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Stanley Bach and Richard C. Sachs*

On August 8, 1846, while the House of Representatives was debating a bill to appropriate $2 million that President Polk had requested for territorial concessions to be negotiated in a peace treaty with Mexico, an amendment was offered by Representative David Wilmot of Pennsylvania:[1]

> Provided, That, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted.

When a point of order was made against the amendment on the ground that the subject of slavery had "no connexion with the bill," the objection was overruled. Since the bill appropriated a sum of money to be put at the disposal of the President, the Chair stated, "[i]t was certainly competent on the part of the House to adopt a provision limiting the application of the money, and providing that it should be applied only on certain conditions."[2] Thus originated the Wilmot Proviso, which sharpened the increasingly bitter debate over the future of slavery.

An appropriation bill had become entangled with the most controversial issue of its day, and not for the first time. Eleven years earlier, John Quincy Adams, then a Representative from Massachusetts, had deplored such a practice--[3]

> the practice to introduce into these appropriations bills matters of new legislation, grants of money, charges upon the People, and expenditures, not warranted by any previous law. The consequence has been, that these appropriations had been subjects of vehement contention and debate in that House, and occasionally in the other, as well

> as of debate between the two Houses, and had been a source of discorp [sic] and dissension between them.

The Ways and Means Committee, which then had jurisdiction over appropriations, should "strip these appropriation bills of every thing but what were legitimately matters of appropriation, and such as were not, they would make the subject of a separate bill.[4]

The separation of appropriations from other matters--i.e., "legislation"--had its roots in British and colonial practices; and in Congress, Schick finds, "the distinction between legislation and appropriations was understood and practiced long before it was recognized in the rules."[5] By the same token, the temptation to add legislation to appropriations bills had arisen as early as 1806, when Senator William Plumer was provoked to inveigh against it in his journal.[6] The House first addressed this practice in its rules in 1837; "[s]elf-restraint without rules was replaced by self-enforcement of the rules."[7] But although prohibitions in House and Senate rules almost certainly had a constraining effect on congressional practice, Schick concludes, "[e]nforcement of the rules was selective and driven by the conveniences of the moment."[8] So in 1879, James A. Garfield, once Chairman of the Appropriations Committee which had been created in 1865, deplored the same tendency: "any attempt to load general legislation upon their [the Appropriations Committee's] bills will be disastrous not only to general legislation, by making it fragmentary and incomplete, but especially so to the proper management of our fiscal affairs."[9]

INSTITUTING PROCEDURAL CHANGE

A similar lament could be made, and has been made, in the contemporary Congress. The parliamentary relationship between legislation and appropriations under the rules and precedents of both houses remains a complex, difficult and, to some degree, ambiguous matter that has created both opportunities and dilemmas for the House and Senate and

their members.[10] If the House is not obliged to appropriate any funds at all for some agency or program that it has authorized by law, then it should have the same discretion to appropriate for all but some particular aspect of agency functions or program activities. Therefore, although clauses 2(b) and 2(c) of House Rule XXI prohibit provisions of, and amendments to, general appropriations bills that would change existing law, House precedents do permit such provisions and amendments that propose only to limit the availability of appropriated funds.[11] "[J]ust as the House may decline to appropriate for a purpose authorized by law, it may by limitation prohibit the use of the money for part of the purpose while appropriating for the remainder of it. The language of the limitation may provide that no part of the appropriation under consideration shall be used for a certain designated purpose."[12]

The essential distinction between legislation and limitations lies in whether the provision or amendment in question would make a permanent change in law or would only impose a negative restriction on use of the funds appropriated by the bill the House is considering. For example, a proposal to prohibit funds appropriated by the pending measure "or any other Act" constitutes legislation and so is subject to a point of order, whether it was included in the bill as reported by the Appropriations Committee or proposed as a House floor amendment.[13] More often, rulings of the Chair on such questions turn on another criterion: limitations "must not give affirmative directions, impose new duties upon executive officers, or by their terms restrict executive discretion to such a degree as to constitute a change in policy rather than a matter of administrative discretion."[14] Limitation amendments, therefore, are not a particularly flexible device for controlling the use of Federal funds.[15] Proposals which include the kinds of qualifications, contingencies, and requirements that often are necessary to fine-tune policy are likely to be considered

legislation precisely because they assign (by implication, at least) to some Federal official the new responsibility to determine whether any such condition has been satisfied.[16]

Nonetheless, the opportunity to offer limitation amendments enabled Representatives to debate and compel floor votes on any aspect of Federal activity that is funded by one of the regular general appropriations bills. If the bills addressing some subject remained stalled in the legislative committee of jurisdiction, their supporters usually could bring the same subject to the floor, albeit in a different form, through one or more limitation amendments. Thus, limitations were one of the two most important exceptions to the ability of the House's legislative committees to exercise an effective veto power over the issues reaching the House floor for debate and decision.[17] Nor were Members reluctant to take advantage of this opportunity. According to a 1978 report of the Democratic Study Group (DSG), "[b]etween 1963 and 1976 the number of limitation amendments averaged 30% of all amendments offered to appropriations bills. In 1977, they represented over 40% of all amendments."[18] Moreover, limitation amendments addressed some of the most important and controversial issues to confront Congress in recent years. In 1973, for instance, limitations were involved in ending U.S. military activity in Indochina.[19] And during 1977 alone, the DSG reported, these amendments dealt with such issues as abortion, affirmative action, busing, chemical weapons, the Clinch River Breeder Reactor, congressional pay, implementation of the Panama Canal treaties, prayer in schools, a saccharin ban, and tobacco support programs.[20]

By proposing limitation amendments, Representatives of both parties could circumvent attempts by the standing committees and majority party leaders to keep controversial issues off the House floor. As a result, Members could be forced to cast politically difficult votes that could split the majority party. And the timely enactment of appropriations could be

prevented by disagreements between the two houses having nothing to do with decisions about funding levels. For instance, the House and Senate resolved all their other differences in conference over the Labor-HEW appropriations bill for FY 1980, but could not break their deadlock over the issue of Federal funding for abortions.[21] Moreover, during the 88th-96th Congresses (1963-1980), appropriations bills became increasingly vulnerable to floor amendments. There were fairly steady increases in the numbers of appropriations floor amendments, and in the rates at which these amendments were adopted. Republicans, junior Members, and Members who did not serve on the Appropriations Committee all became more active in offering amendments to the Committee's bills. And majorities agreed to 60.3 percent of all such amendments proposed during 1979-1982, compared with only 22.5 percent of those offered during 1963-1966.[22]

More generally, during the late 1970s, the House floor became a more active and important forum for legislative policy-making.[23] And after the 1980 election and the re-birth of a potentially dominant conservative coalition, Democratic committee and party leaders had less reason for confidence that they could anticipate, much less control, what would happen to major bills on the floor. One response was an increasing reliance on special rules that restricted floor amendments in ways that made the amending process more manageable and predictable.[24] But this approach was not as well-suited to general appropriations bills, which typically received special rules only to waive points of order against their consideration or provisions.[25] Subjecting these bills to restrictive rules would have constituted a far more radical procedural change than restricting amendments to bills from any other House committee.

