

**Managing Expectations, Exploiting Opportunities and Living with Constraints:  
Congressional Leadership in President Obama's First Year**

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For Democrats, election night 2009 was a resounding triumph. Barack Obama was elected president with 53 percent of the vote, an 8 percentage point margin over his Republican opponent; Democrats picked up 21 seats in the House on top of the 33 seats they had netted in 2006 and in three subsequent special elections and added at least 7 in the Senate. However, the magnitude and the nature of the victory posed daunting challenges to Obama himself and to the congressional majority party leaders who would be expected help him succeed.

What were those challenges and how did Democratic congressional leaders meet them in the first year of the Obama presidency? These are the questions I address in this essay.

Obama ran on a highly ambitious policy agenda and the Democrats' big win raised his supporters' expectations sky high. His voters expected him to deliver the significant policy change he promised and the activists who played such a big role in the victory demanded swift and uncompromising action. Furthermore, many voters expected Democrats to deliver policy change through a more bipartisan and less fractious process as Obama had promised he would. The financial system was in crisis and the economy was sinking into an ever deeper recession, if not a depression. Crises offer opportunities; still, although the problems dated back to the Bush administration, Democrats as the party in power would be held accountable if recovery lagged too long. Furthermore the problems presented by the economy and the issues central to Obama's agenda, especially health care reform, were highly complex and did not lend themselves to simple solutions easily understood by the public.

### **The Party Leadership's Role and Resources**

Major policy change in the United States requires the enactment of legislation and that requires leadership; Congress is, after all, composed of two chambers and a total of 535 voting members. Some of the necessary leadership can and must come for the president but internal leadership is also needed and in the contemporary era that responsibility falls heavily on the party leaders in each chamber.

In both houses of the U.S. Congress the central leaders are party leaders and are effectively chosen by their co-partisans in their chamber. In the 111th Congress, sworn in January 2009, the House Democratic leadership consists of Speaker Nancy Pelosi (CA), Majority Leader Steny Hoyer (MD), Majority Whip James Clyburn (SC), and a number of other members holding lesser offices. The three top members of the Senate Democratic leadership are Majority Leader Harry Reid (NV), Whip Dick Durbin ((IL), and Charles Schumer (NY), vice chair of the Democratic Conference. These are the members who would bear primary responsibility for the enactment of the Democratic agenda.

When the president is of their party, congressional majority party leaders define promoting the president's agenda as an important component of their job. In part, this is because the president's agenda is often their own and their members agenda as well; presidential candidates frequently derive a good part of their agenda from issues and proposals incubated by their co-partisans in Congress. In addition, congressional leaders see their president's success as essential to their own success--to satisfying their members' policy and electoral goals and to maintaining their majorities. Leaders and their members are aware that the president's success or failure will shape the party's reputation and so

affect their own electoral fates. Congressional leaders particularly are judged by whether they delivering on the president's agenda.

For the leaders of the 111th Congress the incentives to make passing Obama's agenda a central objective were especially great. Democrats had been in the minority in both chambers for most of the 1995-2006 period and, during that time, their policy preferences had been largely rebuffed; pent up demand for policy change among Democrats was immense. Speaker Pelosi is a strongly policy-oriented leader; for her, passing major policy change is a basic goal. When the Democrats did take back the majority in the 110th Congress, Pelosi and Senate Majority Leader Harry Reid often found their attempts to legislate frustrated by a president who profoundly disagreed with them and their membership on most major policy disputes. Now they have a president with whom they and their members mostly agree. Furthermore the public's high expectations and the dire economic situation made the likely cost of not delivering exceedingly high. Most of the senior Democratic leaders had served in Congress during the early Clinton presidency and were determined to avoid the mistakes they believed had led to the loss of the Democratic majority.

The leaders began the task of enacting the Democratic agenda with considerable -but far from unlimited--resources. The 2008 elections had increase their majorities significantly. House Democrats began the 111th Congress with a 257 to 178 margin. Senate Democrats, who had struggled through the 110th with a 51-49 majority, boosted their numbers to 58 with one seat undecided.

Further to the benefit of the congressional leadership, this Democratic membership is relatively ideologically homogeneous, at least by American standards,

certainly considerably more homogeneous than the Democratic congressional majorities that President Jimmy Carter or even President Bill Clinton faced. In the 110th Congress (2007-08), the mean party unity score of House Democrats was 92 percent; that of Senate Democrats was 87 percent. (cq.com 2008, 3332-3342) Only 6 House Democrats and 4 Senate Democrats had party unity scores below 80 percent. These figures do not, of course, include the freshmen members elected in 2008, but they do include the 2006 freshmen, many of whom are from "red" states and districts and as such were expected to be less inclined to support party positions. (None of the 4 senators below 80 percent were 2006 freshmen.)

Obama and congressional Democrats ran on quite similar issues, as one would expect when the political parties are relatively ideologically homogeneous; thus they began with considerable agreement on a policy agenda broadly defined. The economic crisis fueled a sense of urgency in the public and among policy makers alike, further focusing the attention of the new president and his congressional partisans on the same agenda.

Congressional leaders command organizational and institutional resources useful for putting together and holding together the support needed to pass their party's agenda. In both chambers, party organization has become quite elaborate, consisting of a number of party committees and subordinate leadership positions; these provide assistance to the top leadership but also give other members an opportunity to participate in party efforts and thereby increase their stake in their success. Leadership staffs have grown significantly over the years and serve as the eyes and ears--and sometimes negotiating surrogates--for the leaders.

