

What's Wrong with Congress and What Should Be Done About It?

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Introduction

Current public dissatisfaction with Congress is at a historic low with nine percent of the public saying that it is doing its job. The American people are convinced Congress is broken and “dysfunctional”, a view that is not wholly shared by scholars of Congress, though even this group hardly puts the institution at the top of the class.¹ Nevertheless, as important as the overall job performance rating is, how the American public evaluates the various functions of Congress more precisely illuminates the areas of prime

dissatisfaction and with that knowledge, a picture of whether the institution can be salvaged and how, can be drawn. (Add graph 1 here)

The Center for Congressional Studies 2010 survey of public attitudes about Congress found profound negative evaluations about the performance of the institution. Congress. The major result of the survey was that on all questions where the public graded Congress, it is rated as an underperforming institution: “Dealing with key issues facing the country” — a D; “Keeping excessive partisanship in check” — D-minus; “Conducting its business in a careful, deliberate way” — D; “Holding its members to high standards of ethical conduct” — a D; “Controlling the influence of special interest groups”— a D-minus. In response to the question, “Do members of Congress listen and care about what people like you think?” 33 percent said no, not most of the time. On the question, “What do you think is the main thing that influences what members of Congress do in office?” 43 percent said it is special interests, and another 41 percent say it is personal self-interest. On the broadest-gauge question — “overall, do you approve or disapprove of the way Congress is handling its job?” — 84 percent disapprove.

Delving further into the survey questions reveals bases for the general perception that Congress simply does not work for the public good. For example, in response to the question, “Have you contacted your current member of Congress for any reason?” 61 percent said they had, but of those, only 45 percent said they were “satisfied with the result of that contact.” This answer illustrates dissatisfaction at a very personal level. On representation, seventy-one percent of people said when members of Congress vote, they have special interests in mind “most of the time” or “just about always.” Another common view widely held by the American public is that Congress is an excessively

contentious place. When asked, “Do you believe that the delays in Congress are due to serious differences on the issues, or that members just like to bicker and score political points?” 66 percent said Congress likes to bicker. Ironically, despite the low grades, personal feelings about the institution’s characteristics and general negative attitudes about Congress, Americans still see Congress as an important institution in our system of government. The survey found that when asked, “How much of an impact does the work of Congress have on your life?” A majority, 52 percent, said “a great deal,” and another 36 percent said “some.” There is also a strong belief that Congress has a legitimate claim to share power with the president. The response to a question about which institution should take the lead, Congress or the president, in setting the national agenda, determining the federal budget, and deciding to go to war, very solid majorities said both the president and Congress should play a role. The conclusion is that Congress is important in our system of government, but it is failing to do its job.

A 2010 survey of political scientists that asked the same questions as the public survey found that the experts gave the institution more positive reviews.ⁱⁱ The experts gave Congress a solid B grades on “exercising its proper role in setting the legislative agenda” and for “focusing on the key issues facing the country,” and B-minus grades on “generally fulfilling its national policymaking responsibilities” and “protecting its powers from presidential encroachment.”

The survey found that the political scientists thought accessibility and openness were other areas of strength with Congress, earning a B-plus on being “accessible to constituents,” and B grades on being “open to the public” and “broadly reflecting constituents’ interests.” Scholars gave Congress very weak grades on “keeping excessive

partisanship in check” — the House received a D-plus and the Senate only a slightly higher C-minus in that area. In response to whether the legislative process in each chamber is “involved a proper level of compromise and consensus,” the Senate got a C-minus and the House a barely-better C. The political scientists also gave Congress C-minus grades on the questions “Does Congress keep the role of special interests within proper bounds?” and “Does Congress consider the long-term implications of policy issues, not just short-term?” When scholars turned their attention to the voters, they gave them D grades for “following what is going on in Congress on a regular basis” and for “understanding the main features of Congress and how it works.” The political scientists gave the institution higher marks than the public, but gave the public flunking grades for understanding and following the working of the institution. As knowledge of the institution goes down, the expectations of its performance seem to go up among the public who gave them very low grades.

The public has clearly given Congress flunking grades while political scientists are much more satisfied with the institution. What is really happening in Congress? Who is right, the public or the experts on Congress? Procedural wrangling and partisan gridlock have tied the Congress in knots at a time when the nation needs a functioning government more than ever. Congress is paralyzed. Congressional polarization along both ideological and party lines is a reflection of the American body politic itself with both the House and Senate dominated by fierce, uncompromising partisanship. Leaders demand ideological purity and lockstep voting and routinely make use of strong-arm procedures to enforce partisan views and subsequent behavior.

What are the major problems with Congress that have led to such dismal evaluations and dysfunction? The purpose of this chapter is to review the most important failures with respect to the major functions of Congress: lawmaking (including the raising and spending money for governmental purposes), oversight, deliberation, and representation.ⁱⁱⁱ Who has the correct perception, the American public or the political scientists? Finally, what reforms can improve the workings of Congress?

The Causes of Congressional Dysfunction

The Missing Middle. A fundamental reason for gridlock and dysfunctionality is the disappearance of the moderates or what some call the vital center in Congress.^{iv} There has been a steady decline in the number of moderates in Congress since 1960 (add Graph 2, 3 and 4 here).^v Four decades ago, there was a vigorous middle in Congress. Both parties spanned the ideological divide that exists today. Each party had a large liberal and conservative wing. On divisive issues such as civil rights, liberal Democrats and Northern moderate Republicans would join forces against the conservatives of the Confederate South. Getting the votes needed to stop a filibuster required a coalition of senators from both parties. Paul G. Kirk, Jr., a former aide to Senator Ted Kennedy who was appointed to fill his seat temporarily in 2009, explains, “More commonly than not, the conservatives in the two parties would be together, the progressives in the two parties would be together, and then you’d kind of have a moderate center and find the 60. The breath of political thought overlapped.”^{vi} The lack of common ground between the twelve members of the Joint Select Committee on Deficit Reduction (the Super Committee) demonstrates the ideological gap between the parties and why they failed to reach an agreement (Add Graph 4 on Super Committee ideology here).

Related to the lack of the middle in each party, it is the movement of both parties to more extreme partisanship, which has also helped to create congressional dysfunction. Congress has become far more partisan in more than half a century. Over 80 percent of the roll call votes have pitted a majority of Democrats against a majority of Republicans, a measure of partisanship. This is the highest percentage of party unity votes since Congressional Quarterly began measuring voting patterns of Member of Congress in 1953. In the 1960s, the yearly average was less than 50 percent.^{vii}

Redistricting Abuse and the Missing Middle: Partisan gerrymandering occurs in most states. The Supreme Court and Congress have both ignored the problem. Rep. John Tanner describes the negative consequences of partisan gerrymandering,

“When Members come here from these partisan districts that have been gerrymandered . . . they have little incentive to really work across party line in order to reach solutions. If one comes here wanting to work across the aisle, one has to watch one's back, because the highly charged partisans don't like it.”^{viii}

The House has been redistricted to safe seats (26 seats were competitive in 2004, 65 in 2006, 68 in 2008, 85 in 2010 and 60 are predicted to be competitive and 2012 after the 2010 redistricting is completed).^{ix} The creation of these safe House districts has led to the election of increasingly "ideologically pure" representatives with a relatively harmonized constituency, little institutional loyalty, and an unprecedented degree of partisan homogeneity (high party unity scores mentioned above) within the two parties. This has made the party primary, with a traditionally low turnout, 18.8% turnout on average for the since 1986, now characterized by activist organizers getting out the

ideological party vote in the voters the election that counts. Moderate voters are easily shut out of the process; appeals to the “base” drown out serious debate on broad issues of national concern. This has increased the importance of ideology in legislating and lobbying activities – creating deadlock, a divided, partisan and mean-spirited House and a subsequent lack of comity and civility in the way decisions are made in Congress or more than likely not made. Our political parties are establishing electoral districts that effectively eliminate the right to vote of those who live in districts in which their candidates can never be elected. In effect, the Representatives choose their voters, hardly a democratic ideal.

