

1-1-2007

## Life Under the Republicans: The Subversion of Democracy in the House Resources Committee

Erica Rosenberg

Follow this and additional works at: [https://repository.uchastings.edu/hastings\\_environmental\\_law\\_journal](https://repository.uchastings.edu/hastings_environmental_law_journal)



Part of the [Environmental Law Commons](#)

---

### Recommended Citation

Erica Rosenberg, *Life Under the Republicans: The Subversion of Democracy in the House Resources Committee*, 13 *Hastings West Northwest J. of Env'tl. L. & Pol'y* 233 (2007)

Available at: [https://repository.uchastings.edu/hastings\\_environmental\\_law\\_journal/vol13/iss2/5](https://repository.uchastings.edu/hastings_environmental_law_journal/vol13/iss2/5)

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in *Hastings Environmental Law Journal* by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

# Life Under the Republicans: The Subversion of Democracy in the House Resources Committee

By Erica Rosenberg\*

## I. Introduction

In the 2006 elections, one victory was particularly sweet for environmentalists: the ousting of Richard Pombo. A California Republican and the powerful Chairman of the House Resources Committee ("the Committee"),<sup>1</sup> Pombo produced countless schemes to open America's public lands and forests to commercial exploitation by logging, drilling, and mining interests. While many of these schemes — like gutting the Endangered Species Act (ESA)<sup>2</sup> — achieved some notoriety, the practices instituted to move his agenda through the Committee did not. As radical as his agenda was, equally radical was his subversion of the legislative process. Taking the helm of the Committee in January 2003 for the 108th and 109th Congresses, Pombo took to new lows the unraveling of a process that began in 1994 when Republicans took control of Congress.

What had once been a somewhat deliberative and transparent process became autocratic and closed.<sup>3</sup> To illustrate, when the U.S. House of Representatives voted to pass the California Desert Protection Act in 1994,<sup>4</sup> it was the culmination of seven years of study, numerous public hearings, and over two months of intermittent debate on the House floor with dozens of amendments offered from both sides of the aisle. A decade later, Pombo, as Chairman of the House Resources Committee, rewrote the Endangered Species Act (ESA) in a matter of days: he introduced the Threatened and Endangered Species Recovery Act<sup>5</sup> on September 19, 2005, held a single hearing on September 21, and held a Committee mark-up the next day. The bill was brought to the House floor a week later; it passed after 90 minutes of "de-

---

\* Erica Rosenberg is the Director of the Program on Public Policy at Arizona State University's Sandra Day O'Connor College of Law. From 1999-2004, she served on the Democratic staff of the House Resources Committee. Much of the information in this article is derived from the author's own experience or communications with staff who prefer not to be identified. Nevertheless, she is most grateful for their help as well as that of her reviewers, Dan Sarewitz and Janine Blaeloch.

1. The Democrats changed the name of the Committee back to the House Natural Resources Committee in 2007, during the 110th Congress.

2. 16 U.S.C.S. § 1531 et seq. (2007).

3. For a general discussion of the Republican reign and its abuses, see Robert Kuttner, *America as a One-Party State*, AM. PROSPECT, Feb. 2004, 18.

4. 16 U.S.C.S. § 410aaa et seq. (2007).

5. H.R. 3824, 109th Cong. (2005).

bate," during which a Republican amendment filed after the deadline and only a single Democratic amendment were allowed consideration.

The Committee has jurisdiction over the nation's natural resources, including water resources, energy and mineral resources, national parks and forests, fish and wildlife, and coastal and ocean resources.<sup>6</sup> Under the Republican regime, the Committee's entire way of doing business was radically transformed and the legislative process, designed for deliberation and debate, was systematically eroded. As the Republicans undermined the Committee process, anti-environmental legislation passed the House, supported by pro-extractive and special interests such as oil companies, the mining and timber industries, and developers. The point was to allow these interests to prevail over the public interest and will. While even the Republican-controlled Senate thwarted much of the high-profile legislation, many minor bills managed to get through both Houses because Members were reluctant to expend political capital to stop them. Indeed, in the end, Pombo's most effective strategy was to use a series of minor bills to undermine environmental stewardship and the public interest.

