

# NISKANEN C E N T E R

## MAKING THE RULES OF THE HOUSE

How factional politics overcame the Rules Committee in the past

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**T**he House Rules Committee has often been called the “traffic cop of Congress.” With only a few exceptions, no bill can make it onto the House floor until the committee has assigned it a rule that will guide the process. Without this committee, the House would be swamped with unfeasible and poorly crafted bills. In the current Congress alone, 16,733 pieces of legislation have been introduced so far. The mandate to sort through that clutter comes with lots of power: In many cases, the committee will decide how long a bill can be debated on the floor, how many and which amendments can be considered, and even which general House rules are waived for the bill. When the Rules Committee acts more like a roadblock than a traffic cop, however, its power turns problematic.

During the 118th Congress, the Rules Committee has had 13 members: nine from the majority party and four from the minority. The minority party — in this case, Democrats — typically votes against bills the majority seeks to advance through the Rules Committee. However, Kevin McCarthy gave the GOP’s Freedom Caucus and one of their allies three seats on the Rules Committee in the 2023 negotiations that brought him his short-lived speakership. Since then, those three have repeatedly used that leverage to join with Democrats’ default “no” and prevent legislation from coming to the floor. Two of the three are still on the Rules Committee in the 119th Congress.

The clearest example in the last Congress may have been the bill to fund international aid to Ukraine, Israel, and Taiwan. Ultimately, Democrats helped their Republican colleagues move it through the Rules Committee (and pass it on the floor) in what was called an “unprecedented” bipartisan moment.

But it was not unprecedented.

Congress has faced intra-party obstruction before and overcome it. This essay considers two periods in which Congress has faced similar challenges and compares them to today. These periods hold lessons for how lawmakers could navigate the challenging politics of the 119th Congress. In brief, breaking the logjam required changing rules to make it easier to pass legislation. But, perhaps more importantly, it required legislators to create new cross-partisan coalitions that could demand those rules changes — and weaken their internal party leadership — to make progress on the key issues that brought them together.

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1. Josiah Watney was an intern at the Niskanen Center in the summer of 2024 and assisted with the writing and research of this piece.

## The challenge: Getting legislation out of the Rules Committee

Since the modern formation of the Rules Committee in the late 19th century, there have been several approaches to allow a majority of the House to deploy congressional procedure to bypass the committee when it bottlenecked popular legislation. All of them come in one of two flavors: You can change the rules of the House or you can change who is on the Rules Committee. In this section, we offer a quick overview of these options before diving into the details.

The first approach has a rich history. In 1909, the House created Calendar Wednesday to allow bills reported by committees to come to the floor without Rules Committee clearance, and in 1910, the discharge petition. In 1949, legislators created a novel solution they called the 21-day Rule.

Today, two solutions have emerged to bypass the committee.. In a top-down way, Speaker Mike Johnson is utilizing suspension of the rules to work around the obstruction. And in a bottom-up way, we have seen a renewed use of the discharge petition.

Changing the composition of the Rules Committee is also a time-honored tradition. In 1910, Speaker Joe Cannon was removed from the committee on a bipartisan vote in the famous “Cannon Revolt.” In 1961, new seats were added to the Rules Committee on a bipartisan vote to dilute the power of the blocking faction of Southern Democrats. Essentially, this is what the Freedom Caucus accomplished in reverse when it got seats on the Rules Committee.

As is so often the case, battles over House rules were also factional fights. Bipartisan majorities passed new rules to unlock a path forward for legislation that had the support of the majority of the House, but not all of the majority party. So far from being “unprecedented,” cross-party factions have been the key to the House advancing legislation throughout its history. The history of blockages on the Rules Committee provides the opportunity to draw on prior solutions and to propose a new way to unlock governing majorities on the House floor.

Cross-partisan alliances in the 118th Congress were frequently arms-length and unspoken. The Republican Rules Committee dissidents did not vote with Democrats because they agreed with them. And Democrats only helped the Republican majority on issues where they had high levels of unanimity. The history we unpack below shows that future alliances will need to be more coordinated and driven by members in the middle, not extremists or party leaders.

