting against, but it passed nonetheless, and the Congress was barred from acting on the Yemen situation for the remainder of the 115<sup>th</sup> Congress.

This is a very odd and unique example of the way that rules can be used, but it’s still an informative case, nonetheless. Though rules are typically used for legislative purposes, which are of course their intended purposes, they are not always used in that way. There are no rules on how rules are used, and the Rules Committee with a simple majority actually has a lot of power in Congress. Because the committee is stacked with members of the majority, and functions as an arm of the leadership, the leadership is able to wield a great deal of power, so long as they are smart about it. The Farm bill is a terrific example of coalition building, backroom legislating, and manipulation of legislation for partisan purposes, and truly demonstrates the flexibility and unique nature of rules in the contemporary House of Representatives.

### **Discussion and Conclusion**

This look into the 115<sup>th</sup> and 116<sup>th</sup> Congress revealed some very interesting findings about the amending process and the way that rules and the Rules Committee are used in the

contemporary House of Representatives. Firstly, I find that important pieces of legislation, measured using CQ Key Votes, are more often brought up under closed rules than general pieces of legislation in the chamber by a fairly large margin. This indicates that when something is perceived to be important, the leadership wants to have as tight of a control over the process as possible, which certainly makes sense and aligns with the increased leadership control over the Rules Committee over the past 50 years. On major bills, I find that closed rules are used over structured rules when a bill meets certain criteria, namely that the bill is both controversial and important to the party platform or that the bill originated in the Senate. In each Congress there is a third category that seems more specific to each Congress, and this categorization is informative for an individual look at the Congresses, but probably not as important in a more generalized sense than the other two categories. Bills that meet one of these criteria are brought up under closed rules, while bills that require coalition building efforts on the part of the leadership are brought up under structured rules.

When looking at the origin of amendments, broken up by DW-NOMINATE scores, I find the most notable differences are in the way that each party acts, regardless of if they are in the majority or the minority. Comparing the distributions of first-dimension DW-NOMINATE scores, it is very apparent that the Republican party is more conservative than the Democratic party is liberal. This is true when looking at the party as a whole, and when breaking the party into categories. Additionally, Democrats are more unified than Republicans, shown both through their distribution of DW-NOMINATE scores and through their shockingly high level of amendment passage on the floor when they were in the majority.

I also find that Republican leaders seem fairly cognizant of the ideological divide in their party and in the chamber as a whole and use this fact to ensure that each group is equally

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represented in the amendments that come to the floor. They also seem to employ the strategy of allowing many amendments to come to the floor, but once they come to the floor, they allow members to vote how they please, thus moving legislation towards the middle. This may seem like it follows median voter theory, because we get more median outcomes in the 115<sup>th</sup> Congress, however I do not find that this is the case. As several scholars have pointed out, the chamber median is an extremely powerful force, and legislation left on its own will naturally move in that direction (Aldrich and Rhode 2000, Krehbiel 1998). If the leadership is throwing their hands up after the Rules Committee process is over and allowing members to vote how they see fit, which it seems they are doing, this is not an active choice by the leaders to move legislation to the middle. Instead, it is indicative of a party that is not united, and a Republican leadership with less of a grip over their rank-and-file members, which Grossman and Hopkins (2014) show is increasingly a problem in the Republican caucus. Further, the example of the AHCA shows that the Republican party remains extremely divided, and the leadership has a tough time building their coalitions and appeasing the very loud extremists in the party who submit the most amendments, and yet are the absolute furthest from the median than any other group in the House.

The Democrats, on the other hand, do not seem to be trying to push legislation to the chamber median when they are in the majority. The number of extremist amendments that they make in order is lower than for the other groups, but the proportion is relatively high and there is no clear intention to leave the party extreme out of the amending process. It seems that such a process would in fact produce non-median results, and the success rate on amendments for Democrats is astounding. This fits nicely with theories of a party cartel, and the negative agenda

control used in the Bipartisan Background Check furthers the theory that when Democrats are in the majority, their control over the rules process is tight; much tighter than the Republicans.

Finally, I find that the Rules Committees utility is not simply limited to the amending process and deciding what amendments should make it to the floor. They are very much an arm of the leadership, as much scholarship has shown, but with the will power and a majority on the floor, there's very little they cannot do (Lynch, Madonna, Vick 2019). They can stop Congress as a whole from checking the executive branch, like they did with the War Powers Act, they can change the overall rules for the House, and they can dictate exactly what happens on the floor in whatever manner they want, even when floor proceedings are already occurring. Of course, this is contingent on the leadership building a winning coalition on the floor, which is a task that should not go understated or underappreciated, but if they can do that, they are golden. It seems that the old quote from John Dingell (D-MI), still holds true: "if you let me write the procedure, and I let you write the substance, I'll screw you every time" (Evans 1999,607).

