

Reforming Congress Project
Sunwater Institute
Interview with Professor Tom Wickham

CHERVENAK: Mr. Wickham, thank you so much for joining us.

WICKHAM: Oh, pleasure to be here.

CHERVENAK: Why don't we start with your background. Where'd you start off? Sort of the arc of your career so far, and what you're doing now.

WICKHAM: Sure, I'm a native Iowan. I was born in a small town in northeastern Iowa. the fifth of eight children. My parents were educators, and as the fifth of eight children, there was a lot of natural dispute resolution going on in my family, and a lot of times those, that rule fell to me. Grew up in this small community, went to the University of Iowa, and while there I did an internship in Washington, DC, in the office of Senator Tom Harkin. It was a summer internship. Came back from after a great summer in DC, finished my undergraduate degree, went on to law school and didn't think too much about Washington, DC, and politics.

I was kind of consumed by law school, but then after law school I decided that I wanted to leave Iowa and have some experiences in Washington, DC, and so similar to you I started at the National Institutes of Health. I was a contractor there and was able to work with some really great people. including Dr. Francis Collins and very peripherally Dr. Fauci and others, but I really felt a need to get closer to the action, something in keeping with my background as an intern in the Senate. So I applied for a job at the Office of Legislative Council. I had an editorial background, more if you felt very comfortable in the position of writing the laws, so this was in the fall of 1994 and the spring of 1995.

The Legislative Council Office in the House was prepared to make me a job offer when they heard from the new speaker, Speaker Gingrich, that they would not be hiring any more legislative counsels. There was a hiring freeze and then there was a suggestion from the then legislative council Pope Barrow that I talk to the Parliamentarian's Office because they were in need of people, and I said, what is a parliamentarian and how do you spell that?

So I really didn't have a an aspiration to be a parliamentarian or a member of that office, but I went and saw the then parliamentarian, a legendary man named Charlie Johnson and in my first, during my interview Cokie Roberts of ABC News poked her head into the office and asked a question of Mr. Johnson, and then a couple minutes later, Sonny Montgomery, a representative from Mississippi, the father of the Montgomery GI Bill, also came in and asked a question. I thought, this seems like a very exciting place to work, and they indicated that this would be a job with a lot of on-the-job training and a long growth potential, so I signed up with the Parliamentarian's Office as an assistant parliamentarian in April of 1995, and I stayed with the office working as an assistant parliamentarian, deputy parliamentarian, and then eventually was appointed the Parliamentarian of the House in 2012 by then-speaker John Boehner and have just recently retired from that office and now work in the private sector.

CHERVENAK: Excellent. So let's talk about this Parliamentary Office in person. So can you talk about what exactly does the parliamentarian do, and what's the role it plays in the House and I guess as it compares to the Senate?

WICKHAM: Sure. The parliamentarian is the first and foremost appointed by the Speaker, but that appointment is by law without regard to political affiliation. This non-partisan charter along with a tradition of long-term service to the House no matter which party's in control has really produced a unique office. The parliamentarian I referenced, Mr. Johnson, has been affiliated with the office for over 55 years. He's retired but still is a very important consultant.

Mr. Sullivan, my predecessor, served in the office for 25 years. I also was in the office for 25 years, and that allows for us to be a trusted advisor no matter which party is in control. I saw four party switches in my tenure in control. The two functions, there's two main functions to the office. The first is that real-time high-profile function of advising the Speaker, the members, the staff, the general public on parliamentary procedure in the House. The Parliamentarian sits to the direct left of the Speaker or the speaker pro temp[ore] and is that person's advisor on parliamentary procedure, and that position is manned by a parliamentarian every moment that the House is in session. So that does indicate that all of the members see you, all of our proceedings are broadcast by C-SPAN, and that that is something that is very highly visible.

The second function is probably more important but less known, and that is that the office is the keeper of the precedence of the House. Once again we're charged by law with compiling, analyzing, and publishing the precedence of the House. The House operates under the principle of stare decisis in that that legal principle means that we're going to let make like decisions over time, that we're going to use the precedents from five, ten, one hundred, two hundred years ago to govern a current procedural problem, and so in that way the Parliamentarian acts a lot like an umpire calling balls and strikes on the basis of precedent.

The Senate also has a parliamentarian. The differences I think start with the differences in our bodies. 435 members of the House for two-year terms. In the Senate, six-year terms, 100 members. Those hundred members all on different schedules, with representation, election cycles being different. The House, every member generally is elected, sworn in, and starts their term on the exact same day. Furthermore, the Senate has a different role Constitutionally in that the House's role under the Constitution, we foresee it as an initiator of legislation, their role as the, under the origination clause as being the House of Congress selected by the Constitution to originate tax measures, power to tax, power to destroy, making it a much different body that way.

