

July 20, 1993

SLOWING THE SPENDING STAMPEDE: A FIVE-DAY WAITING PERIOD FOR CONGRESS

INTRODUCTION

This fall, Congress will go on a spending binge. In the course of six or eight weeks legislators will approve bills appropriating over half a trillion dollars in spending for fiscal year 1994. If recent history is any guide, much of this spending will be considered in a fashion that denies most Congressmen the opportunity to read or even effectively skim the legislation that appropriates the funds. Soon afterwards the House and Senate likely will embark on a pre-holiday legislative orgy, approving scores of bills in the course of a few days before quitting work for the year. In the closing days of its 1990 session, for instance, Congress approved 109 separate bills. Without even a scorecard to tell what is being voted on, Members will be forced to rely on lobbyists and party leaders for a thumbs up or down before casting votes. Long after legislation is passed investigators will be uncovering unjustified spending and special interest favors—items that should have been debated before Congress voted. While Congressmen may be entitled to vote without knowing what is in a bill if they so choose, the public, media, and citizen's groups deserve a reasonable opportunity to review bills for pork-barrel spending or other objectionable provisions before they have become the law of the land.

Congressional rules already mandate minimum review periods of two or three days prior to consideration of appropriations bills (and for legislation generally in the House). Already insufficient for complex legislation, these waiting period rules have increasingly been waived, ignored, or bypassed in recent years. This blind spending and legislating undermines the principle of majority rule in Congress, frustrates accountability to voters, and expands opportunities for pork-barrel spending. While the problem of rushed decision-making is most acute with Congress's massive annual spending bills, the need for adequate time for review, deliberation, and debate applies to all legislation. Congress needs to slow down before it spends again. Fostering genuine deliberation and allowing public scrutiny are essential to reforming congressional spending habits. Congress needs

to extend existing legislative waiting periods and ensure compliance with its waiting period rules. Specifically, Congress should:

✓ **Lengthen the waiting period** for appropriations and other bills to five days, so that legislators and the public have sufficient time to examine proposed spending and other legislation.

✓ **Eliminate loopholes and rule waivers** that allow congressional committees to short-circuit waiting periods and rush debate on bills in order to shield insupportable spending and other controversial proposals.

Unlike waiting period proposals which would infringe upon constitutional rights (on gun purchases, for instance), an internal congressional waiting period would restrict only the delegated powers of Congress. Rather than trespassing on rights, an internal congressional waiting period would help to protect citizens' rights to representation and petition.

THREE DAYS, TWO DAYS, OR NONE AT ALL

Current rules providing minimum periods for scrutiny of appropriations and other legislation are both inadequate and inadequately adhered to. Reports on appropriations must be available to the House for three days,¹ and the Senate for two,² before legislators can vote on them. Separate provisions of House rules also require three-day waiting periods before consideration of non-appropriations legislation and conference reports. If a report is filed in the Senate, a two-day waiting period must be observed. These rules are intended to allow Congress sufficient time to make informed choices, and to give the press and public sufficient information about government spending and other decisions. The fact that three separate House rules include versions of the three-day waiting period demonstrates the importance of allowing time for adequate deliberation.³

In practice, however, these waiting periods frequently are shortened. The Senate Appropriations Committee is allowed to opt to omit any report on spending legislation, thus avoiding the required two-day waiting period. Under unanimous consent agreements the Senate often pulls bills just out of committee immediately onto the Senate floor. The House routinely waives its three-day rules. Those waivers require a majority vote in both the Rules Committee and the full House. The Rules Committee has nine seats for Representatives in the majority party, and four seats for those in the minority. This gives Democrats 69 percent of the votes in that committee, although they have only 59 percent of seats in the House. Since House members traditionally follow committee recommendations on arcane-sounding procedural matters, the vote in the full House rarely varies from the recommendations of the inflated majority in the Rules Committee, so the rules for legislative waiting periods are easily waived. In the 102d Congress (1991-1992),

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eleven out of 26 appropriations bills were passed in the House under waivers of the required three-day waiting period for legislation or conference reports.⁴

Even when waiting period rules are not avoided, their spirit frequently is violated. Copies of bills or reports often are unavailable until a day or more after they are filed. Substitute amendments which revise completely the text of legislation are not subject to waiting period requirements. A loophole in House rules voids the waiting period in the final days of each session, creating an incentive to delay controversial matters.

