

**Adopting House Rules in a New Congress:  
From Democratic Deliberation to Partisan Monopoly**

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**Introduction:** For more than a century now, on the opening day of each new Congress the House of Representatives considers a resolution reported by the majority party caucus (usually designated as House Resolution 5), adopting the standing rules for that Congress. The resolution ordinarily states that the rules of the previous Congress are adopted as the rules of the new Congress, together with certain additional amendments recommended by the majority party caucus. The resolution is usually called up by the House majority leader, in the case of Republicans, or, in the case of the Democrats, the likely chairman of the Rules Committee (which does not come into existence until the rules are adopted).

The majority manager of the resolution is recognized for one hour of debate, half of which is yielded to the minority leader (or a designee) as a matter of courtesy and tradition. At the end of the hour, the majority manager moves the previous question to bring the resolution to a final vote. If the previous question is defeated, then the minority is recognized for an additional hour and may offer its own substitute amendment or individual amendments. Since 1981, the minority has also been offering a motion to commit the rules resolution to a select committee (to be appointed by the Speaker) with instructions to report back immediately certain amendments specified in the resolution (a practice resurrected from the early 20<sup>th</sup> Century). However, neither the previous question motion nor the motion to commit receives any additional debate time, and both attempts by the minority to open the resolution to amendment are usually defeated along party lines.<sup>1</sup>

It seems ironic that the House of Representatives spends just one hour of debate on one of the most important decisions for that Congress--the rules that will govern the House and its committees for the next two years, and that the resolution establishing those rules is not subject to floor amendments by Members who must abide by those rules over the ensuing two years. An examination of House history, however, reveals that the adoption of House Rules has not always been such a closed and partisan affair.

**The Early Years:** Under the Constitution, “each house may determine the rules of its proceedings.” By the time the First Congress convened in 1789, most Members were well steeped in parliamentary procedure based on experiences in the Continental Congress, its successor Congress of the Confederation following independence, and colonial legislatures. All drew heavily on precedents from the British Parliament. Thomas Jefferson, in his *Manual of Parliamentary Practice* which he wrote for the Senate as Vice President (and thus the President of the Senate) from 1787 to 1801, draws heavily on British precedents, beginning with its very first lines in section regarding the “Importance of Adhering to Rules:”

Mr. Onslow, the ablest among the Speakers of the House of Commons, used to say, “it was a maxim he had often heard when he was a young man, from old and experienced Members that nothing tended more to throw power into the hands of administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, the rules of proceeding; that these forms are instituted by our ancestors, operated as a check and control on the actions of the

majority, and that they were in so many instances, a shelter and protection to the minority against the attempts of power.”<sup>2</sup>

The House of Representatives in the first Congress was supposed to convene on March 4, 1789, but it wasn't until April 1 that it achieved a quorum to do business. On that day the House elected Frederick Muhlenberg of Pennsylvania as Speaker. On April 2 the House authorized and appointed an eleven-member select committee “to prepare and report such standing rules and orders of proceeding as may be proper to be observed in the House.”<sup>3</sup> Five days later Representative Elias Boudinot of New Jersey, chair of the select committee, reported a set of four rules to the House dealing with the duties of the Speaker; the duties of members relating to bill introduction, speaking and voting; bill preparation by committees and consideration by the House; and the composition and procedures for considering legislation in the Committee of the Whole House. According to the Journal, after the proposed rules were read, the question was put and the rules were “agreed to by the House.”<sup>4</sup>

Six days later the select committee reported an additional eight rules to the House, five of which were adopted after the resolution had been read and debated by paragraph. The rules dealt with Members' service on committees, leaves of absence, the creation of a Committee on Elections, and a requirement that the Clerk take an oath of office. The other three rules, relating to the duties of the Sergeant at Arms, were committed to the Rules committee for further consideration, and then reported back the following day and adopted by the House without further amendment.<sup>5</sup>

The precedent had been set for a select committee on rules to be appointed in each Congress to report any additional changes in the rules from the previous Congress. Its recommendations would then be subject to debate and amendment by the House. Following disposition of the rules amendments, the select committee would go out of business. Beginning in 1797, the House adopted the rules of the previous Congress before even appointing the select rules committee. In the Congresses between 1811 and 1822, no rules changes were made, and in two of those Congresses the House didn't even bother to create a rules committee. In 1822, on the other hand, the rules committee reported 14 amendments to the rules, dealing mostly with parliamentary procedure, and these were adopted with only modest changes made by the House.<sup>6</sup>

Although a standing committee system had evolved by the 1830s, the rules committee remained a select committee well beyond that. It wasn't until 1841 that House rules gave the select committee authority to report at any time, meaning it would continue in existence for the duration of a Congress. As the history of the rules committee indicates, it was sporadically active, reporting major revisions in House rules in 1837, 1860, and 1880. It was even briefly made a permanent committee in two Congresses (1849-53), but did so little that it was demoted to a select committee for another 28 years. It wasn't until the massive revision of House rules in 1880 that the committee was finally made a permanent standing committee. Prior to that, the Speaker had been made a member of the committee in 1859, and its chairman beginning in 1860.