The Senate, known as our deliberative body, it's, one of its main functions is advice and consent on treaties and nominations, and that's something that's a very different role, and I think the Parliamentarian's Offices in both offices, both, on both sides of the Capitol, reflect that role of having a, first a core nonpartisan charter but then oftentimes comparing once again a sports analogy to a football official and a baseball umpire that we both know the general parameters

of each other's rule, but you would never want a football referee or baseball umpire to switch jobs and do any meaningful work.

CHERVENAK: So the Parliamentarian Office itself, how big is it, how many people work there, and what are the type of people that work in that office?

WICKHAM: Sure, it's composed of six attorneys and three clerks in the immediate Office of the Parliamentarian, and then we have a office that is dedicated to publishing the precedence, and that's another four, so it's a about thirteen, fourteen FTE equivalents. Every person that we hire comes from a non-partisan background. The uniqueness of the position is that you have to be willing as I was over twenty-five years to not tell anyone how you voted, never have a yard sign, never attend a political rally, even small talk in cocktail parties is very, very guarded because that nonpartisan charter is taken so seriously, the moment someone knows that a parliamentarian is acting in a manner that benefits one party or another, the office's mission is severely compromised.

CHERVENAK: So you talk about the Parliamentarian as being an umpire, and that implies a sort of, that all of the rules are imposed from the outside, right, and you're just kind of following the rule book. But these rules must have changed over time and evolved, so how does that rule, if evolution happened, is it because of Parliamentarians' judgments over time? Have they played a creative role in that evolution, or is it all coming from the members themselves in the way that they're dealing with various processes and procedures and challenges?

WICKHAM: It's a great question. The outset, the thing that we always have to remember is that the House of Representatives is a majoritarian body, and that is established by the Constitution such that a majority is going to, starting explicitly with how a bill is passed into law, that a majority is going to be able to establish the rules of procedure. But largely that tradition of stare decisis plays a role in that most of the rules do not change over time.

The most fundamental change has been that of the committee on rules to produce special orders of business that deviate from the standing rules to allow for more effective scheduling of matters of import to the then-governing majority. So a lot of times what we are doing is advising on the current rules, how they operate, and then sometimes responding to external reform ideas and how those types of ideas would fit within the current rules, other similar efforts in the past, how we foresee legislative agendas being able to be carried out under the rules. Those are the types of, we, technical advice that we would provide with regard to the rules. And then also we'll often generate ideas to change the rules, where there's some mismatch between where the majority's agenda is and trying to carry that out or how legislation is formulated, all done in a nonpartisan way, essentially working like a technician on an assembly line for the cars that are coming in, and the first car might be voting reform, the next car could be abortion, the next car could be immigration, but all of them having individual idiosyncrasies or rule-related elements that we would try to identify and then and then bring to the attention of the majority.

CHERVENAK: So you do play a creative role in that you're considering new kinds of rules or adjustments to the rules that could be beneficial to the institution.

WICKHAM: Exactly.

CHERVENAK: And in terms of the set of rules that you're controlling or that you're I guess the umpire of, I should say, you know when I think about the concept of rules in Congress, there's many different types of rules come to mind. One of them is, you know, these, the hard rules set by the Constitution, and then there's a level of rules that I guess in your case that in theory could be wiped out and replaced at any particular time if the Congress so just chose to do so. They don't, but they could in theory be totally changed. And then there's a third set of rules that are more informal, either they're within parties, you know, they're just kind of behaviors or whatever, you know there's those sets of rules, and so it sounds like your circle of rules is really that middle one, that's hard-coded, it's written down, and you're, but you don't really touch the norms piece, and you can't touch the Constitutional piece, is that right?

WICKHAM: Yes, we do advise on those two outer poles, but the outputs from our office, the House Rules and Manual that is published by our office every two years contains a, the Constitution, Jefferson's Manual of Parliamentary Procedure, which we incorporate into the standing rules, and then the standing rules of precedence. It's a 1,600 page tome that each member gets that presents those three pillars of our practice. But at the meantime, at the same time, we are advising on those hard Constitutional issues, and then the norms as well, that you know those bedrocks of, we have 435 members, we have two-year terms, the Constitution requires us to come into session on one day, January 3rd, unless we change it by law. Those types of things play into our advice as well as the norms.

I think we've talked about, or at least quite a bit of discussion has occurred in the Congress about schedules and scheduling of members and travel of members and those types of things that would not be anywhere written down within any of those texts that I just referenced but are really key discussion pieces and thought instruments for Parliamentarians.