## Rules fights, Republican insurgents, and Speaker Joe Cannon

In 1909, the Rules Committee worked quite differently than today. It was chaired by the Speaker and had a total of five members, typically including the majority and minority leaders. In reality, Speaker Joe Cannon ran it. This was the peak of centralized power in the Speaker’s office. There were also intense intra-party fights in the Republican Party between the establishment and insurgent (or “progressive”) wings. On some issues, such as railroad regulation or tariffs, the insurgent Republicans were able to partner with Democrats to advance their policy objectives.

Calendar Wednesday grew out of the ongoing effort of insurgent Republicans to get floor time for their priorities, often on issues opposed by Cannon. At the beginning of the 61st Congress, they voted down the Speak-

er's Rules package and then the Democrats' alternative package.<sup>2</sup> In the ensuing debate, a Tammany Hall Democrat eventually offered a rules package that satisfied Cannon, Democrats, and insurgent Republicans.

That package designated Wednesdays as an opportunity for any legislating committee to get its bill before the House without going through Rules. It worked like this:

1. A committee would finish the markup of their bill and report it to the House.
2. The committee chair would notify the House at least 72 hours before Wednesday that it would be brought up.
3. Every Wednesday, the Speaker Pro Tempore would do a roll call of the committees of the House.
4. The committee chair, or a designee, would bring the bill up when the committee was called.
5. The House would debate the bill in the Committee of the Whole for two hours and then vote on passage by a simple majority.

Importantly, Calendar Wednesday could only be waived by a two-thirds majority of the full House. So vital was the rule that the full revolt against Cannon was triggered by his decision to bypass Calendar Wednesday in March 1910.<sup>3</sup> He was kicked off the Rules Committee, and this came to be known as his “dethroning.”

Although Calendar Wednesday, or more formally the “Calendar Call of Committees,” still exists in House Rule XV, clause 6, it has fallen into disuse.<sup>4</sup>

This was not the end of the rules battles in 1910. On June 17, the House passed a new rule creating the discharge petition, which forced a bill out of legislative committee and onto the floor if 218 members signed a petition to call it up.<sup>5</sup> The coalition was similarly bipartisan, bringing together the insurgent Republicans with Democrats. The discharge petition has played an important role in legislative debates ever since, and has been especially prominent in 2024.

The rise of Calendar Wednesday, the dethroning of Speaker Cannon, and the creation of the discharge petition ended a period where the Rules Committee had unique control over the proceedings of the House.

## Overcoming the Southern Democrats' control of the Rules Committee

Beginning in the late 1930s, the Democratic Party faced an ideological rupture between the North and South. The Northern liberals led the push for New Deal legislation and Civil Rights, while the conservative Southern Democrats opposed some of the New Deal economic agenda and Civil Rights expansion. In some

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2. Much of this congressional history comes from U.S. House of Representatives, Committee on Rules, *A History of the Committee on Rules: 1st to 97th Congress, 1789-1981* (Washington, DC: U.S. Government Printing Office, 1983). In addition, former Republican Rules Staff Director Don Wolfensberger has written on this battle: Donald R. Wolfensberger, *Congress and the People: Deliberative Democracy on Trial* (Johns Hopkins University Press, 2001), 49.

3. Ruth Bloch Rubin goes into more detail on the fight and how insurgent Republicans worked as a faction in her excellent history of Congressional factions. Ruth Bloch Rubin, *Building the Bloc: Intraparty Organization in the US Congress* (Cambridge: Cambridge University Press, 2017). Phil Wallach also discusses the broader battle for Congress. Philip A. Wallach, *Why Congress* (New York: Oxford University Press, 2023).

4. Note that the original text of the Wednesday Calendar has since been modified to add a proviso to refer to Rule XIV clause 4.

5. [45 Cong. Rec. H8439-45 \(1910\)](#).

cases, Republicans would join with Southern conservatives on economic policy. This came to be known as the “conservative coalition.”

One significant locus of this battle was the House Rules Committee. Three conservative Southern Democrats and the Republican members formed an alliance that mirrored the broader “conservative coalition” in Congress to block parts of Northern liberals’ economic agenda.

The clearest example of this fight came in 1937 and 1938, when the Fair Labor Standards Act, also known as the Wage and Hour Bill, got stuck in the Rules Committee.<sup>6</sup> Proponents tried to shake it loose with a discharge petition. Ultimately, a substantially diminished version passed on the floor 314-97.