Instead, the Democratic majority sought to control limitation amendments by changing the House's standing legislative rules. After the 1982 election, the Democratic

Caucus met to decide on a package of rules changes for the House to adopt on the first day of the 98th Congress. Among the changes that the Caucus approved was a re-casting of Rule XXI, clause 2, to enable a simple majority of Members to avoid considering one or more limitation amendments to a general appropriations bill. Previously, Members would offer such amendments to the relevant paragraphs, sections, or titles of an appropriations bill as it was read for amendment in Committee of the Whole. During this process, the majority floor manager might move that the Committee "rise" in order to halt consideration of the bill temporarily. But he or she could not move that the Committee "rise and report" the bill back to the House for final passage, thereby ending the amending process, so long as there were Members still seeking recognition to offer additional amendments.

H.Res. 5, which the House adopted on January 3, 1983, changed these procedural ground rules for amending general appropriations bills. By amending clause 2 of Rule XXI, the resolution prohibited Members from offering any limitation amendments to an appropriations bill as it is being read for amendment. Under the amended rule, no amendment to impose a limitation on the availability of the funds contained in the bill is in order until after the bill has been read in full in Committee of the Whole and Members have disposed of all other amendments. Furthermore, Rule XXI now permits at that time a preferential motion that the Committee rise and report the bill back to the House with only those amendments that already have been adopted. After the bill has been read, the majority floor manager can make this motion before any limitation is proposed or even while one is being considered; and if the motion is adopted, without debate and by simple majority vote, all limitations are precluded. If this motion is rejected, on the other hand, or if it is not offered, a Member can offer a limitation. But after the vote on that

amendment, a motion to rise and report once again is in order and can be repeated after the vote on each limitation amendment that Members choose to consider.[26]

The primary effect of this rules change was to create a procedural vote that allows Members to escape the need to vote on limitation amendments they do not want to consider. If most Members really want to act on a limitation, they can preserve their opportunity to do so simply by defeating the motion to rise and report. But if the limitation raises a controversial and politically difficult subject that most of them would prefer to avoid considering, the motion to rise and report gives them that opportunity as well. By voting for this motion, they support the position of the majority floor manager (and presumably, a majority of the Appropriations Committee), they expedite House passage and ultimate enactment of the appropriations bill, and they defend the principle that appropriations measures should be kept free from the complicating intrusions of legislative policy disputes. And because the motion to rise and report is difficult to explain clearly and simply, Members may vote for it and still believe that they can avoid being charged effectively with having opposed the policy proposal the motion is intended to keep from the floor.

Another effect of the change was to enhance the relative influence of the Appropriations Committee because the amendment to Rule XXI did not impose any corresponding restrictions on the Committee's authority to include limitations in the bills it writes and reports. In fact, the rule not only contemplates that the Committee will continue to do so, it even recognizes that other House committees may request it to insert limitations on their behalf. Under clause 2(b), the limitations reported in a general appropriations bill "may include those recommended to the Committee on Appropriations by direction of any legislative committee having jurisdiction over the subject matter thereof...."[27] Members usually are well-advised to have their legislative proposals approved in committee, rather

than waiting to offer them on the floor (and face the prospect of the committee's opposition). The 1983 amendment to Rule XXI greatly increased this incentive by protecting limitations as provisions of appropriations bills, but placing them at great procedural risk as floor amendments.

In support of the amendment, Majority Leader Wright contended during floor debate that Members sometimes might not "wish interminably to be harassed or further bothered by the necessity for voting on legislative language coming under the guise of a limitation," and asserted that "nothing changes except the presumption that Members must, perforce, be required to vote on and to hear debate upon every limitation which might be dreamed up in the fertile mind of any Member...."[28] On the other hand, Minority Leader Michel noted that some of the eight other rules changes the Democrats proposed also limited the ability of Members to require procedural or substantive floor votes. The package of rules amendments permitted the Speaker to postpone the rollcall vote on approving the Journal that normally can occur shortly after the House convenes each day, and it effectively eliminated most rollcall votes on resolving into Committee of the Whole. And both Wright and Michel also noted that until hours before the House convened, the package had contained a tenth rules change that would have required the signatures of two-thirds of all Members to discharge a House committee from further consideration of a constitutional amendment.[29]

In Michel's view, the related effects of these diverse proposals made it clear that their purpose was to further restrict the rights of individual Members--and, therefore, the minority party--to demand rollcall votes on procedural matters when it suited their purposes to do so and, more important, to propose policies on the floor that the House committees of jurisdiction declined to report as free-standing bills and resolutions.[30]

> This exercise in expediency is being disguised as administrative or management reform. It is not that. The rules changes before us, from the approval of the Journal to the riders on appropriations are all aimed at relieving the Members on both sides of the aisle of their basic responsibilities as legislators, so that you will have to endure less dissent, less debate, less deliberation, and less legislating.
>
> Mr. Speaker, you are converting this body of Representatives into robots, in a glass-covered dome, who come only when they are called, speak only when they are told, and cast their votes only when it is unavoidable.

Republicans dominated the debate on the resolution and concentrated their attack on the changes in Rule XXI. Trent Lott of Mississippi referred to "this new profile in cowardice," Jack Kemp of New York argued that the rules change was "inimical to the future of our constitutional responsibilities," Charles Pashayan of California deemed it "untraditional and unconstitutional in our long and august history," and Edward Madigan of Illinois reminded Democrats of how they had proposed limitations in furtherance of liberal causes.[31] Dan Lungren of California expressed the fear that Democrats who might vote for a limitation would be convinced to vote against considering it:[32]

> They will be told: "Vote with the leadership. It is a procedural vote. It is not a substantive vote. If you cannot vote with the leadership, then you are not being a regular member of the party...."
>
> If we accept this rules change, we are not serving our constituents well. We cannot hide very long by going home and saying, "I am sorry, that vote never came up. I did not vote on it. I voted on a question of whether we should rise as a committee. It is a procedural matter. If I explained it to you, you would not understand it anyway, so just understand that I did not get the opportunity."

Wright was the only Democrat to respond.[33] He argued that the change would "reclaim a bit of the historic prerogatives of the authorizing committees of the Congress"--which had been undermined by budget resolutions, reconciliation bills, and continuing resolutions as well as by limitation amendments--and would allow the House to complete its legislative business on time:[34]

> It got to the point where we were consuming approximately 3 weeks, if you add up all of the debate time that was used, sometimes repetitiously--11 different votes, for

> example, on abortion amendments, and each of them consuming several hours--if you add up all of the time that was consumed in these temptatious flights of legislation in the nature of limitations, you came to about three weeks of the normal legislative year.

To no one's surprise, Wright had solid Democratic support when the debate ended and rollcall votes ensued on ordering the previous question and then on committing the resolution to a select committee. On both votes, the Republicans were perfectly united, but the Democrats suffered only two defections and prevailed.[35]

AFFECTING POLICY CHOICE

Underlying this contentious debate were assertions that limitation amendments were important and that their importance had been increasing. Republicans emphasized that Members of both parties had used limitations to advantage, a contention that Wright himself documented, arguing that "one party is just about as culpable as the other:"[36]

> During the 1960s, for example, from 1963 up until 1968 in the administration of Mr. Johnson, 80 percent of the legislative riders were offered by Members of the minority party. However, during the administration of Presidents Nixon and Ford, 60 percent were offered by Members of the majority party.

And Wright also contended that the popularity of limitation amendments had grown, as had the delays and other difficulties they caused:[37]

> In 1970 there was only one limitation rider adopted to an appropriation bill, only one in all of 1970. In 1980, there were 50. The number of such riders offered as amendments grew from 13 in the entire year 1970 to 67 in 1980. Those adopted grew from 1 to 50.