CHERVENAK: So you do get involved in the unwritten rules in addition to the written rules.

WICKHAM: Yes, because it is such a necessary element of what we do. One example that I pull out quite a bit is that the two inventions that the Parliamentarian most represents are one, air travel, and two, televising of proceedings, though neither of those are written in any of the manuals or House practice now, there's some coverage of televising, but those are fundamental things that shape how we do our job and how the Congress proceeds.

CHERVENAK: So when it comes to these informal rules, do you get involved in the intra-party rules, like for instance the Hastert Rule that that many talk about. That seems to be some kind of an informal rule within a party or just within the Speaker's own mind. Is that something that you would get involved in, or does that move itself over into a different camp of rule?

WICKHAM: It largely would not. It would be something that is a governing philosophy of the majority party. How much outreach, how much to rely on the votes of another party, or how much to go it alone, for lack of a better word, is something that we would leave to the political, the people, the purveyors of the political advice.

CHERVENAK: So when you think of these rules and all these different types of rules, particularly the ones that you're covering the most, you know, so what are ultimately the purpose of these rules? The Constitution doesn't give much guidance on what rules to put in Congress and how it should work, so what's the purpose ultimately of the rule? When you see a rule, do you ask yourself, is this serving the purpose X and then judge it whether it be good or bad based on that purpose? You know, what are these rules really trying to do?

WICKHAM: Yeah, it's good to start with that bedrock which is Article One of the Constitution. We do quite a bit of lecturing on the amount of procedural detail that is there. We usually say it's concise yet ample. The paragraph, there's essentially one paragraph, excuse me, one clause of the Constitution, that covers everything from a majority to pass a bill, to veto procedure and override. All of that is in one paragraph and has, you know, spawned thousands and thousands of pages of written words from people that you've interviewed on this program. And so that is our guiding light, our north star, and when we move along from that, but it is at its heart a legislative body, and we will be the ones to highlight the rules or discuss ideas for rules that move legislation that, we talked about that majority agenda that the Parliamentarian would work with the majority party on rules that would allow for legislation to progress, also working with the majority and minority on certain minority rights that the rules have sought to protect.

CHERVENAK: Well so I think the way you frame that is quite interesting when you talk about the majority versus the minority because you know obviously when the Constitution was set up, most the framers were against the notion of party to begin with, and yet that seems to be a driving framework that people use when typically I would think on a bill-by-bill basis there would be a majority or a minority. When I hear a majority, minority, I think about is that, do a majority of members support this bill or a minority of members support this bill versus a party definition of majority, minority.

So the way that your, you think of the Parliamentarian is on the, is assisting the, I wouldn't call it the majority party, just the majority to get majority kinds of legislation up for vote, is that kind of where you're going? I'm trying to nail it down a little bit more specifically.

WICKHAM: Yeah, I think you're right and that there has been an evolution, a more centralized, more party-dependent system over the last two hundred some years, but there are also mechanisms whereby that lowercase majority, a majority of members on a given proposal, plays out under the rules, and we are knowledgeable of them, but because of the creep of partisanship, those lowercase majority situations that I think you've just referenced become less and less common, but they are very important to remember that they exist because those are often the issues that are most appealing are those that cross party lines and that are the product of or involve cross-party coalitions, et cetera.

CHERVENAK: So when you think about any given rule, right, any given parliamentary procedure, et cetera, and you would need to give it a judgment, is this a good or a bad rule, you know or it needs to be changed or reformed because it's not achieving, either it's not directly achieving the objective of the Constitution, but again that's quite vague, so how would you judge an individual rule within the body of rules that you publish?

WICKHAM: That's a good way to put it. We would counsel, first of all, being a majoritarian body, and the House has its Constitutional charter to determine the rules of its proceedings. We would look at it through the filter of does it violate any of the other required attributes of the Constitution, and then secondly what is its effect on the deliberative process? How is it going to affect the day-to-day activities of the House as it currently sits? That's the way we would filter out whether it's a good rule or not, not placing a value judgment on it through a different lens but starting with that Constitutional focus and then looking at it through the parameters of the House as an ecosystem, how it lives and breathes on a daily, weekly, yearly basis, oftentimes projecting ahead, looking at, well this is where it starts, but we're looking at it from, you know, the perspective of ten years from now, twenty years from now, fifty years from now.

CHERVENAK: But it sounds like you would still look at a rule and say, does this help a majority to get legislation through the process?