George Galloway, in his *History of the United States House of Representatives*, gives us a good description of how the reports of the select committee on rules were handled by the House in the years following the Civil War. “The customary practice in *post bellum* days,” he writes, “when a new House met, was to proceed under general parliamentary law, often for several days, with unlimited debate, until a satisfactory revision of former rules had been effected.” He goes on to cite examples of such extended debate on the rules for a new Congress. For instance, after the general rules revision of 1880 (which included making the Rules Committee a permanent standing committee of the House), “Two days were consumed at the beginning of the 48th Congress (1883), 4 days at the 49th (1885), 6 days at the 51st (1889), 9 days at the 52d (1891), and 6 days at the opening of the 53rd Congress (1893).” “On three of these occasions,” Galloway concludes, “two months or more elapsed before the amended code was finally adopted, in striking contrast to the celerity with which the old rules have been rushed through in recent times.”<sup>7</sup>

**The Modern Rules Committee is Born:** When Rules Committee became a standing House committee in 1880, it soon took on an additional responsibility to that of recommending changes in the standing House rules. It became the scheduling arm of the majority leadership by reporting special rules which were resolutions that allowed specified bills to be considered immediately, as opposed to having to await their turn on the Calendar. This development also marked the beginning of stronger party governance in the House though it did not immediately affect the open treatment for adopting House Rules at the beginning of each Congress.

The person who recognized the full potential of the Rules Committee under the chairmanship of the Speaker and as an arm of the majority leadership was Congressman Thomas Brackett Reed (R-Maine). First elected to the House in 1876, he became a Member of the powerful new standing Committee on Rules in 1881. Republicans lost control of the House in 1882 but were back in power briefly in 1889-90 and elected Reed as Speaker. By this time, Speaker Reed had developed his own ideas about why House rules existed. To him, “the object of a parliamentary body is action, and not stoppage of action,”<sup>8</sup> the role of the majority party was to pass its legislation, and the function of the rules was “to facilitate the action of the majority.”<sup>9</sup>

During debate in January 1889 on a resolution to dispense with the time-consuming call of the states and territories during the final days of the 50<sup>th</sup> Congress, Reed, the author and manager of the resolution (even though still a minority member of the Rules Committee), offered his views on the purpose of House rules:

The rules of this House are not for the purpose of protecting the rights of the minority, but to promote the orderly conduct of the business of the House. They can have no other object. It is because in their application they have been perverted from the purpose for which rules are intended that we have this great trouble today.<sup>10</sup>

Reed's dismissal of minority rights while still a minority party member is not as courageous as it sounds. He knew Republicans would control the House in the next Congress from the previous November's election results. When Republican assumed majority control of the 51st Congress in December 1889, Reed had already mapped out in his own mind a strategy for ensuring that House rules would conform to ideas as to their purposes. As the newly elected Speaker, Reed allowed the House to proceed under general parliamentary law during the debate over a contested House seat, rather than first provide for the adoption of House rules. During debate on that election contest, Reed made several rulings from the chair as Speaker to eliminate various delaying tactics being employed by minority Democrats protesting the finding that the Republican candidate had won the contested seat.

Reed then went to the Rules Committee as its chairman and asked his colleagues to incorporate his rulings in the new body of rules for the House. The Committee complied along party lines (3 to 2). Although Reed had already demonstrated that he was an iron-fisted partisan, the rules resolution reported from the Rules Committee was nevertheless considered under an open amendment process over several days before finally being adopted on a party line vote (161 to 144) on February 14, 1890. As the published history of the Rules Committee notes, while the Reed rules were not entirely welcome, they were "timely and valuable."

Pressured by a workload of increasing size and sophistication, frustrated by the ability of the minority to obstruct, and driven by the indomitable will of Thomas B. Reed, Congress drastically altered the parliamentary principle of a hundred years in a single decade [1880-1890].<sup>11</sup>

**The Mystery of History:** What the histories of the House and the Rules Committee referred to in this paper do not pinpoint is exactly when the changeover occurred from considering rules changes reported from the Rules Committee at the beginning of a Congress under an open amendment process, to considering rules changes recommended by the majority party caucus on the opening day of a new Congress under an essentially closed amendment process.