Clearly, both Democrats and Republicans expected the change in Rule XXI to make a significant difference in what happened on the House floor. To examine whether their hopes were well-grounded and their fears realized, we have examined all 999 floor amendments that Representatives offered to the regular general appropriations bills the House passed during the twelve-year period from 1977 through 1988: the three Congresses

(95th-97th) preceding the rules change and the three Congresses (98th-100th) following it.[38] The effects of these amendments are categorized in Table 1, which documents the importance of limitation amendments in the appropriations process, at least until the 1983 rules change.[39]

Before this change in Rule XXI, amendments that only proposed to limit the availability of appropriated funds constituted roughly one-third of all the floor amendments that Members offered.[40] And if we add the few additional amendments that combined a limitation with a reduction in funding, these amendments were almost as numerous as those proposing to change funding levels, which are the ostensible subject of appropriations legislation. The only other amendments that constituted more than five percent of the total were those proposing to change or strike some limitation or legislative provision that the Appropriations Committee itself had included in a bill it reported. The Treasury-Postal Service and Labor-HHS-Education appropriations bills were the most frequent targets for limitation amendments, as Table 2 indicates. During the 96th Congress, Members offered an average of twelve limitations to these bills alone.[41] And most of the eleven other appropriations bills attracted at least one such amendment during each Congress from 1977 to 1982, before the rules change was instituted. Only the Agriculture, Interior, and military construction bills emerged unchallenged during any of these three Congresses.

These two tables also demonstrate beyond question that the 1983 rules change had a striking effect on appropriations amending activity.[42] While limitations (including those accompanied by funding reductions) constituted more than one-third of all floor amendments during the 95th-97th Congresses, they accounted for less than seven percent of the floor amendments that Members proposed during the three Congresses following the rules change.[43] During the 99th and 100th Congresses, roughly one in twenty floor amendments

was such a limitation. Consequently, amendments proposing only to change funding levels were more than eight times as numerous as limitations during the three more recent Congresses, rising to more than half of all amendments offered.[44] And the effects of the change in Rule XXI on individual appropriations bills were just as striking; virtually all the thirteen bills were affected in comparable fashion. The six Treasury-Postal Service bills of the 95th-97th Congresses, for example, were subject to 39 limitations, but only four such amendments were offered to the equivalent bills during the following six years. For the twelve Labor-HHS-Education bills, the corresponding decline was from 34 limitations during 1977-1982 to two during 1983-1988.[45]

These data only tell part of the story, however, because of the changes that were occurring during this period in the total numbers of appropriations amendments on the House floor. As Table 1 also indicates, amending activity increased significantly between the 95th and 96th Congresses, and then declined to a much lower level in the 97th Congress, even before the opportunity to avoid consideration of limitations was devised. This pattern is consistent with a more long-term assessment, noted above, of trends in House appropriations amendments which also documents that amending activity peaked in the 96th Congress, having risen fairly steadily from the total of 57 appropriations amendments that Members had offered in the 89th Congress (1965-1966).[46] Both studies also show that these trends are not an artifact of changes in the numbers of appropriations bills the House passed; the trend line for the total number of amendments fairly closely parallels the trend line for the number of amendments per bill passed.[47] Moreover, these patterns are not unique to appropriations bills. Smith documents that the total number of House floor amendments to all measures rose gradually between the 84th and 91st

Congresses, and then jumped dramatically in the 93rd and again in the 95th Congress before subsiding in more recent years.[48]

What was true of broader patterns of amending activity was true of limitation amendments as well. Although limitations as a proportion of all appropriations amendments remained quite steady during the 95th-97th Congresses, the absolute numbers of these amendments rose from 76 to 106 and then declined to 60 during the same years.[49] The numbers of limitations adopted, with or without amendment, varied similarly--from 44 to 73 to 45.[50] In other words, the "problem" of limitations evidently had reached its zenith in 1979-1980 and then had declined dramatically in 1981-1982, before the House changed Rule XXI.[51] It may be that the rules change was a somewhat belated response to a problem that already had diminished in magnitude, but Table 3 suggests another contributing explanation for the House's 1983 decision. Note that the share of limitation amendments that were adopted as offered increased during 1977-1982 from one Congress to the next, from slightly more than half to 71.7 percent, a trend consistent with the longer-term increase in the "winning percentage" of all amendments to general appropriations bills.[52] Put differently, only one-fourth of all limitations that Members proposed during the 97th Congress were rejected in Committee of the Whole.[53] Thus, at the same time the number of limitation amendments was declining, those that Members did propose were increasingly likely to be approved.

In addition, we must take account of changes in the political context affecting the House and its relations with the President and his Administration. Limitation amendments are an attractive device to Representatives for at least two reasons. First, they enable Members to bypass House committees which fail to act on their legislative initiatives. And second, they are one of the primary means by which Congress can attempt to impede,

restrict, or control the exercise of administrative and policy discretion by Executive Branch officials.[54] Not surprisingly, therefore, 62.6 percent of all limitation amendments offered during the Carter Administration (the 95th-96th Congresses) were proposed by the Republican minority. In the 97th Congress, when Republicans regained control of the Presidency, this pattern was reversed, with Democrats proposing 60.0 percent of all limitations during that Congress and 51.8 percent of all such amendments during the first six years of the Reagan Administration. But especially during 1981-1982, with the resurgence of "Boll Weevil" Democrats and the bipartisan "conservative coalition," Democratic leaders could not be confident of having an effective working majority on the House floor to limit the discretionary authority of officials such as James Watt at the Interior Department and Caspar Weinberger at the Defense Department. As the 98th Congress assembled, therefore, limitation amendments almost certainly posed more of a potential problem than an opportunity for the Democratic Caucus and the Democratic leadership of the House.

As noted earlier, the effect of the January 1983 change in Rule XXI was immediate and dramatic. The number of limitation amendments fell from 60 in 1981-1982 to only nine in 1983-1984, even though the House passed the same number of appropriations bills, and these nine amendments constituted only 8.7 percent of all appropriations floor amendments during the 98th Congress. This drop accounted for most, though not all, of the decrease in the total number of such amendments between the 97th and 98th Congresses. Half of the regular appropriations bills escaped any floor limitations during both sessions, and only the Treasury-Postal Service bills were subject to as many as three limitations. Then in each of the following two Congresses, Members considered a total of only seven limitations, or an

average of less than one for every three appropriations bills they passed, a far cry from the 96th Congress when there were 4.4 limitations per bill passed.[55]

The rules change worked. The only alternative explanation is that Representatives had less interest and incentive during 1983-1988 than in previous years in using the leverage of the appropriations process to impose their will on the Executive Branch for purposes large and small. But this is hardly plausible, given a Republican Administration with an ambitious policy agenda, a Democratic House gradually recovering from the shock of the 1980 election, and Congress' deliberate use of appropriations measures, especially continuing resolutions, to enact legislation that might well have encountered presidential vetoes if passed as separate bills.[56] It is far more reasonable to conclude that the creators of the new procedure had correctly gauged the situation on the House floor--first, that many of their colleagues were more likely to support controversial limitations because they thought they had to vote for them, not because they really wanted to do so; and second, that motions to rise and report were sufficiently obscure to allow most Democrats to vote for them most of the time, just as Representative Lungren had predicted.