WICKHAM: Not entirely. No, that's, I think we would take a more institutional view to say, does this help the institution, does it allow for all 435 members to properly carry out their role and try to do it in a way that is keeping with Article One of the Constitution, then also the traditions of the House. We're the institutional memory of the House, so oftentimes a lot of these proposals have come up before, and we would have notes or would have reactions based on the precedence of the House.

CHERVENAK: Yeah, so I think what you bring up there is this concept of, on the one side there's the majority rule idea to push, that legislation backed by a majority should move on to the Senate, right, I mean if it's voted on and goes through the proper procedure, so you can imagine that as a kind of properly-functioning Congress, where a properly-functioning House, where a majority was able to vote and move its legislation through. But you, the other part you brought up here, and you tempered that it sounds like, with this idea that there is this concept of equal representation that's been laid out in the Constitution, and so it's not all about majorities moving their, the legislation through, it's also about each member having some kind of fundamental input into that process, that you could, for instance, have a set of rules that would just ensure equal representation, right, that every member has exact same powers, every member has the ability to add informational value to a bill, right, and that could be a totally different set of rules and procedures that would support that goal at the expense of getting things through. So it sounds like you do kind of temper this, you have a balance on the one side of majority-driven procedures, and then also this notion of a universal kind of equality

among the members that would typically be talked about more as a minority rights kind of question.

WICKHAM: Yeah, I think it's interesting. You've placed it in very philosophical terms. Another way to think about it is in practical terms, and I'll try to give an example. Over the last ten to fifteen years of my career, one of the complaints from the rank and file members was a lack of access to the agenda, that their bills were not coming forward oftentimes with bipartisan support. They were not being considered in the committees or in the House, that the majority leadership was considering only a very narrow perspective, and I, we could document rules changes, policy choices, that led to this precipice. Well, in reaction to that, the rank and file, et cetera, expressed their displeasure with the majority and suggested rules changes, one group called the Problem Solvers Caucus. And so we would work with the Problem Solvers Caucus and the majority and the minority on the technical aspects of their idea. In this case, they developed an idea for a consensus calendar, where bills that had a certain threshold of co-sponsors would be expedited to the floor.

So that philosophical principle of all 435 members having equal representation is aligned with, or has to be considered within, the practical context of, if you push members too far this way, you will get a backlash, and that backlash can be viewed through rules changes at, you know, 1970s, 1990s, 2020, and that's the kind of advice that we provide and try to do it in the context of both the Constitutional principle that you're discussing plus those decades of experience seeing how, when a particular philosophy or agenda-setting procedure takes place, what a natural reaction would be to that.

CHERVENAK: So let's move on to the different kind of groups of rules along the bill-to-law process, right, so I guess one big area is when a bill is introduced, which committee does it go to, right, and then after that the committee, maybe within the committee itself there's a set of rules, and then after it's reported it goes to a Rules Committee and more things happen, and then ultimately it's on the floor where there's rules. So can we kind of go through each one and what's the, what do you think the key issues are to think about at each step of the process, and how does the Parliamentarian get involved or, what kind of powers are wielded at each level? So why don't we start with the bill submission and referral to committee?

WICKHAM: Sure. All of the legislative activity in the House of Representatives starts in one place, and that is the informal box known as the hopper. And the ability to, for any bill, any member to introduce a bill while we're in session, and that bill traditionally has been able to be of any form or of any particular origin as long as it was signed by a member, and then that bill would then be dropped in the hopper and then referred to one of the twenty-one standing committees of the House. Those, the rules of the House, govern that process and provide that the speaker is the deciding authority on which committee a bill goes to.

By tradition, the Speaker has relied on the Parliamentarian to fulfill that function. So one of the main, one of the largest volume of outreach we have as an office is to the members in terms of what the committee of jurisdiction is over a particular idea, over a particular text, and then

eventually we make that recommendation to the Speaker on the actual referral of the bill to committee.

CHERVENAK: I guess it sounds the way that you're describing it is, you can say that a health care bill should go to the health care committee, if there were such a committee, but the Speaker could say no, I think it's science and technology and override you.

WICKHAM: Yeah, that's a common reaction, and one of the real great things about the House Representatives, everyone thinks of it in very partisan terms and very heavy-handed thoughts when it comes to Speakers of the House, but for, the tradition for as long as the Parliamentarian's office has been in existence, all Speakers have outsourced that job to the Parliamentarians, and the referral process has been nonpartisan and precedence-based since, you know, for the last hundred or so years. And that to me would go to your unwritten rules, and that the Parliamentarian makes the referral decisions, and that's obviously very consequential as there's 12,000 bills introduced each Congress.