The inability of Congress - in the absence of a vigorous, bipartisan center - to address effectively such known and crucial issues such as job creation programs, tax reform, the rising accumulation of public debt, a looming Medicare and Social Security shortfall, immigration reform, a failing education system, and serious energy and environmental problems is a legitimate cause of public dissatisfaction. A Congress that cannot confront these visible challenges will surely lack the reserves of comity and trust to face any unknown and sudden – and perhaps even more dangerous – crisis.

President Obama and many Members of Congress talk publicly about the difficulty of finding bipartisanship solutions to public problems and finding a common ideological ground. Some promise reform. However, the partisan debate has become so rancorous that it prevents the resolution of America’s most important public problems. There seems to be no prospect that Congress will deal with this crisis on its own. Most Americans believe it is time for Congress, even in an election year, to show that they are attempting to solve the very real problems of unemployment and debt and deficit the US

faces and not simply storing up points for the 2012 fall campaign. Maybe there will be a non-partisan anti-incumbent wave in reaction to the current unpopularity of Congress.

Lawmaking and Legislative Procedural Maneuvers. Congressional procedural changes have undermined the normal legislative process in the past four decades. For the most part have not been structural, but merely misuse and overuse of long standing legislative tools, have helped to undermined trust in the institution. Current concerns focus on today's majority congressional leadership, but the same tactics were practiced in the past by the minority party leadership. A cycle of alleged past abuse and continuing retribution has infected the Congress. Thus, this process cannot be blamed solely on one political party. Parties have increased their use of House rules to deny the minority a full debate or effective votes and to make significant alterations of legislation passed by the committees of jurisdiction.

An additional problem is the increasing use of filibusters, amendments, and holds to clog the legislative work in the Senate. Graph 5 shows the dramatic rise of cloture motions to stop filibusters in the Senate since 1973. (Add Graph 5 here) The term “filibuster” is applied to many different actions in the Senate including: objections to unanimous consent requests, efforts to delay proceedings, and the anonymous “hold” that originally meant as an informational tool for majority leaders trying to arrange floor schedules. “Holds” are an informal senatorial custom unrecognized in Senate rules and precedents. They allow Senators to give notice to their respective party leader that certain measures or matters should not be brought up on the floor. The party leaders will usually honor holds placed by a member. Holds proved significant leverage to members who wish to delay action on nominations of legislation.^x The mere threat of a filibuster

prompts the majority leader to halt action on a bill, or to quickly move to cut off debate, meaning that the minority can block legislation without actually holding the floor and talking for hours on end, like in the film, “Mr. Smith Goes to Washington.” There are too many holds and hostage taking for narrow policy objectives and nomination stalling. Filibusters are currently rarely invoked but often threatened to gain political bargaining power and negotiating leverage. Filibusters involve blocking tactics such as offering scores of amendments, raising points of order, demanding numerous and consecutive roll calls. Holds are another common form of silent filibuster.

Lawmaking and the Shattered Power of the Purse. The Constitution gives the Congress the power of the purse by providing that, “No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law (Article I, Section 9). The entire government will shut down if appropriations are not enacted annually. The budget process is seriously broken and needs reform. There is a too often and too heavy reliance on omnibus appropriations bills, “minibus” appropriations, and additional riders and earmarks added to must-pass appropriation bills as a crutch to act on significant policy issues, often late at night, out of the public view. There is also a growing tendency toward government by continuing resolution.

A major criticism in the last three decades about the performance of Congress and the budget and appropriations processes is that Congress is not doing its job. It is prone to crisis management and always late at every step.

There are too many continuing resolutions and omnibus spending bills. Continuing resolutions, a temporary stopgap funding measure whenever Congress cannot

complete action on one or more of the twelve regular appropriations bills by the beginning of the fiscal year (October 1) is an especially egregious problem. In the past continuing resolutions were only used for short periods (one or two months). The growth in the use of continuing resolutions is an example of congressional dysfunctionality. A record twenty-one continuing resolutions were needed in 2000 before the Republican Congress and President Bill Clinton compromised on their differences on the appropriations bills. Partisan deadlock over a continuing resolution in the spring of 2012 came within a few hours of shutting government as happened in late 1995-early 1996. There are also too many earmarks and too much back door spending by authorization committees. Congress keeps changing the budget rules when it cannot make tough budget decisions. The rules guiding the congressional budget process have been changed almost every year since the implementation of the Budget and Impoundment Control Act of 1974. Former Member of Congress Lee Hamilton of Indiana concludes that,

When people call Congress dysfunctional, when they say it's not working well, the budget process is Exhibit A in that charge. It's a very serious problem. The world's greatest democracy cannot produce a budget.^{xi}

The concurrent budget resolutions have been passed on time only twice since 1976. The federal government has been forced to run on continuing resolutions and supplemental appropriations.

“Backdoor” spending, which is spending not subject to the yearly appropriations process, is the usual way money is “appropriated” for very significant expenditures, such as Social Security payments, Veterans benefits, Medicare and Medicaid (well over 50

percent of the federal budget). The authorizing committees have evolved backdoor funding provisions, such as these entitlement programs that clearly bypass the “front door” of the two-step authorization-appropriations sequence and decimate the power of the Members of Congress who are charged with appropriations to control spending. The laws that enable the authorizing committees charge them with mandating expenditure of federal funds or direct spending on such as contract authority, borrowing authority, and entitlement programs (the fastest growing type of backdoor spending). Backdoor spending subverts the ultimate power of the purse, which is with the appropriators. When the funds for these activities are removed from budget consideration, congressional appropriators find themselves in a poker game with very few chips.

The 2011 experience with multiple continuing resolutions and the debt limit negotiations, reveal a deadlocked Congress, and if that were not enough, the recent failure of the Joint Committee on Deficit Reduction to reach any agreement, confirms the judgment of dysfunction. Individuals and corporations who try to budget on the bases of brinkmanship, continuing resolutions and off-limit activities, often find themselves in home foreclosure and bankruptcy, respectively. It is no wonder the public has lost patience with the Congress.

