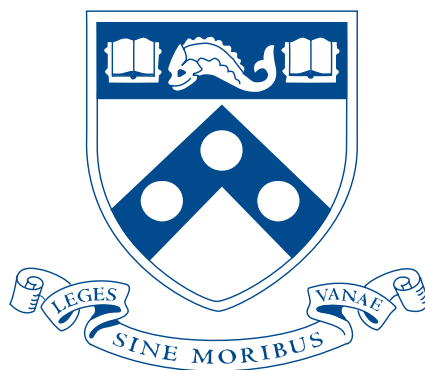


CIVILITY IN CONGRESS (1935-2011) as reflected in the Taking Down process

**Annenberg Public Policy Center Report
September 28, 2011**



BACKGROUND

By adopting the rules at the beginning of a new Congress, the membership voluntarily limits the range of rhetoric acceptable on the floor. When Members wonder why they cannot call another Member a liar or a hypocrite even if the evidence justifies the label, the answer is not simply that the rules of the House forbid it; rather, it is that the membership has voluntarily agreed by vote that these are the rules under which the House will operate during that Congress. Among other things, the rules caution a Member not to call another a liar even if she or he is not telling the truth, not to impugn another's integrity even if their actions invite it, and not to call someone a hypocrite even if she or he deserves it. These boundaries are designed to create a climate conducive to deliberation. Central to the ability to deliberate is the presumption of mutual respect.

Because the taking down process is the formal mechanism the House uses to censure inappropriate discourse spoken on the floor (for a discussion see Appendix C), it is that measure we use to answer the following questions: Has the level of civility in the House changed in the past three-quarters of a century? If so, when, why and how?*

This is the fifth Annenberg Public Policy Center Report on Civility in the House of Representatives. (For a history of this project see Appendix A; the methodology can be found in Appendix B)**.

THE LOGIC OF THE TAKING DOWN PROCESS

The taking down process is an elaborate rhetorical ritual used to mark conduct that violates the rules, elicit acknowledgement of the transgression from the offender and, if that is not forthcoming, open the option of punishing the behavior and lack of repentance by depriving the offender of access to the floor for the rest of the day. When a Member "transgresses" the rules, the

Speaker shall, or any Member may call him [or her] to order; in which case he [or she] shall immediately sit down, unless permitted, on motion of another Member, to explain, and the House shall, if appealed to, decide on the case without debate; if the decision is in favor of the Member called to order, he [or she] shall be at liberty to proceed, but not otherwise; and, if the case requires it, he [or she] shall be liable to censure or such punishment as the House may deem proper. (Rule XIV, Clause 4)

House Rule XIV, Clause 5, took its current form in 1880:

If a Member is called to order for words spoken in debate, the Member calling him [or her] to order shall indicate the words excepted to, and they shall be taken down in writing at the Clerk's desk and read aloud to the House; but he [or she] shall not be held to answer nor be subject to the censure of the House therefore, if further debate or other business has intervened.

Guided by the Parliamentarian, the Speaker (Chair) rules on whether the words to which objection has been raised are out of or in order. Prior to the ruling by the Chair, the Chair may recognize the transgressing Member to give him or her the opportunity to ask unanimous consent to withdraw or modify the contested words. The procedure to take down words is specified in Section 368.

* Relying on the taking down process as our yardstick underestimates incivility. A comprehensive analysis would also track instances in which a call to order occurs after a member raises a point of order or happens at the initiation of the Chair. We have not identified a reliable means of locating these sorts of instances across the 1935-2011 period.

** The research in this report was directed by and the report written by Annenberg Public Policy Center Director Kathleen Hall Jamieson. Data for the report were gathered by a research team led by Deborah Stinnett and Ilana Weitz and supported by analysis by Penn undergraduate Laura Yu. The undergraduate members of the APPC Civility research team are: Kelsey Ferguson, Jaclyn Gulliver, Laura Johnson, Rebecca Kaplan, Laura Yu, Phillip Venice, Anna Tsiotsias, Arielle Van Backer, and Allyson Volinsky. Jennifer McCleary designed and formatted the document. The research could not have been conducted without the wise counsel of the Office of the Parliamentarian of the U.S House of Representatives and Parliamentarian John Sullivan. Their assistance played a similarly important role in our earlier work.

The taking down process is most effective when the language that is the object of the demand to take down does in fact violate the House Rules, the offending Member recognizes what was unparliamentarily about the statement, asks unanimous consent that the words be withdrawn, apologizes to the person whose integrity has been impugned, and does not hold a grudge against the person who demanded that the words be taken down.

This analysis tracks uses of the taking down process in the House from the 74th Congress (1935-6) through the 111th (2009-10) and words withdrawn and demands withdrawn from the 99th (1985-6) through the 111th. We have also gathered preliminary data from the first six months of the 112th.

FINDINGS

- Even in the two years with the highest number of taking down rulings and proceedings that resulted in words out of order, very few of the words spoken in that session elicited objection. Overall, civility, not incivility, is the norm in the House.
- By two measures, the number of times a demand to take down words has gone to a ruling and the number of times words have been held to be out of order as a result of this process, the recent Congresses are operating at a civility level comparable to the norm.
- Two years stand out in the years from 1935-2010: The second session of the 79th Congress (1946) when 15 demands went to a ruling and in almost half of those (7), the offending words were ruled out of order and the first session of the 104th (1995) when 14 requests to take down went to a ruling and in six the words were ruled out of order.
- By this measure, the period from 1935-51 was more uncivil than the years surrounding the modern peak of 1995.
- An analysis of taking down processes in congressional history from the 74th Congress (1935-6) to the 111th (2009-10) shows that the numbers of demands that resulted in a ruling and/or resulted in words being ruled out of order were significantly higher ($p \leq .01$) during two periods: from the 74th to the 83rd and from the 102nd to the 105th.

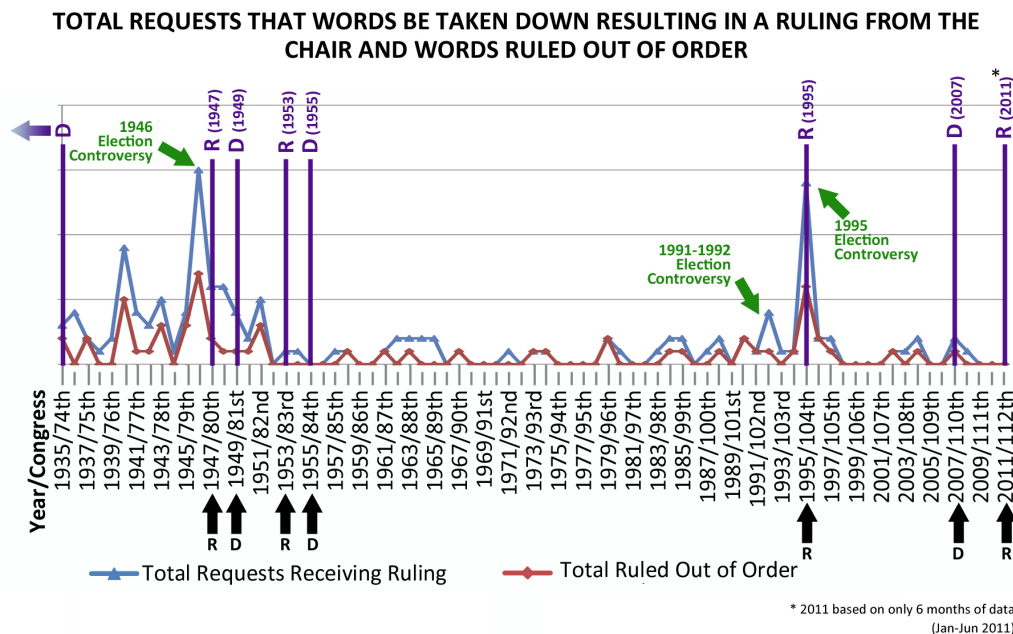


FIGURE 1

(For an expanded version of Figure 1 see Appendix E.)

- By a second measure, words withdrawn, unparliamentary language increased in the years immediately before the 104th turnover and spiked in the first session of the 110th, the first year of Democratic control since 1994.

The presiding officer has the option to respond to a request that words be taken down by asking whether the challenged Member wishes to seek unanimous consent to withdraw the words. The Chair can also ask that a Member reconsider the demand that words be taken down. When these moves are successful or when a Member of his or her own accord withdraws the words or the demand, the process minimizes the amount of time spent on the exchange and cuts off avenues that would otherwise magnify tension. Withdrawing words also constitutes an acknowledgement that they may have been inappropriate. Here we tally “withdrawals” that occurred *before* the ruling of the Chair (for patterns of action including withdrawals see Appendix F).

