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**Abstract**

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**Keywords:** California legislature, Suspense File, constitutional reform, legislative procedure

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## What Democrats Must Give Up to Restore True Majority Rule to California's Legislature

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Today's debate over majority rule in the California Legislature has focused exclusively on how the two-thirds threshold to pass budgets or raise taxes perverts the fiscal policy process, but ignored how a lesser-known rule stymies majority control over the legislative process. Both the Assembly and Senate employ the "Suspense File," an obscure, shadowy process that allows legislative leaders to kill bills without a vote. In doing so, it empowers one wing of the majority party and takes away the median legislator's ability to cast a public, pivotal vote on a hundred or more of the most important bills introduced into the legislature each year. As part of their bid to restore majority rule to the statehouse, Democrats should do away with the tight control over the Suspense File that helps them along with the two-thirds rule that hurts them.

All of the sound arguments in favor of eliminating the two-thirds fiscal threshold apply equally well to reforming the Suspense File. Requiring a supermajority to pass the budget or raise taxes leads to constant budget delays that impose real costs on schools, companies that work with the state, and anyone who receives an IOU. Even worse, the two-thirds rule makes it difficult to pass the sort of budget favored by the median legislator—the lawmaker in the middle of the ideological spectrum—and the average California voter. While polls<sup>1</sup> consistently show that the average Californian wants to reduce deficits through a mixture of spending cuts and tax increases, last fall's budget deal tilted entirely toward spending cuts, an option favored by only 31% of Californians but necessary to get a two-thirds vote. Requiring a consensus to pass a spending plan leads to late budgets that lean to the right of what the average Californian wants, and leaves voters unsure about whom to hold accountable.

In the same way, the power that the leadership of the majority party wields over bills on the Suspense File—leaders can stop bills without a vote, often when these bills would pass with majority support if they were allowed to go to the floor—harms the legislative process. When they stop these bills, leaders slow down the process of replacing unpopular existing policies with new laws that the median legislator favors. This can prevent centrist coalitions from forming in the legislature,

tilting power over legislation to the left of the average Californian. By unnecessarily preempting votes on important bills, the Suspense Process unfairly shields legislators from public accountability.

This brief essay explains how the Suspense File works, explores its effects on voting patterns and policy outcomes, and outlines options for reform. It draws on evidence from Cox, Kousser, and McCubbins (2010),<sup>2</sup> an article that will appear in a 2010 issue of the leading peer-reviewed *Journal of Politics*. Finally, it relates these academic findings to our state's current constitutional debate.

### How Does the Suspense File Work?

The Suspense File may seem like trivial arcana to casual observers of California politics, but Sacramento insiders know the critical role that it plays in determining the fate of bills and shaping policy. Control over the File gives the leaders of the majority party in each house—nearly always Democrats in the state's recent history—the power to kill, even before it reaches the floor, any bill imposing non-negligible costs on the state. This power comes through the screening of bills in the Appropriations Committee.

The state Assembly and Senate rules guarantee every bill a hearing and a recorded vote in the policy committee to which it is assigned, and ensure that every bill that moves to the floor gets an up or down vote. Between these two stages stands each house's Appropriations Committee. When bills reach that committee, professional committee consultants perform a routinized cost-estimation process that places any bill costing the state \$150,000 or a more a year on the Suspense File.<sup>3</sup> While less costly legislation moves to the floor or is put up for an immediate vote in Appropriations, all of the expensive bills are "held on Suspense" until the deadline to reach the floor approaches and a single hearing on a hundred or more bills is convened.

On the eve of that hearing, the top party leaders in each chamber coordinate with the fiscal committee chair and staff to decide which bills will be granted a public vote the next day. The decisions of this "screening group"<sup>4</sup> are based more on the political goals of the majority party than on any fiscal strategy.<sup>5</sup> If a bill is allowed off of Suspense, it is voted on in the fiscal committee, and, if it passes, it moves to the floor. If not, it dies on the Suspense File without a vote.

Even the bills that pass off of the Suspense File are frequently amended according to the dictates of majority party leaders. These amended bills are presented as a *fait accompli* when they are finally moved off of Suspense and put before the full Appropriations Committee in a "do pass as amended" motion.<sup>6</sup> Should members of the fiscal committee dare to buck the amendment or passage recommendations of the unofficial screening group, they can be immediately removed from the com-