To understand the breadth of these changes, one must understand how the Committee and Floor functioned in earlier years. The textbook lesson of "How A Bill Becomes Law" has bill introduction by a Member, referral by the parliamentarian to committees with subject matter expertise, meaningful hearings for public and expert input and transparency, an opportunity for amendment during "mark-ups" in both subcommittee and in full committee, actions reflected in a committee report, and floor debate followed by a recorded vote. In the House, floor debate on significant legislation is generally governed by two types of rules or variations thereof. An open rule, allowing for more debate, allows any member to offer an amendment; a closed rule limits debate by allowing only certain members to offer amendments. If the two Houses pass different versions of the same bill, one House may accept the other's version, or a conference committee is formed to reach consensus on the bill, after which both Houses must pass the legislation.

In practice, the vast majority of bills that pass the House from the Resources Committee are not vetted outside of the Committee. According to the 109th Congress's webpage on the legislative process, the committee's role is significant: "An important phase of the legislative process is the action taken by committees. It is during committee action that the most intense consideration is given to the proposed measures; this is also the time when the people are given their opportunity to be heard."<sup>7</sup>

---

6. U.S. House of Rep., *House Rules and Manual*, 109th Cong. (2005), available at [http://www.gpoaccess.gov/hrm/browse\\_109.html](http://www.gpoaccess.gov/hrm/browse_109.html).

7. U.S. House of Rep., *Tying it All Together*, April 21, 2007, [http://www.house.gov/house/Tying\\_it\\_all.shtml](http://www.house.gov/house/Tying_it_all.shtml).

Most bills referred to committee die in committee. They are not referred to a subcommittee, not given a hearing, not moved to a mark-up, or are voted down. The bulk of bills that emerge from committee for floor consideration are worked out (i.e., the provisions are agreed to) by the members in the committee. By the time they get to the floor, the bills are considered non-controversial and placed on the "suspension calendar." A bill on suspension (for example, the naming of a post office or a national forest boundary adjustment) has only forty minutes of debate, is voted on by unrecorded voice vote, requires two-thirds of the House for passage, and may not be amended (except by the floor manager who manages debate on the floor). The idea is to act quickly on bills that make minor policy changes, require little debate, and enjoy broad support from their originating committees, and let more controversial measures get floor time for consideration by the entire House.

Yet, under the Republicans, the committee process no longer provided the checks to ensure that legislation — whether destined for the floor or more likely, the suspension calendar — was properly vetted and sound. The hearing and mark-up process became so truncated or subverted as to be meaningless, rules intended to provide notice and allow for consideration and amendment of bills were routinely waived, bills were packaged for mark-up to preclude amendment and debate, and votes went unrecorded. With the committee process abrogated, the floor process became even more skewed and closed; from start to finish, the dysfunctional system lacked transparency and accountability.

## **II. Centralization of Power**

Many of these changes stemmed from the centralization of power in a government dominated by one party, that in turn resulted from fundamental changes in how committees were organized. For the most part, Democrats used to select chairs based on seniority, which meant that members were presumably more experienced and knowledgeable about the subject matter. Given his party loyalty and fundraising acumen, Pombo leapt over several more senior Republicans to become Chair of the Resources Committee. Whereas seniority was a significant factor when caucuses elected their subcommittee chairs, Republicans allowed the full committee chair to select subcommittee chairs. Chairman Pombo controlled staffing and agendas of the subcommittees, reducing their autonomy. Pombo decided which bills got hearings, and even cleared witnesses. By eliminating the subcommittee mark-up stage, the Chair further consolidated his power. The number of subcommittee mark-ups in the Resources Committee steadily declined after the Republicans took over, to the point that in the 109th Congress none

were held.<sup>8</sup> To circumvent uncooperative subcommittee chairs who did not always support his reforms, Pombo was known to remove issues from subcommittee to full committee. When Representative Wayne Gilchrist, a moderate Republican who had opposed Pombo on endangered species legislation, chaired the Fisheries Subcommittee, Pombo moved fisheries management legislation out of the subcommittee to the full Committee.<sup>9</sup>

Similar centralization of power expedited process on bills that the Republican leadership wanted to get to the House floor. For example, in the spring of 2003 the Healthy Forests Restoration Act<sup>10</sup> was moved through the Resources Committee, the Agriculture Committee, and the Judiciary Committee in less than a month — with no hearing.<sup>11</sup>