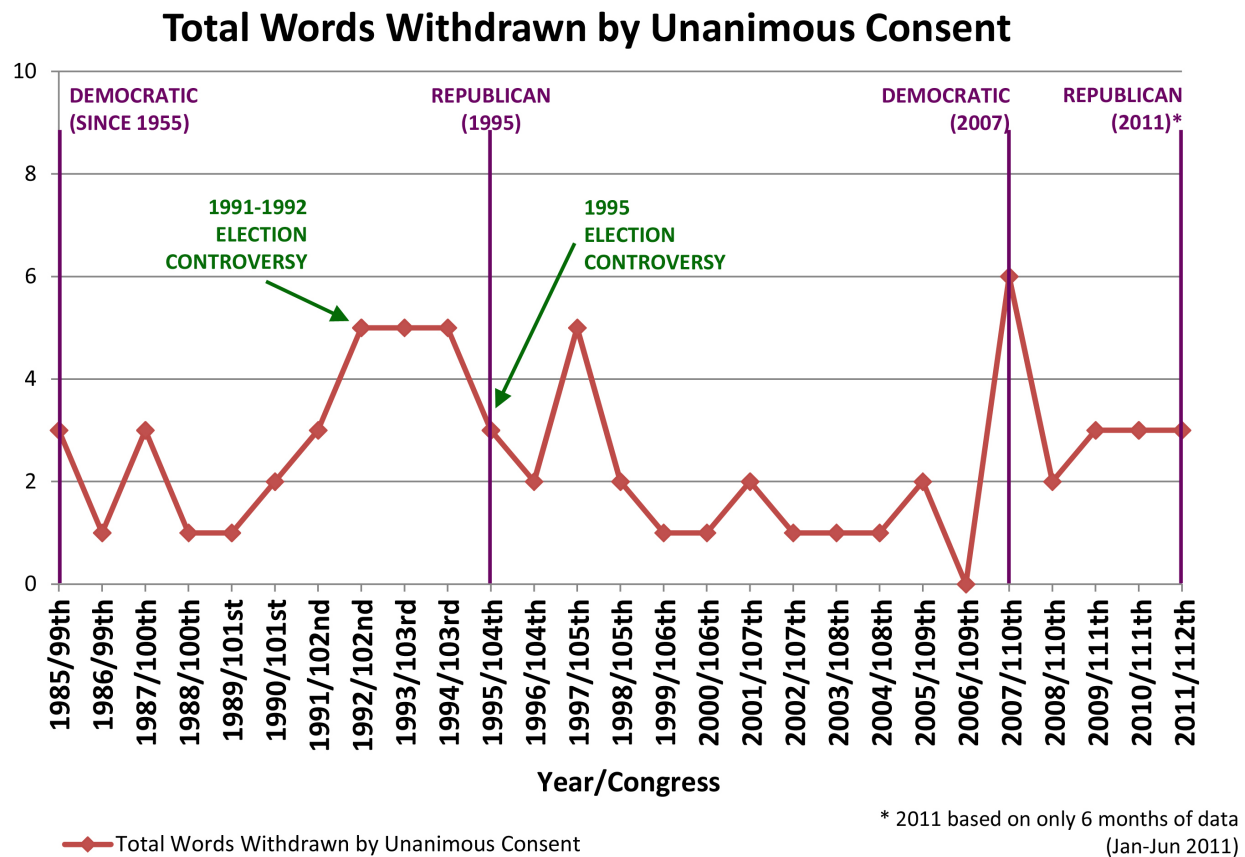


FIGURE 2

- A third measure, demands ruled to have been made too late, suggests that the recent period is more uncivil than it otherwise would appear to be.

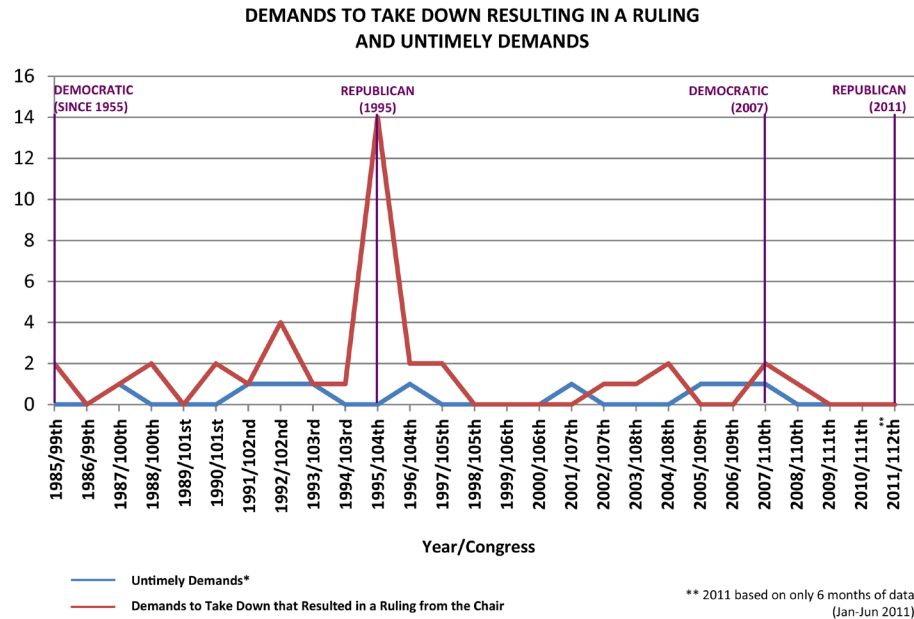


FIGURE 3

*On March 28, 1996 Representative DeLay [R-TX] claimed a representative from New York had been hypocritical. Representative Bonior [D-MI] demanded that his words be taken down. When the Clerk read back Rep. DeLay's words, the sentence including the word "hypocrisy" was not included, thus the Chair ruled that Rep. DeLay had been in order. Representative Bonior appealed the ruling, asking the Clerk to go back further in the record, to which the Chair replied that Mr. Bonior's demand had come too late, and his initial ruling stood. We count this as "untimely demand."

Rule XVII Clause 4 prohibits demands to take down if debate has intervened. We are giving untimely demands a special status because we assume that a Member would only take to the floor under such circumstances if the language seemed particularly problematic. A review of these instances justifies this inference. For example, on September 16, 1991, Representative Dick Armey's demand that Congressman Robert Matsui's words be taken down was made too late. Congressman Matsui (D-CA) had said, "Frankly for one to say one State wins and another State loses, when we are talking about individuals is cynical, is hypocritical and makes no sense at all." On March 28, 1996, Congressman DeLay said, "This is blatant politics and blatant hypocrisy. The gentleman from New York, who just spoke before I did said in his speech...I submit he got that from...the AFL-CIO..." Congressman Bonior's demand that the words be taken down came too late.

For the 104th through the 111th, we also assessed the climate in the House by studying the relationship between two indicators, demands to take down that resulted in a ruling and untimely demands. These indicators suggest that heightened vigilance by Members may account in part for the high number of taking down requests going to a ruling in 1995. Summing these indicators increases the level of unparliamentary discourse in nine of the years from 1985-2011 (1987, 1991, 1992, 1993, 1996, 2001, 2005, 2006 and 2007).

• Our 1985-2010 Summary Measure Supports the Conclusion that Incivility:

Was higher in the 1990s than in the most recent decade;

increased when a turnover occurred after an extended period of control by the other party;

coincided with ethics challenges against a Speaker of the House;

and occurred when unparliamentary election-year attacks infiltrated the House floor.

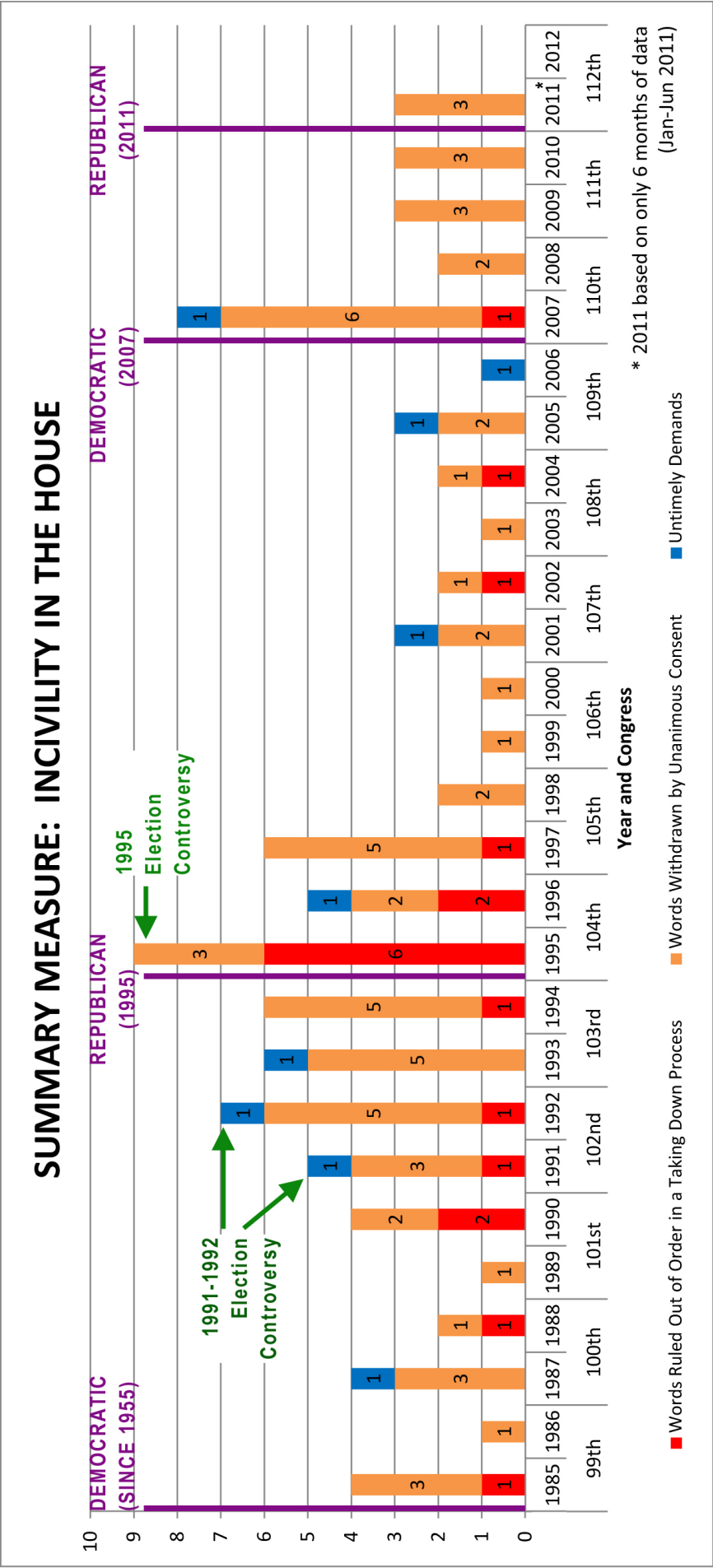


FIGURE 4

A comparison of the language eliciting objections across time reveals that:

- The instances flagged by the taking down process in 2001–2011 are mild by comparison to those in the earlier decades of the study and are less likely to include direct charges that another Member or Member’s statement is hypocritical than are instances in the 1991–2000 period.
- Attacks on the President captured in the taking down process did not occur in the taking downs from 1935–1984.
- Attacks on the President captured in the taking down process became pronounced in the 1991–2000 period reaching a peak in 1995.¹
- *Not found in the first half century of our data, direct attacks on the incumbent president (captured in the taking down process) emerge in the last half of the 1980s, become pronounced in the 1990s and remain noticeable in the last decade (to review these incidents see APPENDIX D).*