CHERVENAK: Got it. And so once it's been, and obviously there's lots to talk about with regard to that process and how it's changed over time, and I know that there's trends there that you've discussed in the past, but why don't we move on instead to the to the committee? So within the committee, once it's referred to a committee, I mean most people think that the chairman is kind of the dictator of that committee and they can come up with any rules they want and, is that true? Or do does the Parliamentarian control, or the I would say the parliamentary procedure control what's happening inside those committees?

WICKHAM: It does. There are not a lot, but once again that majoritarian tradition that there needs to be a majority to adopt a recommendation with regard to the bill as it comes out of committee, I think that's a good place for you and I's discussion to focus is that there have been more and more rules that have focused on the transparency of committee proceedings, that in the 70s and before that, some of the reforms of the 70s, the committees were largely black boxes without much regard for their activities in terms of the public eye. Obviously televising those proceedings and then recording how individual members voted in committee were developments to that time.

Now there's more and more requirements that the text of the amendments that were adopted at committee and the final passage or the final vehicle moved to the House are now governed by the rules, and those would be the types of things the Parliamentarian would counsel on along with certain budgetary effects of the bills.

CHERVENAK: So there's some transparency initiatives so, just to ensure that there's a majority of the committee supports legislation before its perm—and the text is somehow traceable when it's reported to the floor, is that right?

WICKHAM: Correct. I think I may have mentioned, but one of the things that is happening more and more is the front loading of the process, that more and more decisions, more and more

energy is focused on the legislative vehicles prior to their introduction, prior to their markup or hearing in committee, prior to their actual consideration on the House floor, and the rules have tried to, the rules have evolved to keep up with this this phenomenon.

CHERVENAK: Yeah, unfortunately as you increase the transparency of the committees, a lot of that power may just, you know, skip over to the chairman's office, the Speaker's office, I should say, where unfortunately the transparency can't penetrate, at least under the current rules as far as I understand.

WICKHAM: That is certainly one opinion, yes.

CHERVENAK: So in the committee it sounds like there's this, there is some control over this majoritarian concept, and then once it's reported out of the committee, in the House it goes through the Rules Committee, where anything can happen, it seems, under the current scenario, right? It can be, the bill can be completely replaced, it can be totally open rules, it can be closed. What happens there, and how does that, how does the rules of the Parliamentary kind of govern that versus the ad hoc rules made by the Rules Committee?

WICKHAM: It's a very fundamental part of the process and one that we often tell our foreign visitors that are from other parliaments, other experiences, to watch the House Rules Committee because it is unique often among other parliaments, but it is such a fundamental piece of the process. A couple decisions that have happened over the history of the House that make the Rules Committee so fundamental.

First a decision that it would be the Speaker's committee. The Speaker at one time served on the Rules Committee up until the until the revolt against Joe Cannon in 1910, that idea of the Speaker's committee oftentimes replicated in other parliaments, that it's an agenda-setting body, and then it was over time taken on a more partisan makeup than the other committees, which reflect the ratio of majority to minority party members in the House, and then finally their ability to produce what we call special rules of business, special orders or rules which allow for the majority to take up a particular measure outside of the order set by the standing rules of the House.

And that's how the House implements its agenda by the Speaker and the majority leadership conveying to the Rules Committee that they want to consider bill X or Y at this time and then that special rule voted on by the partisanly, the more partisan Rules Committee then is reported to the floor, and then the House adopts that and then moves on to the underlying legislative proposition.

CHERVENAK: So when we talk about this kind of majoritarian ideal, right, or even the equal representation ideal, to me that sounds pretty far from it if you have, the Speaker can kind of like change anything at the last, bring anything they want up, or they can, you know, replace, et cetera, so it would seem that this is kind of like a, almost like a Wild West right before it goes onto the floor. Is that the way it's viewed by Parliamentarians, or is it this, is this seen as a kind

of a normal, you know, I'm just thinking back to like when it happened with Cannon, right. They obviously, they changed it for a reason. They wanted to get things done, they wanted to, they thought they were strengthening the institution when they were doing that, but obviously it has consequences. What do you think about that whole notion of the Rules Committee wielding those kinds of powers and the ability to change that what's coming out of committee?

WICKHAM: I think we would advise and I, as I look at it and start with that Constitutional principle in Article One that the House can determine the rules of its proceedings, and to put that in context, it's been interpreted as a lowercase "m," you know the majority of the House, the Constitution provides for it to be a majoritarian body. So what we would do as parliamentarians would counsel that the House of Representatives on that majority taking that action and not only how it could be used in 2022 but also in the future. So when I look back, one of the most fundamental decisions was the House changing its rules even pre-Cannon to allow for the Rules Committee to have this power, and a lowercase majority tomorrow, or using the process under the standing rules could take away that power if they wanted to. So we would be advising or counseling on that, on that point, at every interval of the rules change.