### III. Meaningless Hearings

Hearings are opportunities to get public and agency input on bills and issues, as well as to create a record on which to base congressional action. Republicans on the Resources Committee viewed public hearings as a mere formality. Assuming a bill even got a hearing (some bills went straight to full Committee mark-up),<sup>12</sup> it became standard to give a minimum of one week's notice before a hearing, as compared to several weeks' notice in a less partisan era. At a major hearing on reforming forest policy through the President's Healthy Forests Initiative and other Healthy Forests legislation, held right after Labor Day, Oregon Representative Peter DeFazio complained that the Democrats heard about the hearing only the Thursday before, giving them no time to prepare.<sup>13</sup> For another hearing in June 2002, announced one week before, language for three of the bills was unavailable to Democratic members and staff, the public, and the Administration witnesses testi-

---

8. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (December 5, 2005).

9. See H.R. 5018, 109th Cong. (2006). According to one staffer, in a highly unusual move, Pombo also had a more junior member of the subcommittee chair a hearing that Representative Gilchrist should have chaired. E-mail Interview with anonymous Committee staff member, in Washington, D.C. (February 23, 2007).

10. H.R. 1904, 108th Cong. (2003); Pub. L. No. 108-148, 117 Stat. 1887. See *infra* note 37 and accompanying text.

11. Personal observation.

12. See, e.g., H.R. 4912, 107th Cong. (2002).

13. *President's Healthy Forest Initiative: Hearing on H.R. 5214, H.R. 5309, and H.R. 5319 Before the H. Comm. on Res.*, 107th Cong. 27 (2002) (statement of Rep. Peter DeFazio, Member, H. Comm. on Res.).

---

fyng on the bill.<sup>14</sup> For another on "Process Gridlock on the National Forests,"<sup>15</sup> the Forest Service report that was the subject of the hearing was not released until the day of the hearing.<sup>16</sup> This short time frame placed all involved except those in control at a significant disadvantage. It was particularly unfair to the public. For interest groups, many of which are located in the West and operate on a shoestring budget, the short notice made the price of a plane ticket prohibitive, so they could not travel to Washington to testify. Not that fact-finding or opinion-seeking (particularly divergent or dissenting opinion) was a priority; most Committee hearings were stacked so that Majority witnesses outnumbered Minority witnesses, often by two or three to one.<sup>17</sup> In stark contrast, according to one long-term staffer, ratios were never that skewed under the Democrats. When the Resources Committee held hearings on drilling in the Arctic National Wildlife Refuge ("ANWR") in the late 1980s under a Democratic Chair, the Democrats invited more witnesses who supported opening up the Refuge than those who opposed it.<sup>18</sup>

Furthermore, the Republicans structured the hearing so that those opposing a bill or Majority position were often the last to testify.<sup>19</sup> By that point, particularly when several bills were the subject of the hearing, most members and most of the press had likely straggled out of the hearing room and meaningful discussion was foreclosed.

Even the Administration, although sometimes working in tandem with the Majority and sympathetic to its agenda, played a diminished role in the

---

14. Personal observation; see *Hearing on H.R. 3802, H.R. 4870, H.R. 4917, H.R. 4919, and H.R. 4952 Before the H. Subcomm. on Forests and Forest Health*, 107th Cong. 1 (2002).

15. *Process Gridlock on the National Forests: Oversight Hearing Before the H. Subcomm. on Forests and Forest Health*, 107th Cong. 1 (2002).

16. Personal observation.

17. E.g., *President's Healthy Forest Initiative: Hearing on H.R. 5214, H.R. 5309, and H.R. 5319 Before the H. Comm. on Res.*, 107th Cong. (2002).

18. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (January 30, 2006).

19. Telephone Interview with Janine Blaeloch, Executive Director, Western Lands Project in Seattle, Wash. (October, 10, 2006). See, e.g., *Crisis on the National Forests: Containing the Threat of Wildland Fire to the Environment and Communities: Oversight Field Hearing Before the Subcomm. on Forests and Forest Health*, 108th Cong. 92 (2003) (Of twelve witnesses, representative of Grand Canyon Trust, an environmental NGO, testified last); *President's Healthy Forest Initiative: Hearing on H.R. 5214, H.R. 5309, and H.R. 5319 Before the H. Comm. on Res.*, 107th Cong. 61 (2002) (representative of the Center for Biological Diversity, an environmental NGO, testified last); see also *Hearing on H.R. 305, H.R. 2237, H.R. 3258, H.R. 4285, H.R. 4667, H.R. 4683, H.R. 4808, H.R. 4817, and H.R. 4887 Before the Nat'l Parks, Recreation, and Pub. Lands Subcomm.*, 108th Cong. (2004) (hearing structured so that environmental witness went last).