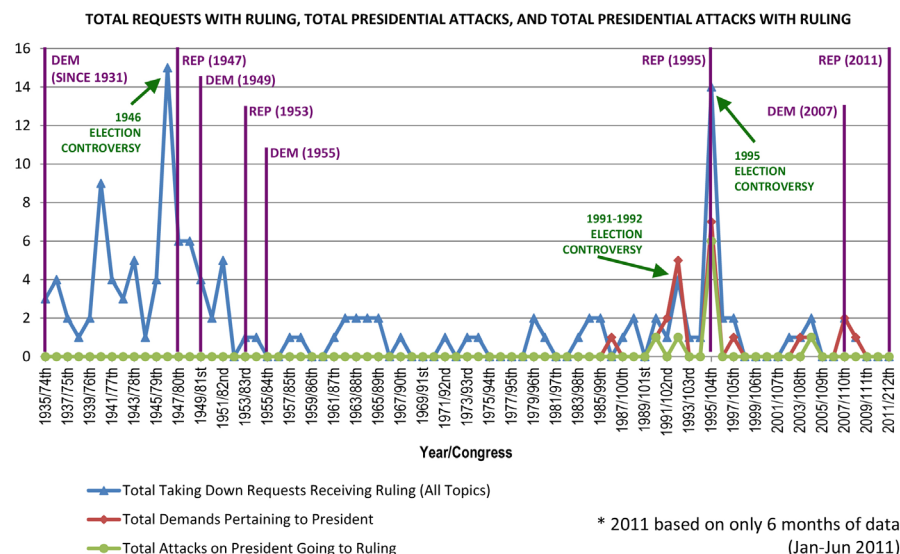


FIGURE 5

Total taking down demands pertaining to the President, by year: 1986 (1); 1990 (1); 1991 (2); 1992 (5); 1995 (7); 1997 (1); 2003 (1); 2004 (1); 2007 (2); 2008 (1)

- **Some forms of attack do not go out of style:**
 - Charging another Member with lying
 - Identifying rhetoric as demagogic
- **Although still used, some forms of attack were more strident and vitriolic in earlier Congresses than in those of the past decade. These include:**
 - Mischaracterizing the ideology of others
 - Characterizing the motives of a speaker
- **Some lines of attack have largely fallen out of fashion**

Insulting the intelligence of the opponent or opposing party: The assertion that another Member or those of the other party are clueless, ignorant or stupid was more likely to occur from 1935–41 than in any period since.

¹ House Rule 47 states: “Members are permitted wide latitude to criticize the President, other officials or the executive branch, and the government itself, contrary to the English parliamentary law which prohibits speaking ‘irreverently or seditiously against the King.’ A member may criticize the motives or action of the President or of other executive officials, but such disapproval may not extend to personal attacks, innuendo, or ridicule. The Chief Executive must be referred to in debate as the President or Chief Executive and not by surname” (Deschler-Brown Precedents, p.10644).

- Unparliamentary language occasioning a taking down process and/or one that results in an out of order ruling is more likely to occur after a turnover when the House has been in the control of the other Party for an extended period and when unparliamentary election-year attacks infiltrate the House floor. The spike in the taking down measures is greatest in 1995, the first session in Republican control after 40 years of a Democratic majority.
- Across time, certain Members are far more likely than others to be involved in a taking down process, either as a violator, a norm enforcer or, in the case of some, as both.

IS THE PAST DECADE OF DISCOURSE IN THE U.S. HOUSE OF REPRESENTATIVES WORSE THAN THAT OF PAST DECADES?

Language accusing others of demagoguery or lying has not changed across time.

• Impugning the integrity of a Member: lie, lying, liar

Note that the difference between the charges that opponents are lying made in the last decade (2000-2010) and those advanced in the decade before or in the distant past is that in the most recent decade the accusation is more likely to be withdrawn by the Member before a ruling by the Chair has been made. One might interpret that change to indicate an improvement in comity.

2001-2011

In 2011 a Member (Representative Watt / June 14, 2011) says “they just make up stuff.” He withdraws the words. Another (Representative Blumenauer / March 3, 2011) says that a Member’s talking points were “Politifact’s biggest lie of the year.” He withdrew those words. Another (Representative Norton / July 20, 2011) refers to “lies in the gentleman’s mouth to...put down this Member” but withdraws the words explaining that she is using an idiom meaning “has no business saying what he said.” Another (Representative Murphy / November 15, 2007) accuses the opposing party of trying “to deceive the American people...your tactics of deceit are obvious” and withdraws the words. Of President Bush in October 2006 a Democratic Member (Representative Waxman / October 16, 2007) says “We must stop the pattern of dissembling... he is not being honest about the level of corruption” in Iraq. (Waxman withdrew his offending word, approved by unanimous consent)

1991-2000

On June 8, 1995, Representative Hoke’s words were ruled out of order. He had said, “Mr. Speaker, one after another after another of our liberal colleagues take to the well to carp, to moan, to deceive and to distort. The lies roll off their tongues so easily. They can say the most outlandish things with such ease, you would swear that it was Mephistopheles himself that was up there speaking.”

On April 21, 1997, Congressman Lewis’ words were ruled out of order. He had said:

I am surprised to see my Republican colleagues on the floor today congratulating Speaker Newt Gingrich for doing something he should have done months ago, paying \$300,000 for lying to Congress. Speaker Gingrich admitted to bringing discredit on the House of Representatives. He has admitted to lying to this House.

1941-1950

In 1943 a Member's words (Rankin / December 20, 1943) were ruled out of order when he said "his statement is false and slanderous." Another (Hook / February 22, 1945) was ruled out of order for calling another "God damn liar. Dirty liar." In 1947 a Member's (Holifield / June 16, 1947) words were taken down after he said, "We completely repudiate the lies and half truths of the report that was issued and consider it un-American." In 1949 a Member's (Celler / May 11, 1949) words were ruled out of order when he said that he could not "let the occasion go by without commenting on the canard that the gentleman from Mississippi was guilty of when he called the Anti-defamation league subversive."

• Identifying rhetoric as demagoguery

In 2001 a Member (Young / November 28, 2001) noted "I do not like people demagoguing this issue" and then withdrew the words; in 1943 a Member (Knutson / May 4, 1943) was ruled out of order for saying "I do not yield to any more demagogues."

In 1965 (Thompson / March 26, 1965) a Member was ruled in order for saying (during the debate on the Elementary and Secondary Education Act of 1965) "I might suggest further you can beat this dog all you want for political purposes; you can demagog however subtly and try to scare people off at the expense of the nation's school children with your demagoguery." In 1973, a Member (Abzug / December 13, 1973) was ruled out of order for saying "An amendment like this can only be demagogic or racist because it is only demagoguery or racism which impels such an amendment as this."

In some categories, the language involved in taking down processes from 2001-2011 is mild compared to that of earlier periods.

• Mischaracterizing the ideology of others

In 2011 a Member (Brooks / April 15, 2011) referred to "socialist Members of this body" before withdrawing the words.

In 1943 a Member (McMurray / March 31, 1943) asked "Did the gentleman's committee also find paid agents of Hitler on the congressional payroll?" and a Member (Biemiller / November 15, 1945) observed his delight in having the record show "there is at least one liberal in the past century that Mr. Rankin does not consider as a Communist." The Member who was the object of that observation (Rankin / February 12, 1946) was ruled out of order for saying "I am not going to sit here and listen to these Communistic attacks on me." It was Rankin (March 28, 1946) as well who observed "This is the Communist line, Mr. Speaker, that is being followed by these enemies of our country in their attacks on the Committee on Un-American Activities." A Member (Dickstein / February 11, 1941) was ruled out of order for saying "I also charge, Mr. Speaker, that 110 Fascist organizations in this country had the back key and have now the back key to the back door of the Dies Committee." In 1954, a Member (Gwinn / March 31, 1954) speaking about TVA funding noted that "We have had 20 years' experience now with America's first, much touted great Socialist, Communist experiment. We ought to have learned something." In 1963 a Member (Foreman / October 31, 1963) was ruled out of order for saying "I have only referred to one Member of this body as a 'pinko'I referred to the gentleman from California, Mr. Don Edwards as Don 'Pinko' Edwards."

• Characterizing the motives of a speaker

In 2010 a Member (Pascrell / March 21, 2010) says of another "you're fear mongering...it is utterly dishonest." The words are withdrawn. Another (Obey / Sept 26, 2008) says in 2008 that the comments are "extremely irritating and disingenuous." These words too are withdrawn. Another uses the "disingenuous" label in 2007

(Millender-McDonald / January 22, 2007). The demand to take down is too late. And in 2001 a Member says in a debate to recommit that there was “not...a good faith effort.” Again the demand is too late.

In 1946 a Member’s (O’Toole / June 26, 1946) words were ruled out of order. He said “I cannot respect the actions or even the sincerity of some of the committee members...” In 1979 a Member (Walker / June 12, 1979) was ruled out of order for saying “The insidiousness of the amendment is compounded by the sponsor’s deceptive, I should say hypocritical presentation of this amendment disguising it as a quota prohibition.” In the same year another (Marks / July 24, 1979) was ruled out of order for saying “Mr. Speaker, may I add that to use, as one of my colleagues used, Lincoln’s name to promote this amendment seems to me the height of hypocrisy.” In 1984 a Member (O’Neill / May 15, 1984) is ruled out of order for saying “My personal opinion is this: You deliberately stood in that well before an empty House and challenged these people, and you challenged their Americanism, and it is the lowest thing I have ever seen in my 32 years in Congress.”

Lines of argument that have fallen out of fashion

Of note is the fact that direct challenges to the intelligence of those of opposed views have dropped dramatically since the early years included in this study.