### 81st Congress: Birth of the 21-Day Rule

In the 1949 election, Democrats won a large majority in the House, wresting control from Republicans. The war was over, and Northern liberals and President Truman had an agenda that they wanted to pass. However, with the 1938 fight in mind, they feared that the entire agenda would either be delayed or completely stalled by three Southern Democrats seated on the Rules Committee. They considered multiple ideas for reform:

1. Substantially lowering the threshold for a discharge petition from 218 signatures.
2. Requiring the Rules Committee to make either a favorable or an unfavorable recommendation within a fixed time frame.
3. Allowing a Committee “Second Thought”: Reworking the Rules Committee so that it could refuse to grant a rule to a bill once, but if the bill was reported out of committee a second time, then Rules would be required to move it ahead.

Working with Democratic leadership, Rules Committee Chairman Adolph Sabath of Chicago settled on the 21-Day Rule.<sup>7</sup> Here’s how it worked:

1. A committee would finish the markup of their bill, report it, then request a rule from the Rules Committee.
2. If a rule had not been drafted for the bill after 21 days, the reporting committee could bypass the Rules Committee and place it on the Floor Calendar anyway.
3. The Speaker or his designee would then be required to call up the bill.
4. The House would debate the bill in the Committee of the Whole — albeit without procedural waivers that bills from the Rules Committee provided — and then vote on passage by a simple majority.

Congress adopted the 80th Congress’ Rules package with only one new amendment, the 21-Day Rule. This was the only issue on which there was substantive debate. It passed with a decisive bipartisan vote of 275-142 (225 Democrats, 49 Republicans, and one independent voted in favor).

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6. John S. Forsythe, “[Legislative History of the Fair Labor Standards Act](#),” *Law and Contemporary Problems* 6, no. 3 (Summer 1939): 464-482.

7. The politics of the 21-Day rule is summarized in Eric Schickler, *Disjointed Pluralism: Institutional Innovation and the Development of the U.S. Congress* (Princeton: Princeton University Press, 2001).

The 21-Day Rule allowed a majority of the House to act even without action by the Rules Committee, but it was not without its flaws. While it served as an effective threat to force the Rules Committee's hand, the committee often responded by slapping an unfavorable rule on any bill that it opposed, which could significantly hamper its success on the floor. And whenever the political blockage at the Rules Committee passed, usually because of a shift in agenda, Northern liberal Democrats winning more seats, or the control of the House shifting to Republicans, the 21-Day Rule was repealed.<sup>8</sup>

### 87th Congress: Adding seats to the Rules Committee

Changing the rules was not the only approach the Democratic majority used to work around the conservative coalition. After John F. Kennedy's election in 1961, House Democrats again worried that Southern Democrats and Republicans on the Rules Committee would block his agenda. They considered several options, including renewing the 21-Day Rule and removing a conservative member from the committee.

They settled on adding two Democrats and one Republican to the Rules Committee, expanding it from eight Democrats and four Republicans to 10 Democrats and five Republicans.<sup>9</sup> Republican Minority Leader Charles Halleck, happy to thwart the Democrats' agenda, whipped his caucus in opposition when the House voted on the change. But 22 Republicans, motivated by the possibility of working with Democrats on Civil Rights, defied him to vote with the majority of Democrats, and the expansion of the committee passed, 217-212.

Two important new factions that were involved in this fight ended up reshaping the House for generations. The first was the Democratic Study Group ("DSG"), the caucus of liberal Democrats formed in 1959 to fight conservative Southern Democrats. The fight over the Rules Committee was one of their early wins. Over the next decade, they came to transform the Democratic Party and the House.<sup>10</sup> Today's Freedom Caucus takes its inspiration from the DSG.

The second was the "Wednesday Group" of moderate Republicans who broke with their party over the Rules Committee expansion. Soon after, they started meeting for drinks informally on Wednesday nights. In the fall of 1961, they formed the "Wednesday Group" as a self-conscious caucus that eventually had staff. That group later became the Tuesday Group, and today, it continues as the Republican Governance Group, the leading moderate GOP faction in the House.