Taking a step back, I find several issues with various legislative theories surveyed previously. Neither party theories of government nor median voter theory is conclusively proven, or even close to it, by this analysis. Sometimes the majority has the ability to produce non-median outcomes, and sometimes they do not. The issue is not that these theories are poorly constructed, rather leaders do not think of legislation on the spatial model in the same way political scientists do. Instead, I find that the leaders in both parties do make an effort to have every voice heard in the amending process, and there is no particular wing or wings of either party that are completely shut out when they are in the majority. The way legislation results from there depends on how much the leader puts pressure on floor activity, which Republicans in the 115<sup>th</sup> Congress did not seem to do, while leaders in the 116<sup>th</sup> did extensively.

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This unified bargaining among each wing of the party tells me that Lynch, Madonna, and Roberts (2016) are wrong in their conception of the “compensation zone”. I find no evidence to support the claim that the majority party is putting special weight into their voters closest to the chamber median. In fact, in the 115<sup>th</sup> Congress, where median outcomes resulted more often on the floor, the work of the leadership primarily allowed extremist policies on the floor, followed closely by these moderates in the so called “compensation zone”. This shows that my original hypothesis of a general U shape, with more attention paid to the two wings on each side than to the mainstream of the party, is probably more apt than Lynch, Madonna, and Robert’s (2016) conception of bargaining more often with the moderates and a trapped extreme wing. It does not seem that the extreme wing is trapped, and the House Freedom Caucus popped up as a consistent thorn in the leadership’s side throughout all of the 115<sup>th</sup> Congress and before, more so than the moderates of the party.

Bloch Rubin (2016) finds that the centrist members are more successful when they form proper, codified coalitions. I accept this thesis and believe that the reason for that being true is also the reason that the House Freedom Caucus was so frequently able to successfully fight the leadership into policy concessions. Democrats were not as divided as Republicans, and though they clearly have factions and differing opinions, they did not have a singular unified group that voted together all the time. Republicans, however, did with the Freedom Caucus. The Freedom Caucus had more success than we may expect, and they are the exact opposite people to those supposedly in the compensation zone. As such, intraparty coalitions are probably a major key to passing preferred legislation, more so than an individual members placed on a one dimensional line, contingent, of course, upon members choosing to band together which they often do not.

The main implication of this research for further study is that differences between Republican and Democrats may matter more than simply majority/minority party interplay. The two parties in the contemporary United States are different. They are different in terms of policy preferences, structure, leadership, ideology, and probably a whole host of other ways. Much scholarship (e.g. Curry and Lee 2020) focuses on the majority and minority dynamic without paying enough attention to the actual differences between how the parties operate. This should change. The parties are completely different groups of people with different goals and means, and they should be explored further.

Extending this, future study should compare the actual substance of amendments, specifically, the amendments coming from the extremist wings of the parties. While they are both labeled as extremists in relation to their party, they do not appear to be the same. Extremists on the Republican side are further to the right than extremists on the Democratic side are to the left. Additionally, Grossman and Hopkins (2014) argue that the primary difference between Democrats and Republicans is not ideology or strategy, it is the groups that they work for. The Republican party, they argue, is more monolithic in who they serve, and have few groups that they have to answer to and make policy for. The Democrats, on the other hand, are a vast coalition of several different groups with a wide array of interests, all with the collective goal of achieving some individual benefits. As such, I would imagine that Democratic extremists are having a comparable level of success as other groups regarding amendment passage because they are not trying to fundamentally reshape the bill or the government; they are merely adding protections for certain interest groups. This may also be why we see so many Democratic extremist amendments passing in the Republican Congress. Recall that Democratic extremists had a higher success rate on passage in the 115<sup>th</sup> Congress than the majority Republican

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extremists. This has to be a product of the composition of their amendments, and it is probable that they are more likely to garner support from Republicans because they are adding amendments that benefit some of the Republican members' constituencies. This is merely conjecture; however, the Democrat and Republican extremists are having very different rates of success and failure, and if we accept that the parties are different and function differently, this would be an excellent place to look at that difference.

Additionally, the rules process demands more attention. The Rules Committee has substantively evolved in many meaningful ways over the years, and this requires closer looks into their activity. In doing so, we will find more information that reveals intraparty disagreement and unity, electoral tactics, messaging tactics, and probably much more. The procedural cartel is not a true model for the rules process, and even if they win often on roll call votes for procedure, this success is not a given and the party is not monolithic in their control over rules. Instead of taking this control and their victories over the minority on procedure as a given, we instead should look at *how* they build these coalitions and maintain control. Doing so will reveal a vast and untouched den of scholarly potential that we have likely only scratched the surface of.

In summary, rules matter. They do far more than prescribe how debate on the floor will look. They dictate the entire amending process, the length of debate, the likelihood of bill passage, and the voices that get heard. They can also do so much more with a majority vote. Instead of ignoring them, or only looking at them on the surface, as much scholarship has done, Congressional scholars would be wise to take rules seriously and give them a closer look.

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