The contemporary House majority party leadership commands formidable institutional resources. The increasing ideological homogeneity of the parties over the last several decades made possible the development of a stronger and more activist party leadership (See Rohde 1991; Sinclair 1995) The majority party leadership oversees the referral of bills to committee, determines the floor schedule and controls the drafting of special rules that govern how bills are considered on the floor. The leaders can bypass committees when they consider it necessary or orchestrate post-committee adjustments to legislation. They can work with (and, if necessary, lean on) committees to report out the party's program in an acceptable form and in a timely fashion; deploy the extensive whip system to rally the votes needed to pass the legislation; bring the bills to the floor at the most favorable time and under floor procedures that gives them the best possible chance for success; and, if necessary, use the powers of the presiding officer to advantage the legislation. The House is a majority-rule institution; decisions are made by simple majorities and opportunities for minorities to delay, much less block, action are exceedingly limited. Thus a party leadership that commands a reliable majority can produce legislation.

Senate rules are a great deal more permissive than House rules and give individual members' much greater prerogatives; a minority of 41 or more can block passage if it uses its prerogative of extended debate. Because Senate rules do not require amendments to most bills to be germane, senators can force to the floor issues the majority leader might prefer to avoid. Consequently the Senate majority leader lacks many of the institutional tools the Speaker possesses. Still the majority leader does command the

initiative in floor scheduling and is the elected leader of the majority party in the chamber (Smith 1993; Sinclair 2007b).

The congressional leadership's own experience is a resource as well. Pelosi has served as her party's top leader since 2002 and Reid since 2004 and both were party whips before that. Most of the rest of the leadership teams in both chambers are battle tested veterans as well.

Although the Democratic congressional leaders began the 111th Congress with some important advantages and considerable resources, they also faced significant constraints. Even when the president and his party in Congress have run and won on similar agendas, there will always be differences about particulars and sometimes also about priorities. Different constituencies assures that. Furthermore, although the congressional Democratic party was ideological homogeneous by historical standards, it nevertheless was far from monolithic and less homogeneous than the Republican party it had replaces in the majority. To win majorities, Democrats in both chambers had recruited moderates in many states and districts that would have been unlikely to elect liberals. The 111th House majority included 49 members from districts that John McCain carried in the 2008 election.; 13 Democratic senators represented states that McCain won.

In the 110th Congress when Bush was still president, many of Democrats' fondest legislative goals were beyond reach. The leaders could concentrate on protecting their vulnerable members from "red" constituencies by avoiding votes on issues politically difficult for them. In the 111th, the leaders had to produce legislation to deliver on the promises they and Obama had made and were also under considerable pressure to

avoid excessive compromises from the liberal mainstream of their membership, which had waited so long for the opportunity to enact their preferences into law.

One might expect such a severe economic crisis to produce a willingness among elected officials to work together across party lines. However, the high level of partisan polarization meant that the Democratic leaders certainly could not count on support from Republicans even for crisis-related legislation and less so for core agenda items such as health care. As the Republican party had shrunk as a consequence of the 2006 and 2008 elections, it became more ideological homogeneous and moved further right. Especially in the House, Republicans' and Democrats' sincere beliefs of what constituted good public policy were very far apart. At the beginning of 2009, however, it was not yet clear what strategy the minority party would decide was in its best electoral interests; would limited cooperation or all out confrontation serve the party best?

### **Early Tests: Leadership Strategies and Real Life Constraints**

What then did the congressional leadership make of the opportunities and the challenges they faced in 2009? Obama and the Democrats had promised change so the leaders believed racking up some early legislative achievements was essential. The House Democratic leadership engineered quick passage of the children's health insurance program (SCHIP) reauthorization and the Lilly Ledbetter Fair Pay Act, bills the House had passed in the previous congress but that had then been blocked before enactment. To speed the process, the House leadership bypassed committee and brought the bills directly to the floor; there they were considered under closed rules allowing no amendments. Lacking the high control over the process their House party leadership colleagues had, the Senate leaders took longer; SCHIP had passed the Senate by



substantial margins in the 110th Congress, only to be vetoed by President Bush; so its passage in 2009 was relatively straightforward. However, the minority Republicans had blocked the fair pay act in the Senate in the 110th and, to pass it in 2009, Reid was forced to muster a supermajority to impose cloture on the motion to proceed to consider the bill and then to pass it. His much bigger Senate majority made that possible. Thus President Obama was presented with popular legislation to sign soon after his swearing in and Democrats achieved some long-sought policy successes.

The stimulus bill and the war supplemental appropriations bill were key early tests for the new administration and the Democratic congressional leaderships. An examination of the efforts to pass these bills illustrates the strategies Obama and the leaders employ and makes clear the nature and magnitude of the challenges they would face going forward.

### **Advancing the Agenda by Passing the Stimulus Bill**

By early 2009, a consensus had emerged among experts that, to meet the worst economic crisis since the Great Depression, a very substantial stimulus package was essential. Partly out of necessity because he was not yet president, Obama relied heavily on congressional Democrats to craft the stimulus package. To be sure, Obama team members begin meeting and discussing a potential stimulus bill with the congressional leadership before the November elections and, by mid-December, Obama transition team members and relevant Democratic congressional staffers were meeting almost daily. Nevertheless, as would become a standard Obama strategy, he gave congressional Democrats great leeway, calculating that members who had a major role in shaping legislation would have a much greater stake in its enactment.

Pelosi tapped Appropriations Chairman David Obey as the head negotiator for House Democrats; a considerable proportion of a stimulus bill would be within his committee's jurisdiction and Obey was a political savvy and tough legislator. On this and the other major agenda items, Pelosi would delegate to her trusted committee leaders but would continuously oversee the process and involve herself deeply when she saw the necessity.