### 89th Congress: Resurrection of the 21-Day Rule

After an overwhelming victory in the 1964 election, the Democrats hoped to implement much of Lyndon B. Johnson's agenda in the 89th Congress. Much attention has been paid to the debates in the Senate, including how the majority overcame the filibuster to pass the Voting Rights Act. However, the 21-Day Rule was critical in the House and enabled Johnson's agenda from 1965 to 66.

After a few reform ideas circulated at the beginning of the Congress, leaders settled on reinstating the

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8. Edward Cox (D-GA) introduced a resolution to [repeal the 21-Day Rule](#) during the 81st Congress. It was clear that Cox wanted to block a Civil Rights bill that many Republicans supported. Republicans voted to keep the 21-Day Rule so that they could continue to pass Civil Rights legislation, even though economic legislation that they opposed also passed.

9. [107 Cong. Rec. H1589 \(1961\)](#)

10. Bloch Rubin's book provides an extensive history of the DSG.

21-Day Rule with a few improvements.<sup>11</sup> However, then-Rules Chairman Howard Smith, who had led the conservative faction of the Rules Committee for years, opposed the 21-Day Rule. Majority Leader Carl Albert offered the amendment to the House rules, and it passed again on a bipartisan vote.

The rule proved effective: It was used to bring eight bills to the floor, of which seven passed the House and five became law. And often, even just the threat of invoking the 21-Day Rule was enough to pressure the Rules Committee to take action, as was the case in the passage of the Voting Rights Act. However, even this modified version of the 21-Day Rule had a short tenure. It was repealed at the start of the next Congress, when the political environment shifted.

## The challenges of today's House

Today's House faces two kinds of challenges from two different perspectives. From the leadership's perspective, the House has struggled to pass bills. From a rank-and-file member's perspective, even majorities struggle to get floor votes or even committee votes on key priorities.

This Congress has seen substantial use of both suspension of the rules (explained below) and discharge petitions to address these challenges. However, these are both imperfect mechanisms for improving the operation of the House. We therefore compare these solutions to the mechanisms described above and discern some general principles for reform that might be useful in today's context.

Speaker Johnson's challenge in the 119th Congress could be even bigger than it was in the 118th. Margins may be smaller. The Freedom Caucus maintains seats on the committee. Getting most things done will require Democratic votes. The Speaker needs a new strategy for managing this factional battle so that the House can pass governing legislation.

### Speaker Johnson's suspension solution

Faced with his own Rules Committee blockage, Speaker Johnson has dusted off a long-standing House procedure usually saved for uncontroversial bills: suspension of the rules. Suspension is a mechanism that allows consensus bills to move quickly through the House with a two-thirds majority. Appreciated in the 19th century for its flexibility, the practice was gradually limited to prevent frequent disruptions of House business, and finally the decision to hold a suspension vote was handed to the Speaker. Johnson's use of suspension to move contested bills is not unprecedented, but he appears to have relied on the tactic far more often than his predecessors.<sup>12</sup>

Johnson has used the suspension process to pass significant bills, such as the Tax Relief for American Families and Workers Act of 2024 (passing 350-70), the Lower Costs, More Transparency Act (320-71-1), the National Defense Authorization Act (310-118), multiple continuing resolutions, agreeing to Senate appropriations bills, and more. His use of suspension has garnered explicit criticism from the Freedom Caucus.

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11. In the 81st Congress, the Speaker was required to allow a committee to bring up a bill under the 21-Day Rule. In the 89th Congress, this was changed to allow the Speaker to have discretion over which bills to bring up.

12. Political scientist James Robinson noted in 1959, "[s]uspension of the rules, Calendar Wednesday, even unanimous consent procedures have been utilized to reach measures on which the Rules Committee has not acted favorably." James A. Robinson, "[The Role of the Rules Committee in Arranging the Program of the U. S. House of Representatives](#)," *The Western Political Quarterly* 12, no. 3 (September 1959): 653-669



However, passing substantial legislation through suspension has its limits. The first is that it restricts debate on the underlying bill to just 40 minutes. That is woefully inadequate to the stakes of major legislation: For example, the National Defense Authorization Act typically has hundreds of amendments filed and multiple days of debate. And while compromise is critical, many good ideas with substantial bipartisan support may not reach the high bar of a two-thirds majority.

