

The Tool Boehner Used To Manage Congressional Dysfunction

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Few can dispute the dysfunction of recent Congresses. The 112th Congress proved the least productive in modern history as measured by laws passed. The dramatic federal government funding standoff in the 113th Congress culminated in a 16-day shutdown that drove congressional approval to its lowest level ever. Congress' dysfunction manifested itself in inaction on major policy priorities and also in gridlock on issues normally treated as noncontroversial. Yet despite these failures, a close look at recent Congresses demonstrates the remarkable ability of the institution to adapt and address internal challenges.



Holly Fechner

U.S. House of Representatives Speaker John Boehner's strategic use of an informal political and procedural tool — the Hastert Rule — allowed him successfully to navigate a treacherous political path of managing his divergent caucus, preserving his leadership position, and passing key legislation even when a majority of his caucus did not support it.

The Hastert Rule provides that the speaker will not schedule a bill for a floor vote unless a majority of the majority caucus favors the legislation. The Hastert Rule is not an official rule. It is a practice designed to protect the speaker's control of the House and to ensure that no bills become law without broad support from the majority party. The rule also serves to strengthen the speaker's position in negotiations with the Senate.

A major source of dysfunction in Congress is the inability of members of the two political parties to compromise and reach agreement on major issues. Academics have documented the steady growth in the ideological distance between the two parties in Congress over time, with a notable jump between 2010 and 2012. This trend does not reflect equal and symmetrical movement by both parties. The Republican spectrum, including both the most moderate and most conservative wings of the party, has moved rightward at a much steeper pace than their Democratic counterparts have moved leftward. The two parties are more divided ideologically than at any point in the past two decades.

The rise of the Tea Party widened the ideological spectrum of members of the Republican caucus, especially in the House, and led to a period of intense infighting within the Republican Party. Numerous Republicans in Congress have faced primary challenges from Tea Party members. These divisions within

the Republican Party created challenging conditions for Speaker Boehner.

As speaker, he is charged with leading his caucus and managing legislation on the House floor. To balance the competing factions in his caucus, Speaker Boehner selectively used the Hastert Rule. He invoked the rule to let his caucus know they were in control because a majority of the majority could determine the fate of legislation. In rare circumstances, however, and often with the tacit support of his caucus, Speaker Boehner overrode the majority of the majority to preserve the political viability of his party.

Undoubtedly, the routine use of the Hastert Rule strengthened the hand of Tea Party members to influence legislation. The Hastert Rule gave Tea Party members outsized influence to push legislation further to the right. They succeeded in enacting their substantive agenda by shutting down the federal government, drastically cutting federal spending for domestic programs, and stopping reauthorization of significant, long-standing federal legislation.

Divided government prevented Republicans from repealing laws outright, although they tried repeatedly, including voting over 50 times to repeal the Affordable Care Act. The Hastert Rule does not make bipartisanship in the House impossible, but it does make it more challenging. With a Democratic-controlled Senate and a Republican-controlled House, the routine use of the Hastert Rule means that the House will often produce legislation that is not appealing to Senate Democrats and is unlikely to pass the Senate. From the perspective of supporters of limited government, an unproductive Congress is not an unsuccessful one.

At the same time, selectively ignoring the Hastert Rule allowed Speaker Boehner to relieve some of the political pressure that the Tea Party members exerted in an effort to address critical public policy concerns and to preserve the future electoral viability of the Republican party. Speaker Boehner allowed five bills to pass without a majority of the Republican caucus in 2013 and 2014, the most since 2008.

The list of bills that merited special treatment is instructive. Bills to fund the federal government, raise the debt ceiling, and provide emergency funding to respond to a natural disaster passed with predominantly Democratic votes. Clearly, the need to safeguard the economy from substantial harm and protect his political party from significant missteps that could diminish their electoral chances in the future motivated the speaker to schedule these bills for floor votes despite the Hastert Rule.

Speaker Boehner also dispensed with the Hastert Rule to pass the Violence Against Women Act reauthorization. In doing so, he was responding to the substantial gender gap that Republicans have faced in elections since 1990. Passing the VAWA was Speaker Boehner's attempt to respond to a perceived political weakness of his party.

Political polarization in Congress, and particularly in the Republican Party, has heightened congressional dysfunction. The use of the Hastert Rule magnifies the influence of the Tea Party members and makes it difficult to pass legislation in a divided Congress, thereby facilitating gridlock. Speaker Boehner's strategic use of the Hastert Rule allowed him to maneuver through this difficult period. He was able to navigate a treacherous political path of managing his divergent caucus, preserving his leadership position, and passing selective legislation when necessary even when the majority of his caucus did not support it.

Speaker Boehner needed to appease the powerful Tea Party faction of his caucus to preserve his job, but he also had to safeguard the economy from harm and protect his political party from significant

missteps that could diminish their electoral chances in the future. Understanding these dynamics helps us understand Congress now and in the future. It is an example of the remarkable ability of Congress to adapt and address internal challenges.

—By Holly Fechner, Covington & Burling LLP

Holly Fechner is a partner in Covington & Burling's Washington, D.C., office. She was policy director for former Sen. Edward Kennedy, D-Mass.

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