• Those of opposed view are stupid or ignorant

“...the gentleman from Michigan... never can tell whether a document has been forged or whether it has not.” (Hoffman / March 1, 1940. Ruled out of order)

“Here is the answer if the gentleman can understand English.” (Blanton / March 9, 1936. In order but remarks revised)

“Is it parliamentary inquiry to ask that the bill be printed in words of one syllable so that the Republicans can understand it?” (Ford / March 31, 1938. In order)

“God knows our half-baked nitwits who are handling the foreign affairs have been carrying on a course of conduct which inevitably [will] plunge us into the new European war.” (Shafer / October 1, 1941. In order)

This line of argument appears only occasionally in the 50s, 60s, 70s, 80s, 90s and in the past decade

“I think the proposed Dannemeyer amendment is one of the stupidest amendments I have ever seen offered on the House floor.” (Waxman / July 25, 1991. The words were withdrawn by unanimous consent)

“If the gentleman believes this trivializes the House, then I really wish the gentleman would not claim time if he has no understanding whatsoever of the material in front of him.” (Thomas / November 12, 1997. No demand is made)

COMPARING THE RHETORIC OF THE HOUSE 2001-2011 TO THAT OF THE HOUSE 1991-2000

Differences between 2000-2011 and the decade before it

- **Hypocrisy is more often invoked in the taking down process in the earlier decade**

1991-2000

“Frankly, for one to say one State wins and another State loses, when we are talking about individuals, is cynical, is hypocritical, and makes no sense at all.” [Sept. 16, 1991 Rep. Matsui (D-CA); demand too late]

“I think for the gentleman from Georgia to come out here and promise a check, promise a check to people that are unemployed, is the height of hypocrisy. The Republican President of the United States...” [Sept. 25, 1991 Rep. Coleman (D-TX); words withdrawn]

“The ultimate act of hypocrisy is that the President today signs the civil rights amendment...” [Nov. 21, 1991 Rep. Richardson (D-NM); words withdrawn]

“That is the kind of hypocrisy that the Kasich-Penny amendment is. That is the kind of hypocrisy that voted for a \$50 billion new Government program on NAFTA. That is the kind of hypocrisy that they brought to this Chamber. Nothing has changed here in the last 8 months. This big freshman class apparently did not make much difference.” [Nov. 20, 1993 Rep. Brown (D-OH); words withdrawn]

“Madam Chairwoman, I think the gentleman here is, to say the least, hypocritical, inasmuch as he has distorted an attribution to me.” [Jul. 20, 1994 Rep. Gonzalez (D-TX); demand withdrawn]

“Mr. Speaker, we are here doing the people’s business on a regular basis, and what we have just heard is a great hypocrisy coming from the other side of the aisle.” [Jan. 24, 1995 Rep. Hoke (R-OH); words withdrawn]

“But it is apparent to anyone who is paying attention to what is going on that the Democratic Party is doing everything they can to derail the Contract with America. They are proposing hundreds of amendments to slow down the process. All I want to say is that it is the height of hypocrisy, the height of hypocrisy for Democrats to come down here and complain about what the Republicans are doing after the way they have run this House for the last 40 years.” [Jan. 24, 1995 Rep. Burton (R-IN); in order]

“I had specific conversation with the gentleman from Michigan, and he stated to me very clearly that it is his intention to vote against this bill on final. Now, if that is not a cynical manipulation and exploitation of the American public, then what is? What could be more cynical? What could be more hypocritical?” [Mar. 29, 1995 Rep. Hoke (R-OH); out of order]

“I think there are 5 compelling reasons to reject this bill tonight. The first is that it is at lease [sic] inconsistent, at worst hypocritical, to make our foreign policy based upon the party affiliation of our commander in chief. In other words, I do think this bill is politically suspect in its motivation.” [Nov. 17, 1995 Rep. Moran (D-VA); in order]

“I hope Members will really take a look at what is happening here. This is blatant politics and blatant hypocrisy.” [Mar. 28, 1996 Rep. DeLay (R-TX); in order]

“We do not allow such unspecified charges on the floor of this House. Any Member of this body who would accuse another would have his words taken down for judgment by the body. Why weren’t the President’s words taken down so they could be judged? Because the process is not meant to be fair. The process is meant to

destroy. Every month, every week, indeed every day, brings new examples of the hypocrisy of these charges.” [Dec. 18, 1998 Rep. Davis (D-IL); not requested]

2001-2011

BY CONTRAST Only one taking down process in the past decade involves the implication of hypocrisy and, in that instance, the word is not used.

“Mr. Price, I wish you would have the decency, if you are going to do that to the people of south Mississippi, that maybe you ought to come visit south Mississippi before you hold them to a standard that you would never hold your own people to and that you failed to hold the Bush administration to.” [Mar. 21 2007. Rep Taylor (D-MS); words taken down.]

THE ROLE OF INDIVIDUAL MEMBERS

Some Members are featured players in the taking down process. Across the 1935-2010 period a number of individuals stand out for their repeated starring roles in this House procedure where they either offend or take umbrage and in some cases play both roles albeit at different times.

- Representative John Rankin (D-MS) – 30
- Representative Robert S. Walker (R-PA) – 26
- Representative David Obey (D-WI) – 16
- Representative Clare Eugene Hoffman (R-MI) – 14
- Representative Harold Volkmer (D-MO) – 9
- Representative Robert Dornan (R-CA) – 8
- Representative Ron Dellums (D-CA) – 7
- Representative Vito Marcantonio (Republican/American labor party NY) – 7
- Representative Emanuel Celler (D-NY) – 6
- Representative Randy (Duke) Cunningham (R-CA) – 5
- Representative Adolph Sabath (D-IL) – 5
- Representative John Dingell (D-MI) – 5
- Representative Edward Cox (D-GA) – 4
- Representative Frank Hook (D-MI) – 4
- Representative Martin Hoke (R-OH) – 4
- Representative Newt Gingrich (R-GA) – 4 [mentioned/involved in others but not as primary]
- Representative Chester Holifield (D-CA) – 3
- Representative Jim Sensenbrenner (R-WI) – 3
- Representative Dan Lungren (R-CA) – 3

NORM ENFORCERS: Relying on numbers of instances to measure unparliamentary discourse masks the fact that the House has contained serial offenders and vigilant norm enforcers and some who play both roles. Members who repeatedly perform a discourse policing function against the other side are: Representatives Hoffman (4) and Hook (3) in the 1939-41 period; Representative Rankin (17) from 1941-1949; Representative Marcantonio (5) from 1946-49; Representative Keefe (3) from 1948-1951; Representative Hoffman (9) from 1939-1950; Representative Bauman (4) from 1973-1980; Representative Walker (23) from 1985-1995; Representative Volkmer (7) from 1990-1996 and Representative Obey (11) 1995-2008.

At times the norm enforcers take to the floor to comment on earlier exchanges. For example on June 15, 1987, Representative Obey (D-WI) notes his concern “about the statements that I have heard on the floor today, because I believe that what they have a tendency to do, even though that may not be the intention, I think they have the tendency to try to assassinate the character of the person making the statement rather than to effectively assassinate the argument.”

Both roles: Representatives Rankin (D-MI), Hoffman (R-MI), Marcantonio (R-NY)

SERIAL VIOLATORS: Representative Knutson in the early 1940s (2 times, words out of order), Representative Rankin from 1939-49 (10 ruled in order, 2 times, words out of order), Representative Rooney from 1950-51 (words out of order on two occasions), Representative Hoffman from 1940-1967 (4 in order, one out of order), Representative Marcantonio from 1943-6 (one out of order and one in order), Representative Dornan from 1985-95 (words ruled out of order twice, other remedies [e.g., words withdrawn] 5 times)

ACCOUNTING FOR CHANGES OVER TIME

An analysis of demands to take down words and resulting words ruled out of order from 1935 to 2011 suggests that incivility was higher in the period from 1935 to 1951 than in the period from 1980 to 1998, that the interim was relatively quiet, and that unparliamentary outbreaks peaked in 1946 and 1995. Each of those times corresponds roughly to a change in control in the House to the party not controlling the White House. By these measures (words taken down that go to a ruling and resulting words out of order), the first session of the 104th Congress was less civil than its immediate predecessors. Importantly, in the second session of the 104th the House had returned to its historic norm.

An analysis of the instances of words taken down reveals that some situations are more likely to produce incivility than others. These include those mentioned above—a change in control of Congress that creates a divided government—as well as incidents in which the minority feels abused or the majority obstructed, the House is involved in a high-stakes, highly charged ongoing debate on an issue central to an upcoming election, and occasions when a Member in a leadership position is being investigated on ethics charges.

Change in control of the House

Because the 104th was the first Congress in 40 years with both houses controlled by Republicans, it represented a dramatic alteration in roles for both the Democrats and the Republicans. “A great many Democrats remained in shock over the very concept of having lost control, which they thought they were entitled to by divine right,”² a veteran congressional reporter noted. It was obviously difficult for those who had power to be without the staff support and agenda control to which they had been accustomed. And the task of managing a legislative agenda required a set of skills different from those usually exercised by the minority. Also the 104th was more ideologically polarized than the 103rd in part because many of the 52 seats lost by the Democrats had been held by moderates.

When the House has been in the hands of one party for a long time, members of that party may fail to empathize with the frustrations of the minority. Speaker Sam Rayburn’s 17-year tenure was interrupted twice by Republican majorities, reminding the Democrats of how it feels to be the minority party.

In 1985 the Republican majority surprised many by guaranteeing the minority the right to include instructions in motions to recommit, banning proxy voting in committees, and promising to provide more open rules. But, stung by their reversal in role and status, the Democrats responded in the first session of the 104th by adopting the tension-producing tactics they had found so offensive when the Republicans wielded them, including raising parliamentary objections and demanding roll call votes.

The tensions created by the shift in power in the 104th are reflected in the taking down process. So for example, on January 24, 1995, the chair rules out of order the words “All I want to say is that it is the height of hypocrisy, the height of hypocrisy for the Democrats to come down here and complain about what the Republicans are doing after the way they have run this House for forty years.”

² We conducted interviews with veteran reporters for the first report.

The turnover also pitted two groups skilled in agitation against each other. The freshman class of the 104th was elected on appeals similar to those that brought the Watergate classes into power. Indeed, 35 were first-time elected officials. By the 104th, the Watergate generation of Democrats had assumed the leadership of their party, pitting two reform driven, anti-establishment groups against each other. By contrast, the 83rd Congress (1953-4), which put the executive and legislative branches in the hands of the Republicans, did not produce an escalation in instances of taking down words largely because the Democratic minority was led by individuals ready to join the Republican moderates in service of President Dwight D. Eisenhower's agenda.