SPENDING SECRECY

The need for a waiting period is magnified by congressional practices which frequently succeed in making an end run around other rules designed to assure openness in the legislative process. Though House and Senate rules generally require committees to hold open meetings, the House Committees on Appropriations and Ways and Means frequently conduct bill-writing sessions in secret. The Senate Finance Committee likewise excluded press and public from its recent deliberations on the Clinton Administration's new tax bill. While the Senate Appropriations Committee opens its meetings to the public, the meeting room used by the committee is so small that only a handful of outsiders are allowed in.

Conference committees also are supposed to be open to the public, but conferees frequently meet in secret, making the constraints imposed by House and Senate rules irrelevant. Though conference committees are supposed to compromise between differences in House and Senate bills, not add new material, this constraint is often ignored. This practice is in violation of both House and Senate rules. If new provisions are inserted in an appropriations report, an objection may be raised against it by any Senator, but there is no remedy in the rules of the House.⁵ Even bills which are relatively free of pork when they pass the House and Senate can be loaded up with wasteful spending in a conference committee. Like mushrooms that emerge overnight and flourish in the dark, the conference process can produce new growth on what had been a clean field the day before.

HURRY UP AND VOTE

The legislative hurry-up offense—the combination of committee and conference secrecy with waiting period waivers—deprives the public, the media, and rank and file Members of the House and Senate of adequate opportunity to examine legislation before it is voted on. In most cases the only evident reason for accelerating the legislative process is to hurry through pork-barrel spending or to cut short debate on other politically controversial proposals. Nearly every instance of circumventing the waiting period rules provides more evidence of the need to strengthen such requirements and to apply them consistently.

⁴ The eleven waivers comprised four in the first session and seven in the second session. They typically permitted the House to dispose of in one or two days matters that ordinarily require a three-day waiting period.

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Stratospheric Spending

Senior Congressmen frequently use waiting period waivers not only to overcome policy objections, but even to frustrate the express will of a majority of lawmakers. Take, for instance, the \$360 million allocated in fiscal year 1993 for continued funding of the advanced solid rocket motor (ASRM). Although NASA, the Bush Administration, and many environmental, scientific, and taxpayer groups recommended termination of this program,⁶ the fact that the ASRM is built in the district of Jamie L. Whitten, then Chairman of the House Appropriations Committee, apparently was decisive.

Whitten added the ASRM funds to the Veterans Administration and Housing and Urban Development (VA-HUD) appropriations bill in committee. The House then approved an amendment to kill all ASRM spending and sent the bill to the Senate, which left ASRM funding out of the bill. In the conference committee, however, ASRM funding was reinserted. The day that the conference committee reported its decision, the House voted to waive the three-day rule, and funding for ASRM and the rest of the bill was approved the next day. Had a five- or even a three-day waiting period been enforced, ASRM opponents might well have been able to marshal forces to uphold the initial House decision to kill the program.

Urban Mushrooms

The bill that funded ASRM also contained a Housing and Urban Development "Special Purpose Grants" fund controlled by Congressmen sitting on HUD's funding committees. The Senate had proposed spending roughly \$125 million for the grants; the House had included no money at all. The conference committee did not compromise: it added an additional \$135 million. The \$260 million appropriation included \$1.3 million for subsidies to two sugarcane mills in Hawaii and \$1.5 million each for a "manufacturing incubator facility" in North Dakota, renovation of two county courthouses in Alabama, small business loan funds in Vermont, a "Center for Pacific Rim Studies" at the University of San Francisco, and a video conferencing and training facility at Enterprise Development Incorporated of South Carolina.⁷

It is difficult to see why these local governments, private universities, and businesses should be subsidized by the federal government. But it is easy to explain why so many Congressmen pushed to waive the mandated three-day period that the conference report was required to be available: scrutiny of this spending would have jeopardized its prospects of passage.