Lawmaking and Earmarks: The ballooning of “earmarks” in the actions of Congress – appropriations, authorizations, and tax legislation – may be the most offensive legislative manipulation, and possibly the most egregious of all forms of misbehavior by Members of Congress. Earmarks, named for the pinning of an ownership tag in the ear of a cow, are when committee members add special narrowly cast provisions in appropriations, tax and authorization bills usually for the benefit of their

constituents. They are typically specific spending provisions inserted as the behest of particular Members and often to meet the needs special interests. The Congressional Research Service identified some 3,000 earmarks worth \$19.5 billion enacted in 1996. By 2005, the number of earmarks had grown to almost 13,000, valued at \$64 billion. Reform in 2007 earmark shrunk the numbers to below 6,000, but they soon climbed back to 8,500 in FY 2009 representing a total of \$7.7 billion.^{xii} In 2010, Congress passed a moratorium on appropriations earmarks, but found a way around the restrictions, especially for tax and authorization legislation. There has been no enforcement of tax and authorization earmarks since the 2007 reforms required more transparency and justification for the earmarks. No doubt there are instances in which Congress has legitimate reason to specify how money is spent. However, many recent earmarks appear to have been inserted into legislation without public debate, notice or attribution, especially in must pass defense and home land security appropriations, which means the moratorium is not working.

Earmarks present ethical challenges for Members. A criminal conviction of US Representative “Duke” Cunningham was built on an exchange of earmarks for personal cash and in-kind payments. Earmarks have been associated with, if not causally linked to, campaign contributions and the exercise of the power of incumbency. The earmarking of funds for a project in the Member’s district, fully disclosed and debated can be a legitimate part of the Legislative process. However, the funding as a secret response to a lobbyist’s request goes against open and fair budget deliberations. The ability of a single Member of Congress to direct funds to a lobbyist’s clients must have further curbs. One way to accomplish this is to require Members of Congress to certify that they have

neither sought nor received campaign contributions from an individual registered to lobby them for an earmark in the current Congress. Congress should create a single, searchable online database for all earmark requests (for appropriations, taxes, and authorizations) and the amount approved by committee of jurisdiction. The sponsor of any earmark is now identified, but the department or agency, the state or district of the member who made the request, the name and address of the intended recipient, the type of organization (public, private nonprofit, or for profit entity), the project name, description, and estimated completion date should be identified, too. Finally, a small number of Members of the House or the Senate, such as xx and xx, respectively, should be empowered to require a roll-call vote on any earmark.

Lawmaking and Committees. There are too many committees and subcommittees, 218 panels in 2011, and resultant multiple Member assignments to these committees for Congress to have a rational division of labor and work either effectively or efficiently. The policy fragmentation of jurisdictional overlap and competition is excessive, causing delay and deadlock based on jurisdictional turf battles rather than policy differences. This was clear to the American public in the battles over health care reform and climate change legislation. The fight over turf has often become more important than policy. Examples of policy fragmentation are extensive: the number of committee and subcommittees with jurisdiction over homeland security is 108, for energy-environment 56, and for jobs/economic security, potentially all 218 committees and subcommittees.

There is also a problem of policy balance with too many committees being captured by specific interests that represent only one view of issues, such as the

agriculture and armed services committees committee, whose members typically reside in farm states and close to military bases or defense companies. They may give short shrift to views that represent national concerns rather than local or parochial interests. When there is little policy equilibrium within committees in the deliberation of various competing policy positions, there is a perception of unfairness and unequal access for policy preferences

Although there have been periodic attempts to reduce the number of committees, rationalize jurisdictions, and decrease the number of committee assignments, potential reforms of the committee system in the House and Senate have all failed since the overhaul of the Senate committee system in 1976. There have been thirteen committee reform efforts since the Joint Committee on the Organization of Congress in 1946 which established the present system of committees. It has been a sorry history of turf protection and protection of the status quo. The consequences of an antiquated congressional committee system are unequal workloads of committees and members, unnecessary duplication, delay and gridlock. Ultimately committees should be used to define major public problems with the precision that can only result from study, hearings and debate representing all views, and select solutions to those problems.^{xiii} A bill should come to the floor with amendments considered in committees from both sides. There has also been the practice of not having real post enactment conference committees; Congress needs to return to conference committees that require members of both the majority and minority to participate and to compromise with one another in order to reach final agreement on a bill, which truly encompasses the votes of both houses.

Oversight. Rigorous oversight of federal agency actions is essential to ensure Congress is aware of the president’s policy initiatives and that the laws Congress has passed are properly implemented. Congress is often too timid when there is unified party government and too aggressive with divided party government. Congress practices “fire alarm” oversight, waiting until the alarms go off before it begins to review in detail agency activities, rather than “police patrol,” regular, planned and active oversight. Congress often. There has been a long-term decline in the ability or even willingness of Congress to make thorough use of its oversight powers to keep the executive branch in check. Robust oversight could have potentially prevented or lessened the banking and housing crises and the Gulf oil spill and response, and ascertained agencies were prepared for natural disasters. Members of Congress are typically not involved in laws after they are passed. In some cases, there are too many friendly alliances between committees that authorize programs, the interest groups that benefit from the programs, and the agencies that administer them. In other instances, the Committee chooses to distance itself from the implementation, knowing the results will not please every constituent. Whatever the excuse, the committees are the guardians of the programs under their purview. All laws have intended and unintended consequences and they need to be monitored carefully by Congress. Former U.S. Representative Lee Hamilton argues that,

If we want to make sure that federal agencies are doing their jobs appropriately, with the best interests of the American people constantly in mind, then Congress must do a better job of oversight, looking into every nook and cranny of their activities.^{xiv}

Deliberation. There is a difference between deliberation and dysfunction. The right to talk a bill to death, the filibuster, has been allowed by the Senate's rules since 1806, but at first it was used sparingly. Its use is on the rise, as shown in Graph 5. Senators these days feel very little compunction about stopping the work of the Senate. The collapse of comity is also a serious problem undermining deliberation. The influx of more partisan former House members into the Senate has undermined its capacity for bipartisan deliberation. There is a lack of true deliberation and comity and civility in House and Senate. There are fewer committees meetings and hearings, conference committees do not meet, laws are often written or substantially revised behind closed doors by the party leadership, and there has been a general demise of the regular order.

Representation and the Role of Money. The drive for reelection is a logical part of a representative democracy, though it continues to get more expensive. The growth of the "permanent campaign," with its negative campaign tactics that destroy the opposition is threatening to severely weaken or even destroy the institution. The components of negative campaigning have carried over into governing. There are also too many wedge issues, to help elect people rather than solve public problems.

Too much money in elections and the deregulation of campaign finance making it more non-transparent about who is giving and for what have all led to problems of representation in Congress.^{xv} The post *Citizens United v. Federal Election Commission* (2010) avalanche of non-transparent campaign money from corporations and unions is a serious challenge to representative democracy in America.