During his campaign, Obama had promised to transform Washington policy debate, replacing partisan hostility with bipartisan cooperation. In an attempt to do so, he reached out to Republicans on the stimulus bill, sending high ranking appointees to consult with them and visiting with both House and Senate Republicans on their own turf himself. Furthering the president's bipartisanship outreach strategy, Pelosi sent the stimulus bill to the three committees of jurisdiction for mark-up as Republicans demanded rather than bypassing committee consideration. Of course, by doing so she also assured rank-and-file Democrats on those committees a much coveted role in the legislative process on this major piece of legislation.

Despite the outreach and the inclusion of a large tax cut component in the stimulus bill, Republicans opposed the majority's bill. When the parties are highly polarized, genuine and severe policy disagreement impedes bipartisanship. Furthermore when the minority party faces unified government as the Republicans do now, they may perceive bipartisanship to conflict with their electoral interests. Their likely rationale: Obama and the congressional Democrats will get credit for any successes but, if they support the bills, Republicans will share the blame for any failures.

Conservatives in Congress and on the airwaves launched an all-out attack on the Democratic plan. At one point in the stimulus battle, opponents seized the initiative in defining the bill, claiming it was not a stimulus at all but just a lot of useless and expensive pork. Urged on by the Democratic congressional leadership, Obama personally took over the job of selling the stimulus bill and did so aggressively, but some ground had been lost.

Demonstrating the control the House majority leadership commands as well as the extent to which Democrats saw passage of the stimulus as essential, the House committees marked up the stimulus bill during the first week of the Obama presidency and the House passed it in the second. The bill was considered under a rule that "self executed" (meaning no vote was necessary) an amendment making several last minute changes to the bill; these post-committee adjustments included provisions striking money for resodding the Mall and family planning funds. Democratic leaders had decided that these provisions had become lightning rods that were not worth the pain they were causing their members. Better to remove them than try to explain in the face of the conservative onslaught. The rule allowed 11 amendments to be offered--one with bipartisan sponsorship, 6 sponsored by Democrats and 4, including a substitute, by Republicans. Of the amendments made in order, three were sponsored by freshmen Democrats, including one benefiting the textile industry by North Carolinian Larry Kissel. In constructing the rule, the leadership's first concern was facilitating passage of this key agenda item but the leaders were also looking out for their more vulnerable members.

HR1, the stimulus bill, passed the House by 244 to 188; 11 Democrats, mostly more conservative Blue Dogs, voted against the bill; not a single Republican supported it. The Republican whip system was aggressively employed to keep any Republican members from straying; even Joseph Cao, newly elected from a poor, majority-black district, was pressured into opposing the stimulus bill (The Hill 12/13/09). The Republican House leadership seemingly had decided that the party's electoral interest lay in unequivocally and vigorously opposing Obama's and the congressional Democrats' policy agenda.

Because a simple majority can prevail in the House, even unanimous Republican opposition is irrelevant to passage. In the Senate, a minority of 41 or more can block passage if it uses its prerogative of extended debate. Thus Majority Leader Harry Reid's problem was how to get to 60 votes; with 58 Democrats, he would need several Republican votes and the Republican Senate leadership had made its opposition to the Democratic approach clear. Thus when Senate moderates Ben Nelson, Democrat of Nebraska, and Susan Collins, Republican of Maine, began talks about possible revisions to the committee-reported bill, Reid encouraged their effort. Intense negotiations among these and a larger group of moderates and with Reid and White House officials finally yielded an agreement that could garner 60 votes. It cut the size of the stimulus, but the many Senate Democrats who supported a bigger package had no real choice but to go along.

After cloture was invoked on the compromise bill with the essential help of three Republicans-- Susan Collins and Olympia Snowe, both of Maine, and Arlen Specter of Pennsylvania, and the bill passed the Senate, a compromise between the House and

Senate bills was necessary. That would require some serious bargaining, which, as is often the case, took place behind closed doors before a formal meeting of the conference committee. Although the Obama administration had left much of the detailed drafting to Congress, at this point the administration was deeply involved with Chief of Staff Rahm Emanuel and OMB Director Peter Orszag acting as point men. Pelosi too was a key negotiator. And the Senate moderates had to be consulted and kept on board. When talks seemed to hit a wall over funding for school construction, the president phoned Pelosi and House Majority Whip Jim Clyburn to make sure that negotiations moved ahead.

The agreement reached by House and Senate negotiators was for a stimulus plan costing about \$789 billion. The open conference committee meeting was tightly controlled by Democrats intent on holding together the package they had so painstakingly crafted; no amendments were allowed. As the leaders had promised, both chambers passed the conference report before the President's Day recess. Obama signed the bill on February 17, less than a month after his inauguration.

### **Unified Control's Bitter Fruit: War Funding**

Passing the supplemental appropriations bill to fund the wars in Iraq and Afghanistan presented another and somewhat different test. Because President Bush had not included war funding in his regular budget requests, one more supplemental appropriations bill was necessary. Many Democrats strongly opposed the Iraq war and had long refused to vote for funding; they were developing increasing doubts about the war in Afghanistan; yet the Democrats as the new governing party could not fail to pass a bill providing for the troops. And the bill included other emergency funds such as money for swine flu preparedness.