California received the biggest payload from this fund — over \$25 million. However, the second largest recipient of special purpose grant funds (\$19.25 million) was the state of West Virginia, a state with comparatively little acreage but comparatively large political clout: its representatives include Senate Appropriations Committee Chairman Robert C. Byrd and House HUD subcommittee member Alan Mollohan. For purposes of com-

6 The ASRM was opposed by such diverse groups as Citizens for a Healthy Environment, Friends of the Earth, National Toxic Campaign Fund, the Sierra Club Legal Defense Fund, the Association of American Scientists, the National Resource Council, the Aerospace Safety Advisory Panel, Citizens Against Government Waste, Citizens for a Sound Economy, and the National Taxpayer's Union.

7 Conference Report 102-902, H.R. 5679.

parison, Arkansas—a slightly larger state with comparable economic needs—received only \$1.25 million.

Scientific Pork

Another blatant example of the use of rule waivers to avoid public scrutiny and frustrate a congressional majority occurred on the 1993 Energy and Water appropriation. The subcommittee in charge of writing the bill slipped in ten science projects, costing over \$97 million, that were not authorized as required by House rules. The Appropriations Committee secured a waiver of the waiting period in hopes that the bill would pass without controversy. However, Representative George E. Brown, Jr., the authorizing committee chairman, discovered the pork and proposed that the funding be deleted unless the projects were duly authorized after a competitive review process. Three weeks after Brown won 250-104, supporters of the ten disputed projects convinced their Appropriations Committee colleagues to insert the same projects into the conference report on another appropriations bill, the one funding defense spending. Before the defense report was available to non-committee members, appropriators secured a Rules Committee waiver of all points of order, including the three-day waiting period and the ban on unauthorized spending.

One copy of the conference report was made available for the scrutiny of Congressmen about two hours before the vote took place. "I think they deliberately did their best to conceal what they were doing," Brown later said.⁸ By the time that he was permitted to see the only available copy of the conference report—73 pages of small print—and was able to find the pork, the window of opportunity to marshal support for another funding deletion vote had passed. The bill was reported only one day before the end of the session, just a few weeks before the 1992 elections. A successful vote to overturn the waiver of the waiting period would have meant that Congressmen would have had to stay in Washington rather than going home to campaign. Brown's attempt to overturn the rules waiver failed, and the unauthorized spending (along with the rest of the bill) was approved.⁹

LEGISLATION WITHOUT DELIBERATION

The deliberative vacuum is not confined to appropriations. In 1991, the House approved a thousand-page \$151 billion highway authorization bill that was unread by any Member.¹⁰ Shortly after midnight on November 27, the day before Congress was scheduled to quit work for the year, the House Rules Committee met to approve a waiver of all House rules applying to the highway conference report. At the time the Rules Committee met, conferees had not even completed work on the bill. At 4:00 a.m., still with no bill in sight, House members began debating the merits of the conference report on the House floor. Just before 5:00 a.m. a single copy of the bill, pieced together from different word processing machines, was brought to the House floor, and at 6:00 a.m. the House voted

⁸ See Holly Idelson, "Unsinkable Science," *Congressional Quarterly Weekly Report*, October 10, 1992, p. 3191.

⁹ *Ibid.*

¹⁰ See the discussion of the Intermodal Surface Transportation Efficiency Act of 1991 in Eric Felten's *The Ruling Class* (Washington: Regnery Gateway, 1993), pp. 3-5.

overwhelmingly to approve the bill which no Member had even leafed through. Weeks later, Department of Transportation staffers were still plowing through the bill, discovering unknown pockets of pork. Nothing in the bill was so urgent as to demand such a willfully blind voting procedure. While a week's wait may not have changed the outcome, the prospect of scrutiny certainly would have made conferees think twice about the pork-laden monster they created.

In the course of the final seven days of the session that saw the highway bill pushed through and completed, Congress approved 46 other pieces of legislation, ranging from federal deposit insurance reform to the declaration of "National Visiting Nurse Associations Week." In the final week of the previous session, Congress took action on 109 pieces of legislation, including eleven out of thirteen appropriations bills. There is little excuse for Congress's habit of procrastination all year followed by a final rush in the last days of a congressional session. Knowing that they faced an enforceable waiting period likely would force committees to conduct their business in a more orderly and deliberative fashion throughout the year.

No Reason to Rush

Even more inexcusable than Congress's annual end-of-the-year rush is the cavalier waiver of waiting period rules on major legislation—legislation which likely would pass muster even with an additional day or two of delay. The only appreciable result is to force legislation to a vote before it can be scrutinized and vetted of any potential flaws.