CHERVENAK: So once it's through this Rules Committee if it's lucky enough not to be squelched by the Speaker and it gets out there, so what rules will govern it, what are the rules kind of that cover the floor? Obviously there's the rules for particular bill, but there are other rules, you know, how do you run the floor?

WICKHAM: Basic rule is the basic element of debate is the hour rule, so every special order of business would be considered under the hour rule, and then there's a vote on the previous question, which is the way that the House ends debate, and that's the, one of the fundamental differences between the House and the Senate. Senate with its tradition of unlimited debate the house with an hour rule and a previous question vote as a way to terminate debate.

And then after that the norms of how a majority uses its authority to produce a special order business, whether it makes an order as we saw last week with the Competes Act, hundreds and hundreds of amendments and hours and hours of debate, or it chooses to make an order zero amendments and very little debate, those are decisions for the majority to undertake and to put in that special order of business along with, you know, several overlaps with the standing rules of the House.

CHERVENAK: And to change those rules again, it's a majority-based thing at the beginning of each Congress.

WICKHAM: That's correct, and so when people say, how can you have this partisan-loaded Rules Committee, and how can you support the you know volume of restrictive rules that restrict debate, restrict amendment, what we always say is that at the beginning of that process or the end of that process is that every rule for the Rules Committee has to get a majority of votes.

CHERVENAK: Right. So when it comes to rules, the parliamentary rules, or whatever, any given rule in the House, how much do you think about rules that are in other, that are in the UK's parliament or in Germany or in Japan, you know is there, you have a small team there, right, it's not a big, competitive, intelligence team giving all kinds of information about rules that work or don't work in other jurisdictions. How much do you, are you able to look at that, and again do the, does the speaker even care if you did have brought in kind of competitive ideas or new things into that would make the institution run better?

WICKHAM: Yeah I've been lucky that the Speakers have supported our efforts. I've, you know, traveled to twenty or so nations on behalf of the House and studied their practice, extensive collaboration with the EU Parliament, the House of Commons, and some of the emerging African democracies working with the House Democracy Project, so there is a lot of study and collaboration there. I think one of the things that the House does a lot better is a little bit more, there's a little bit more of an evolutionary nature to it as we have a generational change that many of the ways in which the House has traditionally performed its legislative function have been influenced by other parliaments as the world has gotten smaller and then evolutionary thinking or, by people like Mr. Kilmer and Mr. Timmons. A group that I've worked very close with, the Select Committee on Modernization of Congress. So there has been a lot more receptivity to those outside ideas.

CHERVENAK: And how about visualizing rules? You know, I've always been interested in the fact that rules in many cases, or most cases, are written by lawyers, they're in paragraphs, they're difficult to understand, and on the other hand you could have a flow chart, right, with different boxes and how things would flow. And of course when people try to make those flowcharts of Congress, they get so complicated you can't understand them. So are there ways that you've thought about trying to communicate rules beyond the textual version?

WICKHAM: Well that is an excellent question and not one that gets enough attention. Over my career, looking at other similar officials, one of the things we often talk about is how we communicate our rules, and the most basic one as we look at the Super Bowl weekend is how effortlessly it seems and so universally accepted NFL referees can signal their rulings with simple hand gestures, and some of my greatest moments have been the comparisons of what were the initial early debates on the rules of how the Congress would organize itself. Pages and pages of oratory from the great leaders, the founders of our House of Representatives on how the Origination Clause would work, how debates would go, and then fast forward 200 years where my advice is often, was often conveyed with a head shake or nod, and that evolution.

We also used to see these very dramatic, complex flow charts. GPO would make them to train their employees, CRS, that would cover pages and pages of text, and I think that conveyance of how the legislative process works is something that could be studied and developed and improved upon by reformers.

CHERVENAK: So you've spent a lot of time thinking about rules more deeply than maybe anybody else as it comes to the US Congress, like what would you change if you had, if I said

here you go, here's a pen, you know, X out any rule you want and write any new one in, what kinds of things would you consider doing?

WICKHAM: In my trips and interactions with foreign parliaments, I usually make three points, and you know we used to have a real issue with the arrogant American, and so what we tried to do was to fulfill this idea that we're a more perfect union, that we're constantly improving, but the first thing I tell people is I've been working with emerging House of Representatives and parliamentary bodies for 25 years, and do you know the number of them that have adopted two-year terms for their representatives?

CHERVENAK: My guess is zero, all right.