The record of the House's first six years of experience under its revised Rule XXI indicates that Members have become acclimated quickly to the new procedure. During consideration of 16 of the 22 appropriations bills (72.7 percent) the House passed during the 98th Congress, Members agreed to the motion to rise and report by uncontested voice votes. (See Table 4.) The frequency of voice votes dipped several points during the following two years but then increased to 87.0 percent in 1987-1988. This does not mean, however, that no limitation amendments were offered in any of these cases. On the contrary, during consideration of 15 appropriations bills during the three Congresses (22.1 percent of the total), Members offered at least one limitation amendment without encountering either a

point of order that the amendment was not timely or a preferential motion to rise and report. Some of these proposed limitations were of only local interest. Among other amendments to the Interior appropriations bill for FY 1985, for example, Members agreed by voice vote to the following new section proposed by Lawrence Smith of Florida:[57]

> Sec. 314. None of the funds provided by this Act to the Fish and Wildlife Service may be obligated or expended to plan for, conduct, or supervise deer hunting on the Loxahatchee National Wildlife Refuge.

But not all of these limitations were of such limited impact. On September 22 of the preceding year, the majority floor manager of the Labor-HHS appropriations bill, William Natcher of Kentucky, deliberately refrained from offering a motion to rise and report so that Silvio Conte of Massachusetts, the ranking Republican on the subcommittee as well as the full Appropriations Committee, could propose that "[n]one of the funds provided by this Act shall be used to perform abortions."[58] The Conte amendment was adopted by a vote of 231 to 184, with both Natcher and Jamie Whitten, chairman of the full Committee, voting with Conte in the majority. And on November 2 of the same year, the majority and minority floor managers of the defense spending bill both announced that they would not attempt to block consideration of the amendment by Clarence Long (a senior Democrat on the Committee) prohibiting U.S. land forces from participating after March 1, 1984, in the Multinational Force in Lebanon.[59] Long's amendment was rejected by a vote of 153-274, a margin large enough that the outcome probably was never in doubt. Thus, as these last two incidents suggest, there are several possible reasons why a floor manager may refrain from moving to rise and report: he may support the limitation that is going to be offered; or he may oppose it but decide against trying to block it because he confidently expects it to be rejected; or he may oppose the amendment but prefer to have it considered without challenge rather than face the prospect of having his motion to rise and report defeated.

On only 23.5 percent of the 68 possible occasions during 1983-1988 were there recorded votes on initial motions to rise and report. And majorities agreed to 11 of these 16 motions, thereby precluding consideration of at least one limitation amendment in each case.[60] So we are left with only five instances, 7.3 percent of the total, in which such a motion was rejected so that a limitation then could be proposed and approved. And four of the five cases dealt with the delicate and divisive issue of abortion, which also had provoked some of the most notable limitation amendments before the 1983 rules change.

1. On June 2, 1983, during consideration of the HUD appropriations bill for FY 1984, the Boland motion to rise and report was rejected by a margin of 144 to 225 at the urging of Dannemeyer of California, who then proposed to prohibit use of funds in the bill to impose sanctions for failure to meet national ambient air quality standards. The Dannemeyer amendment was adopted, 227-136, with the support of Majority Leader Wright, Majority Whip Foley, and Henry Waxman of California, chairman of the Energy and Commerce subcommittee with jurisdiction over the Clean Air Act.[61]

2. On October 27 of the same year, Members voted 193-229 against Roybal's motion to rise and report the Treasury-Postal Service bill for FY 1984 back to the House for final passage. Smith of New Jersey then proposed that funds appropriated by the bill not be used to pay for abortions except where the life of the mother would be endangered or for administrative expenses for Federal employees' health plans providing any benefits or coverage for abortions. Joining Smith in opposing Roybal's motion were the chairman and ranking Republican member of the Appropriations Committee. The Smith amendment was adopted by voice vote.[62]

3. Members agreed to another anti-abortion amendment on July 17, 1985, voting 227-185 for a DeWine amendment prohibiting funds appropriated to the Legal Services Corporation from being used "to participate in any litigation with respect to abortion." A motion to rise and report the Commerce-State-Justice-Judiciary bill for FY 1986, offered by Neal Smith, the Democratic floor manager, had been rejected moments before by a similar margin of 183 to 232.[63]

4. Thirteen days later, Smith of New Jersey proposed to amend the Treasury-Postal Service bill for FY 1986 by adding a new section stating that "[n]one of the funds provided in this Act shall be used to perform abortions." After Members voted 172-244 against a preferential motion to rise and report, offered by Dixon of California, they also agreed to Smith's amendment, 221-199.[64]

5. Most recently, an amendment proposed by Dornan of California to prohibit the use of funds for abortions except where the life of the mother would be endangered was approved 269-96, after Members voted 148-189 against Neal Smith's motion to rise and report the Commerce-Justice-State-Judiciary bill for FY 1987.[65]

What distinguished these five cases from the 13 instances in which Members agreed to motions to rise and report by recorded votes was the level of Democratic opposition.[66] The overwhelming majority of Republicans have opposed almost every motion to rise and report decided by recorded vote. On average, 26.8 Republicans voted for each motion to rise and report that Members agreed to, compared with the 20.2 Republicans who supported motions that were rejected. By contrast, an average of 84.4 Democrats voted against each of the five motions that were rejected, compared with only 18.4 Democrats who opposed each of the 13 successful motions. In other words, motions to rise and report typically have divided Members clearly along party lines, with Democrats supporting them in overwhelming numbers and Republicans being just about equally united in opposition. And the only times the motions failed were when there was a significant division within the Democratic majority.[67]

AVOIDING POLITICAL RISK

The record of the House's first six years of experience under its revised Rule XXI is impressive. Changes in congressional procedure rarely yield such immediate and clear changes in Members' actions and Congress' decisions. Yet the 1983 rules change hardly was a radical one; it did not prohibit limitation amendments nor even subject them to two-thirds votes. Instead, it only provided that a limitation amendment might have to survive a preliminary majority vote before Members could vote to accept or reject it by another majority vote. The fact that the first vote now occurs on something called a "motion to rise and report" certainly should not deflect a determined majority. Yet the decision to interpose this procedural vote evidently has had precisely the effect hoped by its proponents and feared by its opponents. Although we cannot be certain what would have happened during

1983-1988 if there had been no rules change, the record gives us good reason to believe that Members would have proposed many more limitation amendments.

In only five instances during these six years were motions to rise and report defeated. Far more often than not, Members have not even contested these votes in attempts to offer any limitations of their own or to support attempts of others to do so. There are several institutional reasons why Members usually have been prepared to support motions made pursuant to the rules change. Limitations subvert the authority and control of the legislative committees on which most Members serve, and they can complicate and delay the work of the Appropriations Committee and its members. They can require Congressmen to vote on complex policy questions without the benefit of any committee hearings or reports and with no more than an hour or two of floor debate. And they undermine the ability of majority party leaders to control the agenda of legislative issues that reach the House floor.