process. Administration views should be — and used to be — routinely sought. After all, who can better assess the merits and impact of a bill and suggest practical changes than the implementing agency? Yet the compressed timetable often precluded the Administration's input. The Administration needs at least a week to allow staff to review legislation, to develop a formal position on legislation, and to clear the testimony with other agencies and the Office of Management of the Budget. Given the vindictive nature of some members who ultimately control agency budgets, at least one agency opted out of the process: The Department of Agriculture, which oversees the Forest Service, had an unwritten policy of never opposing Republican-sponsored legislation. While the Administration normally supports, opposes, or recommends amendments to legislation, the most the Forest Service was willing to state on the record amounted to "We would like to work with the Committee on this bill."<sup>20</sup>

Similarly, on a bill before the Resources Committee dealing with raising penalties for setting fires on public lands, the Department of Justice ("DOJ") declined to testify at the Democratic staff's request, and the Majority never solicited the DOJ's views.<sup>21</sup> Like the public's views, the Administration's views seemed expendable. At the September 21, 2005 hearing on Endangered Species Act Reform, Assistant Secretary Craig Manson commented: "At the outset, let me note that because the bill was introduced just two days ago, on Monday, September 19[th], we have not had sufficient time to fully analyze the legislation or to develop a formal Administration position on the bill."<sup>22</sup> When an expedited process not only preceded the hearing but also followed the hearing — bills often went to mark-up within days of a hearing — there was little opportunity to gather additional information

---

20. E.g., *Hearing on H.R. 3401, H.R. 3954, and H.R. 3962 Before the Subcomm. on Forests and Forest Health*, 107th Cong. 7 (2002) (statement of Elizabeth Estill, Deputy Chief, Programs and Legis., U.S. Forest Serv., "The Department would like to work with the Committee to make a number of improvements . . ."); *Hearing on H.R. 427, H.R. 434, and H.R. 451 Before the Subcomm. on Forests and Forest Health*, 107th Cong. 18 (statement of Sally Collins, Deputy Chief, U.S. Forest Service "[T]he Forest Service has some concerns with the management direction provided by these bills. However the Department and the Forest Service would like to work with the Committee to resolve the issues these bills address . . .").

21. Personal observation; see H.R. 1038, 108th Cong. (2003). The same bill had been reported out of the Resources Committee during the previous Congress as part of a package of bills, but without a hearing in either the Resources or Judiciary Committees. See H.R. 4912, 107th Cong. (2002).

22. *Threatened And Endangered Species Recovery Act: Hearing on H.R. 3824 Before the House Comm. on Res.*, 109th Cong. 27 (statement of Craig Manson, Assistant Sec., Fish and Wildlife Serv.). E-mail Interview with anonymous Committee staff member, in Washington, D.C. (January 23, 2006).

from the public or the agencies, neither of which could respond in time to written questions from Members. Those written responses used to inform amendments to or disposition of the bill and traditionally had become part of the hearing record.

#### IV. No Hearing and No Hearing Record

In contrast to prior practice, the Chairman, as opposed to the Subcommittee Chair, decided which bills got a hearing. According to one Democratic staffer, Pombo also had a policy on Democratic bills: the ratio of Republican bills to Democratic bills had to be at least two to one.<sup>23</sup> Democratic requests for hearings were routinely ignored or turned down. These bills, denied hearings on substantive as well as partisan grounds, were likely protective of the environment and public resources; the bills would have, for example, protected the ANWR, reinstated the Clinton roadless rule for national forests, designated large swaths of wilderness, ended commercial logging on national forests, or suspended royalty relief for oil and gas companies.<sup>24</sup>

Field hearings, which provided a taxpayer-subsidized campaign opportunity for members seeking re-election, were limited to Republican districts. In one instance, when New Mexico Representative Tom Udall, a Democrat, requested an oversight hearing on science and post-fire logging, the Subcommittee Chair, Oregon Representative Greg Walden, scheduled a field hearing in his own district in Medford without consulting Representative Udall on his availability.<sup>25</sup> With more than half of hearing transcripts never printed in a form available to the public, the process was further obscured. No record exists of the meager, rigged process or the nature of public involvement or of member engagement. In this sense, Pombo further perverted the democratic process.