The conference report on the congressional budget resolution embracing President Clinton's first five-year budget plan was treated with just such unjustified haste. In the space of one day, the House of Representatives received the conference report, voted to waive the three-day waiting period, and approved the bill. "Not one member of this Congress knows what is in this except for about five people," argued Republican Representative Gerald Solomon of New York, perhaps generously. With one exception, every House Republican voted against the waiver, while every House Democrat voted for it. A real deliberative period might have permitted Congressmen to cast a vote on some basis other than party affiliation.

The Senate version of the reconciliation bill, embodying the tax and entitlement provisions of President Clinton's deficit reduction plan, was likewise the subject of unjustified haste. The Senate Finance Committee approved the plan before legislation even existed. Members of the committee voted on the plan on Friday afternoon, June 18, with only a three-page outline of the bill's likely provisions and a Joint Taxation Committee document explaining their tax consequences. The actual text of the legislation was not available until late Friday night; Senators had one working day to study the legislation before the Senate began considering the \$1.5 trillion plan on June 22.

Second Thoughts

Certainly most outside observers object to habitually rushing bills through the legislative process. There is also evidence that Members of Congress themselves are frustrated with a system that places them at the mercy of conference committees and congressional barons, forcing them to vote on legislation they do not understand. In a recent survey conducted by the Joint Committee on the Organization of Congress, Congressmen ranked "studying and reading about pending or future legislation or issues" first among a dozen choices of activities on which they would like to spend more time. Nearly twice as many

Congressmen expressed a desire for more time to study and read as cited any other activity.

THE SUNSHINE SOLUTION

Some solutions to the problem of politicized appropriations and hastily considered legislation require substantial alterations in the constitutional balance of powers: the line-item veto, for example. A simpler repair, a five-day waiting period for approval of proposed legislation, might achieve the same kind of public accountability while producing a far more fair and democratic legislative process. A week's delay would allow a more thorough examination of spending and other proposed laws by the media, congressional staffers, public interest groups, and ordinary citizens. Justice Louis D. Brandeis called sunlight "the best of disinfectants."¹¹ Public review may provide the best test of whether spending is a legitimate response to national needs, or just pork. Current procedures, on the other hand, sanction the use of public money without public review.

A waiting period could reduce pork-barrel congressional spending dramatically. Currently, appropriations bills speed through Congress. Even the two or three days which Congressmen are supposed to have to scrutinize bills are simply not enough—and Congress frequently fails to follow its own rules. Experienced budget analysts say they need at least a week of work to gain a reasonable understanding of an average appropriations bill. Since many appropriations bills are brought forward and then voted on long before a week passes, there is every reason to conclude that public monies are being appropriated whose significance Members of Congress have no real opportunity to understand. Each of the thirteen appropriations packages (the legislation plus the accompanying report) is typically hundreds of pages long; last year's defense appropriations package ran to over 250 pages. For FY 1993, the average appropriations bill totalled \$59.7 billion.¹² With five days to read a bill that size, working 24 hours a day, a Member of Congress would have to pass judgment at a rate of over eight million dollars a minute.

Support for particularly egregious pork often vanishes under the light of day. Two recent examples of pork barrel funding that was approved but later rescinded show the sort of abuses that conscientious Congressmen and watchdog groups could highlight more often if given greater opportunity to examine appropriations bills. Democratic Senator Daniel Inouye of Hawaii inserted \$8 million for North African Jewish refugee schools in France into the conference report on a 1987 appropriation bill.¹³ The funding came to light only after the bill had passed, but when Inouye was unable to provide a convincing rationale for U.S. taxpayers to provide funding for a religious school in France, Congress rescinded the funds. In 1990 North Dakota Democratic Representative Byron Dorgan added half a million dollars to renovate the birthplace of Lawrence Welk, which is located in his state.¹⁴ Though the funding survived its first challenge, the resultant publicity created an uproar and Congress later acted to remove the controversial spending. With

11 *Other People's Money* (New York: National Home Library Foundation, 1933), p. 67.

12 See House Report 102-1091, p. 4; the median appropriation is the Commerce-Justice-State-Judiciary's \$23.2 billion.

13 S. 1924, 100th Congress.

14 H.R. 5268, 101st Congress.

expanded and consistently enforced waiting period rules, there is every reason to believe that rank and file Congressmen will successfully pursue more challenges to committee-sponsored pork.