Consistent with the notion that turnovers occasion tension and with its unparliamentary language (as Figures 2 and 3 suggest), there was also a spike in total words withdrawn and in demands ruled too late in the first session of the 110th—the first session of Democratic control after 12 years of Republican majorities.

Ethics charges against the Speaker of the House

One other dynamic played a role in the increase in unparliamentary language in the 104th Congress—and the first session of the 105th—a Democrat in the White House (see discussion in next section) confronting a partisan Republican majority led by a Speaker of the House whose ethics were challenged. So, for example, in a taking down process on January 18, 1995 the Chair ruled out of order a statement that:

News accounts tell us that while the Speaker may have given up the \$4.5 million advance, he stands to gain that amount and much more. That is a whole lot of dust where I come from. If anything now, how much the Speaker earns has grown much more dependent on how hard his publishing house hawks the book. Now more than ever before, the perception of impropriety, not to mention the potential conflict of interest, still exists and cannot be ignored.

Attacks on Speaker Gingrich were the subject of a second taking down process and “out of order” ruling in the first session of the 105th (April 17, 1997). In that incident the Member said:

I am surprised to see my Republican colleagues on the floor today congratulating Speaker Gingrich for doing something he should have done months ago, paying \$300,000 for lying to Congress. Speaker Gingrich admitted to bringing discredit on the House of Representatives. He has admitted lying to this House.

Additionally, in three instances in 1996 the Chair responded to points of order raised about ethics charges against Speaker Gingrich by either ruling the identified words out of order or sustaining the point of order (Sept. 24, 1996, Sept. 17, 1996, Sept. 12, 1996).³

Context matters: unparliamentary election-year attacks infiltrate the House floor

Election issues in 1946

The spike in 1946 suggests as well that context affects deliberations in the House. 1946 was a tumultuous year in U.S. politics: FDR was dead; World War II had ended, bringing thousands of U.S. military personnel home from overseas; and President Harry S. Truman was under siege. Following a divisive debate over price controls and strikes by railroad and mine workers, the Republican campaign of 1946 produced a majority in both Houses in 1947, creating a face-off between Congress and the president. In addition, 1946 was the beginning of the Cold War, a fact reflected in the taking down of phrases such as *communist line*, *enemies of our country*, *subversive*, and *red-baiting tactics*. And in 1946 Members waged the congressional election in part from the floor.

Election issues in 1995

By retaining control of the House for a second consecutive Congress, Speaker Newt Gingrich's Republicans managed a feat denied their party since 1927-30. The task was not an easy one. To return the Democrats to the majority, in

³ See CRS-26 October 26, 1999

summer 1995 their allies in the labor movement and the well-financed Democratic National Committee targeted many of the 73 Republican freshmen with attack ads castigating them for their support for reductions in the rate of growth (characterized as cuts by the Democrats and the ads) in Medicare. The campaign translated the Republican proposal to reduce the capital gains tax and roll back the Clinton tax increase of the 103rd into the allegation that tax breaks for the rich were being funded by robbing seniors and the poor.

Front and center in the Republican's 104th agenda was the Contract with America and within it a seven-year balanced budget whose terms were unacceptable to President Clinton and the Democratic Members. On the other side of the aisle, President Clinton was backed by enough Democratic Members to sustain a veto. Tensions mounted when the fiscal year ended on September 30th without an approved budget; a series of continuing resolutions were required to keep the government running. The formula for an impasse was built into the debate. As the saga unfolded, the incumbent Democratic president vetoed budget bills six times and the federal government was largely shuttered for over three weeks.

The budget controversy elicited six of the fourteen 1995 demands to take down that went to a ruling. It also accounts for two of the six instances in which a demand led to words being ruled out of order. Additionally one of the blocks of taken down words elicited a caution; another that was not the result of a taking down demand drew an admonishment from the Chair:

That is what is happening here. The other side of the aisle is trying every tactic they can to stop the Contract With America. That is quite evident to the American people. (In order. January 18, 1995)

But it is apparent to anyone who is paying attention to what is going on that the Democratic Party is doing everything they can to derail the Contract With America. They are proposing hundreds of amendments to slow down the process. All I want to say is that it is the height of hypocrisy, the height of hypocrisy for the Democrats to come down here and complain about what the Republicans are doing after the way they have run this House for the last 40 years. (In order. January 24, 1995)

One after another after another of our liberal colleagues take to the well to carp, to moan, to deceive, and to distort. The lies roll off their tongues so easily. They can say the most outlandish things with such ease, you would swear that it is Mephistopheles himself that was up there speaking. For instance, they say that Republicans are drastically cutting Medicare. It is not true and they know it. Far from cutting Medicare, Republicans are strengthening the programs and saving it from certain bankruptcy as said so by the trustees of the program itself. They tell the same lies about the programs for children, about education, about nutrition, you name it (Word "lies" ruled out of order. June 8, 1995)

We heard him now, I am sure you have seen the recent commercial. We also have Bill Clinton saying, I think it can be done. Well, it can be done, first of all it can be done in 7 years. That is May 1995. Then we heard him in 10 years, then we heard 9 years, and 8 years. Well, my colleagues, we are here to nail the little bugger down, and that is the purpose of this. (Out of order. November 18, 1995)

[W]hen one of the leaders of the Democratic party says, 'Well, Republicans are going to cut Medicare,' knowing full well we are going from \$4,800 to \$6,700 per person knowing that, and they look your mother in the eye and your dad and assume that they do not know what is going on and say, 'The Republicans are going to cut your Medicare.' Wouldn't it be great to have a beep come on and for all these C-SPAN viewers out there to know the person who is now speaking is lying. (In order but cautioned. Nov. 15, 1995)

Yesterday he puts a bunch of children behind him kind of as props and attacks everybody who is expecting him to keep his word. It is very simple. Mr. President, keep your word to the American people. When you talk to those children, talk to them about scout's honor, talk to them about the importance of keeping your word. That is what it all comes down to. (In order. December 19, 1995)

What a lie, Mr. President. We are sick of the rhetoric that you are using on this. Do not do it.... I am insulted by the way the President is behaving. (Member is referring to an emergency supplemental appropriations bill for fiscal year 1995. Chair admonishes. Not a taking down process. May 18, 1995)

WHY THE LARGE NUMBER OF POTENTIALLY UNPARLIAMENTARY ATTACKS ON INCUMBENT PRESIDENTS FROM 1991-2000?

Migration of campaign attack to the floor

The simplest explanation for such accusations in 1991, 1992, and 1995 is that the presidential campaigns infiltrated the floor of the House. Members seem to admit as much with words such as:

“Now it is an election year and millions of unemployed are raining on the President’s parade.”

“It is for down-in-the-dirt gutter politics...”

“Now, I am sure you have seen the recent commercial.”

“...selling access to the Communist Chinese in return for campaign contributions to his administration.”

Other evidence that the campaign affected House conduct is found in a change in the rules announced in late September 1992 by Speaker of the House Thomas Foley (D-WA) banning derogatory remarks about presidential candidates. The decision was made “after Representative Cass Ballenger, Republican of North Carolina, accused Governor Clinton of lying about avoiding the draft and his participation in protests against the Vietnam War.” “Within 30 minutes of his pronouncement, though,” noted the *New York Times*, “several Democrats were chastised for out-of-bounds remarks about President Bush.”⁴

Of the fifteen potentially unparliamentary attacks on the president made in the 1990s, all but two contain appeals present in the speeches or ads of the presidential campaign; one of the attacks in 1991, five in 1992 and seven in 1995 either mimic arguments at play in the upcoming presidential election or make an indirect reference to the ongoing campaign. Two of these are noteworthy for their accusation that incumbent Bill Clinton “gave aid and comfort to the enemy,” an accusation of treason delivered by repeat transgressor California Republican Bob Dornan. Importantly this line of attack against Clinton first appeared in the 1992 presidential campaign.⁵

The notion that the potentially unparliamentary anti-Bush and anti-Clinton attacks signal the migration of campaign rhetoric to the floor of the House is consistent with the timing of their appearance:

1991 - 2 cases

1992 - 5 cases

1995 - 7 cases

1997 - 1 case

To sketch a fair picture of the extent to which language that might have been taken down was present in 1995 and 1996, we add a category for which we do not have reliable data in earlier years, numbers of admonitions by Chair. On three occasions in those years, the Chair cautioned or admonished Members for language that could otherwise have been subject to a taking down process,⁶ once in the first session of the 104th (1995) and twice in the second session (1996).

On May 18, 1995 Rep. Istook (R-OK) elicited an admonition when he said, “What a lie, Mr. President. We are sick of the rhetoric that you are using on this. Do not do it...I am insulted by the way the President is behaving.” In response the Chair noted “Members are reminded that the President of the United States is to be treated in debate in the same manner as Members of the House.” The Chair also explicitly reminded the Congressman that “The rules require that

⁴ “The 1992 Campaign: House Leader Acts to halt Attacks on Clinton.” [NYT Sept 27 1992.]

⁵ Article Three section three of the U.S. Constitution says that “Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.”

⁶ This total is drawn from U.S. Congressional Research Service Report for Congress no. 98-573, “Decorum in House Debate,” by Mary Mulvihill, updated October 26, 1999.

no Member may be personally abusive to the President of the United States, and the words may be taken down, as with Members, if such conduct takes place. The words to be taken down, though, would be requested from the floor.”

The two admonition-generating attacks on the president’s integrity in 1996 were also sharply worded. On May 2, 1996 Rep. Scarborough (R-FL) stated “Another editorialist, Robert Samuelson, for the Washington Post, wrote in straightforward terms that ‘the President,’ and I am quoting Robert Samuelson, I would not say this on the floor myself, but Robert Samuelson said, ‘The President lied on Medicare to win votes from senior citizens when the President knew that Social Security was going bankrupt.’” Not waiting for a taking down request, the Chair reminded “the gentleman from Florida that he is not to use any personally derogatory terms in relation to the President.” He added that the House rules “do not allow the gentleman to quote from anyone, from any source, that may give some derogatory term to the President which would be improper if spoken in the Member’s own words.”