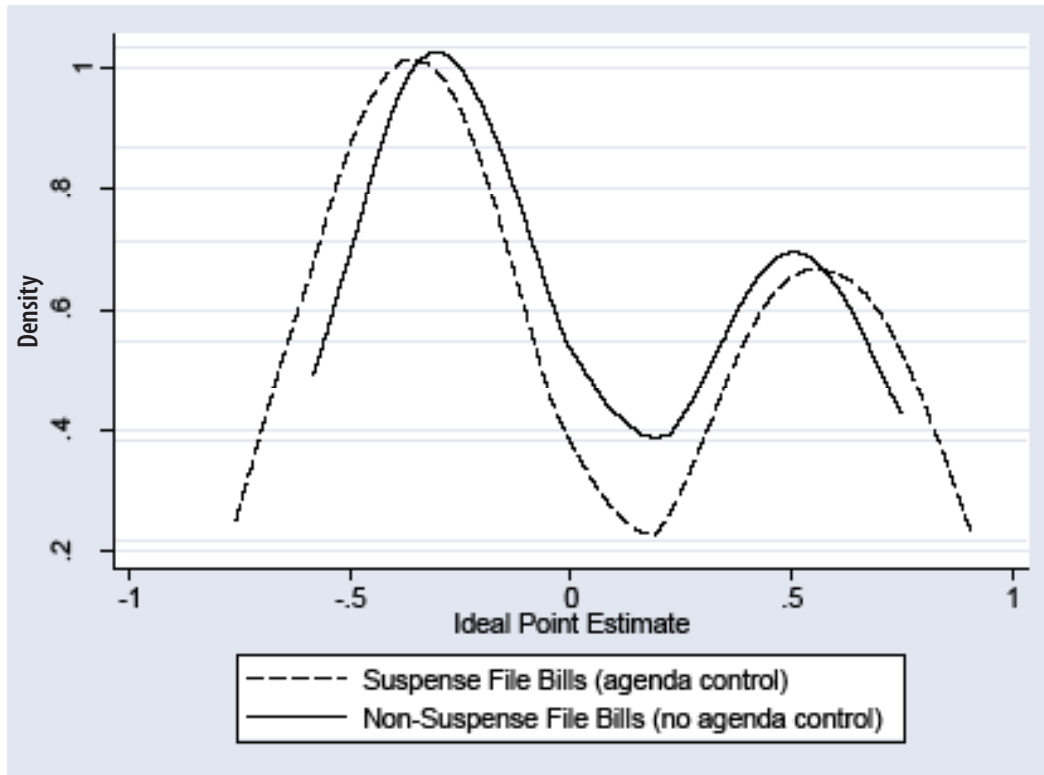
mittee, as Senators Debra Bowen and Jackie Speier were in 2005<sup>7</sup> and Senators Lou Correa and Ron Calderon were in 2007.<sup>8</sup> According to former Senate Appropriations Chair Patrick Johnston, the Suspense File is used “to parcel out bills based on the policy need to prioritize spending and the political need to reward or punish members without a public vote.”<sup>9</sup>

### **How Does the Suspense File Affect Voting Patterns and Policy Outcomes?**

When majority party leaders control which bills live or die, minority party legislators and centrists within the majority party lose. Consider what sort of bill a leader would want to kill without a public vote. There is no need to use the Suspense File to kill an extremist minority-authored bill that appeals only to members of that party; this sort of bill would die on an up or down vote. Yet a bill that would draw support from a coalition of majority-party moderates and minority legislators is exactly the sort of legislation that majority leaders want to keep off of the floor. It might be authored by a Republican or by a maverick Democrat. Regardless, it would pass with the support of a center-right coalition, over the objections of majority party leaders and legislators in the left wing of the Democratic Party. Fearing this, leaders use the Suspense File to avoid such a defeat, stopping center-right coalitions before they can ever form by keeping these bills off the floor.

Leaders can thus use their power over the Suspense File to reshape voting patterns and control policy outcomes. This affects legislative politics and policymaking in three ways. First, without the chance ever to form voting coalitions with minority party legislators, moderates in the majority party never have the opportunity to show their centrist stripes. Moderate Democrats will look more leftist than they really are, and the legislature as a whole will appear to be more polarized than it would be if the Suspense File was not controlled by majority leaders. Second, fewer bills supported by a center-right coalition—of which the median legislator is a member—pass. Third, policies passed through the legislative process in California, which still reflect the preferences of the median legislator much better than policies passed through the supermajoritarian budget process do, will tilt a bit toward the left.

Recent research on California and other states backs up all of these claims. Cox, Kousser, and McCubbins (2010) present an analysis of roll call voting patterns in California, comparing bills that emerged from the Suspense File with bills that were not subject to the control of majority-party leaders because they cost less than \$150,000 a year and thus bypassed Suspense. Comparing voting patterns on these bills can give a glimpse of what might happen if the Suspense File process was eliminated or if majority leaders were stripped of their power over it.<sup>10</sup>



First, as the figure below shows, California’s legislature looks like a much more polarized body when one looks only at the bills that went through the Suspense File than it does when we look at legislation that was not subject to screening by majority party leaders.<sup>11</sup> The dotted line is an “ideological map” of the legislature based upon votes on Suspense File bills, with the line showing how many legislators are located at a particular point on the left-to-right ideological spectrum depicted by the x-axis. The line shows a large group of legislators (Democrats) located on the left of the spectrum and a smaller group (Republicans) located toward the right. The line dips sharply in the middle, indicating that very few legislators appear to be in the ideological middle ground.