Because Republicans supported the war funds as they had in the past, initial passage in the House was not a problem; 51 anti-war Democrats voted against the bill but it passed 368 to 60. The issue of what to do with the Guantanamo detainees had required some adept leadership to manage. Obama had promised to close the prison at Guantanamo within a year, but Republicans claimed that bringing any onto U. S. soil endangered Americans. Congressional Democrats, especially junior and electorally vulnerable ones, feared votes on the issue as potential reelection-killers and the leaders knew they would lose a significant number of their members if they were forced to take such a vote; furthermore, the party leaders wanted to protect their members from such really tough votes if at all possible. Appropriations Chair David Obey had amended the bill in committee with a compromise Guantanamo amendment but whip checks revealed it was not enough. A stronger amendment that still did not repudiate the president's policy was negotiated; the rule for floor consideration self executed that amendment and precluded any other amendments; so when the rule passed--on a largely party-line vote, the bill's passage was assured.

The Senate passed its bill 86 to 3. Since the Senate majority party cannot bar amendments as its House counterpart can, Democrats employed a strategy of preemption. The chairman of the Appropriations Committee himself offered a floor amendment deleting funds from the bill for transferring detainees or closing the prison, while also arguing that Guantanamo would have to be closed within a reasonable period of time. When the amendment passed overwhelmingly, the biggest potential problem in resolving differences between the chambers seemed to have been removed.

Two other issues would prove to be major problems in final passage of the bill. The Senate but not the House bill included \$5 billion for the International Monetary Fund (IMF), a provision the administration argued was essential but that House Republicans vehemently opposed. The Senate had adopted an amendment by Lindsey Graham (R-SC) and Joe Lieberman (I-CT) that exempted photos showing prisoner abuse by U.S. soldiers from being accessible through the Freedom of Information Act (FOIA). House liberals strongly opposed that amendment, believing that FOIA should not be thus weakened and, in many cases, that the photos should be made public.

The conundrum the House and Senate leaderships faced was that what it would take to pass the bill in the House might well make it impossible to pass in the Senate and vice versa. Pelosi decided that the IMF money had to be in the final bill but that meant she would have to pass the conference report with Democratic votes alone. She would have to persuade a number of fervently anti-war Democrats to vote for a bill that included provisions she herself found hard to stomach; doing so would be impossible if the Graham-Lieberman language were included. Yet, Graham and Lieberman backed up by most Senate Republicans, vowed to filibuster the bill in the Senate if their language was stripped.

Once the House leadership's insistence on dropping Graham-Lieberman was accepted by the negotiators, the task on the House side was persuasion. The administration deployed top Cabinet members-- Treasury Secretary Timothy Geithner, Defense Secretary Robert Gates and Secretary of State Hillary Rodham Clinton-- as well as Obama himself to make calls. The Democratic whip system worked to get an accurate count and to persuade. However, since it was anti-war liberals who needed to be flipped,

Pelosi, as an anti-war liberal herself, had to assume the central role. For days she stalked the floor, talking, listening and persuading. As wrenching as voting for more war funding might be, as difficult as it might be to stand up to pressure from liberals bloggers, as hard as it might be to explain the vote to one's constituents, Democrats had to pass the bill in order to clean up after the Bush administration; Republicans were trying to defeat the bill in order to give Obama a black eye. Pelosi again made those argument in an impassioned speech to her Caucus before the vote. Still, Democratic leaders were nervous enough about the outcome that they called Caucus Chairman John Larson (CT), out sick with food poisoning, to the Capitol to cast a vote in support. (RC6/18/09) The conference report passed 226-202. Even though the Speaker usually does not vote, Pelosi voted for the bill. Passing the supplemental was "the hardest thing we did," Pelosi would say at the end of the year. (11/13/09 at Kennedy School seem on C-SPAN)

President Obama broke the impasse preventing Senate passage of the bill. Before the Graham-Lieberman amendment was even offered, Obama had announced that he opposed making the pictures public. Now he stated that he would use every "legal and administrative remedy" available to prevent the disclosure of the pictures (RC 6/12/09). He made the promise first in a phone call to senators--heard over the speaker of White House chief of staff Rahm Emanuel's cell phone--and then in a letter addressed to the Senate and House Appropriations chairs.

### **Leadership Styles and Strategies**

These and other tests--passing an omnibus appropriations bill and the budget resolution, especially-- in the first half of 2009 illustrate the strategies developed and employed by the Democratic leadership and the Obama administration and the challenges



they face in attempting to enact their ambitious agenda. The Obama administration's preferred strategy is to lay out broad objectives but rely on Congress to actually write the legislation and do the initial deals. It steps towards the end of the legislative process to shape the final product. A White House peopled by savvy operators with extensive congressional experience--Chief of Staff Rahm Emanuel, a former House member who had served as chair of the Democratic Congressional Campaign Committee and chair of the Democratic Caucus, Director of the Office of Management and Budget Peter Orszag, who has served as director of the Congressional Budget Office, head of congressional liaison Phil Schiliro, formerly chief of staff for senior House Democrat Henry Waxman, chairman of the Energy and Commerce Committee, Senior Advisor Pete Rouse, a 30-year veteran of the Hill who had served as chief of staff to Senate Majority Leader Tom Daschle, and Obama himself--believe that members who have participated in crafting legislation have a greater stake in and thus will work harder for its success and, by not drawing lines in the sand early, the president retains more maneuvering room. These experience Hill hands also know that members of Congress need a lot of "care and feeding;" so top White House aides are often on the Hill and more often on the phone with members; Obama himself invites groups of members to the White House regularly. On a tough vote, everyone including top Cabinet members is expected to take part in persuasion efforts and Obama himself makes multiple calls.

Obama's strategy of outreach to the Hill has very emphatically included Republicans, as illustrated by the stimulus campaign. Despite the limited payoff in terms of votes and considerable grumbling from liberal Democrats, he has continued to reach across the aisle. However, sometimes under prodding from congressional Democrats,

Obama has been willing to "go public" defending his proposals and calling out obstructionist Republicans.