The comment that drew an admonition on May 30, 1996 was also a clear violation of the rules. Specifically, Rep. Lewis (R-KY) declared, “There is a huge difference between Bill Clinton’s view on welfare reform and the Republican view on welfare reform. Bill Clinton wants to demagog. He wants to protect Washington bureaucracy and Washington spending.” Here the Chair warned, “The Chair would remind the Member not to refer to the President in personal terms.”

WHY NO UNPARLIAMENTARY ATTACKS ON THE PRESIDENT BEFORE 1985?

The question, “Why did this form of attack on the incumbent president emerge when it did?” is a more difficult one to answer. One explanation resides in changes in the political campaign culture. The perception that presidents lie was fueled by the revelation of Lyndon Johnson’s deceptions about the Vietnam War and Richard Nixon’s Watergate cover-up. The first presidential campaign focused on honesty as a character trait occurred in 1976 when President Gerald Ford’s pardon of Richard Nixon elicited questions about motive and candor. In Governor Carter, the Democrats fielded a candidate who promised that he would never lie to the American people, a clever attack intended to contrast the Democrat with both the Republican incumbent and his disgraced predecessor. In subsequent years both President Reagan and candidate George H.W. Bush were accused of lying about Iran-Contra (trading arms for hostages).

To that mix, the 1988 campaign added a challenge to the Democratic nominee’s patriotism in the form of an assault on his defense of the right of children who were Jehovah’s Witnesses to refuse to say the Pledge of Allegiance in class. And in 1992 candidate Clinton was accused of deflecting questions about his extramarital interests and engaging in deceit to avoid being drafted into the Vietnam War even as charges that President Bush had deceived the country about his knowledge of Iran-Contra persisted. Since attacks on a president only become problematic in the House when they devolve to “personal attacks, innuendo, or ridicule,” importing the mainstream rhetoric of pre-1976 presidential campaigns to the floor would not have produced either admonitions from the Chair or words ruled out of order.

WHY THE LOWER LEVEL IN 1996?

However, if the admonitions and words justifying sanction are propelled by presidential election-fever, one would expect an increase in 1996 (over the seven attacks in taking down processes and two admonitions in 1995) just as we saw an increase in anti-Bush attacks from 1991 (2) to 1992 (5). Nor would the election-contagion hypothesis anticipate the drop to two admonitions and no attacks caught in the taking down process in the actual 1996 general election year.

One explanation of the lower level of attack on the president in 1996⁷ is socialization of Members in the norms of the House. Another is displacement of the focus on the president with one on the opposing party. We find support for the second alternative in calls for taking down the words spoken by Representatives Kingston and DeLay in 1996. On July 23, 1996 Representative Jack Kingston (R-GA) says:

⁷ In 1996 there is one indirect attack on the White House over an election-tied controversy that is involved in a taking down process. We have not counted it because the words involved do not include the president by title or name (see Demand by Representative Solomon to take down the words of Representative Kanjorski, July 25, 1996)

Mr. Speaker, there is an old saying that when you cannot dazzle people with your brilliance, you baffle them with your bull. Certainly that seems to be the theme of the Democratic Party today...one after another saying that the Speaker said Medicare should wither on the vine. They know, as do their AFL-CIO comrades, that the statement was that HCFA, the Health Care Financing Administration, would wither on the vine. This thing is so important that *even television stations have taken the AFL-CIO Democrat ad off the air because it is a lie*. It is amazing that they speak with such forked tongue, that they come up here and ask for bipartisanship (emphasis added).

After a demand that they be taken down, Representative Kingston withdrew the words. Similarly on March 28, 1996, Representative DeLay says:

This is blatant politics and blatant hypocrisy. The gentleman from New York, who just spoke before I did, said in his speech that we owe the American workers to raise the minimum wage. I submit he got that from the convention that was just held in this town *by the AFL-CIO who said they would raise over \$35 million to take this majority out*. That is what this vote is all about. This group over here on this side of the aisle has been screaming and yelling to the last many weeks (emphasis added).

In this case, the Chair ruled that the word “hypocrisy” may have been out of order but ruled the demand was made too late.

Another explanation for the shift from problematic attacks on President Clinton in 1995 to a focus on comparable ones on the Democratic Party in 1996 is electoral strategy. With the polls showing the incumbent president comfortably leading Republican standard bearer Bob Dole, the new Republican majority may have concluded that its hold on the House was more secure if it discredited the opposing party, and by implication those running against freshly elected Republicans, and not risk alienating prospective supporters who might be planning to vote to re-elect the incumbent president. By contrast in 1992 the Democrats in the House felt confident that they would retain the majority and had at the head of their ticket a person all but assured of victory. Here the strategic calculation would dictate attack on an incumbent who was unpopular with independents.

THE COMBUSTIBILITY HYPOTHESIS

We see a second explanation for the falloff in unparliamentary attacks (captured in the taking down process) on the incumbent president in the years after 1995. Specifically, the situation in 1995 was uniquely combustible. In the first session of the 104th, the tensions created by the turnover may have combined with the large number of Members unsocialized in the norms of the House to produce both a high (although historically precedented) number of taking down processes and also, because of the conservative bent of the newly elected Members, fuel a disposition to purge the White House of a president elected by a plurality, not a majority, whose biography and ideology were alien to many of the new Members. We see evidence for this inference in statements such as:

“Clinton gave aid and comfort to the enemy.”

“But while he is busy resurrecting the sixties, we will be working hard for the people by getting America ready for the next century.”

The notion that some of those engaging in unparliamentary attacks had not had time to become versed in the norms of the House is borne out in the fact that of the six individuals involved in the seven attacks in 1995 (Representative Dornan is involved in two) one Member was serving his first term and two others, their second. And the attack in 1997 was made by a Member who served his first term in the 104th.

HOW COMBUSTIBLE IS THE 112TH?

Some of the factors that contributed to the heightened level of incivility in the first session of the 104th are present in the 112th:

- The 112th is a turnover Congress. Incivility increased in the first sessions of the last two turnover Congresses.
- The 112th's Republican majority was elected in a campaign centered on attacking legislation (The Patient Protection and Affordable Care Act; The American Recovery and Reinvestment Act of 2009) passed by a Democratic House without Republican votes. (The Republican majority was elected in 1994 in a campaign focused on attacking provisions of the Omnibus Budget Reconciliation Act of 1993, legislation enacted without Republican House support.)
- The budget issues before the 112th are likely to play a central role in the 2012 campaign. As a result, the spill-over of campaign rhetoric onto the House floor is [as 1945, 1992, and 1995 predict] more likely.
- The issues before Congress and the president in 2011 are remarkably similar to those at play in 1995-6.
- Although they rebounded into a comfortable range in 1996, President Clinton's 1995 poll standings raised doubts about re-election. President Obama's ratings are now lower than President Clinton's were at this point in the 1995 year. A president's perceived electoral vulnerability may decrease the political cost and increase the political benefits of unparliamentary attacks.

Unlike the situation in 1995-6:

- The economy is in comparatively poor condition.
- Congress and the president are constrained by the provisions of The Budget Control Act of 2011 enacted August 2, 2011.
- Before the 112th, the Democrats had held the House for only four consecutive years.
- The Democrats control the Senate.
- Freshman tea-party adherents are ready to break ranks with Republicans to vote against legislation that does not honor the commitments they made to their base.
- No one in the House leadership is the object of an ethics investigation.

APPENDIX A: History of this project

Developed as background for the Bipartisan Congressional Retreat held at Hershey, Pennsylvania. March 7-9, 1997 and funded by the Pew Charitable Trusts, the first APPC report “Civility in the House of Representatives: A Background Report” focused on the 74th through the then-current 104th Congress. It included historical perspective as well as a report of the views of 11 reporters who covered Congress. For that research, Erica Falk, Deborah Stinnett and a team of 13 Annenberg graduate and undergraduate students identified “Taking Down” incidents using the relevant section of the Congressional Record’s Appendices as a guide. The identified incidents were cross-checked against the records gathered in two Congressional Research Service reports by Ilona Nickels and one report by Republican leader Bob Michel, and by conducting a Lexis-Nexis search of the *Congressional Record* from 1985-1996. Where available, C-SPAN video was used to verify the *Congressional Record*’s account.

Issued a year later, a second report documented the influence of the Hershey retreat and tracked the use of words from seven newly developed “indices of incivility” across the previous six Congresses.

The third report, created for use at the Second Bipartisan Congressional Retreat (March 19-21, 1999), also in Hershey, brought the research and findings of the earlier reports up to the end of the 105th Congress.

The fourth report, fashioned as background information for the Third Bipartisan Congressional Retreat held at Greenbrier in West Virginia on March 9-11, 2001, carried the research through the 106th Congress.

Begun in early 2011, this fifth report updates the earlier ones by tracking taking down incidents for the 105th-111th Congresses. In addition to the information contained in early reports, this document catalogues words withdrawn, requests withdrawn and untimely demands.

APPENDIX B: Methodology

Initially, the Library of Congress’s Thomas.gov website was used to obtain additional information on previously located taking down incidents for the 101st Congress through the 112th Congress. Because Thomas.gov only contains the Congressional Record for the 101st to the 112th Congresses, HeinOnline (HeinOnline.org) was used to gather data from incidents that occurred prior to the 101st Congress. As with Thomas.gov, sections of the quoted text or taken down were used to locate the incidents.

APPENDIX C:

Why These Measures?

The rules that govern a Congress are adopted at the beginning of its first session. The process commits the membership to precepts—some centuries old, others new—that determine the formal context within which the deliberations of the body will take place in the coming two sessions. Historians have recognized the role that the rules can play in creating a climate conducive to action or inaction, comity or contention. From 1800 to 1828, for example, “Contentiousness was encouraged by Senate and House rules which gave higher precedence to raising questions than to deciding them and which guaranteed almost total freedom from restraint to the idiosyncratic protagonist.”⁸

The rules are not engraved in granite but have instead “been greatly modified in the last quarter century. Voting practices have changed; debate has become more structured; reliance on special orders of business has replaced the use of more traditional methods of considering legislation on the floor,” writes William Holmes Brown, who served as House parliamentarian from 1974 to 1994.⁹

8 James Young, *The Washington Community: 1800-1828*. in *The American Polity Reader* Second edition. ed by Ann G. Serow, W. Wayne Shannon, Everett C. Ladd (New York: WW Norton, 1993) p. 141.