Similarly, another way in which bills that went through the Committee — often serving some vested or political interest — avoided scrutiny or an opportunity for amendment was by the elimination of hearings altogether.<sup>26</sup>

---

23. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (December 8, 2005).

24. E.g., H.R. 770, 108th Cong. (2003) (Rep. Ed Markey, (D-MA), along with 145 co-sponsors, introduced bill to protect the ANWR) ; H.R. 3710, 109th Cong. (2005) (Markey bill suspending royalty relief). Cf. H.R. 4984, 108th Cong. (2004) (Rep. Pearce (R-NM) bill reducing royalty rates.).

25. See *Forest Emergency Recovery and Research Act: Field Hearing on H.R. 4200 Before the Subcomm. on Forests and Forest Health*, 109th Cong. (Feb. 24, 2006).

26. E.g., Sound Science for Endangered Species Act Planning Act, H.R. 1662, 108th Cong. (2003). The "sound science" bill amending the ESA was introduced by

In classic congressional horse-trading, these suspension bills were packaged together in Committee mark-ups so that their individual merits were hardly considered. The ratio of Republican bills to Democrat bills reported out of Committee under Pombo was approximately three to one.<sup>27</sup> Because the suspension calendar (times when suspension bills can be on the floor) had been extended, less time was allotted for debating substantive bills, and more controversial bills were included on the suspension calendar. Other bills, particularly at the end of a congressional session when any semblance of process falls by the wayside in a rush to finish business, went straight to Committee mark-up or even to the floor.<sup>28</sup>

It used to be standard that bills that did not get passed in one Congress would start the process over in the next; after all, new members would be voting on the measures and circumstances may have changed. Not so under Pombo. He decided what he termed "non-controversial" bills, including complicated land exchanges, that had passed out of Committee in one Congress or had passed the House, could go straight to the floor without hearings or mark-ups.<sup>29</sup>

## **V. Mark-Ups on Draft Bills and "Rocket Dockets"**

A committee report includes the substantive and procedural history of the bill; it outlines the factual and policy justifications for the bill, analyzes the provisions, documents amendments and votes, and often includes Administration views and an estimate of costs, as well as any dissenting or additional opinions. Reports from Pombo's Committee, when they were provided, were so shoddy in explaining the need and purpose of legislation that they were virtually useless in providing legislative history, telling members on the floor what they were voting on, or giving agencies guidance on how to

---

Rep. Greg Walden on Apr. 8, 2003, and reported out of Committee without a hearing on Nov. 19, 2004. *See* H.R. REP. NO. 108-785 (2004).

27. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (December 8, 2006).

28. *E.g.*, National Forest Organizational Camp Fee Improvement Act of 2003, H.R. 5316, 107th Cong. (2002). This bill required the Forest Service to get less than fair market value for leasing public lands to camping groups. It was introduced by Rep. Jim Kolbe (R-AZ) on Sept. 4, 2002, and discharged from the Resources and Agriculture Committees on Oct. 10, 2002, without a hearing or mark-up. *See* 148 CONG. REC. H7859 (2002).

29. E-mail Interview with anonymous Committee staff member, in Washington, D.C. (February 28, 2005).

---

implement the law.<sup>30</sup> Sometimes, reports included language penned by the affected industry.

To further keep the public in the dark, some Republicans employed another technique for making the process opaque: holding hearings and mark-ups on draft bills or "committee prints," bills that were never introduced. As a result, no text was available for public input or reaction. Mark-ups on committee prints produce no committee reports, so there is no record of committee action, no legislative history, no opportunity to file dissenting views, no Congressional Budget Office analysis of the fiscal impact of a bill, and no recorded votes. Like the lack of hearing transcripts, the lack of a report obscures the process. The Resources Committee prints ultimately received the democratic imprimatur of a vote on the House floor, rendering this Orwellian strategy complete.

Stealth legislating was not limited to minor pieces of legislation. Chairman Pombo perfected the procedural maneuverings to squelch debate and dissent on major legislation as well. Under the Republican majority and Pombo's chairmanship, unprecedented legislation and radical rewrites of bedrock environmental laws took place in a matter of days. These compressed timetables were not aberrations — they became the norm.