Campaign spending has grown rapidly from \$3.08 billion in 2000 to \$5.29 billion in 2008 for presidential election years and from \$1.62 billion in 1998 to \$3.65 billion in 2010 in non-presidential election years. Too much money is being spent for elections and too little time is spent in Washington. Campaign costs have become so monumental that Members must spend most of their time raising money, leaving less time for legislating and working with their fellow legislators. There is intense pressure to constantly raise money and campaign. Moreover, Members often win by criticizing Congress, undermining trust in the institution. Many members stay with their families in the home district and commute to “work.” With fewer Members in Washington, the infamous “Tuesday-through-Thursday Club” is all too real. The House in 2011 spent fewer than 100 days in session, the smallest number in 60 years, and pretty close to the 108 days clocked by the 1948 “Do-Nothing Congress.” This is far too little time to address the monumental challenges of unemployment, debt-deficit, and war and the day-to-day issues requiring governance. It is also way too little time for Members of Congress to know each other and to learn to work together.

There needs to be a way to substantially reduce the role of the fundraising lobbyist. When lobbyists participate in campaign fundraising for the same Members of Congress whom they later lobby, there is a serious issue of conflict of interest, coercion, and unequal access by the lobbyists to the Members of Congress.

Leadership Political Action Committees (PACs) are also a major part of the question of whether money is being raised and spent appropriately. A Leadership PAC is affiliated with a politician that is separate for his or her official campaign committee. High-level lawmakers have used leader PACs to collect money from their donors for

redistribution to their parties' candidates in other districts and states currying favor with candidates who receive the money. Growing numbers of Members of Congress, not just leaders, have formed "Leadership PACs" to accumulate more money than would otherwise be legally allowed to assist other campaigns and causes. A significant number of these PACs are managed by lobbyists who have direct business with the Members of Congress whose PACs they manage. It is alleged that the choice of a member to chair a committee may depend on his or her ability to raise significant funds in a leadership PAC. Fund raising quotas are often set by the top party leadership for committee chairs and subcommittee chairs. This is a growing problem because money is given by donors who have direct business with the chairs and ranking members of committees who have the quotas.

Campaign contributions closely linked to votes and to earmarks must be restricted. The post *Citizens United* world of secret unlimited campaign contributions to organizations that may campaign for or against candidates at all levels of government is also a growing problem of conflict of interest and lack of transparency about who is giving and for what.

Representation and Lobbying. President Barack Obama has argued that the major problems with Congress stem from interest groups and lobbyists. This was revealed in 2008 when Candidate Obama made this promise to the public:

I intend to tell the corporate lobbyists that their days of setting the agenda in Washington are over, that they had not funded my campaigns, and from my first day as president, I will launch the most sweeping ethics reform in U.S.

history. We will make government more open, more accountable and more responsive to the problems of the American people.^{xvi}

Obama also addressed the destructive power of lobbyists in a town hall meeting in Bristol, Virginia: “We are going to change how Washington works. They will not run our party. They will not run our White House. They will not drown out the views of the American people.”^{xvii} He continued his tough attack on lobbyists and special interest money on August 8, 2008:

I suffer from the same original sin of all politicians, which is we’ve got to raise money. But my argument has been and will continue to be that the disproportionate influence of lobbyists and special interest is a problem in Washington and in state capitals.^{xviii}

Lobbyists and the massive amount of money from special interests in campaigns are certainly part of the problem with Congress; however, even after President Obama’s historic lobbying and ethics reforms in 2009, he has found that lobbyists have little to do with the problems of deadlock, extreme partisanship, and the hostility the public sees in Congress today. However, lobbying for local, partisan, and private special interests too often prevails over the national interest, and the real question is whether this stems from the need of each member to collect and spend vast amounts of campaign money or corrupt lobbyists. Lobbying is inappropriately linked to campaign finances. Nevertheless lobbying can be an essential part of congressional policy making, as when lobbyists provide expertise that would not be available to the members, but its influence on Congress gives rise to concerns about conflict of interest and whether the advent of

massive lobbying campaigns wrinkles rather than levels the playing fields. The number of registered lobbyists soared – from 16,342 in 2000 to 34,785 in 2005, but dropped to around 13,000 in 2010 after the 2007 lobbying reforms. The drop in the number of lobbyists does not mean there is less lobbying in Washington. The decline in registered lobbyists is due at least in part to failure to register by sliding in under the requirements, in the letter but not the spirit of the reforms. In 1998, registered lobbyists reported spending \$1.427 billion; in 2004, lobbyists spent at least \$2.128 billion on reported activities; and in 2010 that grew to \$3.5 billion, but there is probably three to four times more spent in “grassroots lobbying” and other unregulated efforts. Spending by registered lobbyists has grown 62% in the last five years. This astonishingly averages out to over \$9.7 in lobbying expenditures each day Congress was in session in 2008 or over \$6.5 million per year for every Member of Congress. This does not include money spent for strategy, public relations, grassroots, coalition building, issue advertising on television ads, and in the print media, and advocacy on the Internet.^{xix} We need new rules to achieve transparency on the access of lobbyists to Members of Congress. There needs to be a new threshold of what is considered lobbying since most advocacy in Washington is not covered by the 1995 Legislative Disclosure Act (LDA) and the 2007 Honest Leadership and Open Government Act (HLOGA).^{xx} The definition of a lobbyist is much too narrow.^{xxi} It fails to capture most of the advocacy activity in Washington.

Representation and Ethical Behavior: There continues to be serious problems with the way Congress polices itself with respect to ethical behavior.^{xxii} There has been a collapse of ethical standards even after the 2007 reforms and the scandals that led to those reforms. In light of campaign contributions for earmarks and campaign fund

raising activities closely scheduled around important votes, there is a need to be more rigorous enforcement of ethics in Congress. Congress should enforce exist ethical codes and impose additional restrictions and reporting requirements similar to those it has placed on lobbyists. The Senate should follow the lead of the House and establish an independently managed Office of Congressional Ethics or more commonly called an Office of Public Integrity in state government.^{xxiii} There should be real enforcement of the codes of ethics in the House and Senate and more transparency about ethical problems.

Conclusion: What is to be done?

Most of the problems facing the way Congress works are linked to the lack of true bipartisanship and the its extreme polarization. The chambers are more partisan than at any time in more than a half-century. There is little consensus about major policy problems and solutions. It is harder than ever for the majority to get its way. However, as long as politics are so polarized in the United States, and parties demand strict loyalty, procedural tinkering and minor reforms seems unlikely to change how Congress works. We have concluded that Congress is indeed floundering, and in danger of sinking. Therefore, before we give up on the institution, what do we believe are the most important reforms that would improve lawmaking, lead to more consistent and careful oversight, encourage deliberation, and fulfill its Constitutional mandate to represent the people? Here are some suggestions:

Reduce polarization by increasing the number of moderates, a goal that would most likely be accomplished by redistricting by non-partisan commissions.

Improve lawmaking through legislative procedural reforms. Return to the regular order, limit restrictive rules, and improve protection of the minority in the House. The Senate needs immediate filibuster reform.^{xxiv} Make it easier to invoke cloture, to stop the almighty filibuster, say with a vote of 60 on a first vote to 51 on the fourth vote.^{xxv} Moreover, Senate Filibuster rules must be changed to force the members to actually do a filibuster, typical of skin in the game rules. A face-saving route to reduce frivolous filibusters and the resulting deadlock in the Senate must be found. Secretive and lengthy holds on bills and nominations must also be limited.