9 Brown, William Holmes, *House Practice: A Guide to the Rules, Precedent and Procedures of the House*. U.S. Government Printing Office. Washington, DC. 1996, p.vii

As we note in this report “The tough criticism such candidates received during one-minute and Special Order speeches on the House floor during the 1992 election season led the Speaker to announce to the House his intention to expand the protections of decorum restraints to all candidates for the Presidency.”¹⁰ The ruling applied to nominated candidates for both the presidency and vice presidency.¹¹

The Origin and Function of House Rules

Article I, Section 5, of the U.S. Constitution gives Congress the power to govern itself: “Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and with the concurrence of two-thirds, expel a Member.” In his *Manual of Parliamentary Practice*, Thomas Jefferson observes, “It is very material that order, decency, and regularity be preserved in a dignified public body.”¹² The presence of uniform, agreed-upon rules and procedures creates a legislative atmosphere subject neither to “the caprice of the Speaker” nor to the “captiousness of the members.” The rules make it less likely that a member will be censured for language that seems uncivil to the hearer but incisive to the speaker. The House adopted rules of decorum on April 7, 1789. House precedents are summarized in *The House Rules and Manual* of each Congress as well as in works by House parliamentarians. The rules say that:

1. A Member “Shall confine himself [or herself] to the question under debate, avoiding personality” (Rule XIV, Clause I). Avoiding personality is taken to mean arraigning or impugning the motives of members.¹³
2. “A Member, officer, or employee of the House of Representatives shall conduct himself [or herself] at all times in a manner which shall reflect creditably on the House of Representatives” (Rule XLIII, Clause 1).
3. A member may say that what has been said by another is untrue but not that the representation is deliberate or intentional (Rule XLIII, Clause 1). The word *lie* is, as a result, unacceptable.
4. “Debate may...not include characterizations of Senate action or inaction, other references to individual Members of the Senate, or other quotations from Senate proceedings” (Rule XIV, Clause 1). In the early 1900s the House rules were amended to allow for some general discussion of Senate legislative action, but members are still forbidden to characterize those actions or inactions.
5. Members may not use “offensive words against the character of the House, or impeaching the loyalty of a portion of the membership.”¹⁴
6. Drawing on a practice in the English House of Commons, Thomas Jefferson¹⁵ in Section 360 of his *Manual* prohibited the use of indecent language against the proceedings of the House.
7. When speaking, members do not refer to each other by name or in the second person. The proper reference is “the gentleman from” or the “gentlelady from.”

Rules and procedures are important because they “provide stability, legitimize decisions, divide responsibilities, reduce conflict, and distribute power.”¹⁶ The House rules give the Chair the authority and responsibility for maintaining decorum. Rule I, Clause 2, states, “He [or she] shall preserve order and decorum, and, in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.” Members too have power to assist in the process of preserving decorum. Rule XIV, Clause 4, gives the Speaker or any members the power to call to order a member who has “transgressed” the rules: “It is...the duty of the House to require its Members in speech or

10 Nickels, Ilona. (1995). *Decorum in the House*. Washington, DC: Congressional Research Service, November 24. 6.

11 Cong Record 1992. vol 138 September 24 1992 H9299.

12 Thomas Jefferson, *A Manual of Parliamentary Practice*, 1868. n.p.

13 *House Rules and Manual*, , H.Doc.104-272, 104th Congress, 2nd sess., (Washington: GPO, 1997).

14 Ibid,

15 Jefferson

16 Walter J. Oleszek, *Congressional Procedures and the Policy Process*, Third Edition (Washington DC: Congressional Quarterly,1989), p. 5.

debate to preserve that proper restraint which will permit the House to conduct its business in an orderly manner and without unnecessary and unduly exciting animosity among its Members or antagonism from those other branches of the government with which the House is correlated.”

The rules of the House and the precedents interpreting them are designed to create a climate conducive to deliberation. Accordingly, they circumscribe what a member may say about those involved in the legislative process: other members of the House, members of the Senate, the Speaker, the President, and those nominated for President or Vice President.

By dampening tensions, the rules of the House and Senate increase the likelihood that the best ideas of each party will be heard whether or not they are incorporated into legislation. The rules themselves and the presence of a nonpartisan parliamentarian decrease the likelihood that the party or ideology of the chair will dictate the chair’s rulings.

While a demand to take down words is pending, for example, “the Speaker has the right to refuse to recognize parliamentary inquiries” or a “unanimous consent request that a Member be allowed to proceed for one minute.”¹⁷ By curtailing a member’s right to speak until it is determined whether the offending words will be struck from the record, the rules also dampen the likelihood that the tensions will escalate. The process of taking down the words focuses the House’s attention on the nature of inappropriate discourse; striking words from the *Congressional Record* expresses collective disapproval; requiring the consent of the body before the offending member is permitted to re-enter the day’s debate establishes a formal mechanism for reincorporating into the deliberate community those who have breached decorum.

This process also minimizes the likelihood that a person attacked will respond in kind. By focusing debate on the topic under consideration rather than on the advocates themselves, the rules depersonalize the discourse of Congress. So, for example, speakers do not address each other but rather the Chair (“Mr. Speaker”); they speak of each other as representatives of a state (“the gentlewoman from”) not as spokespersons for a party or a position; the person recognized by the Chair determines whether, if, and to whom to yield the floor.

The taking down process makes institutional sense only if the Chair is perceived as evenhanded and consistent and the members of both parties are presumed to share an interest in maintaining comity. By contrast, if the members of each party treat the taking down process as a partisan act, the process becomes a meaningless exercise that will inevitably produce a result consistent with the wishes of the majority party. Depending on what suits its interest, the majority party can successfully appeal any ruling of the Chair or table any motion to appeal a ruling. If a member of the minority objects to striking the words, the majority has the votes to strike. In this scenario, any ruling by the Chair against the words of a member of the minority would be upheld and any against a member of the majority voided. The request that the member be permitted to proceed in order can be politicized as well.

Tracking Incivility Through the Taking Down of Words

Tracking incivility assumes access to an accurate record of what has been said on the floor. For a number of reasons, that assumption is problematic. Until the 104th Congress, the *Congressional Record* did not faithfully reflect what had happened on the floor. Members were able to alter the Record “usually,” wrote *Roll Call*, “to preserve an illusion of total decorum in Congress.”¹⁸ For example, two members got into a shouting match during the debate over the Family Planning Amendments Act in April 1993, and one yelled at the other, who was trying to interrupt him, “You had better not do that, ma’am. You will regret that as long as you live. Who do you think you are?” What appeared in the *Record* was, “I will say to the gentlelady, for whom I have the greatest respect, I would hope that she or any other Member not try to cut off another Member when a serious matter like this is to be resolved here in the proper House.”¹⁹ Because the taking down process that results in a ruling is recorded, we view it as the most reliable measure of the institution’s own perception of breaches in decorum on the floor.

17 Michel, Robert H. (1993). Words Taken Down: The History, Evolution and Precedents of an Important House Rule. R.H. Michel Papers - Leadership - Box 15 - F. Leadership - 103rd - “Dear Colleagues” - 10/8/93 at the Dirksen Congressional Center, Pekin IL. P.7.

18 The same is true of the Senate. When a senior senator told another to “shut his own mouth,” he was able to excise the statement from the *Record*.

19 Stephen Barr, “House Moves Record Closer to the Truth,” *The Washington Post*, January 9, 1995, A15.

APPENDIX D

1981-1990

- “The President, unfortunately, needed to find some way of doing it because hypocrisy has characterized his entire dealing with this issue. He has contended all along that it is nonnuclear.” (Aug. 12, 1986 Representative Markey [D-MA]; caution by chair, who says “It is the opinion of the Chair that the proper remedy in this situation is not to take down the words, but the gentleman from Massachusetts [Mr. Markey] should refrain from characterizing the President in a way that demeans the President or the Office. The gentleman may proceed in regular order.”)
- “It isn’t, Mr. Speaker, that the President is intellectually dishonest, though indeed in the last election he was. It is about the fact that he has a \$500 billion...” (May 9, 1990 Representative Torricelli [D-NJ]; out of order)

1991-2000

- “I think for the gentleman from Georgia to come out here and promise a check, promise a check to people that are unemployed, is the height of hypocrisy. The Republican President of the United States...” (Sept. 25, 1991 Coleman [D-TX]; words withdrawn)
- “David Duke does not need to run for President, preaching his gospel of dividing the races. His issues are already being advanced by the White House. The ultimate act of hypocrisy is that the President today signs the civil rights amendment...” (Nov. 21, 1991 Representative Richardson [D-NM]; words withdrawn)
- “Now it is an election year and millions of unemployed are raining on the President’s parade. Once again he has threatened to deny the reality of unemployment and veto unemployment benefit extensions for his own petty personal political gain.” (Jun. 9, 1992 Representative Defazio [D-OR]; in order)
- “The President has repeatedly claimed that his policy toward Saddam Hussein was ‘to encourage Saddam Hussein to join the family of nations.’ He denounced those who suggest that the policy gave Iraq access to ‘bombs or something of that nature.’ But the truth is different. The administration knew a great deal about Saddam Hussein’s military procurement program and made a conscious decision to tolerate it, and in many cases facilitated the effort.” (Jul. 21, 1992 Representative Gonzalez [D-TX]; words withdrawn)
- “Mr. Speaker, this is a gimmick, another in a long string of gimmicks on deficits and fiscal policy. The fact is that fiscal policy in this country has been reckless, dangerous and irresponsible... The President in his budget for next year proposed that we have a deficit of \$350 billion, but it is higher than that because he, in my judgment, as some in Congress do, used the Social Security surplus to reduce it... But all of these things are gimmicks.” (Sept. 16, 1992 Representative Dorgan [D-ND]); Withdraws use of word ‘dishonest’ which does not appear in Record.
- “Well, it turns out that the President’s recollection of affairs of state a mere 6 years ago when he was Vice President of the United States are contradicted by Secretary Weinberger and Secretary Shultz. I quote from the Washington Post:
“...new information emerging from court cases and congressional records since Bush last ran for President has cast fresh doubt on his assertion that he was ‘out of the loop,’ generally uninvolved in and largely unaware of the most controversial Iran-Contra operations. There are numerous indications in the documentary record that Bush was at meetings where decisions were taken in the mid-1980’s about both the secret sale of arms to Iran and some of the covert efforts to aid the Contra rebels in Nicaragua.”
(Sept. 24, 1992 Representative Defazio [D-OR]; words withdrawn)
- “I want America to know that there is no function of this Government that George Herbert Hoover Bush would not subjugate to the agenda of the National Right to Life...” (Oct. 3, 1992 Representative AuCoin [D-OR]; words withdrawn)