We now turn from the Speaker's chair to the back benches, where members are pursuing their own strategies to bypass committee bottlenecks.

### Increased use of the discharge petition

The discharge petition dates to the same fights as Calendar Wednesday. It solves the problem that a legislative committee might not even take up a popular idea within its jurisdiction. While the process has changed over the years, the basic idea is that after a bill is filed, members of Congress can file a separate “discharge petition” where lawmakers register their support for “discharging” the bill from committee to the floor. Today, 218 signatures are required, although the number has moved up and down over time.

In April, Philip Wallach and Priscilla Goh of the American Enterprise Institute noted that there had only been two successful uses of the discharge petition in the 21st century:<sup>13</sup> campaign finance reform in 2002 and the reauthorization of the Export-Import Bank in 2015 (which was led at the staff level by our Niskanen colleague Corey Schrodtt, then working for a member of the House).

That number has doubled in the last half-year.

In May, Rep. Greg Steube (R-FL), a Freedom Caucus member, worked with both parties to discharge his bill providing tax relief for victims of natural disasters from the Ways and Means Committee, on which he serves. The House Democratic Caucus supported Steube's bill, which ultimately passed on suspension.

In September, Reps. Garrett Graves (R-LA) and Abigail Spanberger (D-VA) achieved the necessary 218 signatures to force the Social Security Fairness Act to the floor. It passed 327-75 on November 12, 2024..

As Wallach and Goh note, the modern use of the discharge petition now focuses on discharging *resolutions* that provide special orders for bringing bills to the floor for debate in the Committee of the Whole. So instead of discharging a bill, they discharge a rule that structures debate on the bill. This allows for a more structured debate, more time for deliberation, and waivers of key provisions of the House rules.

## Comparing the past and present

This table summarizes the key differences between Calendar Wednesday, the 21-Day Rule in the mid-20th century, the use of suspension today, and the discharge petition:

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13. Pearson and Schickler found that only 18 have been discharged between 1931 and 2000. Kathryn Pearson and Eric Schickler, “Discharge Petitions, Agenda Control, and the Congressional Committee System, 1929-76,” *The Journal of Politics* 71, no. 4 (November 2009): 1238-1256.

	Bipartisan legislating	Passage vote	Requires action by committee of jurisdiction	Speaker selects bills	Uses Committee of the Whole
Calendar Wednesday	de facto	Majority	X		X
21-Day Rule	de facto	Majority	X	X (89th)	X
Suspension	de facto	2/3rd		X	
Discharge petition	de facto	Majority			X

This chart reveals some of the features that a reform to House Rules might require.

**Bipartisanship.** Suspension requires a two-thirds vote to pass the motion. Both the 21-Day Rule and Calendar Wednesday emerged from a political context where there was a potential bipartisan coalition for legislation that could be blocked, in one case by a minority faction on the Rules Committee and in the other by the Speaker’s role on the Rules Committee. Both rules passed with bipartisan support.

**Committee work.** The 21-Day Rule and Calendar Wednesday strongly emphasized committee work. Both mechanisms required that the relevant committee(s) take action on the bill and report it to the full House. Many reformers, both inside and outside of Congress, have called for deeper work in committees to rehabilitate Congress. Suspension does not require this.

**Uses Committee of the Whole.** With the sole exception of “suspension,” all of the mechanisms discussed here for bringing a bill to the floor have legislators debate and amend bills in the Committee of the Whole, where the House once did most of its work. The Committee of the Whole provides easier rules for debate and can be structured with a special rule to allow the House to bypass some of its standing rules. Both the 21-Day Rule and Calendar Wednesday resulted in debating the bill in the Committee of the Whole. The modern use of the discharge petition — where it technically discharges a special rule for an underlying bill — typically also leads to the Committee of the Whole. By contrast, “Suspension, short for “Motion to Suspend the Rules and Pass,” does not allow amendments and limits the debate to 40 minutes.

## Committee-sponsored discharge petitions

Based on this understanding of today’s challenges and rules changes in the past, we propose a new way to unlock governing majorities on the floor of the House. Existing mechanisms are ill-suited to the present moment. The discharge petition requires too high a threshold of support for floor action on a regular basis. Suspension bypasses committees and/or stifles floor debate in a manner that further empowers the Speaker. And the 21-Day rule and Calendar Wednesday permit such easy floor access that leadership and blocking minorities are unlikely to consent to their revival.