Of particularly critical importance is requiring members of both chambers to spend more time on their jobs in Washington. The Tuesday to Thursday Club (TUTH Club) needs to be stopped with an enforceable required schedule of work in Washington. Members should be in Washington doing the work of committees, oversight, lawmaking, and education of themselves about the problems and solutions. Both parties have tried to stop the TUTH Club, but to no avail. It is time for the party leadership in both chambers to set rules of attendance that have consequences. There needs to be a new schedule for Congress in session, which includes not only the show time on the floor, but the work time in committees and their offices. Congress also needs to return to real post enactment conference committees that are transparent to the public and fair to both parties.

Congress generally needs increased transparency in the way decisions are made. Reducing the number of committee and subcommittees, realigning jurisdictions, reducing the number of committee assignments, and reducing the amount of policy fragmentation will go a long way to enabling the interested persons and even the public in general to understand the policies being considered. Major advancements in educating the public

about its workings have been made in the last thirty years, but much more transparency is needed such as all committee and subcommittee hearings should be easily accessible on the Internet as they are held, and easily searchable after they have occurred. All congressional documents should be easily accessible and searchable on the Internet including the results of mark-ups and oversight hearings within a reasonable amount of time.

The ultimate in legislative procedural reforms must come with the congressional budget process. Enforce the calendar and stop the growth of continuing resolutions and omnibus spending bills. Establish a biennial appropriations process with one year for appropriations and the next year for oversight of government programs. A two year process is reasonable, as now the budget is often passed right on the heels of the next year's budget talks. Establish a true Pay-As-You-Go (PAYGO) rule covering expenditures, taxes and authorizations. Abolish earmarks in both the House and Senate by requiring open access to and discussion of all narrowly cast appropriations. Stop all new "backdoor spending" by authorization committees and require all permanently authorized legislation to be reviewed on a regular basis.

Improve congressional oversight by enforcing oversight calendars set by all committees when getting their legislative branch appropriations. Improve the use of the Government Accountability Office reports and inspectors general reports. Develop productive working relationships with agency heads and the Office of Management and Budget. Challenge the president on his expansion of power through signing statements, war powers, and the use of secrecy to cover various executive branch decisions.

Improve congressional deliberation by taking advantage of the recommendations above to reduce excessive partisanship, restore the regular order of doing business, reject omnibus bills and other legislative short cuts, and establish a predictable work schedule in Washington, which would return fairness to the legislative process.

Improve congressional representation. Mann and Ornstein argue that another transformational election is needed to change the dynamics of Congress and begin to repair the “broken branch.”^{xxvi} Ideally, reform should result from elections but we have had several since their publication in 2006, and not one has led to positive reform. In fact, the election of 2010 has worsened partisanship and deadlock. Clearly, something different is needed.

A key part of representation in America is pluralism, the expression of interests, lobbying through organized groups. The 2007 lobbying and ethics reforms were a weak down payment on improving the regulation of lobbying. There needs to be better definition of lobbying and better enforcement of the Congressional rules and laws. Codes of ethics in both House and Senate are rarely enforced, but coupled with greater enforcement, the Senate should create an office of public integrity and the House should step up its investigations and public reporting of ethical violations. There should be an absolute ban on lobbyists raising money for those they lobby. Leadership political action committees have no role in good government and should be abolished. Fund raising quotas set for committee chairs and ranking members are an invitation to practice undue influence; the quotas benefit no one.

Campaign finance reforms to reduce the need to constantly campaign for funds and reduce the dilatory affects of the permanent campaign should be a high priority. In considering the shape of the reforms, all ideas should be on the table including limits on money collected and spent, limits on the time money can be spent on campaigning, free television and radio time, or equal access at a reasonable price, for candidates to help reduce the costs of campaigns, and transparency in where the campaign funds are coming from and how they are used. *Citizens United* dealt campaign reform a huge blow and spurred the massive growth of money in politics. New reforms are needed to cut the cost and time of campaigning, including restricting or at least disclosing campaign contributions. Now is the time to foster civic engagement by the public and educate the public about how Congress works.

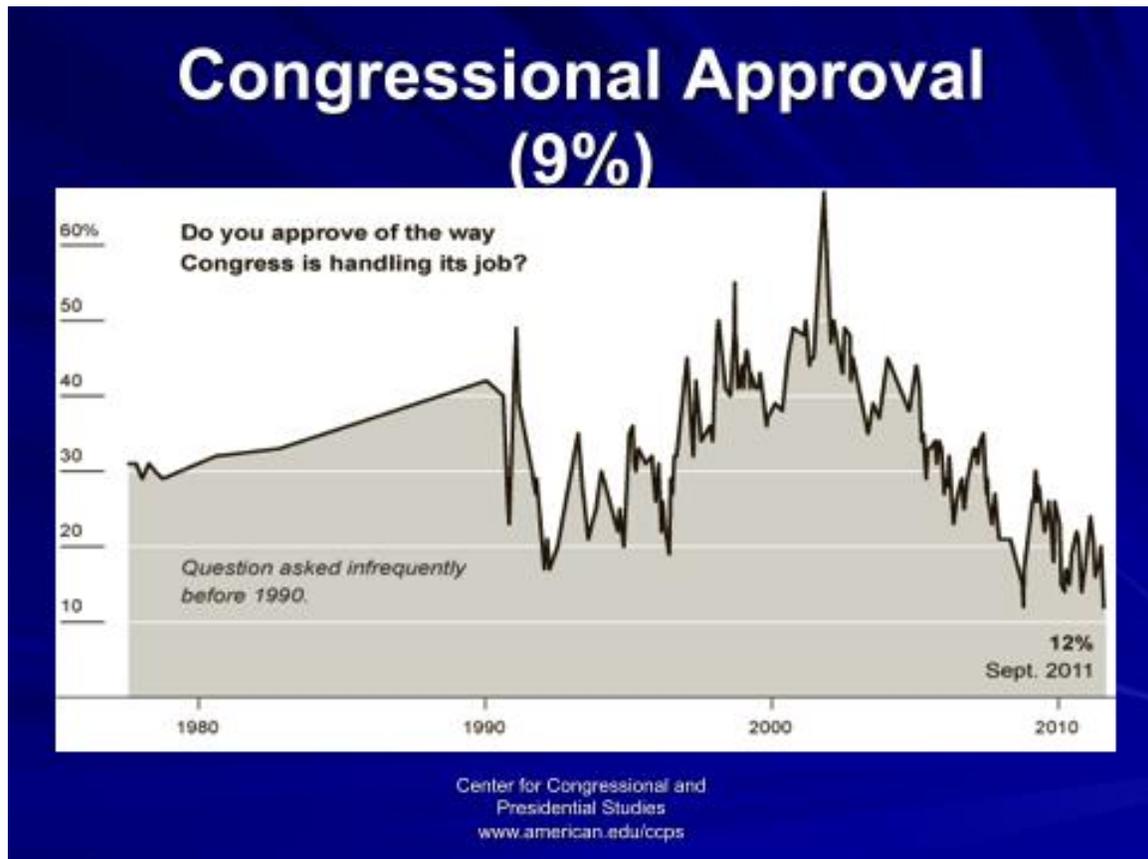
Finally, democracy requires participation of the electorate and participation can increase by implementing easier early voting procedures, establishing an election day holiday or even half holiday, expansion of polling hours, and lowering registration standards for voting.