If the current waiting period rules are not effective as written, they are even less effective when they are waived. The rules which mandate time for consideration, as well as those which prevent conference committees from adding new material, are regularly breached. Thomas Jefferson began his account of the House Rules by endorsing the idea that nothing could promote the prospects of centralized political power than "a neglect of, or departure from, the rules of proceeding. [The rules] operated as a check and control on the actions of the majority, and... they were, in many instances, a shelter and protection to the minority, against the attempts of power."¹⁵

The modern trend toward frequent waiver and disregard of Congress's procedural rules confirms Jefferson's understanding of the dangers of this course. Congress would do well to heed Jefferson's advice and resist the temptation to waive its own rules. Any genuine congressional reform package should move in the opposite direction: it should strengthen rules that encourage deliberation and scrutiny of all legislation, particularly spending bills.

RECOMMENDATIONS

Congress should lengthen the waiting period for legislation.

Congress should lengthen the two- and three-day waiting periods to five days, and the Senate should expand its waiting period rule to cover all legislation. Congress should also begin to count days when the bill or report is printed in the *Congressional Record*, or otherwise made widely available, rather than starting the clock when the bill or report is filed (as it does currently). The waiting period must include conference reports, though it should not be necessary for the second house acting on the identical report to delay action if the other chamber has complied with the waiting period rules. Finally, Congress should apply the same waiting period to substitute amendments, which replace the entire text of a bill with new proposals.

Congress should eliminate loopholes and waivers of its waiting period rules.

The House should eliminate the special provision which automatically waives the waiting period in the final six days of the session,¹⁶ as this creates an incentive to put off until the session's final days what should be handled earlier. If waivers are necessary, the House should require a two-thirds vote of the Members to waive the rules, making rules waivers more difficult and underscoring the gravity of departing from ordinary procedures. The Senate should make the production of appropriations reports mandatory, not optional, so that the appropriations committee cannot avoid a waiting period by failing to issue such a report.

¹⁵ *Rules of the House*, p. 118.

¹⁶ See *Rules of the House*, Rule XXVIII(2).

CONCLUSION

Current congressional waiting periods are both too short and too easily waived. Rank and file Congressmen and the public deserve a reasonable opportunity to review legislation before it is voted on by the House or Senate. Adequate and well-enforced waiting periods would make Congress more accountable, more democratic, and more cautious in the use of the public's money. Allowing insufficient time to review spending and other legislative decisions is poor public policy. Creating rules which encourage deliberation is the responsible alternative. Committees and influential Congressmen would have greater difficulty in slipping in special interest provisions without adequate justification and debate. The pressures of public review would prompt Congress to avoid squandering public funds. Indeed, it might serve as a welcome reminder of the source of that money.

Dan Greenberg
Congressional Analyst

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One copy of the conference report was made available for the scrutiny of Congressmen about two hours before the vote took place. "I think they deliberately did their best to conceal what they were doing," Brown later said.⁸ By the time that he was permitted to see the only available copy of the conference report—73 pages of small print—and was able to find the pork, the window of opportunity to marshal support for another funding deletion vote had passed. The bill was reported only one day before the end of the session, just a few weeks before the 1992 elections. A successful vote to overturn the waiver of the waiting period would have meant that Congressmen would have had to stay in Washington rather than going home to campaign. Brown's attempt to overturn the rules waiver failed, and the unauthorized spending (along with the rest of the bill) was approved.⁹

LEGISLATION WITHOUT DELIBERATION

The deliberative vacuum is not confined to appropriations. In 1991, the House approved a thousand-page \$151 billion highway authorization bill that was unread by any Member.¹⁰ Shortly after midnight on November 27, the day before Congress was scheduled to quit work for the year, the House Rules Committee met to approve a waiver of all House rules applying to the highway conference report. At the time the Rules Committee met, conferees had not even completed work on the bill. At 4:00 a.m., still with no bill in sight, House members began debating the merits of the conference report on the House floor. Just before 5:00 a.m. a single copy of the bill, pieced together from different word processing machines, was brought to the House floor, and at 6:00 a.m. the House voted

⁸ See Holly Idelson, "Unsinkable Science," *Congressional Quarterly Weekly Report*, October 10, 1992, p. 3191.