The Democratic leadership in the House has been Obama's most valuable ally. Contact, usually by phone, between top leadership staffers and the White House is constant; and Pelosi and Obama speak frequently. Both agree on the necessity of close coordination of internal efforts and of message, though sometimes actually accomplishing that is difficult. The strategies honed during their first congress in the majority and in some cases their time as minority leaders are now employed by Pelosi and her leadership team to enact an ambitious Democratic agenda, much of it as articulated by President Obama. Pelosi's leadership style combines toughness, discipline and attention to detail with inclusiveness, a willingness to listen and attention to members' individual needs. Her experience as a mother of five, Pelosi jokes, taught her to combine the roles of "disciplinarian and diplomat." (Kennedy School 11/13/09) An effort to pass major and controversial legislation typically involves multiple "listening sessions" with groups of members, often as organized in the various caucuses--the Blue Dogs, the Progressive Caucus, the Black Caucus, etc. Pelosi meets weekly with the freshmen and the entire leadership attends the weekly whip and Caucus meetings. Majority Leader Steny Hoyer meets regularly with the committee chairmen; as a moderate, he has close ties to the Blue Dogs and the New Democrats. Whip Jim Clyburn is a member of the Black Caucus himself and also keeps in touch with the various element of the party through his whips as well as multiple meetings.

Through early involvement on major legislation and listening to all segments of the Democratic membership, the leadership hopes to put together a bill that can pass on

the floor without any last minute drama. Seldom do the Democratic leaders count on any Republican votes. Pelosi in fact has little contact with her minority counterpart.

Constructing a majority may take adjustments to legislation reported from committee and that may require hands-on leadership deal making. The Speaker's control over the Rules Committee which sets the terms of floor debate enables the leadership to protect the bill from attempts to unravel the compromises made.

Aggressive use of the institutional powers of the speakership is a central leadership strategy and rules are central to that strategy. Of the 68 rules for initial consideration of legislation in 2009, 28 percent were closed, allowing no amendments, another 12 percent allowed only a Republican substitute; only 1.5 percent (1 rule) allowed all germane amendments; 18 of the rules had self-executing provisions, which incorporate provisions into the bill without a vote on the provisions. (compiled by Wolfensberger, WW Center) Structured rules, which made up 59 percent of rules, allow specific amendments to be offered and can be used to give members an opportunity rack up a visible accomplishment. The huge number of noncontroversial bills the House considers under the suspension of the rules procedure provides the same opportunity; and the Speaker controls what gets considered under the suspension procedure.

Persuasion is, of course, always a central element of leadership strategy in a body where the leaders are elected by their members. Pelosi is known as a persistent and tough persuader. Some observers even claim that Clyburn, conciliatory and low key, and Pelosi engage in a "good cop, bad cop" routine (RC 3/20/09). During the first year of the Obama presidency, the House leadership has had to ask their members to take some very tough votes. Many participants believe that Pelosi made a major mistake in making her

members vote on a highly controversial climate change bill when the prospects for it passing in the Senate seem bleak; that vote will be an albatross in "red"-district Democrats' 2010 reelection bids and made getting the votes for other important legislation--health care, preeminently-- harder, they argue. Pelosi's insistence that the House move on the climate change bill does illustrate the extent to which Pelosi is policy-oriented and a risk taker. This vote aside, the political context dictated that Democrats attempt to pass the ambitious agenda they had promised and that made tough votes for House members inevitable. Because of the Senate's supermajoritarian requirements, the House would have to be "the assault force... the first marines on the beach," as one long-time observer expressed it. High partisan polarization has increasingly forced that role on the House.(see Sinclair, 2007a) In persuading their members to take the tough votes, the House Democratic leaders repeatedly stressed the extent to which Obama's success is essential to congressional Democrats' success. "Our political fortunes are tied to Barack Obama's. It's impossible to overstate that," declared Chris Van Hollen, a Pelosi lieutenant and chair of the Democratic Congressional Campaign Committee. ( Politico 1/6/09)

The early battles also made clear that Senate obstructionism and individualism would pose the greatest barriers to enacting the Democrats agenda. When the contested Minnesota race was finally decided in favor of Democrat Al Franken and Republican Arlen Specter switched to the Democratic party, Senate Democrats held 60 seats, nominally enough to cut off a filibuster at will. However, imposing cloture is a time consuming process and, to run at all smoothly, the Senate depends on unanimous consent and that requires cooperation between the majority and the minority leader. Furthermore,

the Democratic membership includes 13 members from states McCain won in 2008 and senators such as Joe Lieberman inclined to go their own way. In fact, even though the Senate, like the House, has become more polarized along party lines, the prerogatives Senate rules give individuals tempt senators to pursue their own interests even when they conflict with those of their party; Senate individualism is far from dead.

The Senate majority leadership consequently has a considerably harder task in passing major policy change. Reid usually needs 60 votes. His institutional powers for facilitating passage are much less than the Speaker's and, largely as a result, so are his carrots and sticks. Reid's leadership strategies consequently rest heavily on eliciting cooperation through negotiation and persuasion, especially from his fellow Democrats. Reid generally defers to his committee chairmen. Through innumerable meetings with Democratic senators in small groups, one-on-one and in weekly caucus lunches, Reid keeps members informed and elicits feedback. He tries to reach decisions that all members of the caucus can live with and clears important ones with the caucus before they are finalized. The process can be maddeningly slow and Reid is often subject to harsh media criticism for being ineffectual.