We began this discussion with the results of two surveys, one of the public and the other of political scientists. We posed the question as to which group more accurately described the state of Congress today. In light of the above analyses of problems with the institution today, one can only conclude that the academics inflated their grades and the public saw more clearly the problems. Nevertheless, the suggested reforms have the potential to raise the grades for Congress of the public from Ds to As, raise the assessments of the academics from Cs and Bs to As and, in doing so, provide us all with better, more representative and responsive government.

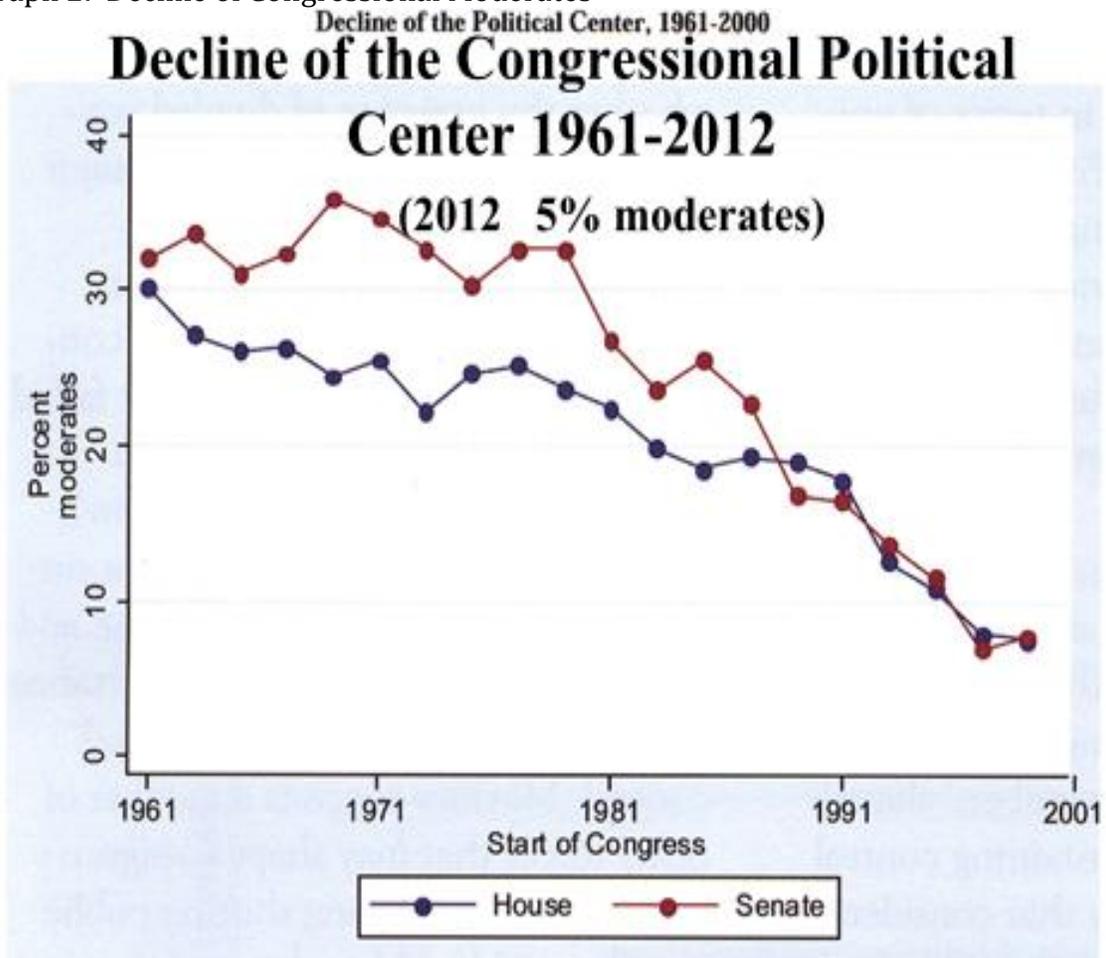
Graphs for the Chapter

Graph 1: Congressional Job Performance, 1980-2011

Source: Gallup Polls



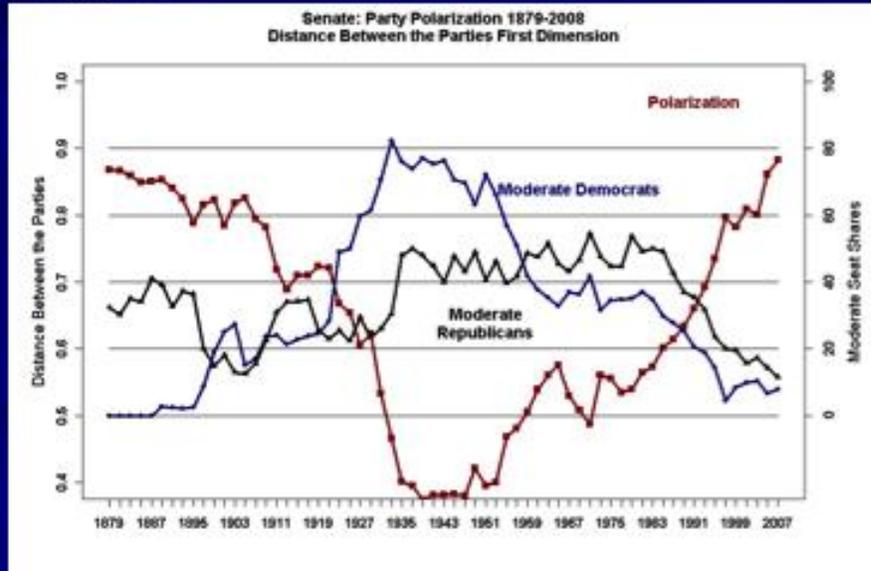
Graph 2: Decline of Congressional Moderates