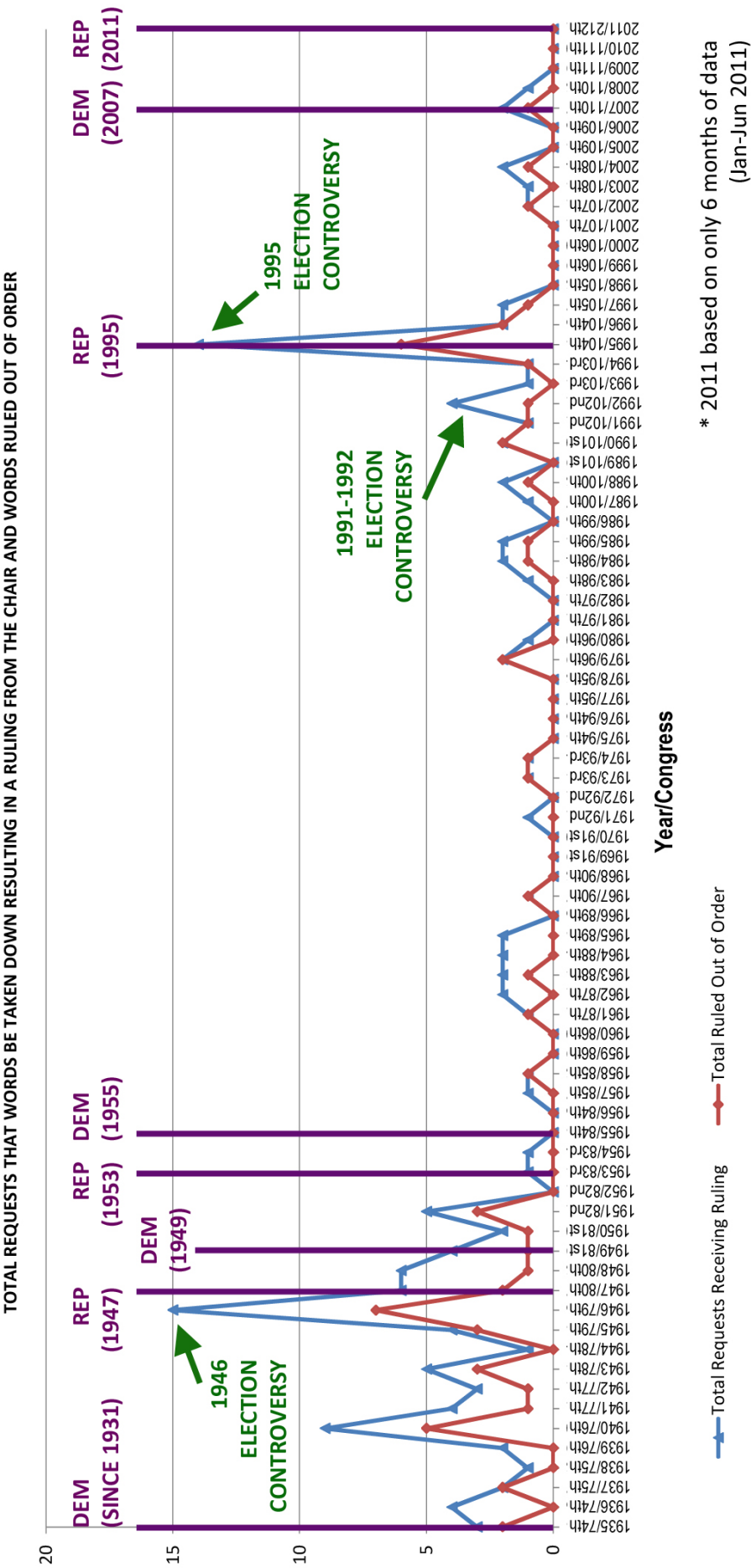
- “Even Andrea Mitchell of NBC took note that is [sic] Ronald Reagan’s prerogative, George Bush’s and all of us who wore the uniform or served in a civilian capacity to crush the evil empire. Clinton gave aid and comfort to the enemy.” (Jan. 25, 1995 Representative Dornan [R-CA]; out of order)
- “I will not withdraw my remarks. I will not only not apologize... I will accept the discipline of the House... I believe the President did give aid and comfort to the enemy, Hanoi.” (Jan. 25, 1995 Representative Dornan [R-CA]; out of order)
- “Mr. Speaker, if the President wants to continue to engage in this type of blatant political propaganda and demean his office in the process, he is free to do so... But while he is busy resurrecting the sixties, we will be working hard for the people by getting America ready for the next century.” (Feb. 23, 1995 Representative Tiahrt [R-KS]; demand withdrawn)
- “Yes, it is more restrictive than the last continuing resolution because the idea is to encourage both Members of this body, the Members of the other body, to pay attention to the appropriation bills that have already passed the House of Representatives, and also to encourage the President to pay attention to those bills when they come to him and not frivolously veto them like he did the legislative branch bill.” (Nov. 8, 1995 Representative Livingston [R-LA]); in order)
- “We said let us make sure that part of the solution is not part of the political problem. That is why the Republicans put holding the line on the beneficiaries’ part of the part B premium on the continuing resolution, to stop the President from this kind of political game playing. They will tell you it is for good and worthy purposes. It is for down-in-the-dirt gutter politics, and you people are going to pay.” (Nov. 14, 1995 Representative Thomas [R-CA]; in order)
- “Now, I am sure you have seen the recent commercial. We also have Bill Clinton saying, I think it can be done. Well it can. First of all, it can be done in 7 years. That is May 1995. Then we heard 10 years. Then we heard 9 years, and 8 years. Well, my colleagues, we are here to nail the little bugger down, and that is the purpose of this.” (Nov. 18, 1995 Representative Mica [R-FL]); out of order). Representative Mica explains that he was referring to the budget, not the President.
- “The President made that promise to the American people. All of us saw it... Yesterday he put a bunch of children behind him, kind of as props and attacks everybody who is expecting him to keep his word. It is very simple. Mr. President, keep your word to the American people. When you talk to those children, talk to them about Scout’s honor, talk to them about the importance of keeping your word. That is what it all comes down to.” (Dec. 19, 1995 Representative McInnis [R-CO]; in order). Chair rules that it’s not an improper reference to President.
- In the process of asking unanimous consent to withdraw his words, Representative Scarborough said: “... I will specifically withdraw the statement regarding the President selling access to the Communist Chinese in return for campaign contributions to his administration.” (Mar. 13, 1997 Representative Scarborough [R-FL]; words withdrawn)

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- “So I am here today to say the President did not tell the truth to the American people in the State of the Union. He lied to the American people around the country when he promised to expand this program.” (Jun. 19, 2003 Representative Lofgren [D-CA]; out of order by presiding officer *sua sponte*)
- “I come from Florida where you and others participated in what I call the United States coup d’etat. We need to make sure that it does not happen again. Over and over again, after the election, when you stole the election, you came back here and said get over it.” (Jul. 15, 2004 Representative Brown [D-FL]; stricken). Chair rules that Member cannot refer to other Members in these terms.

- “Once again, this House is being stampeded by fear-mongering and deception into signing away our rights. If you trust this President and if you trust this dishonest Attorney General to exercise unfettered power to spy on Americans without any court supervision, then you should support this bill... I do not believe we will soon be able to undo this damage. Rights given away are not easily regained. This bill is not needed to protect America from terrorists. The only purpose of this bill is to protect this administration from its own political problems and cynicism and from the illegal actions that were taken outside the law without any authorization.” (Aug. 4, 2007 Representative Nadler [D-NY]; words withdrawn)
- “We must stop the pattern of dissembling and the misuse of classified information. President Bush is now asking taxpayers for an additional \$150 billion to support the war and to support Iraqi Prime Minister Nouri al-Maliki. But...is not being honest about the level of corruption in the Maliki government.” (Oct. 16, 2007 Representative Waxman [D-CA]; words withdrawn)
- “The Center for Public Integrity in a report released today has found, quote, the Bush administration led the nation to war on the basis of erroneous information that it methodically propagated and culminated in military action against Iraq on March 19, 2003. In short, the President and the Vice President lied and 4,000 of our soldiers died. The President and Vice President lied and a million innocent Iraqis died in a war that will cost us \$2 trillion while people here in the states are losing their jobs, their health care, their homes, their dignity. Lies are weapons of mass destruction. Lies are also an impeachable offense. Monday, January 28, is the State of the Union. We already know the state of the union. It’s a lie. We must re-establish truth as the state of our union. So on that day I will introduce articles of impeachment concerning the President. If impeachment is off the table then truth is off the table. If the truth is off the table, this house will be living a lie. The bible says you shall know the truth and the truth shall set you free. Let us once again be the land of the free by beginning the process which the founders understood will set us free and keep us free. Impeachment.” (Jan. 23, 2008 Representative Kucinich [D-OH]; words withdrawn)

The clustering of potentially unparliamentary attacks on the president in the 1991-2010 period is convenient because it encompasses two symmetrical ten-year periods: one in which a Republican president was in office for two years (President G.H.W. B:1991-2) and a Democratic president for eight (President Bill Clinton 1993-2000), the other in which the reverse was the case (President G.W. Bush: 2001-2008; President Barack Obama: 2009-10).



APPENDIX F