Most Senate Republicans sincerely oppose most of the Democrats' agenda and many also believe Democratic failure to enact their agenda will benefit the Republican party electorally. Consequently Reid can expect little help from the Republican leadership. Democrats believe that Republicans are "slow walking" business in the Senate. Although not forcing Democrats to impose cloture on the motion to proceed just to bring measures to the floor as frequently as they did in the 110th, Republicans have used that time-wasting device on 8 important bills. They have placed "holds" not just on

legislation but on many Obama executive branch and judicial nominations, delaying the process of staffing those branches to a crawl. Republicans are even slow to respond to unanimous consent agreement offers from Democrats, thus slowing the process of reaching agreements, Democrats contend. On the floor, they insist on offering multitudes of amendments. Thus bills that have in the past been noncontroversial, such as the transportation appropriations bill, take days on the Senate floor.

Still, Reid has no choice but to deal with Minority Leader Mitch McConnell on a continuous basis nor does McConnell have a choice about dealing with Reid. McConnell could make Senate Democrats' lives considerably harder by not agreeing to unanimous consent agreements at all. Even now, the Senate does a large part of its business through unanimous consent and, while reaching agreements takes more time than it use to and may be tortuous on major legislation, the lack of agreement would bring the Senate to a halt. McConnell needs to protect his party's reputation so he does not want to chance its being seen as responsible for a complete breakdown. Furthermore his members have legislative goals quite apart from the big issues that separate the parties and accomplishing them requires that the Senate be able to function.

Because the majority party sets the floor schedule with legislation it wants to pass and especially when, as now, the majority party has a big agenda, a minority leader has considerable bargaining power. Increasingly in the last few years, majority leaders have agreed to 60 vote requirements in unanimous consent agreements; that is, the UCA will specify that, for passage of the bill or of an amendment, 60 votes rather than a simple majority is required. The majority agrees because doing so saves time. For example, the UCA negotiated by Reid on the Lilly Ledbetter Wage Discrimination Act specified that

passage would require 59 votes (three-fifths of the total number of senators sworn which, at that time, was 98). After all, the Republicans could have forced Reid to go through the time-consuming process of imposing cloture. After a bill has been on the floor for a time, the majority leader often attempts to reach a unanimous consent agreement for finishing it off and that usually includes agreement on the additional amendments that each side can offer. Again, McConnell can drive a hard bargain for his members because Democrats want to move the legislation. Reid has had to convince his own members that they have to take hard votes in order to enact their agenda.

The Majority Leader does have a procedural weapon he can use to bar amendments, but it is only effective under special circumstances. The leader can "fill the amendment tree," that is, he can use his prerogative of first recognition to offer amendments in all the parliamentarily permissible slots; he can then file for cloture and if cloture is imposed, he can, after running out the 30 hours of debate if the minority insists, get a vote on the legislation without any further amendments being in order. Of course, if passing legislation is the aim, the tactic only works if the majority leader has 60 votes for cloture or political considerations preclude the minority from filibustering. Reid used the weapon fairly frequently during the 110th Congress; it allowed him to bring to the floor bills Democrats wanted to spotlight but also protect his members from tough votes on Republican amendments; if cloture failed as it often did, he would pull the bill from the floor. Little was lost because, even if the bill had passed, President Bush would have vetoed it.

In 2009, in contrast, Democrats want and need to enact their agenda. Reid has "filled the amendment tree," but not often. In January, Reid used the tactic on a

omnibus public lands bill; the omnibus measure combined 90 committee-reported bills and so included provisions of interest to most senators; yet it had been held up for months by a single senator, Tom Coburn (R-OK). By January, senators were ready to end the long, drawn-out process and voted 68 to 24 for cloture. Some senators who favor a bill may not be willing to impose cloture before they --or their colleagues--have had an opportunity to offer amendments. Minority party members particularly are unwilling to do so. If the majority leader were to use the procedural weapon too quickly and too often, the minority would be even less likely to cooperate on routine business.

In sum, contemporary Senate majority leaders usually need to muster 60 votes to pass legislation--and often to get approval of nominations as well. When they are expected, as Reid and his leadership team are now, to pass an ambitious agenda, they confront a situation in which individual senators can exercise enormous bargaining power. The three Republicans who voted for the stimulus package did so after successfully bargaining for major alternations; at Senator Susan Collins (R-Maine) insistence, aid to the states was significantly cut back and school construction funds were deleted. Democrats on the conservative end of their party also were involved in the negotiations to reduce the size of the package and, with Democrats having since gained the 60th vote and Republicans having hardened their opposition to the Democratic agenda even further, the moderate Democrats have become even more pivotal. The fight over health care reform demonstrates their impact.

### **Health Care Reform: The Paramount Test**

Health care reform is at the pinnacle of Obama's and the Democratic party's agenda. All the major Democratic presidential candidates had strongly advocated health



care reform throughout the lengthy campaign and many congressional Democrats had been working on the issue for years. But reforming the health care system--fully 16 percent of the economy (GDP)--presented an enormous challenge; the system is highly complex so effective reform could not be simple--or simply explained. The economic stakes for major industries are huge and pressure from interest groups would be intense. The impacts of reform proposals were likely to vary by region, by urban versus rural, and by income. For party leaders balancing the divergent interests and views within their caucuses well enough to pass legislation would be excruciatingly complex.

The failed attempt to reform health care in the early Clinton administration informed the strategies of both the president and the congressional leaderships. Unlike Clinton, Obama would not send legislative language to Congress; he would set out general principles and let Congress fill in the details. He would not draw lines in the sand that would make later compromise difficult. And he would attempt to preempt the opposition by drawing into the process the major interest groups that had killed Clinton's reform attempt; getting and keeping those groups at the table and negotiation deals when possible was a major administration aim from the beginning.

