

House Rules Change

January 11, 2019

The House of Representatives has adopted a series of rules changes for the 116th Congress to implement a reform package that House Democrats developed after recapturing the House majority in the November 2018 midterm elections.¹ In a news release announcing the new rules, House Speaker Nancy Pelosi (D-CA) and Rules Committee Chairman James McGovern (D-MA) described them as “historic changes that will modernize Congress, restore regular order and bring integrity back to this institution.”² They emphasized that the rules changes would restore the people’s voice, the legislative process, oversight and ethics, budget rules, and inclusion and diversity.

The rules changes include three titles, which the House has adopted in separate votes to (1) change the standing rules of the House (by a 234-197 vote), (2) establish a Select Committee on Modernization of Congress (by a 418-12 vote), and (3) authorize the Speaker to intervene on behalf of the House in litigation involving the Patient Protection and Affordable Care Act (ACA) (by a 235-192 vote). Summarized below are highlights from each title.³

Title I – Changes to the Standing Rules

Title I includes a variety of amendments to the standing rules of the House in the following categories:

- **Rights of Delegates and Resident Commissioner:** Restores Delegates’ and the Resident Commissioner of Puerto Rico’s right to vote when the House resolves into the Committee of the Whole to consider legislation (subject to immediate reconsideration in the House if their vote is collectively decisive), and the right to serve on joint committees.
- **Office of Speaker:** Provides that a resolution causing a vacancy in the Office of Speaker is privileged if offered at the direction of a party caucus or conference, where a majority must vote to authorize such action. This rules amendment changes the prior practice allowing any Member to offer such a resolution. A privileged matter may be called up at any time for immediate consideration, interrupting the regular order of business of the House.

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- Committees: The new rules include the following changes affecting committees:
 - *Name changes* – Changes the name of the Committee on Oversight and Government Reform to the Committee on Oversight and Reform; and the name of the Committee on Education and the Workforce to the Committee on Education and Labor.
 - *Oversight plans* – Requires each standing committee to submit an oversight plan to the Committee on House Administration and the Committee on Oversight and Reform by March 1 of the first session of a Congress; and requires the Committee on Oversight and Reform to submit oversight plans to the House by April 15 of the first session of a Congress.
 - *Term limits* – Removes term limits for committee chairs and members of the Budget Committee.
 - *Depositions* – Authorizes each standing committee (except the Committee on Rules) and the Permanent Select Committee on Intelligence to take depositions without a Member being present.
 - *Hearing and markup requirement* – Requires a committee and/or subcommittee hearing and markup for any bill or joint resolution that the Rules Committee reports for House floor consideration (subject to Rules Committee waiver).
 - *Select committee on climate* – Establishes a Select Committee on Climate Crisis to investigate, study, make findings and develop recommendations on policies, strategies and innovations to achieve substantial and permanent reductions in pollution and other activities that contribute to the climate crisis. The Select Committee, however, does not have subpoena authority.
- Consensus calendar: Creates a consensus calendar to expedite measures with bipartisan support (i.e., with at least 290 co-sponsors) that are unreported by committee. The Speaker also must designate at least one such measure for floor consideration any week in which the House is in session.
- Bill text availability for 72 hours: Requires that legislative text be made available electronically to the public for a full 72 hours before it is considered in the House. Previously, the legislative text could not be considered before “the third day” on which it had been made available to Members, Delegates and the Resident Commissioner, and a portion of a day was construed to be a full day.
- Discharge petitions: Amends the discharge petition process by requiring the Speaker to schedule consideration of privileged motions to discharge legislation within two legislative days after a Member announces an intention to offer the motion. Previously, the process restricted consideration of such motions to the second and fourth Mondays of a month.
- Diversity and inclusion: Excludes religious headwear from the prohibition on wearing hats in the House chamber; prohibits discrimination on the basis of sexual orientation or gender identity by any House Member, Delegate, Resident Commissioner, officer or employee; establishes the Office of Diversity and Inclusion to create a diversity plan, including policies to direct and guide House offices to recruit, hire, promote and retain a diverse workforce.