The bargain we seek to offer is one in which it would be easier to get popular bills to the floor, but only if there was bipartisan committee involvement followed by robust, but not overly rigid, floor debate and amendment.

The key elements of a reform proposal include:

- **Substantial bipartisan agreement.** Any faction that has blocking power in the Rules Commit-



tee will have some degree of blocking power on the floor, so there is no getting around the need for supermajorities.

- **Require committee action.** Bipartisan committee action signals bipartisan support on the floor. In addition, committee processes tend to be more open, so there would be opportunities to scrutinize and amend the bill.
- **Allow deliberation,** including amendments, in the Committee of the Whole.

The most obvious way to structure this reform would be to take the underlying idea of the 21-Day Rule and marry it to the contemporary use of the discharge petition.

Under 21-Day Rule practice, the reporting committee would request a rule. If the Rules Committee would refuse, the bill could come to the floor after 21 days. However, the bill would not have the procedural benefits that often come with the Rules Committee's blessing, such as waivers of specific House rules that can trip a bill up on the floor. The 21-Day Rule thus didn't have the flexibility of the discharge petition, which in its current form effectively allows the proponent of the bill to suggest the terms of the debate.

Based on this framework, we suggest the House bring back the 21-Day Rule in a modified form: *lower the threshold to discharge a rule if the authorizing committee has reported the underlying bill on a bipartisan basis.* Call it the committee-sponsored discharge petition.

The steps would be:

1. A committee would complete the markup of the bill, report the bill to the House, and request a rule.
2. After 21 days, if the bill does not receive a rule, the chair and ranking members of the committee can file a resolution to discharge a rule to bring the bill to the floor.
3. The discharge threshold would be 145 signatures, rather than 218.

A report from the Hoover Institution and the Sunwater Institute has proposed a mechanism with a similar spirit, with additional excellent recommendations.<sup>14</sup>

## The lesson is more political than procedural

This history of overcoming factions within the Rules Committee is in part a deep-in-the-weeds story about congressional procedure.

However, another way to frame this same story is that, at key periods, arcane debates over the organization of the House became focal points for ongoing, high-stakes factional disputes in Congress. In 1909-1910, the fracture in the GOP became an open split that weakened Speaker Cannon (and the Speakership) and created the Wednesday Calendar and the discharge petition as mechanisms for the insurgent faction to leverage its power. The rules fight was merely the appetizer, however: Republicans spent most of their time fighting over tariffs, credit, and other substantive policy.

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14. Brandice Canes-Wrone et al., "Revitalizing the House: Bipartisan Recommendations on Rules and Process" (Hoover Institution and Sunwater Institute, September 2024). <https://www.hoover.org/research/revitalizing-house-bipartisan-recommendations-rules-and-process>.

From the 1930s to the 1960s, there were a series of fights over economics and Civil Rights. To accomplish their policy and political goals, legislators sometimes turned these into fights over the organization of the House. Those are the moments where there was institutional innovation like the 21-Day Rule and the change in composition of the Rules Committee.

In this understanding, congressional procedure is a sort of engineering problem — a search for the right vehicle to run the House and use power. And so congressional rules are downstream of political and cultural transformations.<sup>15</sup> If that is the story, the hardest part isn't the procedure. It's finding and motivating the legislators who wish to act and are willing to engage in forthright factional conflict to accomplish their goals.<sup>16</sup>

Perhaps the biggest question that we face today is, who wants to engage in conflict to ensure governance? History provides models and tools. But history cannot provide the political will today. That takes leadership.

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15. This was the lesson Soren took from Nelson Polsby's book talks for Congressional staff on How Congress Evolves. Nelson W. Polsby, *How Congress Evolves: Social Bases of Institutional Change* (New York: Oxford University Press, 2004).

16 , Jack Santucci has made the same point around election reform. Jack Santucci, *More Parties or No Parties: American Electoral Reform and the Politics of Extreme Distrust* (New York: Oxford University Press, 2023) and Jack Santucci, "[Multiparty America?](#)" *The Journal of Politics* 82, no. 4 (October 2020): e35-e39.