

To: Political reporters, editorial board members and columnists, members of the General Assembly

From: Marc Stier, Director, Pennsylvania Budget and Policy Center

Subject: The Rules the PA House Needs

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Created by the close party balance in the House and a speaker of the House committed to open and transparent government, we have a unique opportunity to reconsider Pennsylvania House rules for the first time since 2007 when similar political conditions arose and a determined group of state legislators took advantage of them to institute significant reforms of those rules. So, we should all be pleased that Speaker Rozzi and the work group he created has been touring the state asking for public comment on how the House operates.

This memorandum builds on the [public testimony](#) I gave a little over a week ago to Speaker Rozzi and his work group. In it, I draw on my long experience as student of legislative rules to present a little deeper analysis of the challenge of creating rules for a legislative body.<sup>1</sup>

There are two fundamental problems with the way the General Assembly, and especially the House, has been operating in the past ten years.

*The first is that existing rules do not create a proper balance between strong party leadership, which is necessary for democratic government, and allowing the majority party to be so strong that it denies all members of the legislature, whether from the majority or minority party, to play a role in the legislative process.*

A fundamental principle of American democracy is majority rule. That is not to say this principle overrides all others. American political thought has always accepted limits to the principle of majority rule. We have long believed that it is important to protect the rights of minorities against an impassioned and impatient majority. We have long believed that legislators should have time for thoughtful deliberation about the issues before them. And we have long believed that legislative bodies should do their work transparently and give the public sufficient time to comment on legislation that is under consideration.

Yet barriers to majority rule are built into the structure of most state legislatures. All but one state has a bicameral legislature in which the members of each house are elected by a different constituency. Bicameral legislatures are designed to protect minorities and to slow the legislative process—this gives legislators and the public time to understand and think carefully about the consequences of legislation.

For nearly all of US history, most American legislatures have had strong political parties. Strong political party systems have two features. First, most legislators vote with their party leadership. Second, by virtue of their unity and the rules they adopt, the majority party controls the agenda of

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<sup>1</sup> My first work as a political scientist was *Revolution in Congress: Freshman Representatives and Reform in the 94<sup>th</sup> Congress*. In many ways, the challenges the US House faced that year are similar to those faced by the Pennsylvania House this year.

the legislative body. Those rules typically give them some influence over committee decisions and partly determine which legislation and amendments can be considered on the floor of the body.

Americans have long had ambivalent attitudes towards political parties. Some of us believe that strong parties stand in the way of creating broad agreement or compromises between competing views both in the public and among legislators. That is especially likely under two circumstances. Strong parties sometime create unity, not by forging ideological agreement but, for example, by denying legislators who buck the party line access to office, staff, campaign funds, and other perquisites. Those actions can limit legislators' ability to support bipartisan legislation in committee or on the floor of the legislature. Or they can keep legislation from coming up for a vote, thereby denying citizens an opportunity to know where their legislators stand.

When a strong majority party acts in this way, it undermines democracy and can actually establish minority rule in a legislature. If a majority of legislators in the majority party force the rest of the party to follow their lead, they can enact legislation that only a minority of all legislators really want. Or they can block a majority of all legislators from enacting laws that have a bipartisan majority without any public accountability because they never allow a vote to be held in either committee or on the floor.

On the other hand, the experiences of both Congress and state legislatures show us that strong political parties accomplish two important tasks.

First, they enable legislatures made up of diverse people and representing different constituencies to come together to enact legislation. There is a great deal of evidence—starting with the near-collapse of the US Congress during the war of 1812—that without some effective party leadership, legislators cannot overcome ideological, geographic, ethnic, and racial divisions to reach agreements on public policies that the public supports.<sup>2</sup> That laws need to be enacted by two houses of a legislature in the federal government and 49 of the 50 states makes this process even more difficult.

Second, when parties are mostly unified they can move legislation through committees and bring them to the floor for votes. And when they take different stands on a range of issues, strong parties allow voters for representative or senator in the US Congress or their state legislature to make an explicit choice between one direction and another for the state or country. When voters make such a choice—as Pennsylvanians did dramatically in the PA House elections in 2022 when there was a shift of 12 seats from Republican to Democrat—the new majority party should be able to follow the decision of the voters and pursue its agenda. Then voters can decide in the next election whether to again support the recently elected majority party or change direction.