Sweeping changes to forest policy contained in the fifty-page Healthy Forests Restoration Act were marked up on a draft bill "introduced" five days before. As New Mexico Representative Tom Udall complained at the Committee meeting in April, 2003:

The committee print of this bill was received in my office during a recess period, on a Friday afternoon before it was scheduled to be marked up in the committee a mere [five] days later. Not only did we receive it [five] days before mark up and during a recess, when many if not all members were out of town, but the importance and depth of this issue is further undermined by the fact that this committee did not even hold any hearings on the bill before proceeding straight to mark[-]up.<sup>31</sup>

Echoing his comments, Washington Representative Jay Inslee remarked that the print "sprung on us last Friday" was "a continuation of the anti-environmental regime we've been suffering under. . . . [W]e have seen time and time again the majority party ramming through this Committee bills

---

30. E.g., H.R. REP. NO. 108-509 (2004) (regarding the Tribal Forest Protection Act of 2004, H.R. 3846, 108th Cong. (2004)); H.R. REP. NO. 107-763 (2002) (regarding H.R. 4912, 107th Cong. (2002) (on penalties for setting fires).

31. *Healthy Forest Restoration Act of 2003: Unpublished Transcript of the Mark-up of H.R. 1904 Before the H. Comm. on Res.*, 108th Cong. 15-16 (2003).

---

that come down on the anti-environmental side of all these issues."<sup>32</sup> Oregon Representative Peter DeFazio summed up the situation best at another mark-up of an expedited bill: "There is nothing wrong with the legislative process. I mean, we don't do it around here much anymore. More legislation is written in the Rules Committee than . . . in the Committees where people have some expertise."<sup>33</sup>

On a complaint that no hearings were held on a given measure, the Committee's standard response was that it had held *oversight* hearings on the subject of the legislation.<sup>34</sup> But the legislation and how it effected policy changes were never vetted publicly. Oversight hearing transcripts were printed as infrequently as legislative hearing transcripts.

The Committee's hundred-plus page energy bill<sup>35</sup> — a major piece of legislation with royalty relief for oil companies and exemptions from environmental review of oil and gas leasing operations — was given to staff as a committee print on Monday for a Wednesday mark-up, barely within the minimum 48-hour notice.<sup>36</sup> Because the committee print (as opposed to an introduced bill) was adopted by the Committee, no report was mandated. The bill therefore has no legislative history from the Resources Committee.<sup>37</sup> A second energy bill, the Gasoline for America's Security Act,<sup>38</sup> was rammed through the Committee in the fall of 2005 and was similarly devoid of process, but failed before it got to the floor.<sup>39</sup> Ultimately, the "Monday text, Wednesday mark-up" timeline became something of a routine.

By short-circuiting the process on budget reconciliation, the Committee almost succeeded in radically reforming mining law. The result would have divested millions of acres of public land to mining companies. The

---

32. *Id.* at 16-17.

33. *Healthy Forest Reform Act of 2002: Unpublished Transcript of the Mark-up of H.R. 5319 Before the H. Comm. on Res.*, 107th Cong. 85 (2002).

34. *See e.g., id.* at 24. During the mark-up, Subcomm. Chair Scott McInnis, (R-CO), pointed to boxes of transcripts from committee oversight hearings. Personal observation.

35. H.R. 6, 109th Cong. (2005); Pub. L. No. 108-58 (2005).

36. The mark-up on the committee print was held on Apr. 13, 2005. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (January 1, 2006).

37. *See* 109 Bill Tracking H.R. 6 (LEXIS 2005).

38. H.R. 3893, 109th Cong. (2005). The committee print was marked up on Sept. 28, 2005, and the bill was on the floor on Oct. 7, 2005. 151 CONG. REC. H8750 (2005).

39. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (January 30, 2006).