Pelosi too took lessons from the Clinton experience. In the House three committees have significant health policy jurisdiction: Energy and Commerce, Ways and Means, and Education and Labor. To avoid the turf fights that had hindered the Clinton effort, Speaker Pelosi asked the chairmen of the three committees (who she later dubbed the three tenors) to negotiate a single bill that then could be introduced in all their committees.

Pelosi and her leadership team undertook a months-long campaign of consulting, educating and negotiating with their members. Because health care reform is so complex, the House leadership made a serious and continuing effort to educate the membership; for example, in late July, the leaders held a five hour tutorial on the bill as it then stood, with the first half devoted to briefings from expert staff --with no questions allowed until the second half (WP 7/29/09) A series of Caucus meetings devoted to specific aspects of reform--the public option, for example-- followed in the fall. Pelosi estimated that in total 100 hours of caucus meetings had been devoted to health care. (CQ 01/04/2010)

The regularly-scheduled weekly whip and Caucus meetings, as well as innumerable special meetings with various groups of members, allowed the leaders to keep their members informed and to get feedback. The Blue Dogs, moderate to conservative Democrats mostly from rural areas or the South, were particularly concerned that the bill reflect their point of view.

To get a bill to the floor that could command a majority took intense leadership negotiations at a number of stages of the process and some painful compromises. Although the three chairmen consulted widely before unveiling their bill, getting the support of enough Blue Dogs on the Commerce Committee to report out a bill took compromises to the public option, among other provisions. The Blue Dogs then resisted the leadership's effort to bring a bill to the floor before the August recess; many moderate Democrats did not want to vote before they saw what the Senate Finance Committee produced; why take a tough vote on a liberal bill, they reasoned, when the end result may be much less ambitious. The leadership was forced to accede.

The House party leadership had begun the process of merging the bills from the three committees before the August recess but the lack of a Finance bill hampered the effort. The leaders knew they could expect no Republican votes at all so they could lose at most 39 Democrats. That meant they would have to get a considerable number of moderate to conservative Democrats on board without losing their liberal members.

The core negotiating group included the top party leaders and the three chairmen. But, as a Pelosi spokesman insisted, "Everyone is going to be in discussions on healthcare. . .People are going to continue to offer input." (Politico 8/04/09). A number of major disputes needed to be settled. Whether or not the bill would include a public option and if so what its form would be received the most media attention. Progressives, including Pelosi herself, strongly favored the so-called "robust" public option, a public insurance plan that would pay providers at the Medicare rate plus 5 percent. Many Blue Dogs preferred no public option at all; some were, however, willing to support the version contained in the Education and Commerce compromise; that called for a public insurance plan with rates negotiated by the secretary of Health and Human Services. The cost of the bill and how to pay for it were contentious issues. Blue Dogs worried about the total cost; junior Democrats from wealthier suburban districts opposed the Ways and Means bill's surtax on the wealthy to pay for a good part of the cost. When Obama in his September 7 speech called for a bill with a maximum cost of \$900 billion dollars, the Democratic leaders knew they would have to reduce the price tag on their bill but doing so created other problems, including assuring that subsidies for the middle class remained high enough to make coverage affordable. Anti-abortion Democrats insisted on strong language to prohibit any federal funding from being used for elective abortions; pro-

choice Democrats were outraged, claiming the this was an effort to make anti-abortion language more draconian than at present. In August, the "tea party" protesters and right wing bloggers claimed that the Democrats' health care bill would provide benefits to illegal aliens; Republican Joe Wilson's infamous shout of "you lie" at Obama was in response to the President's assertion that this was not the case. Latino Democrats were concerned that, in attempting to assure that undocumented workers would not receive benefits, the bill would place onerous conditions on legal immigrants. Each of these controversies threatened, if not adeptly handled, to drain away crucial votes.

After weeks of negotiations and whip counts, Pelosi found she did not have sufficient votes for the robust public option so it was dropped. The surtax on high income earners was modified to pick up some votes. And, in the end, Bart Stupak, the leader of the anti-abortion forces, was allowed to offer his amendment. Pelosi is a liberal, but as leader of the House Democratic party, she is a savvy pragmatist. House liberals were upset about the public option decision and even more about the Stupak amendment and the meeting where Pelosi informed the pro-choice women of her decision was stormy; but the liberals realized that bringing down the bill was a destructive option.

Until the vote itself, the top leaders, the whip system and the administration continued to focus on undecided members. One member reported that on the Friday before the Saturday vote he received calls from Obama, Pelosi, White House Chief of Staff Rahm Emanuel, Health and Human Services Secretary Kathleen Sebelius and Education Secretary Arne Duncan. (WP 11/07/09) Obama who had talked with numerous members over the course of the process came to Capitol Hill on Saturday to talk to the

Democratic Caucus, arguing that this was an historic opportunity, perhaps the most important of their careers.

The Democratic leadership used its procedural powers to bring the bill to the floor under a favorable rule. The rule specified that the manager's amendment, which incorporated most of the compromises, with some last minute changes the leaders had negotiated would be adopted without a separate vote by virtue of the rule being adopted. Only two amendments were made in order: the Stupak abortion amendment and a Republican substitute. With all the Republicans and 64 Democrats voting for Stupak, it passed handily.