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<sup>2</sup> The history of the near collapse of the US Congress at the outset of the War of 1812 is told in one of the essential books on legislative politics in the United States: James Sterling Young, *The Washington Community, 1800-1828* (Columbia University Press, 1968). Young shows how the end of party division that came about with the collapse of the Federalist Party in the “era of good feelings” led to such division within the Democratic-Republican Party that Congress was unable to act in response to the threat of war and then only ineffectively picked up the pieces after the war was over. It was only the renewal of party division in the presidential elections of 1824 and 1828 that led to the renewal of effective congressional action. While Young’s work is about a now distant past, since then, political scientists have been drawing on his lessons (which were anticipated by Woodrow Wilson in his first major book *Congressional Government*) to form their understanding of how legislative rules work to create effective or ineffective legislative bodies.

I'm discussing the way political parties operate in legislatures because I believe it is important to the process of reforming the rules of the House for legislators and the public to recognize both the contributions and problems created by strong legislative parties. While an effective legislative majority party is part of the democratic process, it is important that the majority party not exercise so much control of a legislative body's business that it undermines that process.

A review of these contributions and problems of strong political parties reminds us that the rules of the House should ideally seek a balance. Political parties should be strong enough to enact legislation and give voters a choice in subsequent elections. But they should not be so strong that a minority of the legislative body can block legislative action or discourage cross-party discussion and agreement or keep controversial issues from coming to a vote. A strong legislative party should be strong enough to encourage, rather than stand in the way of, potential compromises between members of the majority and minority, compromises that advance legislation embodying the goals of a majority of members or of the public as a whole.

In the last decade, the Republican majority in the Pennsylvania House too often has stood in the way of bipartisan agreement and / or the will of the majority of legislators. The leaders of the Republican majority repeatedly blocked legislation that was not supported by a majority of its own caucus. And that means, of course, that they were not just frustrating Democrats but frustrating Republicans who were seeking to create a bipartisan agreement on one piece of legislation or another.

Under Republican control, legislation that's had the support of a bipartisan majority of the House has not been considered in committee. Even if passed by a committee, it has been blocked from coming to the House floor. We have seen a session of the House gavelled to a close by the speaker just when the House was about to enact bipartisan legislation he opposed.

The partisan blockade of action in the House not only stands in the way of enacting legislation that already has a majority but it also provides a strong disincentive for legislators to engage in the kinds of give-and-take that can lead to productive compromise with broad support, even if it does not satisfy everyone. (A *compromise*, by definition, does not satisfy everyone.) When the leadership of one party can block any policy it opposes—even if it is supported by the public and most legislators—and the other side can achieve none of its policy goals despite public support, neither side has an incentive to propose or craft legislation that is broadly appealing.

The current partisan division and enmity in the House is not wholly a product of the rules that have been in place in recent years. There are, of course, national forces that have pushed the parties apart in our state—but the Pennsylvania House of Representatives' rules have reinforced the effects of these forces. Fair rules would have the opposite effect, tempering partisan division and encouraging both legislators and the people of the state to constructively reengage with those who stand on the other side of the partisan divide.

We can't be sure what legislation might have passed the House with fairer rules. But in my judgment, if the House had been more responsive to the majority of its members and bipartisan compromise thus more likely, over the last ten years, legislation would have passed a House that

- raised the minimum wage in PA as it's been raised in every state surrounding us—probably not as much as we would prefer but certainly far above \$7.25.
- instituted a severance tax on natural gas drilling much like West Virginia's.

- created by constitutional amendment a nonpartisan, independent redistricting commission for legislative and congressional districts.
- took stronger steps to address the inequities in local property taxation.
- reduced our highest-in-the-nation tuition at our state colleges.
- built on Act 77 to make it easier for Pennsylvanians to vote and gave the counties the funding they need to count votes quickly and securely.
- moved more quickly to reduce inequities in K-12 education.

It's likely that fair rules would not have led to legislation that embraces all the goals of our progressive-leaning organization, even though there is substantial public opinion research that shows those goals are highly popular. But we would have seen legislation that moved Pennsylvania's public policy in a progressive direction.