This fits with journalistic accounts of our legislature. California’s statehouse is indeed quite polarized, but the solid line shows that this is in part due to the way that the Suspense File allows majority leaders to keep any bill that would allow moderate legislators to display their centrist tendencies from reaching the floor. That occurs when moderate Democrats ally with Republicans to pass bills over the objections of leftist Democrats and majority party leaders. Since leaders do not want such coalitions to form, they use their power to keep these bills from moving off of the Suspense File.

But for less expensive bills that are not subject to the Suspense File, majority leaders do not possess this agenda control, and, thus, they cannot prevent these centrist coalitions from forming. They do sometimes form, allowing some legislators to show that they are in fact moderate, and the solid line depicting the ideological distribution of legislators based on non-Suspense bills shows a great many more moderates, as well as two parties that appear a bit closer together. Eliminating leadership control over the Suspense File would make California's legislature look more like the one illustrated by the solid line rather than the sharply polarized one depicted by the dotted line.

Cox, Kousser, and McCubbins (2010) use the same analysis of roll call behavior to estimate the ideological direction in which each bill moved policy. If right-of-center legislators were more likely to vote for a bill than left-of-center members, then we labeled this a rightward policy movement. A successful bill that captures mostly right-of-center support relies on exactly the sort of center-right coalition containing the median legislator that majority leaders seek to avoid by using their power over the Suspense File.

Only eight of the bills that moved off of Suspense led to these sorts of coalitions on the Assembly Floor (8% of Suspense bills). By contrast, 84 bills that were not subject to Suspense (14% of bills in this category) passed with center-right coalitions. From this evidence, it appears that Democratic leaders successfully use the Suspense File to cut down on the number of bills that would, under a simple majority vote, pass and move California policy a bit toward the right.

The cross-state analysis conducted by Lax and Phillips<sup>12</sup> fits with this finding. These Columbia University researchers gathered data on what policy the median voter wanted in each state in 39 different policy areas, and what each state produced. California comes out on top in delivering the policies that the average voter prefers in the most areas, evidence that our legislative policymaking process generally performs quite well. But when the legislature produces a policy that does not fit with what voters want, the statehouse almost always errs to the left. This is the weakness of our legislative process, and it is a flaw that could be corrected by eliminating the majority leadership's control over the Suspense File.

### **How Could the Suspense File Be Reformed?**

Because the Suspense File is a creature of each house's internal rules, it could be changed simply by rewriting the rules, which are generally passed at the beginning of each two-year legislative session. The File itself, which gives Appropriations Committee members the chance to look at all expensive legislation at once, could be preserved, while eliminating the majority leadership's ability to kill bills without a public committee vote or to change that committee's membership to exert

their will. This change would empower the median legislator on the committee and in the legislature, thus restoring true majority rule to the legislative process.

Yet reforming a legislature from within is often a difficult task, because it relies upon the backing of the leaders who draw important powers from the existing rules. Outside reform is also possible. Consider the case of Colorado's General Assembly, which had a similar set of rules in the late 1980s that allowed the Republican majority leaders to kill bills without a vote both in committees and before they reached the floor.

Democrats within the legislature tried to change these rules, but, unsurprisingly, Republican leaders stymied their efforts. In the 1988 election, though, a coalition of 23 reform groups, led by Colorado Common Cause and the PTA, put an initiative called the GAVEL Amendment ("Give a Vote to Every Legislator) before voters.<sup>13</sup> The initiative passed by a 72%-28% margin, stripping Republican leaders of their power to kill bills without a public vote and leading to more ideological moderation and more center-left coalitions in the next session (see Cox, Kousser, and McCubbins 2010). A constitutional change in California could have a similarly strong impact on California's legislative process.

The fairest way to do this would be as part of a reform package that restores majority control both to the budget and to the legislative process. Proposition 25, which would allow a majority of legislators, rather than two-thirds in each house, to pass a budget is headed to the November, 2010 ballot.<sup>14</sup> This is an important, necessary change that would reduce budget delays and make fiscal policy more representative of what middle of the road California voters want.

If it passes, the legislature itself or a coalition of reform groups should push to change the Suspense File process. If the budget measure fails, the next step should be a more comprehensive constitutional amendment that packages elimination of the two-thirds budget requirement with the elimination of majority leadership's control over crucial legislation through the Suspense File. Such a combination would provide something for both the left and the right in California, empowering voters in the middle and restoring true majority rule to our legislature.