WICKHAM: Zero. The second is that the House in the United States took a very incremental approach to granting rights to its citizens, such that a universal declaration of human rights or something similar to that would really have benefited the House and then benefited the country, and then third in terms of rules, something that's beguiled our planet forever has been wars between nations, wars between groups, and the way that the US goes to war is something that could use vast improvement.

And so that's how I would portray the issue with regard to dealing with other democracies on areas where further study and reform could be needed. And then I have been someone who's always wanted a more open process, and that obviously is something that's going to, you know, greater debate, greater amendments, further, more access of the rank and file to the agenda, but at the end of the day I am a big believer in the majoritarian charter of the House, and so that is the advice I give, but I am very content with whatever advice or whatever, people use the term rulings that I give, that at the end of the process there is a vote, there is that majoritarian stamp or rejection of what is going on, and that that gives me great solace.

CHERVENAK: So before we move on to the common questions I ask everyone, I do want to circle back to the party question because one, I guess, concern I always have is about the rules inside the chambers and how they are maybe kind of ensconcing those parties somehow into the process. The party, an external entity, becomes part of the internal machinery of the Congress. So clearly the Speaker having controlled the Rules Committee, you could argue either way on that one, but there are there other rules that are in there that, you know, name Republican or Democrat or somehow through, you know, through inference or through some kind of some mechanism in, support this notion of party and reinforces it as institutional component of the rules?

WICKHAM: Yeah, we often see this. We counsel the parties on their individual conference and caucus rules, and sometimes they will have rules with regard to term limits and such, and from time to time those have made their way into the House Rules. There once was a term limit on the Speaker, which was dropped, and there are term limits with regard to chairs and ranking members in certain areas of the House. And those types of things along with a kind of evolution in my mind, which has been that the blanket of partisanship is so extreme and is such a place

now that formerly the Parliamentarian's Office would not be one to sign on to giving access to the agenda for items that have a certain amount of bipartisan support. And I have opened my mind to that, but that is a dispute amongst Parliamentarians and mavens of the House that is very, very vivid right now, and I certainly can see it both ways, but as I get farther away I certainly value some of the bipartisan, some of the attempts to put a notion of bipartisan support into the rules.

CHERVENAK: Great, well let's move on to phase two if you're ready, where I ask questions that I ask everybody so someday we can compare the results. First question is what do you think congressional representation should mean?

WICKHAM: Yeah, when thinking about this question I've really been someone who's thought about it from the representative government we have chosen, and that we see a lot of examples especially as I focus on the state and local aspect and then other countries of direct democracy, of plebiscites ballot initiatives, et cetera, and that when you contemplate the alternative to our representative system, I am one that is a big believer in that human element that leadership portion of it that the member of Congress is voted on to lead and to make decisions on behalf of those people that he or she represents, and if there is a desire to move away from that, we know of the alternatives. We know of the alternatives, and I am a big believer in that representative element of congressional representative.

CHERVENAK: So you're a Burkean. And in terms of the people, who those constituents actually are, they, the primary voters, are they the whole the party, are they everybody in the district, are they 10 generations down, you know great, great, great grandkids, you know, who are the constituents that this person's making judgments on behalf of?

WICKHAM: Yeah, I think that's going to circle back to my earlier issue with regard to the two-year terms. One of the areas where I've had some experiences on the congressional budget. And it is often, well it is required to have a 10-year window, and then we have these representatives with two-year terms making decisions based on a 10-year window. So what I counsel the members to do is to think, my goal is this interview, is going to show, what will the future generations think of this decision? What will you think of this decision five years, ten years, fifteen, twenty years from now? That may clash with, you know, the vision of the founders that the House the Representatives, the body closest to the people, was going to take an instant temperature check, but that I hope fuses with that idea of choosing a leader that is going to be even tempered and be forward-looking in terms of making their decisions as a representative?

CHERVENAK: All right, next question is how would your ideal Congress allocate its time? I'm sure you've been involved in these discussions over here.

WICKHAM: Yes, yes. I put it this way often in speeches, that I respect the fact that there is a role for governing and then a role for campaigning. I just wish that the dial was turned more towards governing than it currently is, and so anything that would drive towards that equation

or theorem is how I would envision a future Congress. And so I tried to tailor my advice upon that, and we don't take positions with regard to reform efforts that address that, but you could, you can tell where I would probably come down when it comes to individual reform aspects on how Congress should spend its time.

CHERVENAK: The next one I'm very interested to hear your perspective is how should debate, deliberation, or dialogue occur or be structured in Congress? Should it be on the floor, should it be in those committees exposed, should it be in the committees closed, should it be at the bar? You know, where should these committees, these kinds of debate dialogue happen? How should they be structured?