Such reasons must account in part for the impressive degree of Democratic and Republican party unity when there have been recorded votes on motions to rise and report. Party and committee leaders have had some success in encouraging their fellow partisans to vote for or against a motion to rise and report even though they would vote differently on the limitation itself if it were to be offered. By voting for these ostensibly procedural motions, Democrats can escape from the awkward cross-pressures they encounter when the interests of their party and committee leaders conflict with the intense preferences of highly mobilized constituency groups.[68] And by voting against the motions, Republicans can attempt to force issues and alternatives onto the floor agenda. But these incentives are insufficient to explain why Members so often have allowed motions to rise and report to go unchallenged. On only 16 of 68 occasions during the 98th-100th Congresses did Representa-

tives oppose the initial motion to rise and report by requiring a recorded vote on it. Evidently the rules change has worked because Members have been content for it to work.

The general decline in amending activity on the House floor from the peaks reached during the 1970s suggests that procedures permitting Representatives relatively open access to the House's legislative agenda through floor amendments (subject to the germaneness requirement, of course) proved to be a mixed blessing. Almost every Member would take advantage of these procedures from time to time, and some would use them regularly. The ability to offer floor amendments allowed Members to affect policy decisions outside of their committees' jurisdictions, and these opportunities were especially valuable and appealing to Republican and junior Members who were less likely to prevail in committee markups. But each Member also had to cope with the consequences of the amendments that his or her colleagues offered. Numerous and controversial amendments created risks of delay and deadlock that did institutional harm while making the lives of its Members more complicated and less predictable. And floor amendments compelled them to vote on politically dangerous issues that otherwise would have remained safely on the legislative calendars of the House's committees.

To offset the potent electoral advantages they enjoy, Congressmen face one potentially significant disadvantage of incumbency: each of them has a record which he or she must be prepared to defend.[69] And since a competent challenger will be quick to emphasize aspects of an incumbent's record that offend widely or intensely held constituency preferences, Members might reasonably conclude that they often are better served by avoiding a public record on divisive issues. (Recall that votes on amendments in Committee of the Whole went unrecorded until 1971.) Increased legislative participation results in a larger record of public votes which in turn can result in an increased danger of electoral vul-

nerability. If so, then there is an unavoidable tension between the opportunity floor amendments provide for changing national policy (or claiming credit for trying to do so) and the political dangers they create by compelling Members to cast votes they would prefer to avoid. Members may have to address major policy issues, but they can minimize their political risks by staking out positions in the form of carefully calibrated and sometimes deliberately ambiguous statements rather than by casting votes on floor amendments. Most of the time, then, most Members have more incentive to avoid controversial floor votes than to provoke them.

Such calculations probably are a major reason for the success the Rules Committee recently has enjoyed in securing adoption of the restrictive special rules it has proposed. Such rules have not been defeated very often and only two of them have been amended on the House floor since the mid-1970s.[70] One explanation could be that the Rules Committee has been remarkably adept at anticipating what procedural arrangements a majority of Members are prepared to accept. But the Committee (and the Democratic leadership) also may have benefitted from an increasingly widespread perception that a restricted amending process often serves Members' individual political interests at the same time it expedites the House's work. When Republicans now oppose a restrictive rule, for example, their alternative frequently is a different set of restrictions on amendments, rather than a fully open rule. And by the same token, whenever Members have urged their colleagues to reject a motion to rise and report, they always have based their argument on their desire to offer or support a specific limitation, not to allow all Members to offer all the limitations they wish.[71]

Democratic leaders could have dealt with limitation amendments by enlisting the help of the Rules Committee to bring the regular appropriations bills to the floor under special

rules prohibiting some or all limitations, just as continuing resolutions and supplemental appropriations sometimes are considered under restrictive rules. However, this would have involved a significant change in established legislative practice, and it would have led to as many as thirteen more floor fights each year over special rules.[72] It was easier instead to make a lasting change in the House's standing rules, enduring thirty minutes of Republican criticism before what was certain to be a strictly party-line vote. Moreover, a common characteristic of limitation amendments make votes on them particularly dangerous as ammunition for electoral opponents and gave the Democratic majority an additional reason to establish a permanent procedure for coping with them.

In order to avoid being tainted as legislation, limitation amendments are far more likely than other amendments to be brief, clearly stated, and apparently unambiguous in their purpose and effect. They are unusually well-adapted, therefore, to the over-simplified policy discourse of congressional campaigns. Furthermore, the inflexibility that House precedents impose on limitations means that the amendments themselves often over-simplify complex and sometimes agonizing policy choices into simple yes or no propositions that can force Members into unpalatable choices between undesirable alternatives. In short, a limitation amendment is the legislative device most ill-suited to the expression of nuance and studied ambiguity that often characterize Representatives' fully developed policy positions; so it is more likely than any other kind of measure or amendment to produce a vote that misrepresents the true preferences of all Members, Democrats and Republicans alike.

From this perspective, the change in Rule XXI effectively addressed the key disadvantage of incumbency by allowing Members to avoid the floor votes that could be used against them most easily and most effectively. If the meaning of a Member's vote on a limitation amendment is apparently clear but actually misleading, the importance of his or

her vote on a motion to rise and report--a proposition with no obvious meaning or policy significance that precludes an entire class of amendments--is so obscure that it offers considerable protection from partisan criticism. It also helps protect Members from the electoral dangers of single-issue politics when they might have to confront a limitation that is supported avidly by some constituency groups but opposed with equal vigor by others. Whenever any vote on a limitation, either for or against it, would seriously disappoint substantial numbers of prospective voters, there is obvious appeal to a strategy of minimizing political risk by invoking a procedural mechanism for risk avoidance. Perhaps for this reason, incumbents of both parties evidently have decided that it usually is in their interests to take advantage of the imaginative new procedure that the Democratic Caucus brought to the House floor in January 1983--a procedural change enabling Members to insulate themselves from the political risks of policy choice.

TABLE 1. Effects of Floor Amendments to Regular General Appropriations Bills Passed by the House, 95th-100th Congresses

	Congress (in percent)								
	95th	96th	97th	98th	99th	100th	95th-97th	98th-100th	Total
Change funding level	38.6	39.6	38.1	61.2	59.8	46.9	38.9	56.0	44.7
Limit availability of funds	35.0	35.7	31.2	8.7	5.5	5.3	34.3	6.4	24.7
Reduce funding level and limit availability of funds	3.6	1.8	2.8	0	0	0.9	2.6	0.3	1.8
Appropriate unauthorized funds or change existing law	2.5	5.6	5.7	5.8	13.4	26.5	4.7	15.4	8.4
Control allocation of funds	2.0	3.5	2.3	1.9	4.7	1.8	2.7	2.9	2.8
Change funding level and also legislate or allocate	3.0	4.2	2.3	2.9	0	3.5	3.7	2.0	3.1
Change or strike limitation or legislation	12.2	6.0	8.5	10.7	6.3	0.9	8.5	5.8	7.6
Other	3.0	3.5	9.1	8.7	10.2	14.2	4.6	11.1	6.8
Total number of amendments	197	283	176	103	127	113	656	343	999
Number of bills passed	26	24	22	22	23	23	72	68	140
Amendments per bill passed	7.6	11.8	8.0	4.7	5.5	4.9	9.1	5.0	7.1

Notes: During the six Congresses, 26 amendments to appropriate unauthorized funds or change existing law were protected by special rules that the House agreed to. "Other" amendments include truly technical amendments (e.g., to correct section numbers or printing errors), retrenchment amendments meeting the criteria of the "Holman rule," amendments to strike provisions allocating funds, amendments to transfer funds from one purpose to another without making any net change in funding levels, and amendments proposing other combinations of effects (e.g., to strike a limitation or legislation and also to either allocate funds or change a funding level).