⁹ *Ibid.*

¹⁰ See the discussion of the Intermodal Surface Transportation Efficiency Act of 1991 in Eric Felten's *The Ruling Class* (Washington: Regnery Gateway, 1993), pp. 3-5.

overwhelmingly to approve the bill which no Member had even leafed through. Weeks later, Department of Transportation staffers were still plowing through the bill, discovering unknown pockets of pork. Nothing in the bill was so urgent as to demand such a willfully blind voting procedure. While a week's wait may not have changed the outcome, the prospect of scrutiny certainly would have made conferees think twice about the pork-laden monster they created.

In the course of the final seven days of the session that saw the highway bill pushed through and completed, Congress approved 46 other pieces of legislation, ranging from federal deposit insurance reform to the declaration of "National Visiting Nurse Associations Week." In the final week of the previous session, Congress took action on 109 pieces of legislation, including eleven out of thirteen appropriations bills. There is little excuse for Congress's habit of procrastination all year followed by a final rush in the last days of a congressional session. Knowing that they faced an enforceable waiting period likely would force committees to conduct their business in a more orderly and deliberative fashion throughout the year.

No Reason to Rush

Even more inexcusable than Congress's annual end-of-the-year rush is the cavalier waiver of waiting period rules on major legislation—legislation which likely would pass muster even with an additional day or two of delay. The only appreciable result is to force legislation to a vote before it can be scrutinized and vetted of any potential flaws.

The conference report on the congressional budget resolution embracing President Clinton's first five-year budget plan was treated with just such unjustified haste. In the space of one day, the House of Representatives received the conference report, voted to waive the three-day waiting period, and approved the bill. "Not one member of this Congress knows what is in this except for about five people," argued Republican Representative Gerald Solomon of New York, perhaps generously. With one exception, every House Republican voted against the waiver, while every House Democrat voted for it. A real deliberative period might have permitted Congressmen to cast a vote on some basis other than party affiliation.

The Senate version of the reconciliation bill, embodying the tax and entitlement provisions of President Clinton's deficit reduction plan, was likewise the subject of unjustified haste. The Senate Finance Committee approved the plan before legislation even existed. Members of the committee voted on the plan on Friday afternoon, June 18, with only a three-page outline of the bill's likely provisions and a Joint Taxation Committee document explaining their tax consequences. The actual text of the legislation was not available until late Friday night; Senators had one working day to study the legislation before the Senate began considering the \$1.5 trillion plan on June 22.

Second Thoughts

Certainly most outside observers object to habitually rushing bills through the legislative process. There is also evidence that Members of Congress themselves are frustrated with a system that places them at the mercy of conference committees and congressional barons, forcing them to vote on legislation they do not understand. In a recent survey conducted by the Joint Committee on the Organization of Congress, Congressmen ranked "studying and reading about pending or future legislation or issues" first among a dozen choices of activities on which they would like to spend more time. Nearly twice as many

Congressmen expressed a desire for more time to study and read as cited any other activity.

THE SUNSHINE SOLUTION

Some solutions to the problem of politicized appropriations and hastily considered legislation require substantial alterations in the constitutional balance of powers: the line-item veto, for example. A simpler repair, a five-day waiting period for approval of proposed legislation, might achieve the same kind of public accountability while producing a far more fair and democratic legislative process. A week's delay would allow a more thorough examination of spending and other proposed laws by the media, congressional staffers, public interest groups, and ordinary citizens. Justice Louis D. Brandeis called sunlight "the best of disinfectants."¹¹ Public review may provide the best test of whether spending is a legitimate response to national needs, or just pork. Current procedures, on the other hand, sanction the use of public money without public review.

A waiting period could reduce pork-barrel congressional spending dramatically. Currently, appropriations bills speed through Congress. Even the two or three days which Congressmen are supposed to have to scrutinize bills are simply not enough—and Congress frequently fails to follow its own rules. Experienced budget analysts say they need at least a week of work to gain a reasonable understanding of an average appropriations bill. Since many appropriations bills are brought forward and then voted on long before a week passes, there is every reason to conclude that public monies are being appropriated whose significance Members of Congress have no real opportunity to understand. Each of the thirteen appropriations packages (the legislation plus the accompanying report) is typically hundreds of pages long; last year's defense appropriations package ran to over 250 pages. For FY 1993, the average appropriations bill totalled \$59.7 billion.¹² With five days to read a bill that size, working 24 hours a day, a Member of Congress would have to pass judgment at a rate of over eight million dollars a minute.