Graph 3: Ideology in the U.S. Senate, 1879-2009

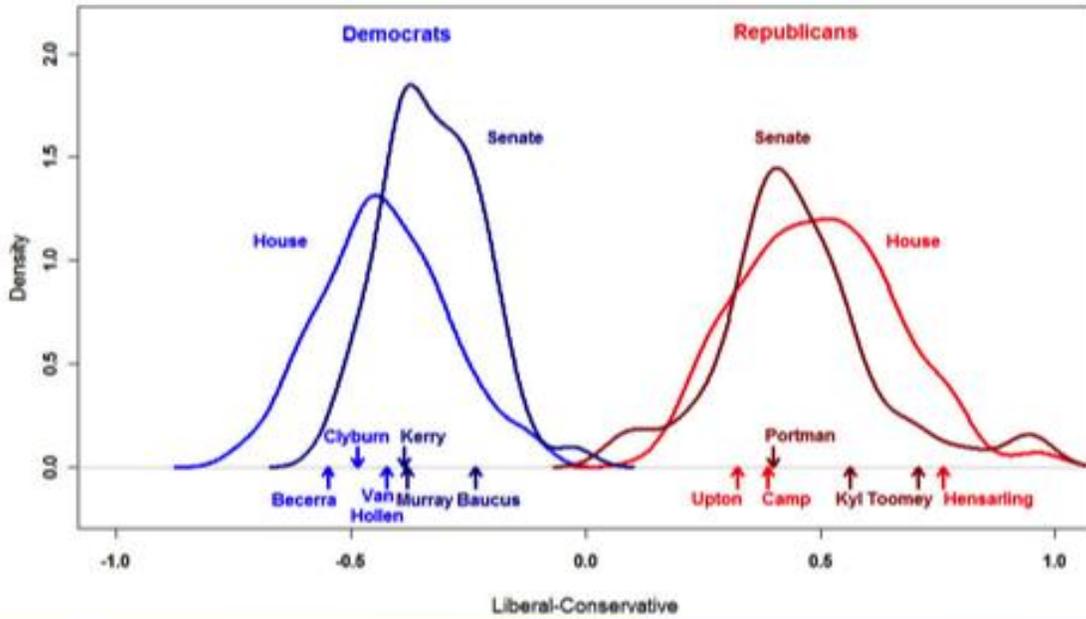
Senate 1879-2008

1. Fewer Moderates since 1970s
2. Growth of Distance between Dem. and Rep. Senators

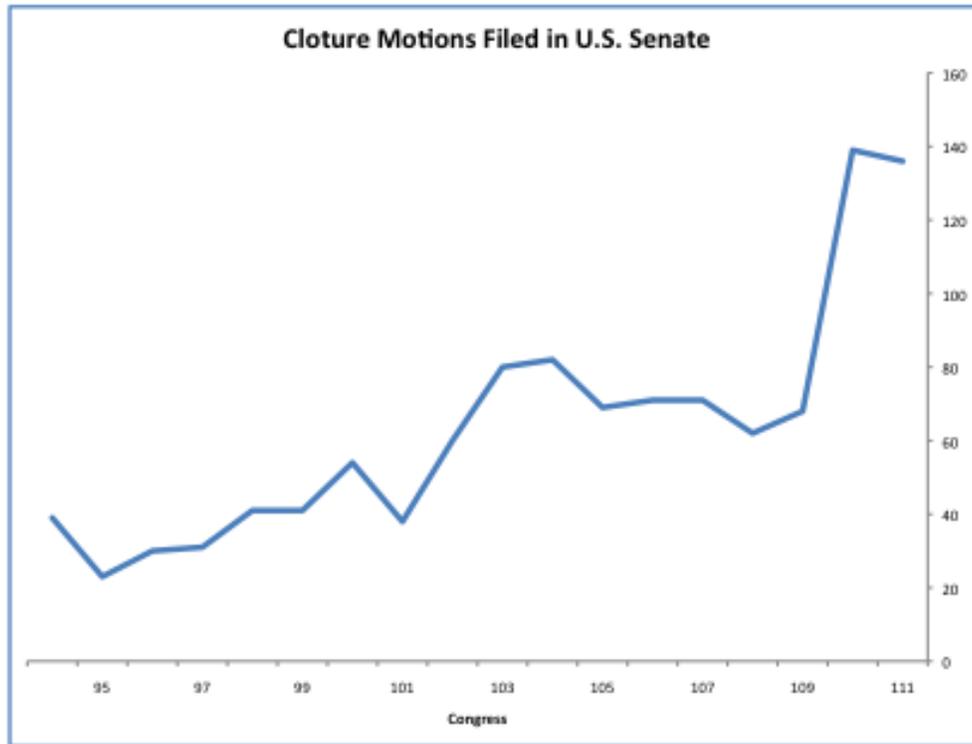


Graph 4: 112th House and Senate Common Ideological Space Scores Highlighting Super Committee Members

112th House and Senate DW-NOMINATE Common Space Scores
Democrats (blue), Republicans (red)



Graph 5: Cloture Motions Filed in U. S. Senate, 1973-2011



Source: United States Senate. Accessed 10/21/11 from: http://www.senate.gov/pagelayout/reference/cloture_motions/clotureCounts.htm

Appendix

Survey of 44 Political Scientists' Evaluation of Congress

The Center for Congressional studies

Indiana University

December 2010

1. Does Congress protect its powers from presidential encroachment?

A	7.5%
B	47.5%
C	37.5%
D	7.5%
F	0.0%

2. Does Congress carry out effective oversight of the president and executive branch?

A	2.5%
B	32.5%
C	50.0%
D	10.0%
F	5.0%

3. Does Congress generally fulfill its national policymaking responsibilities?

A	15.0%
B	42.5%
C	27.5%
D	12.5%
F	2.5%

4a. Does the HOUSE allow members in the minority to play a role?

A	2.6%
B	10.3%
C	33.3%

D 28.2%

F 25.6%

4b. Does the SENATE allow members in the minority to play a role?

A 39.5%

B 39.5%

C 13.2%

D 7.9%

F 0.0%

5a. Does the HOUSE follow good process in conducting its business?

A 5.0%

B 40.0%

C 32.5%

D 17.5%

F 5.0%

5b. Does the SENATE follow good process in conducting its business?

A 2.5%

B 10.0%

C 22.5%

D 37.5%

F 27.5%

6a. How well is the HOUSE able to handle the balance between allowing careful deliberation while also being able to act?

A 2.5%

B 42.5%

C 42.5%

D 5.0%

F 7.5%

6b. How well is the SENATE able to handle the balance between allowing careful deliberation while also being able to act?

A 2.5%

B 7.5%

C 35.0%

D 32.5%

F 22.5%

7a. Does the HOUSE engage in productive discussion?

A 2.6%

B 17.9%

C 41.0%

D 33.3%

F 5.1%

7b. Does the SENATE engage in productive discussion?

A 2.5%

B 25.0%

C 40.0%

D 27.5%

F 5.0%

8a. Does the HOUSE allow multiple points of view on an issue to be heard?

A 10.3%

B 28.2%

C 28.2%

D 28.2%

F 5.1%

8b. Does the SENATE allow multiple points of view on an issue to be heard?

A 37.8%

B 48.6%

C 5.4%

D 8.1%

F 0.0%

9a. Does the legislative process in the HOUSE involve a proper level of compromise, consensus?

A 2.6%

B 36.8%

C 34.2%

D 21.1%

F 5.3%

9b. Does the legislative process in the SENATE involve a proper level of compromise, consensus?

A 5.1%

B 23.1%

C 25.6%

D 30.8%

F 15.4%

10a. Does the HOUSE keep excessive partisanship in check?

A 2.7%

B 5.4%

C 32.4%

D	40.5%
F	18.9%

10b. Does the SENATE keep excessive partisanship in check?

A	2.6%
B	15.4%
C	25.6%
D	41.0%
F	15.4%

11a. Is the MAJORITY leadership in the HOUSE effective?

A	47.2%
B	44.4%
C	2.8%
D	2.8%
F	2.8%

11b. Is the MINORITY leadership in the HOUSE effective?

A	12.8%
B	48.7%
C	23.1%
D	10.3%
F	5.1%

11c. Is the MAJORITY leadership in the SENATE effective?