TABLE 2. Number of Limitation Amendments to Each Regular General Appropriations Bill Passed by the House, 95th-100th Congresses

	Congress								
	95th	96th	97th	98th	99th	100th	95th-97th	98th-100th	Total
Agriculture	5	5	0	0	1	0*	10	1	11
Commerce-State-Justice	6	10	9	0	2	0	25	2	27
Defense	6	9	8	1*	0*	0*	23	1	24
District of Columbia	2	5	4	0	1	3	11	4	15
Energy and Water Development	7	6	5*	1	0	0	18	1	19
Foreign Assistance	14	5*	2*	--**	--**	0*	21	0	21
Housing and Urban Development	3	4	7	2	0	0	14	2	16
Interior	0	2	4	1	0	0	6	1	7
Labor-HHS-Education	7	22	5	1	1	0	34	2	36
Legislative Branch	15	5*	--**	0	0	3	20	3	23
Military Construction	0	1	1	0	1	0	2	1	3
Transportation	10	6	3	0*	1	0	19	1	20
Treasury-Postal Service	1	26	12	3	0	1	39	4	43

Notes: (1) the Energy and Water Development appropriations bill was known as the Public Works appropriations bill in 1977-1978; (2) the Labor-HHS-Education appropriations bill was known as the Labor-HEW appropriations bill in 1977-1979; (3) a single asterisk (*) indicates that only one such bill was passed during the Congress in question; (4) a double asterisk (**) indicates that no such bill was passed during the Congress in question.

TABLE 3. Disposition of Limitation Amendments to Regular General Appropriations Bills Passed by the House, 95th-100th Congresses

	Congress (in percent)								
	95th	96th	97th	98th	99th	100th	95th-97th	98th-100th	Total
Adopted as offered									
By voice or division votes only	32.9	46.2	60.0	66.7	71.4	28.6	45.4	56.5	46.4
By one or more recorded votes	19.7	18.9	11.7	22.2	14.3	14.3	17.4	17.4	17.4
Total	52.6	65.1	71.7	88.9	85.7	42.9	62.8	73.9	63.8
Amended and adopted									
By voice or division votes only	3.9	1.9	1.7	0	0	0	2.5	0	2.3
By one or more recorded votes	1.3	1.9	1.7	0	0	0	1.6	0	1.5
Total	5.3	3.8	3.3	0	0	0	4.1	0	3.8
Rejected									
By voice or division votes only	23.7	13.2	18.3	0	0	0	17.8	0	16.2
By one or more recorded votes	18.4	17.9	6.7	11.1	14.3	57.1	15.3	26.1	16.2
Total	42.1	31.1	25.0	11.1	14.3	57.1	33.1	26.1	32.4

Notes: Amendments adopted as offered include amendments modified by unanimous consent. Amendments adopted as offered by recorded votes include amendments adopted by voice votes after one or more perfecting or substitute amendments had been rejected by recorded vote. Amendments rejected include amendments rejected by voice or recorded votes after one or more perfecting or substitute amendments had been adopted or rejected by comparable votes.

TABLE 4. Limitation Amendments and Motions to Rise and Report: Regular General Appropriations Bills Passed by the House, 98th-100th Congresses

	Congress (in percent)			
	98th	99th	100th	Total
No limitations considered and				
Motion agreed to by voice vote	54.5	56.5	69.6	60.3
Motion agreed to by recorded vote	13.6	13.0	8.7	11.8
Motion rejected by recorded vote and limitation then approved	4.5	13.0	0	5.9
Total	72.7	82.6	78.3	77.9
One or more limitations considered and				
Motion agreed to by voice vote	18.2	13.0	17.4	16.2
Motion agreed to by recorded vote	4.5	4.3	4.3	4.4
Motion rejected by recorded vote and limitation then approved	4.5	0	0	1.5
Total	27.3	17.4	21.7	22.1
Total number of initial motions				
Agreed to by voice vote	72.7	69.6	87.0	76.5
Agreed to by recorded vote	18.2	17.4	13.0	16.2
Rejected by recorded vote	9.1	13.0	0	7.3
Total number of subsequent motions agreed to by recorded vote	4.5	4.3	0	2.9

Notes: Instances of one or more limitations being considered before the vote on an initial motion to rise and report excludes cases in which a limitation was offered and pending when a motion to rise and report was made as a preferential motion and was agreed to, thereby precluding further consideration and possible adoption of the pending amendment.

NOTES

* Nothing in this paper is to be construed to represent a position of the Congressional Research Service. The authors wish to thank Joe White for his thoughtful comments, and Ed Davis and Sandy Streeter for facilitating the research on which this paper is based.

1. Congressional Globe, August 8, 1846 (29th Congress, 1st Session), p. 1217.

2. Ibid. On appeal, the House sustained this ruling by a vote of 92 to 37.

3. Congressional Globe, December 10, 1835 (24th Congress, 1st session), pp. 19-20. As this statement indicates, Adams was concerned that appropriations bills were burdened not only with new legislation but also with grants of money and expenditures "not warranted by any previous law." The history and recent status of the relationship between authorizations and appropriations, although linked to the relationship between legislation and appropriations, is not considered here.

4. Ibid. p. 20. See also Asher Hinds and Clarence M. Cannon, Hinds' and Cannon's Precedents of the House of Representatives. (Washington: U.S. Government Printing Office, 1907 and 1936), vol. 4, sec. 3578, pp. 382-385.

5. "Almost 100 years before the First Congress met, the House of Lords declared that 'the annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to, and different from, the matter of the said Bill of Aid or Supply, is unparliamentary, and tends to the destruction of the constitution of this government.'" Allen Schick, Legislation, Appropriations, and Budgets: The Development of Spending Decision-Making in Congress. Report 84-106 of the Congressional Research Service; May 1984; pp. 9-10.

6. In his journal entry for April 22, 1806, Plumer recorded: "Appropriations for an Indian treaty is lost. The House annexed two paragraphs rendering it penal for any person to settle on the lands purchased of the Indians, unless the settlers had title under the United States--and authorized the President to raise the militia against them. This was designed by John Randolph to prevent the Yazou claimants from entering. Tis abominable to tack such provisions to an appropriation law.... Tis a good provision in the constitution of Maryland that prohibits their Legislature from adding any thing to an appropriation law." Everett Somerville Brown (editor), William Plumer's Memorandum of Proceedings in the United States Senate, 1803-1807. (New York: The Macmillan Company, 1923), p. 490.

7. Schick, Legislation, Appropriations, and Budgets, op. cit., pp. 18-19.

8. Ibid., p. 19.

9. James A. Garfield, "National Appropriations and Misappropriations," North American Review, no. 271, June 1879, p. 586.

10. See Louis Fisher, The Authorization-Appropriations Process: Formal Rules and Informal Practices. Report No. 79-161 of the Congressional Research Service; August 1, 1979.

11. The strictures of Rule XXI and this discussion apply only to general appropriations bills and not to either continuing resolutions or special appropriations measures. Germane legislative amendments to the latter kinds of bills are in order, although the House frequently agrees to special rules limiting or prohibiting such amendments.

12. U.S. Congress, House of Representatives. Deschler's Precedents of the United States House of Representatives. House Document 94-661; 94th Congress, 2d Session; vol. 8, ch. 26; pp. 38-39.