WICKHAM: Yeah, it is really a concern of mine how front-loaded the process has become, that, and that has been the reaction to many of the rank and file members, is that an idea is conceived oftentimes when we see a shared government or unified government with all, both the Congress and the administration under one particular party's leadership, is that a bill, an idea is conceived and looked at and drafted, and, you know, addressed as comprehensively as possible prior to the actual legislative process. The years of legislative process being engaged. And I tend to think that that produces less than stellar legislation, that having a broader, longer process would be desirable. But that once again clashes with our two-year terms and the election cycle. So whenever we would look at a proposal, we would be managing all of those equities in weighing in on those proposals. So the longer that legislation could lay bare and allow for members to refine it, the public to weigh in on it, would be the best way for at least this particular parliamentarian to go about the House's business.

CHERVENAK: So it sounds like that kind of process would be best played out in the committee, since the floor, it can't be such a long period of time, right? In the committee it can spend more time and get better seasoned by inputs.

WICKHAM: Yes, and that used to be the position of someone who thought and wrote a lot about the House of Representatives, Barney Frank. He would often tell members of Congress to really focus on the committee procedure and make their mark there because it was so much more open, and in those days did not yet have a leadership imprimatur or not on it.

CHERVENAK: And so does that mean your perspective on the floor, you know, some people say we should have open rules, other people say there's no way. Do you have a, kind of a theory or a thought about what should happen on the floor? Should there be debate dialogue there or not?

WICKHAM: I do, and you know I think you're going to find that this plays into a theme as we look at this a hundred years ago, it's, you know, from now is a mix of the ideal, the Constitutional ideal, and the practicalities, and I've talked about society and the desire to have more scheduling, more restrictive control over our day-to-day activities even going to the education and management of our children, that that is just playing out in the House of Representatives such that open-ended things, and so this is all trending towards a greater

structuring. All the external pressure is on a greater structuring, whereas the founders and the Constitution, I think, envisioned a more deliberative process. And so what we would do is make a suggestion like, we'd like to have controlled openness, or a window of openness, so that you put it in there to indicate that that was the value that you were committed to, but that you were also aware of the realities of scheduling in 2022.

CHERVENAK: Next question is, what fundamental institutional improvement should Congress make within fifty years?

WICKHAM: As I said, I think I would like to see more emphasis on governing, and then the thing that I have preached and I think Congress plays a great role in this is, with regard to civic education, that civic education has been under-emphasized in the case of our education system, and then that has had effects on the Congress. In one of the analogies I often say is that the Parliamentarian is teaching algebra or advanced algebra, and oftentimes the people that he or she is reaching are only capable of basic math.

CHERVENAK: Right.

WICKHAM: And that is something whereby I think, there's a real shift is occurring, but it's something that I would love for the Congress to really lean into.

CHERVENAK: What book or article most shaped your thinking with respect to Congressional reform?

WICKHAM: With regard to reform, I'm, I tried to stay away from a lot of that before, fear of grasping a particular idea or trying to be a cheerleader for a particular idea. I really thought, and I still believe, that being a good Parliamentarian, being a good effective lawmaker is about the three Ps of knowing, you know, people, policy, and procedure. And *The Dance of Legislation* is a book from the 1970s. It talks about the advancement of the Public Health Service Corps, and it captures a sufficient amount of procedural detail for someone like myself.

There are two former staffers that have written books, John Lawrence and Don Wolfensberger, who really do a good job of making sure that the procedural aspects of particular activities are documented, which is something that I certainly appreciate.

CHERVENAK: All right, well last question is really about your plans. You've retired, but you're working. Do you have any, you have any more books coming? What are your plans in the coming year?

WICKHAM: I do work very closely, I try to be as available as I can to the Select Committee on Modernization of Congress. I work with two professors that you know well at the Center for Effective Law Making at University of Virginia and Vanderbilt, and then I work on a lot of democracy building projects here at my current employer, the US Chamber of Commerce, so I am keeping myself very active in those areas as well as some guest lecturing. But currently I'm

watching the debate on the Electoral Count Act, which is something that I worked very closely with for twenty-five years that has become the issue of the day after largely being ignored for quite, quite some time, so I'm watching that debate closely and will try to be a positive influence on that debate as I can.

CHERVENAK: Well Mr. Wickham, thank you so much for your service, and thank you for the time and discussion about Congress.

WICKHAM: Thanks so much for this project, and I'm going to try to highlight it and get you some more participants because it is very valuable.

CHERVENAK: Very welcome. Thank you.