A	16.2%
B	40.5%
C	40.5%
D	0.0%

F 2.7%

11d. Is the MINORITY leadership in the SENATE effective?

A 30.8%

B 41.0%

C 23.1%

D 5.1%

F 0.0%

12. Does Congress hold members to high standards of ethical conduct?

A 5.3%

B 44.7%

C 31.6%

D 13.2%

F 5.3%

13. Does Congress focus on the key issues facing the country?

A 20.5%

B 48.7%

C 25.6%

D 2.6%

F 2.6%

14. Do members educate themselves well on the key issues facing the country?

A 5.1%

B 48.7%

C 33.3%

D 10.3%

F 2.6%

15. Does Congress consider the long-term implications of policy issues, not just short-term?

A	2.6%
B	15.4%
C	43.6%
D	30.8%
F	7.7%

16. Does conflict in Congress reflect substantive differences, rather than political game-playing?

A	7.7%
B	30.8%
C	41.0%
D	17.9%
F	2.6%

17. Does Congress exercise its proper role in the decision to go to war?

A	2.7%
B	13.5%
C	35.1%
D	32.4%
F	16.2%

18. Does Congress exercise its proper role in determining the federal budget?

A	5.4%
B	32.4%
C	35.1%
D	24.3%
F	2.7%

19. Does Congress exercise its proper role in setting the legislative agenda?

A	17.9%
B	59.0%
C	17.9%
D	2.6%
F	2.6%

20. Does Congress reflect our nation's diversity?

A	2.6%
B	33.3%
C	43.6%
D	10.3%
F	10.3%

21. Does Congress make its workings and activities open to the public?

A	23.1%
B	59.0%
C	15.4%
D	0.0%
F	2.6%

22. Do legislators broadly reflect the interests of their constituents?

A	25.6%
B	46.2%
C	23.1%
D	2.6%
F	2.6%

23. Do legislators make a good effort to educate their constituents about Congress?

A	7.7%
B	23.1%
C	41.0%
D	23.1%
F	5.1%

24. Do legislators make a good effort to be accessible to their constituents?

A	41.0%
B	51.3%
C	5.1%
D	0.0%
F	2.6%

25. Does Congress keep the role of special interests within proper bounds?

A	5.1%
B	10.3%
C	48.7%
D	25.6%
F	10.3%

26. Does Congress reform itself sufficiently to keep up with changing needs?

A	5.1%
B	7.7%
C	61.5%
D	20.5%
F	5.1%

27. All things considered, how well does Congress do in representing the interests of the American people?

A	2.5%
B	35.0%
C	47.5%
D	12.5%
F	2.5%

Grade of US Citizens

1. Contacting their members of Congress on issues that concern them.

A	5.0%
B	35.0%
C	45.0%
D	10.0%
F	5.0%

2. Following what is going on in Congress on a regular basis.

A	0.0%
B	2.5%
C	35.0%
D	45.0%
F	17.5%

3. Voting in congressional elections.

A	0.0%
B	5.0%
C	65.0%
D	30.0%

F 0.0%

4. Working through groups that share their interests to influence Congress.

A 2.5%

B 37.5%

C 55.0%

D 5.0%

F 0.0%

5. Understanding the main features of Congress and how it works.

A 0.0%

B 2.5%

C 25.0%

D 52.5%

F 20.0%

6. Having a reasonable understanding of what Congress can and should do.

A 2.5%

B 0.0%

C 32.5%

D 55.0%

F 10.0%

7. Understanding the role of compromise in Congress.

A 2.5%

B 5.0%

C 35.0%

D 50.0%

F 7.5%

8. Being able to get to the core facts of issues before Congress.

A	2.5%
B	2.5%
C	50.0%
D	42.5%
F	2.5%

ⁱ See the Center for Congressional Studies at Indiana University's Political Scientists Survey about Congress, December 2010 in the Appendix.

ⁱⁱ See Appendix for survey results.

ⁱⁱⁱ In 2006 Thomas E. Mann and Norman J. Ornstein argue in *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* (Brookings, 2006) that Congress is dysfunctional and need major reforms. In 2009 they continued their criticism of Congress in their chapter, "Is Congress Still the Broken Branch?" In *Congress Reconsidered* edited by Lawrence C. Dodd and Bruce I. Oppenheimer (CQ Press, 2009).

^{iv} Pietro S. Nivola and David W. Brady (eds.), *Consequences and Correction of America's Polarized Politics, Volume Two* (Brookings, 2008).

^v Keith T. Pool and Howard Rosenthal, "A Spatial Model for Legislative Roll Call Analysis," 29 (2): 357-84

^{vi} Joseph J. Schatz, "Looking for Room to Maneuver," CQ Weekly, April 19, 2010: 959.

^{vii} Op.Cit.

^{viii} *Congressional Record*, July 29, 2008, H7285.

^{ix} Michael P. McDonald, "Redistricting and Competitive Districts" in *The Marketplace of Democracy: Electoral Competition and American Politics*, edited by Michael P. McDonald and John Samples (Brookings, 2006): 222-44.

^x Walter J. Oleszek, *Proposals to Reform "Holds" in the Senate* (Congressional Research Service, July 15, 2010).

^{xi} Lee Hamilton, The Center for Congressional Studies at Indiana University, October 28, 2011.

^{xii} David Clarke, "Earmarks: Here to Stay or Facing Extinction?" *CQ Weekly*, March 16, 2009, 613.

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- xiii Michael L. Koempel, et. al., *Committee Rules in the House on Legislative Activities: Planning for the 112th Congress* (Congressional Research Service, January 24, 2011).
- xiv Lee Hamilton, "There is No Substitute for Robust Oversight," The Center for Congressional Studies at Indiana University, June 9, 2010.
- xv R. Sam Garrett, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress* (Congressional Research Service, January 28, 2011).
- xvi <http://www.nhpr.org/node/14408>
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- xviii <http://www.iht.com/articles/ap/2007/08/17/america/NA-POL-US-White-House-Obama.php>
- xix See James A. Thurber, "Obama's Battle with Lobbyists," in *Obama in Office* edited by James A. Thurber (Paradigm, 2011), 127-144.
- xx Pub. L. No. 110-81 Stat. 735 (Sept. 14, 2007).
- xxi Task Force on Federal Lobbying Laws, Section of Administrative Law and Regulatory Practice, American Bar Association, *Lobbying Law in the Spotlight: Challenges and Proposed Improvements* (ABA, January 3, 2011).
- xxii Jacob R. Straus, *Enforcement of Congressional Rules of Conduct: An Historical Overview* (Congressional Research Service, December 18, 2009).
- xxiii Jacob R. Straus, *House Office of Congressional Ethics: History, Authority, and Procedures* (Congressional Research Service, Report R40760).
- xxiv Christopher M. Davis, et. al, *Proposals to Change the Operation of Cloture in the Senate* (Congressional Research Service, July 27, 2010).
- xxv Richard S. Beth, *Entrenchment of Senate Procedure and the "Nuclear Option" for Change: Possible Proceedings and Their Implications* (Congressional Research Service, March 25, 2005).
- xxvi Mann and Ornstein, *The Broken Branch*.