- Budget, appropriations and taxation: The new rules contain the following changes to House authority regarding the budget, revenue-raising and expenditures:
 - *Net increase in budget authority* – Removes the point of order prohibiting appropriations bill amendments that propose a net increase in budget authority in a bill. It retains the requirement that the bill, as amended, remain within the limits contained in an adopted budget resolution.
 - *Supermajority vote* – Removes the requirement that the House agree by a 3/5 supermajority to a proposal raising revenue through additional federal income taxes raised by amending certain subsections of the Internal Revenue Code.⁴
 - *PAYGO* – Reinstates the PAYGO rule that any proposed new spending that increases the deficit or reduces the surplus must be offset by an equivalent amount of new revenue and/or reduced spending.
 - *Dynamic scoring* – Removes the requirement that the Congressional Budget Office and Joint Committee on Taxation make assumptions regarding changes in macroeconomic variables (also called “dynamic scoring”) when preparing estimates on budgetary effects of major legislation.
 - *Suspending debt limit* – Provides that, when the House adopts a concurrent resolution for a budget for a fiscal year, it is considered simultaneously to have passed a separate joint resolution suspending the federal debt limit through September 30 of that fiscal year. Separate Senate action on the budget resolution is no longer required in order to trigger automatic passage in the House of the joint resolution without any further action.
- Banning conduct: Bans sexual relationships between Members and House employees; bans Members and staff from serving as an officer or director of any public company.
- Service of indicted Members in leadership and on committees: Establishes a policy that a Member, Delegate or Resident Commissioner indicted or formally charged with criminal conduct for a felony offense punishable by at least two years in prison should resign from serving in party caucus or conference leadership positions or on any committee.

Title II – Select Committee on Modernization of Congress

Title II establishes a Select Committee on Modernization of Congress to investigate, make findings, hold hearings and develop recommendations on modernizing Congress through rules to promote a more modern and efficient Congress; procedures including the schedule and calendar; policies to develop the next generation of leaders; staff recruitment, diversity, retention, and compensation and benefits; administrative efficiencies; technology and innovation; and the Franking Commission (dealing with congressional mailing standards). The Select Committee will include 12 Members: six appointed by the Speaker and six by the Minority Leader.

Title III – Intervention in Litigation Involving Patient Protection and Affordable Care Act

Title III authorizes the Speaker to intervene in *Texas v. United States*, No. 4:18-cv-00167-O (N.D. Tex)⁵ or any appellate proceedings arising from the case. It also authorizes the Speaker, in consultation with the Bipartisan Legal Advisory Group⁶, to intervene in any other cases involving the ACA, and it directs the House Office of General Counsel to represent the House in any such litigation, employing outside counsel or other outside experts, as needed.

¹ The U.S. Senate applies its rules continuously from one Congress to the next and did not attempt at the opening of the 116th Congress to change its rules, which requires a two-thirds vote in favor of terminating debate in order to move to a vote on such a measure.

² *Pelosi and McGovern Unveil Details of Rules Package for the 116th Congress* (January 1, 2019), <https://rules.house.gov/press-release/pelosi-and-mcgovern-unveil-details-rules-package-116th-congress>.

³ See H. Res. 6, *Adopting the Rules of the House of Representatives for the One Hundred Sixteenth Congress, and for other purposes*, 116th Congress, 1st Session (January 2019); H. Res. 6, *Adopting the Rules for the 116th Congress, Section-by-Section Analysis*, Committee on Rules, U.S. House of Representatives (January 2019).

⁴ The original 3/5 supermajority requirement, first adopted by a Republican Congress in 1995, applied only to limited subsections of the Internal Revenue Code establishing tax rates. See I.R.C §§ 1(a)-(e), 11(b), 55(b) (1986).

⁵ In *Texas v. United States*, the U.S. District Court for the Northern District of Texas ruled that the tax bill that Congress enacted in December 2017 (Tax Cuts and Jobs Act of 2017, Pub.L. 115–97) effectively rendered the ACA unconstitutional. The 2017 tax law amended the ACA’s so-called “individual mandate” by zeroing out the penalty tax imposed on individuals who fail to purchase insurance. Previously, the U.S. Supreme Court in *National Federation of Independent Businesses (NFIB) v. Sebelius*, 567 U.S. 519 (2012) upheld the constitutionality of the ACA on grounds that the individual mandate was a legitimate exercise of Congress’ taxing authority. The *Texas* court held that, because the individual mandate is no longer a tax after enactment of the 2017 tax law, the individual mandate is an unconstitutional exercise of congressional authority. The court also ruled the balance of the ACA unconstitutional, reasoning that its other provisions rely on, and are inseverable from, the individual mandate.

⁶ The Bipartisan Legal Advisory Group has been a standing body of the House since 1993. Comprising five members of the House leadership (the Speaker, the majority and minority leaders, the majority and minority whips), it directs the activities of the House Office of General Counsel.