At about 6 pm as planned, the vote on passing the bill began. The leaders were confident they had the votes; this was not the sort of bill they would bring to the floor "on spec." When the 'yea' vote reached 218 a cheer went up from the Democratic side. Pelosi, however, had one more chore to perform; she went to a room off the floor to persuade Loretta Sanchez (D-CA) to come in and cast the 219th vote. With more than a bare majority, vulnerable Democrats could not be attacked as having cast the decisive vote. Towards the end of the voting period, a lone Republican cast his vote for the bill; Joseph Cao who had defeated a disgraced Democrat William Jefferson in a majority black district voted for the bill, but only after passage was assured. The vote was 220-215; 39 Democrats voted against the bill; of those 31 represented districts McCain had won in 2008; 24 of 53 Blue Dogs voted against the bill but 29 voted for it. (NYT 11/08/09)

A former Clinton staffer involved in the 1993-94 effort said admiringly, "On the final vote, the whipping process was intense and impressive. Democratic leaders I have known in the past have rarely played this kind of hardball, but some kneecaps were

broken Saturday night to get these votes, and the Speaker did a masterful job of doing every little thing that needed to be done. She gave no passes to people, and she was very clear there would have been consequences to all who voted no. She got the job done.” (Mike Lux, Huffington Post 11/09/09).

With fewer procedural powers and less leeway in terms of votes he could lose, Senate Majority Leader Reid had a still more difficult task. Reid defers to his committee chairs more than Pelosi does and, on health care, the result was that Finance Committee Chair Max Baucus spent months trying to negotiate a bipartisan deal. The costs of waiting out that effort were substantial; August proved to be a PR debacle for Democrats, as many had feared. Since neither chamber had produced one bill and especially since the Finance bill's outlines remained so unclear, Democrats lacked a proposal to defend and wild rumors about the reform gained currency. Opponents staged rowdy protests at some Democratic House members' town hall meetings and the media gave the most disruptive demonstrations enormous play. Republican leaders endorsed the protests and slammed the entire Democratic reform endeavor as an outrageously expensive big-government power grab. On the other hand, by waiting out the lengthy attempt, Reid made clear that the Democrats gave bipartisanship their best shot and likely convinced his own moderates that a bill which would command substantial GOP support was simply not attainable.

When Baucus, in fall, finally got a bill out of his committee-- with one Republican vote, that of Olympia Snowe, Reid took on the task of melding that bill with the considerably more liberal one reported earlier by the HELP Committee. The core negotiating group consisted of Reid, the chairmen of the two committees and, for the White House, Rahm Emanuel and Nancy-Ann DeParle, the president's top health care

adviser. As on the House side, putting together a bill that could pass required consulting broadly. Reid, however, knew that he would need 60 votes just to get the bill to the floor and then 60 again to get a vote on final passage; he also knew that getting any Republican votes would be exceedingly difficult.

In the end, Reid would be required to make a number of compromises that were hard for his more liberal members to swallow. Special help to Louisiana still suffering in the aftermath of Katrina was not a major problem, harder to take was Joe Lieberman's demand that any form of the public option be dropped and then that the compromise of letting some 55 to 64 year- olds buy into Medicare also be scrapped. Reid, knowing he had to have the vote, acceded. The last holdout, Ben Nelson, was brought on board with compromise abortion language and some special provisions for his state.

Once Reid had his 60 votes for passage, he could use procedural tactics to bring the process to a close. Reid filled the amendment tree to prevent more amendments and filed for cloture. At 7 am on Christmas eve morning, the bill passed the Senate on a straight party line vote of 60 to 39. The Senate had debated the bill for 25 days, without breaks for weekends since early December, and Democrats had had to win five cloture votes; provisions that a large majority of the Democratic membership strongly supported had been dropped to get the requisite 60 votes. But Reid had gotten a major health reform bill though the Senate before the end of Obama's first year. He had done so, in Tom Harkin's words, by "exhibit[ing] the patience of Job, the wisdom of Solomon and the endurance of Samson," (RC12/23/09)

### **Assessing the Democratic Congressional Leadership**

If health care becomes law as seems likely, the Democratic congressional leaders certainly must to be judged successful in legislative terms. They engineered passage of a massive stimulus bill and of other legislation that contributed to stabilizing and then stimulating the economy; through the stimulus bill and appropriations bills, domestic priorities were significantly shifted, with education and scientific research as special beneficiaries. In ordinary times, the enactment of the Ledbetter pay act, the credit card regulation bill, the legislation to allow the FDA to regulate tobacco and an expansion of the hate crimes covered by federal law would have been celebrated as very significant accomplishments. Still health care reform if enacted will stand as the preeminent legislative achievement of the Congress. The final bill will not live up to the expectations of Democratic activists because many compromises had to be made; yet, given the enormity of the challenge the leaders faced, they got the job done--they put together legislation that incorporated meaningful reform and that could pass.

Legislating successfully is a major part of the leaderships' job, but not the only one. Members also expect their leaders to further their reelection goals and to preserve the party majority. Thus the second key test of leadership performance in 2009 will come in November of 2010. Will health care reform be an electoral boon or an albatross? And what about the rest of the legislative record? Can the activists and voters who expected miracles that did not come to pass be persuaded to work and vote?

On December 16, 2009, at the end of the first session, Pelosi told her members she had shifted to "campaign mode;" 2010 would be about reelecting her members. Controversial legislation that entailed tough votes for her vulnerable members would not be brought up unless and until it had passed the Senate. "The Speaker has told members



in meetings that we've done our jobs," a Democratic leadership aide explained. "And that next year the Senate's going to have to prove what it can accomplish before we go sticking our necks out any further." (RC 12/16/09) However, with a backlog of important House-passed legislation awaiting action, Reid cannot protect his members from tough votes in 2010; the Senate Democratic leadership can expect another difficult year. The extent to which the leaders' actions in 2010 make a difference we can not know until November.

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