It is also quite possible that ideas our organization opposes, such as new ID requirements, would have been enacted as well. But the point of fair rules is that they are fair to all sides. We have enough confidence that a legislature organized to respond over time to the will of the people of Pennsylvania would do the right thing more often than not.

How do we correct the rules of the House so that having a majority party with strong leadership gives members of the minority party some influence on House proceedings? By creating rules that

- give an appropriate and fair, but limited, partisan advantage on committees to the majority party, one that is roughly related to the partisan balance in the House.
- require committee hearings and a decision on legislation that has the support a majority of members. We might even want to require hearings on legislation that has the support a substantial minority—say 40% or 45%—of members of both parties.
- create an effective discharge process that enables a majority of members to bring a bill to the floor even if it has not passed in committee.
- allow three-fifths majority of the members of a committee to replace the chair with another committee member.

Rules along these lines would allow for effective party leadership by the majority party. But it would not allow the majority party to stand in the way of bipartisan discussion and debate that could lead to compromise legislation with broad support in the House and the state as a whole. Indeed, under rules of this kind the majority party leadership would have every incentive to help build those compromise bills.

*The second problem with the rules of the House is that they allow the practice of legislating by constitutional amendment in a way that contravenes the separation of powers.*

There is a legitimate place for constitutional amendments. We mentioned above that we need a constitutional amendment to change the process by which we set legislative districts. And our organization strongly supports the constitutional amendment that would give survivors of sexual abuse the ability to seek justice in the courts—we believe that this amendment should be placed on the ballot as soon as possible.

But seeking to secure policy changes that can be attained by legislation through the constitutional amendment process is an abuse of that process and an attempt to undermine the constitutional requirement that legislation be approved by both the General Assembly and the governor unless the governor's veto is overridden by a two-thirds vote in both houses. Recent attempts to legislate

via constitutional amendment violate the spirit and letter of the Pennsylvania Constitution, which follows the US Constitution by embracing both the separation of powers and checks and balances.

The process of legislating by constitutional amendment is especially egregious when such amendments are considered on the floor of the House without public hearings and when multiple amendments are considered in the House in a single bill. The Pennsylvania Constitution requires an intervening election between the two votes that the General Assembly takes on a constitutional amendment so that citizens can consider those amendments when casting their votes for state representative. Bundling multiple constitutional amendments into a single bill defeats the purpose of that constitutional provision.

Defenders of recent, policy-oriented constitutional amendments have complained that this is the only way to enact legislation that the governor vetoes. But that is precisely what is wrong with their action. The governor, who is elected statewide rather than in too-often gerrymandered legislative districts, has a right to play a role in the legislative process under our constitution.

Moreover, the abuse of the constitutional amendment process is closely related to the House's unfair legislative rules. If the House were to have more democratic rules, it would be far more likely to pass legislation that's a product of a genuine compromise, legislation that would likely then be signed by the governor.

Defenders of legislation by constitutional amendment also say that, ultimately, the people have the right to approve or reject constitutional amendments, so it doesn't really matter what the Pennsylvania House does.

That argument, however, neglects one of the central features of politics: the power to set the agenda, which is one of the most important ways political power is exercised. Just as we want to create rules of the House that don't allow the leadership of one party to have complete control over the agenda, we also don't want that party to have complete control over what issues the voters can consider at the polls.

If members of the House want to empower the people of the state to enact legislation, they should create a referendum process in Pennsylvania that allows the people, by petition, to put referenda with the power of law on the ballot. And they should require that constitutional amendments only be considered by the voters during general elections in even-numbered years.

I would be happy to see a referendum in support of raising the minimum wage on the ballot in our state. Such a referendum passed overwhelmingly in Florida. It would do so here as well.

But when the rules of the House allow the majority party, and it alone, to decide which policy-oriented constitutional amendments can be put on the ballot and allows them to put these on the ballot at times when relatively few voters come to the polls, their goal is not really to allow the people to decide on the direction of the state. The goal is to use unfair rules to attain an almost predetermined result that cannot be achieved through the normal legislative process.

The Pennsylvania House of Representatives is part of the oldest legislative body in the United States, one with a history that is sometimes glorious, as well as having periods of malaise like that found in the last ten years. Current members of that body can add to the high points of that history, rather than defile it, by adopting rules that allow it to act on behalf of the people of Pennsylvania far more often than it has in recent years.