Deficit Reduction Act<sup>40</sup> overturned twenty-five years of ANWR policy that forbade drilling, ended a ten-year moratorium on off-shore drilling, and instituted mining "reform." Again, no hearings were held on the legislation; the committee print was distributed to members on October 24, 2005, and marked up in full committee two days later.<sup>41</sup> Dissenting views from Democrats were filed only because House rules require that all views be sent to the Budget Committee. The Rules Committee dropped some of the most egregious provisions (e.g., regarding ANWR and off-shore leasing) but allowed the mining land giveaway to sail straight to conference — with no debate and no floor vote.<sup>42</sup> Fortunately, not a single senator, even those sympathetic to the mining industry, supported the language that, once exposed, created a public uproar.<sup>43</sup>

## VI. Closed Rules

Before the Republican ascent, every Resources bill on the floor was debated under an open rule, allowing anyone to offer an amendment, or a modified open rule, with time limits or requirements that amendments be printed in advance.<sup>44</sup> Under the Republicans, closed rules were standard.<sup>45</sup> Amendments were generally limited to those offered by Committee members, sponsored by Republicans, or ones assured of failure when sponsored by Democrats. By barring Democrats from offering amendments with teeth, the Republican majority ensured passage of only Republican legislation. From the start of Republican control in 1994 to 2003, the number of open rules dropped from forty-five to twenty-two percent.<sup>46</sup>

When the Healthy Forests Restoration Act of 2003 emerged from three committees without a single hearing,<sup>47</sup> the Rules Committee gave it a closed

---

40. H.R. 4241, 109th Cong. (2005).

41. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (January 30, 2006).

42. *Id.*

43. *Id.* See also Robert Pear, *Arctic Drilling Push Is Seen as Threat to Budget Bill*, N.Y. TIMES, Nov. 3, 2005, at A5; Juliet Eilperin & Debbi Wilgoren, *Bill Would Sell Land Promised to D.C.*, WASH. POST, Nov. 10, 2005 at A02.

44. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (December 8, 2005).

45. See generally, HOUSE RULES COMMITTEE, MINORITY OFFICE, *BROKEN PROMISES: THE DEATH OF DELIBERATIVE DEMOCRACY* (2005), available at [http://www.citizen.org/documents/Broken\\_Promises.pdf](http://www.citizen.org/documents/Broken_Promises.pdf).

46. *Id.* at 12-13.

47. H.R. 1904, 108th Cong. (2003), Pub. L. No. 108-148 (2003). The bill was introduced on May 1, 2003, discharged by the Resources Committee on May 9, 2003, and reported out by the House Agriculture Committee on May 9, 2003, and by the

rule, restricting debate to one hour. During debate, Florida Representative Alcee Hastings vociferously objected:

I rise today in opposition to this restrictive rule. Typically, during debate on the rule, the minority expresses its outrage at the process by which the underlying bill is coming to the floor. We talk about the limited time that we have had to consider the content of the bill, as well as the lack of opportunities that we have to offer amendments. Today is no different. I again come to the floor in disgust by the majority's rule that [allows to be debated] a meager one of the eleven amendments that were offered by Democrats, many of which, I note, addressed some of the bill's most controversial provisions. These common sense amendments held the potential to transform a controversial bill into one that the entire House can support. Instead, the American people will never hear a discussion on these amendments because the Republican majority has shut off debate.<sup>48</sup>

Oregon Representative Peter DeFazio also spoke on the rule. He noted that in his time in Congress, open rules would allow each and every member to offer amendments, but his two amendments were foreclosed,

because the House is in a hurry. A hurry for what? . . . for some reason the United States House of Representatives cannot work after four o'clock in the afternoon and allow members whose districts are most affected by this legislation an opportunity to offer amendments. That is absolutely outrageous, unconscionable, and, of course, violates everything the Republicans promised in the 'Contract with America.'<sup>49</sup>

Even conservative Democrat Charlie Stenholm of Texas, who supported the bill, pled for more debate: "I ask my colleagues on the other side, please do not continue this pattern of not allowing free and open debate."<sup>50</sup>

In "reforming" the Endangered Species Act, Pombo did allow more process than for other bills. He held a hearing on a whirlwind schedule and the Committee issued a report. Nevertheless, his goals of avoiding public scrutiny and reasonable debate remained intact. The closed rule allowed

---

House Committee on the Judiciary on May 16, 2003. Floor debate on the rule took place on May 20, 2003. See 108 Bill Tracking H.R. 1904 (LEXIS 2003).

48. 149 CONG. REC. H4278 (daily ed. May 20, 2003).

49. *Id.* at H4279 (daily ed. May 20, 2003).

50. *Id.* at H4281 (daily ed. May 20, 2003).

only a Democratic substitute bill that had no chance of passing along with a Republican amendment, rewritten past the filing deadline that changed the bill in significant ways.<sup>51</sup> All other Democratic amendments were prohibited.