13. Deschler's Precedents, op. cit.; vol. 8, ch. 26, pp. 506-508.

14. Deschler's Precedents, op. cit.; vol. 8, ch. 26; p. 39.

15. As a result, Members may have to propose amendments that do not achieve their policy goals directly and explicitly, but with the hope that their limitation then can be refined in the Senate and in conference or that the affected department or agency will react as they would like even if not compelled to do so by clear statutory language. For example, see the debate over a limitation offered by McDade of Pennsylvania concerning the census count of aliens for purposes of re-apportioning House seats. Congressional Record, August 20, 1980, pp. 22140-22149. See also Congressional Record (daily edition), November 1, 1983, pp. H8963-H8965.

16. A well-known and illuminating example was the series of rulings on proposed abortion limitations during House floor consideration on June 17, 1977, of the Labor-HEW appropriations bill for FY 1978. Congressional Record (daily edition), June 17, 1977, pp. H6082-H6083. See also the legislative history of abortion funding restrictions that Senator Helms of North Carolina inserted in the Congressional Record (daily edition), May 21, 1981, pp. S5461-S5467; and Roger H. Davidson, "Procedures and Politics in Congress," in Gilbert Y. Steiner (editor), The Abortion Dispute and the American System. (Washington: The Brookings Institution, 1983), pp. 30-46.

17. The other is the addition to House bills of non-germane Senate amendments on which the House ultimately may have to vote, either as parts of conference reports or as separate amendments in disagreement.

18. "The average percentage of limitation amendments agreed to between 1963 and 1976 was 30%; in 1977 55% were agreed to." Democratic Study Group, The Appropriation Rider Controversy. Special Report No. 95-12; February 14, 1976. Both the number of limitation amendments that Representatives have proposed and the difficulties that arise in distinguishing between limitations and legislation are suggested by the more than 900 pages devoted to the subject in the most recent published collections of House precedents. (Deschler's Precedents, op. cit., vol. 8; pp. 405-1322.)

19. Congressional Quarterly Almanac, 93rd Congress, 1st Session, 1973. (Washington: Congressional Quarterly, Inc., 1974), pp. 95-107, 119-123, 861-862.

20. Democratic Study Group, op. cit., Attachment A. See also Alan Murray, "House Funding Bill Riders Become Potent Policy Force," Congressional Quarterly Weekly Report, November 1, 1980, pp. 3251-3255.

21. Congressional Quarterly Almanac, 96th Congress, 1st Session, 1979. (Washington: Congressional Quarterly, Inc., 1980), pp. 236-246.

22. Stanley Bach, "Representatives and Committees on the Floor: Amendments to Appropriations Bills in the House of Representatives, 1963-1982," Congress & the Presidency, vol. 13, n. 1, Spring 1986; pp. 41-57.

23. See Steven S. Smith, Call to Order: Floor Politics in the House and Senate. (Washington: The Brookings Institution, 1989).

24. See Stanley Bach and Steven S. Smith, Managing Uncertainty in the House of Representatives: Adaptation and Innovation in Special Rules. (Washington: The Brookings Institution, 1988).

25. Note again that this study excludes continuing and supplemental appropriations measures. See note 11.

26. See Stanley Bach, The Status of Limitation Amendments Under the Rules of the House of Representatives for the 98th Congress. Report of the Congressional Research Service; February 7, 1983.

27. U.S. Congress, House of Representatives. Constitution, Jefferson's Manual, and Rules of the House of Representatives, One Hundredth Congress. House Document No. 99-279; 99th Congress, 2d Session; p. 573.

28. Congressional Record, January 3, 1983 (98th Congress, 1st Session), pp. 35-36.

29. Ibid, pp. 34-36.

30. Ibid, p. 37. See also the resolution adopted by the House Republican Conference. Ibid., p. 39.

31. Ibid, pp. 41-45.

32. Ibid, p. 45.

33. The only other Democrat to speak was John Breaux of Louisiana, who opposed the amendment to Rule XXI. Ibid., p. 44.

34. Ibid., p. 47.

35. Ibid., pp. 49-51. Congressional Quarterly Almanac, 98th Congress, 1st Session, 1983. (Washington: Congressional Quarterly, Inc., 1984), pp. 596-597, 2-H, 3-H.

36. Ibid, p. 37.

37. Ibid., p. 47.

38. This study is limited to floor amendments to the regular general appropriations bills the House passed during this period without regard to whether the bills eventually became law. Excluded are amendments to continuing and supplemental appropriations measures, including a water resources appropriations bill for FY 1984 (and in an exceptional case, amendments to a Contra aid bill of the 99th Congress which, by operation of a special rule, was tied to passage of the Military Construction appropriations bill for FY 1987). Also excluded are amendments that were ruled out of order or withdrawn, amendments to amendments, and amendments embodied in recommittal motions.

39. Amendments to change funding levels include those to increase funding from zero or decrease funding to zero. Amendments to appropriate unauthorized funds or change existing law are so categorized even if they included other provisions which would have been in order if offered as separate amendments. Amendments to control allocation of funds include all earmarking amendments, whether proposing a ceiling or a floor on the allocation of appropriated funds for a certain purpose. (On earmarking, see U.S. General Accounting Office. Principles of Federal Appropriations Law (Washington: U.S. Government Printing Office, June 1982), ch. 5, pp. 4-6.) The categorizations do not take account of truly incidental and conforming provisions.

40. The data presented here on limitation amendments are approximate; they reflect the authors' judgments but cannot be either exact or authoritative. The only authoritative determinations are those made by the Chair, upon advice of the Parliamentarian, in response to points of order made in Committee of the Whole. Without the benefit of such a ruling, it can be very difficult to determine whether an amendment qualifies as a limitation or whether it constitutes legislation. This determination can require a close examination of what already is required or permitted by law in order to decide whether an amendment would impose some new duty on an Executive Branch official. For example, an amendment may prohibit the obligation or expenditure of funds for a certain purpose until after an agency head submits some report to Congress. If the agency head already is required by existing law to submit that report, the amendment probably would qualify as a limitation; otherwise, it would impose a new responsibility on that official and so would propose changing existing law. For illustrative examples of rulings predicated on existing law, see the proceedings in the Congressional Record of June 16, 1977 (p. 19377), June 18, 1979 (p. 15287), and June 27, 1979 (p. 17035). This study generally gives amendments the benefit of the doubt, considering each to be a limitation unless there is clear and persuasive evidence to the contrary--for example, if an amendment applies to funds appropriated by "this or any other Act"--and especially if either floor manager actively opposes it (and so presumably would have had reason to make a point of order against it).

41. "Of the two days of House debate devoted this year [1980] to the Treasury and Postal Service appropriations bill (HR 7583), for example, scarcely an hour was given to discussion of money matters. The rest revolved around a string of controversial riders that did such things as prohibit the government purchase of typewriters from communist countries, restrain the IRS from taking tax-exempt status from private "white flight" schools and stop consideration of a withholding tax on interest income. Of the 19 amendments adopted,

only one altered the funds appropriated in the bill." Murray, "House Funding Bill Riders Become Potent Policy Force," op. cit., p. 3251.

42. For further background and a more detailed examination of the House's first two years of experience under the new rule, see Richard C. Sachs, Limitation Amendments to Appropriation Bills: The Implementation of House Rule XXI(2)(d) in the Ninety-Eighth Congress. Report of the Congressional Research Service; December 14, 1984.