Support for particularly egregious pork often vanishes under the light of day. Two recent examples of pork barrel funding that was approved but later rescinded show the sort of abuses that conscientious Congressmen and watchdog groups could highlight more often if given greater opportunity to examine appropriations bills. Democratic Senator Daniel Inouye of Hawaii inserted \$8 million for North African Jewish refugee schools in France into the conference report on a 1987 appropriation bill.¹³ The funding came to light only after the bill had passed, but when Inouye was unable to provide a convincing rationale for U.S. taxpayers to provide funding for a religious school in France, Congress rescinded the funds. In 1990 North Dakota Democratic Representative Byron Dorgan added half a million dollars to renovate the birthplace of Lawrence Welk, which is located in his state.¹⁴ Though the funding survived its first challenge, the resultant publicity created an uproar and Congress later acted to remove the controversial spending. With

11 *Other People's Money* (New York: National Home Library Foundation, 1933), p. 67.

12 See House Report 102-1091, p. 4; the median appropriation is the Commerce-Justice-State-Judiciary's \$23.2 billion.

13 S. 1924, 100th Congress.

14 H.R. 5268, 101st Congress.

expanded and consistently enforced waiting period rules, there is every reason to believe that rank and file Congressmen will successfully pursue more challenges to committee-sponsored pork.

If the current waiting period rules are not effective as written, they are even less effective when they are waived. The rules which mandate time for consideration, as well as those which prevent conference committees from adding new material, are regularly breached. Thomas Jefferson began his account of the House Rules by endorsing the idea that nothing could promote the prospects of centralized political power than "a neglect of, or departure from, the rules of proceeding. [The rules] operated as a check and control on the actions of the majority, and... they were, in many instances, a shelter and protection to the minority, against the attempts of power."¹⁵

The modern trend toward frequent waiver and disregard of Congress's procedural rules confirms Jefferson's understanding of the dangers of this course. Congress would do well to heed Jefferson's advice and resist the temptation to waive its own rules. Any genuine congressional reform package should move in the opposite direction: it should strengthen rules that encourage deliberation and scrutiny of all legislation, particularly spending bills.

RECOMMENDATIONS

Congress should lengthen the waiting period for legislation.

Congress should lengthen the two- and three-day waiting periods to five days, and the Senate should expand its waiting period rule to cover all legislation. Congress should also begin to count days when the bill or report is printed in the *Congressional Record*, or otherwise made widely available, rather than starting the clock when the bill or report is filed (as it does currently). The waiting period must include conference reports, though it should not be necessary for the second house acting on the identical report to delay action if the other chamber has complied with the waiting period rules. Finally, Congress should apply the same waiting period to substitute amendments, which replace the entire text of a bill with new proposals.

Congress should eliminate loopholes and waivers of its waiting period rules.

The House should eliminate the special provision which automatically waives the waiting period in the final six days of the session,¹⁶ as this creates an incentive to put off until the session's final days what should be handled earlier. If waivers are necessary, the House should require a two-thirds vote of the Members to waive the rules, making rules waivers more difficult and underscoring the gravity of departing from ordinary procedures. The Senate should make the production of appropriations reports mandatory, not optional, so that the appropriations committee cannot avoid a waiting period by failing to issue such a report.

¹⁵ *Rules of the House*, p. 118.

¹⁶ See *Rules of the House*, Rule XXVIII(2).

CONCLUSION

Current congressional waiting periods are both too short and too easily waived. Rank and file Congressmen and the public deserve a reasonable opportunity to review legislation before it is voted on by the House or Senate. Adequate and well-enforced waiting periods would make Congress more accountable, more democratic, and more cautious in the use of the public's money. Allowing insufficient time to review spending and other legislative decisions is poor public policy. Creating rules which encourage deliberation is the responsible alternative. Committees and influential Congressmen would have greater difficulty in slipping in special interest provisions without adequate justification and debate. The pressures of public review would prompt Congress to avoid squandering public funds. Indeed, it might serve as a welcome reminder of the source of that money.

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