Behavior at end-of-session was particularly extreme. At the end of a session, bills that were introduced with no hearing become part of a package of bills, moving in an enormous game of horse-trading. Democrats routinely acquiesced to bad legislation in exchange for a bill that served their political interests. Amendments of these packages during Committee mark-up were precluded. In addition, the Republican majority regularly invoked "martial law," allowing any bill to be called up on the floor with no notice — a technique rarely employed when the House was under Democratic control.<sup>52</sup> One staffer estimated that it was used perhaps twice in ten years by the Democrats and only in regard to a certain bill.<sup>53</sup> In an unprecedented move, the Republicans invoked martial law at the end of every session and allowed it to be applied to any bill.<sup>54</sup>

## VII. Autocracy Disenfranchises All

Thus, Democrats and moderate Republicans were cut out of the process in a myriad of ways: few hearings on their bills, no field hearings in their districts, little notice of Committee activities, little ability to amend bills. Even the allegedly bipartisan NEPA Task Force issued its draft report not only without Democratic input, but also without notice to the Democrats on the Task Force.<sup>55</sup>

From introduction to passage, these blatantly unfair and accelerated procedures and practices shut out not only the Democrats, who represent

---

51. Telephone Interview with anonymous Member, in Washington, D.C. (December 5, 2005); Telephone Interview with anonymous Committee staff member, in Washington, D.C. (December 6, 2005).

52. E-mail Interview with anonymous Committee staff member, in Washington, D.C. (December 16, 2005).

53. *Id.*

54. *E.g.*, "Dear Colleague" Letter from Rep. Louise Slaughter (D-NY), to House Members, (December 16, 2005) ("This unprecedented rule, which circumvents the regular 1-day layover requirement for consideration of a rule will allow the House to consider virtually *any* rule on *any* piece of legislation on the House Floor on the same day the rule is reported without requiring the standard 2/3rds vote for same day consideration of the rule.").

55. Telephone Interview with anonymous Committee staff member, in Washington, D.C. (January 30, 2006). NEPA requires an open process for government decision-making to analyze projects and programs, such as dam building or mines, with potential environmental impact. 42 U.S.C.S. § 4332 *et seq.* (2007). NEPA has long been targeted by the Republicans.

140 million people, but the public. With no accountability, the Pombo Committee produced shoddy, ill-conceived and poorly-drafted legislation.<sup>56</sup> The Pombo regime enacted federal land trades and giveaways that bypassed environmental review, deprived taxpayers of a fair return on their lands, and benefited developers.<sup>57</sup> Committee tactics exempted controversial federal actions, like timber sales on national forest land, from environmental and judicial review in order to aid the timber industry. In those few acres of wilderness the Committee protected (Pombo would only consider wilderness bills that met certain criteria), it allowed special exemptions for environmentally damaging activities in exchange for giving away federal lands to growing counties.<sup>58</sup> The Committee tried but failed to enact legislation that would have eviscerated the ESA, removed countless activities from NEPA review, and transferred millions of dollars and interests in land to corporate entities.

In large part, an environmental backlash voted Pombo out of office. With a Democratic regime now ensconced, it would behoove the Democrats to remember how the Republican regime ran the House, how the legislative process is designed to work, and how the erosion of procedural safeguards disenfranchises everyone. Despite talk of returning to a more deliberative and open process and a "more democratic democracy"<sup>59</sup> at the start of the Pelosi regime, there is already talk of bringing bills directly to the floor. However, by restoring procedural safeguards and debate, the Democrats can begin to dismantle not just the substantive part of the Republican anti-environmental legacy, but the anti-democratic procedural one as well.

---

56. E.g., Public Lands Fire Regulations Enforcement Act of 2003, H.R. 1038, 108th Cong. (2003). The bill purported to increase penalties for fire use on public lands, but was so poorly researched and vetted that it actually made it more difficult to penalize arsonists.

57. E.g. Sierra National Forest Land Exchange of 2005, H.R. 409, 109th Cong. (2005) (circumvents appraisal requirements).

58. E.g., H.R. 4593, 108th Cong. 118 Stat. 2403 (2004) (Lincoln County Wilderness bill containing land giveaways).

59. Carl Hulse, *With Promises of a Better Run Congress, Democrats take on Political Risks*, N.Y. TIMES, Dec. 27, 2006, at A23.

---