43. In the analysis that follows, limitation amendments include those that proposed to reduce funding levels as well as to limit the availability of the remaining funds. This assumes that the primary purpose of these amendments was to prevent the United States Government from undertaking the proscribed action and that a secondary purpose was to make certain that the funds which were intended to be used for that action would not become available for other purposes funded by the same paragraph of the appropriations bill.

44. In some cases, though, Members' explanations of their amendments to reduce funding levels make clear that the amendments were offered with an intent to limit--i.e., by stating that the purpose and effect of an amendment was to eliminate funds for some specific purpose. For example, see the proceedings in the Congressional Record for June 6, 1984 (daily edition, p. H5282), July 16, 1985 (p. 19170), and July 23, 1986 (p. 17432).

45. In relative terms, the rules change had the least effect on limitations proposed to District of Columbia appropriations bills, probably because the District of Columbia Committee does not report major annual or periodic re-authorization bills to which Members can offer policy amendments.

46. Bach, "Representatives and Committees on the Floor," op. cit., Table 1, p. 45. The total numbers of amendments presented in that table for the 95th-97th Congresses are somewhat lower than the corresponding totals in Table 1 here because the 1986 study deliberately excluded certain amendments from the analysis.

47. Even though in recent years the House has enacted the texts of many appropriations bills through continuing resolutions, the House passed most of those bills separately before incorporating them into omnibus measures. Table 2 indicates which bills the House never passed during the twelve years under study here.

48. Smith, Call to Order, op. cit., Figure 2-1 and accompanying text. The recent decline in amending activity generally is attributable in part at least to the impressive increase in the number and percentage of restrictive special rules. (See Bach and Smith, Managing Uncertainty in the House, op. cit.) The same cannot be said, however, for floor amendments to general appropriations bills. Of the 140 regular general appropriations bills the House passed during 1977-1988, only six (or 4.3 percent) were considered under special rules that restricted floor amendments in any way. Thirty-five percent of the bills had no special rules, and 44.3 percent were considered under rules that only waived points of order under Rule XXI or the Budget Act or both. (The percentages of bills without special rules ranged from 26.1 to 50.0 percent; the percentages of bills with waiver rules varied from 21.7 to 59.1 percent.) In addition, another 16.4 percent of the regular general appropriations bills received special rules that actually expanded the range of floor amendments that Members

could offer by waiving points of order against one or more amendments. Five rules did restrict amendments on certain subjects (for example, abortion and congressional pay), but not until 1988 did the House adopt a restrictive rule for a general appropriations bill comparable to the restrictive rules so often proposed for other kinds of measures. (See H.Res. 457, adopted on May 25, 1988, for considering H.R. 4637, the foreign operations appropriations bill for FY 1989.) On the other hand, continuing resolutions and, to a lesser extent, supplemental appropriations bills (which are not encompassed by this study) are likely to be considered under restrictive amendment procedures, either by unanimous consent or pursuant to special rules.

49. The numbers of amendments proposing only to change funding levels followed an almost identical pattern--from 76 to 112 to 67 during the three Congresses.

50. All data presented here on the disposition of amendments reflect the votes taken in Committee of the Whole, and do not take account of the few instances in which amendments adopted in Committee of the Whole were later rejected on separate votes in the House.

51. Although we lack exactly comparable data on the numbers of limitation amendments before the 95th Congress, the data we do have on the total numbers of appropriations amendments strongly suggest that the 106 limitations of the 96th Congress represent an historical peak, at least for the contemporary era.

52. Bach, "Representatives and Committees on the Floor," op. cit., Table 1, p. 45.

53. The proportion of limitations provoking recorded votes decreased from 39.4 to 20.1 percent during the three Congresses, but this is no necessary indication of any diminution in the policy importance of those amendments. For example, a floor manager who opposes a limitation may prefer to have it agreed to by voice vote in order to avoid a public record of Members' preferences that would make it more difficult politically to modify or jettison the amendment in conference with the Senate. Over the entire twelve-year period, 35.1 percent of limitation amendments involved one or more recorded votes, compared with 37.7 percent of all other amendments.

54. See, for example, the amendments proposed in July 1979 to block implementation of Internal Revenue Service rulings. Congressional Record, July 16, 1979, pp. 18808, 18812.

55. Note that there was an upsurge in the 99th and 100th Congresses of amendments appropriating unauthorized funds or changing existing law. Some of them were protected by special rules, but more than half were amendments which, in our judgment, would have been subject to points of order for constituting legislation (including a series of amendments, offered by Walker of Pennsylvania in 1988, calling for drug-free workplaces), but which Members did not challenge. However, this development is too recent and uncertain to bear the weight of analysis.

56. For an earlier perspective on "riders" and presidential vetoes, see Edward Campbell Mason, The Veto Power. (New York: Russell & Russell, 1890), pp. 47-49.

57. Congressional Record (daily edition), August 2, 1984, p. H8310.

58. Congressional Record (daily edition), September 22, 1983, p. H7317.

59. Congressional Record (daily edition), November 1, 1983 (pp. H8963-H8965), and November 2, 1983, pp. H9009-H9010, H9024.

60. On the 98th Congress, see Sachs, Limitation Amendments to Appropriation Bills, op. cit., pp. 8-15.

61. Congressional Record (daily edition), June 2, 1983, pp. H3500-H3519.

62. Congressional Record (daily edition), October 27, 1983, pp. H8736-H8738.

63. Congressional Record (daily edition), July 17, 1985, pp. H5827-H5829.

64. Congressional Record (daily edition), July 29, 1989, pp. H6789-H6794.

65. Congressional Record (daily edition), July 17, 1986, pp. H4649-H4650.

66. Two of the thirteen recorded votes were on subsequent motions to rise and report. After an initial motion to rise and report had been rejected and a limitation agreed to, a subsequent motion to rise and report was adopted, thereby precluding consideration of another limitation.

67. The one exception which has been omitted from these calculations and conclusions occurred during consideration in November 1983 of the Defense appropriations bill for FY 1984. After Members had defeated the Long limitation concerning U.S. forces in Lebanon, a motion to rise and report was offered for the only time to date by a minority floor manager, Edwards of Alabama, the ranking Republican on the defense appropriations subcommittee. Although a majority of Democrats, including the subcommittee chairman, Addabbo of New York, voted against Edwards' motion, Republicans supported it by a three to one margin and it was adopted. The ideological mixture of Members voting on both sides of this question strongly suggests that there was no common agreement about what amendment would be offered next if Edwards' motion were rejected. Congressional Record (daily edition), November 2, 1983, pp. H9042-H9043.

68. The motion is likely to be characterized vaguely by the media, if at all, in terms such as "a parliamentary maneuver" or "a procedural device."

69. A second may be the dubious public standing of Congress as an institution. However, opinion polls consistently have demonstrated that constituents often are willing and able to distinguish between their opinion of Congress and their own Congressman.

70. Bach and Smith, Managing Uncertainty in the House, op. cit. ch. 4.

71. Only twice did Members seek to defeat motions to rise and report more than once during consideration of the same bill. See note 66.

72. This is precisely what happened on May 25, 1988, when a foreign aid appropriations bill came to the floor under a restrictive rule, even though the rule was quite accommodating in the amendments it made in order. See note 48.