## Notes

<sup>1</sup> For instance, in the January, 2010 Field Poll, when a random sample of California voters were asked how they'd like to see the state's \$20 billion budget deficit closed, 57% responded that they would prefer some mixture of spending cuts and tax increases.

<sup>2</sup> Gary W. Cox, Thad Kousser, and Mathew D. McCubbins, "Party Power or Preferences: Quasi-Experimental Evidence from American State Legislatures," *Journal of Politics*, forthcoming in 2010.

<sup>3</sup> In the Senate, the "Suspense File" and the criteria for placing bills on it is described in Rule 8 of the Senate Appropriations Committee, accessed at [http://www.senate.ca.gov/htbin/testbin/com-ahtml?INET\\_FTP:\[sen.committee.standing.approp.information\]rules.txt/analysis/analysis](http://www.senate.ca.gov/htbin/testbin/com-ahtml?INET_FTP:[sen.committee.standing.approp.information]rules.txt/analysis/analysis) in October, 2006. In the Assembly, the Suspense File procedures are laid out in the full house rules, in Assembly Rule 58.2, accessed at [http://www.leginfo.ca.gov/rules/assembly\\_rules.html](http://www.leginfo.ca.gov/rules/assembly_rules.html) in October, 2006. Both sets of rules are typically amended or challenged only at the beginning of legislative sessions.

<sup>4</sup> Jon Matthews, "Door Closed on Open-Meeting Bill," *McClatchy News Service*, June 21, 1990.

<sup>5</sup> One justification of the Suspense File process is that it allows holistic fiscal planning because the Appropriations Committees can hold all costly legislation until the policy committees have finished their work, the state budget begins to take shape, and committee members can match the demands they face with the amount of money they have to spend. This is a perfectly good justification for holding bills on the Suspense File until they can be heard together, but not for denying a subset of these bills—selected by majority party leaders—a vote.

<sup>6</sup> This description of the Suspense File is based on an interview with former Senate Appropriations Chair Dede Alpert, conducted by Thad Kousser and Mathew D. McCubbins on May 5, 2005 in San Diego, California, and upon anonymous follow-up interviews with committee staff.

<sup>7</sup> Kevin Yamamura, "Two Inquisitive Senators Booted off Key Panel," *Sacramento Bee*, June 6, 2005.

<sup>8</sup> Anthony York, "Calderon, Correa Dumped from Approps," *Capitol Weekly*, posted on May 18, 2007.

<sup>9</sup> Patrick Johnston, "The Changing Legislative Landscape," in *Governing California: Politics, Government, and Public Policy in the Golden State*, ed. Gerald C. Lubenow (Berkeley, Calif.: Institute of Governmental Studies Press, 2006), 13.

<sup>10</sup> This is admittedly not a perfect comparison, because bills that are not subject to the Suspense File are by definition less expensive than the bills that go on Suspense. But this in itself should not make them any less controversial or otherwise drive voting behavior. For the bills that were voted on on the Assembly floor in the 1993-1994 Session—the sample analyzed in Cox, Kousser, and McCubbins (2010), non-Suspense bills passed on the Assembly floor by an average vote of 61-10, compared with the 60-13 passage of a typical Suspense File bill. Even though this does not indicate a major difference, we conducted an alternative analysis that used econometric matching techniques to compare Suspense File bills with a subset of non-Suspense bills that were heard in the same committee and had the same "fiscal tags," and found similar results to the ones presented here.

<sup>11</sup> In order to use Poole and Rosenthal's well-known method of drawing ideological maps of legislatures to estimate jointly ideal points for legislators who voted on both Suspense File and non-Suspense bill, we "anchored" our analysis by incorporating into the estimation procedure our knowledge that the very same legislators cast votes on both sets of bills. For each assemblymember,

we estimated three ideal points for each of them (one based on Suspense Bills, one based on other bills, and one based on all bills). We then compared the ideal points based on the first two sets of votes, and discarded the third, “anchoring” ideal point.

<sup>12</sup> Jeffrey R. Lax and Justin H. Phillips, “Institutions and Representations: Policy Responsiveness in the U.S. States.” This paper was presented at the meetings of the 2009 American Political Science Association and won the 2009 award for the best paper presented at any conference in state politics and policy.

<sup>13</sup> For a description of this initiative and its effects, see John A. Straayer, *The Colorado General Assembly, Second Edition* (Boulder, Colo.: University Press of Colorado, 2000), beginning at p. 142.

<sup>14</sup> This measure, the “On-Time Budget Act of 2010,” can be viewed at <[http://www.endbudget-gridlock.com/Websites/stopthebudgetgames/Images/Downloads/Full\\_Language\\_of\\_Prop.pdf](http://www.endbudget-gridlock.com/Websites/stopthebudgetgames/Images/Downloads/Full_Language_of_Prop.pdf)>.