*A History of the Committee on Rules* notes that, "The rules of the House were not substantially altered between 1895 and 1910, when the rules were amended directly on the House floor to strip Speaker Cannon of his membership, chairmanship and appointment authority of the Rules Committee and the committee was enlarged from 5 to 10 members, elected by the House."<sup>12</sup>

The book goes on to discuss how the Democrats retook control of the House in the 1910 elections and proceeded to pound the final nail in the coffin of "Czar Speaker" by providing for the election of all committees by the House. The book notes that the resolution that made that and other changes in House rules in 1911 had been "agreed upon in the Caucus." And the footnote to that observation states the following: It was customary at this time for the majority party's candidate for the chairmanship of the Rules Committee to introduce changes in the House rules, agreed upon by the Caucus.<sup>13</sup>

Nowhere in Galloway's history of the House or in the Rules Committee history covering the years between 1895 and 1911 is the origin of this custom identified. To better pin this down, a search was made of the House Journals between the 51st Congress (1889-91) when Republicans began a 16 year reign in the House, and the 61st Congress (1909-1911), when Democrats regained control of the body. Below is a running account of the adoption of House Rules at the beginning of each of those Congresses.

**The 51<sup>st</sup> Congress (1889-1891):** On February 14, 1890, the House adopted a substantial revision in House Rules (the Reed Rules) reported by the Rules Committee. The resolution was considered under an open amendment process over several days of debate.

**The 52<sup>nd</sup> Congress (1891-1893):** The Rules Committee was created on opening day of the new Congress and it subsequently reported a body of rules which were considered under an open amendment process and adopted.

**The 53<sup>rd</sup> Congress (1893-95):** On August 8, 1893, the House adopted a resolution authorizing the Speaker to appoint a Committee on Rules and the temporary adoption of House rules from the preceding Congress which were referred to the Rules Committee to make recommendations for any further rules changes in the new Congress. On August 29, 1892, Representative Catchings (D-Miss.), the second ranking majority member on the Rules Committee (Speaker Crisp was the chairman), reported back a resolution making 14 recommended changes the rules of the previous Congress.

Catchings offered a motion, by unanimous consent, to proceed to consider the rules resolution by paragraph for amendment, with 5 minutes of debate allowed for and against each amendment. He then moved the previous question on his resolution. Representative Thomas Brackett Reed (R-ME), the ranking Republican on the Rules Committee (and its former chairman and House Speaker from 1889-91), made the point of order that it was not in order to move the previous question on the resolution. The Speaker (Crisp) overruled the point of order saying the previous question was in order. Catchings nevertheless withdrew his order of business resolution and the House proceeded to debate the resolution containing the rules changes recommended by the Rules Committee.

On August 30th, Catchings propounded a unanimous consent request to close debate on the rules resolution at 2 p.m. that day and then proceed to consider amendments to the resolution by paragraph under the five-minute rule. There was no objection, and the House proceeded to consider amendments on August 31, and September 1, 2, and 6. It is apparent from the Journal's summary of amendments that the entire body of House Rules was open to amendment, and not just the 14 changes recommended by the Rules Committee. On September 6, Rep. Burrows (R-MI), the second-ranking minority member of the 5-member Rules Committee, offered a final substitute to in effect adopt the Rules of the 51st Congress with one change. The substitute was rejected, 65 to 149, and the House subsequently adopted the rules package as amended by voice vote.

**The 54th Congress (1895-97):** On December 2, 1895, when Republicans retook control of the House, the House adopted H. Res. 5, adopting the rules of the 51st Congress (when Republicans were last in the majority) as the rules of the 54th Congress, “until otherwise ordered.”

On January 10, 1896, Rep. Henderson (R-IA), the second-ranking Republican on the Rules Committee, called-up the first of two reports (Nos. 29, 120) reported by the Rules Committee to amend House Rules. Henderson asked unanimous consent that, after amendment process on the proposed rules changes was completed, the House then proceeded to consider amendments to the rules, beginning with Rule, I. Numerous amendments were considered on January 10th and 11th. On January 23rd, the House took up the second of the Rules Committee reports (No. 120), which proposed three additional amendments. It too was subject to numerous amendments, one of the final of which was an amendment by the minority to substitute the rules of the 53rd Congress (when the Democrats were last in control). It was rejected. Because the various amendments recommended by the Rules Committee were considered and disposed of individually, as with the January 10th report, there was no need for a vote to adopt the total package.

**55th Congress (1897-99):** On March 15, 1897, Rep. Henderson (R-IA), still the second-ranking Republican on the Rules Committee, called-up a resolution adopting the rules of the 54th Congress as the rules of the 55th Congress ‘until further notice.’ The resolution was debated but not opened to amendment. Rep. Henderson moved the previous question, at which point an attempt was made to offer an amendment on grounds that the previous question does not exist when the House is operating under general parliamentary law. The Speaker overruled the point of order saying the previous question does exist under general parliamentary law of the House. The previous question was then adopted, 182-154, and the resolution was subsequently adopted by voice vote. **There is no indication of any subsequent Rules Committee action on reporting a further revision in the rules.**

**56th Congress (1899-1901):** On December 4, 1899, Rep. John Dalzell (R-PA), the second-ranking Republican on the Rules Committee called up a resolution adopting the rules of the 55th Congress as the rules of the 56th Congress.<sup>14</sup> This time the resolution carried no phrases anticipating any further recommendations from the Rules Committee (e.g., “until otherwise ordered” or “until further notice”). The resolution was debated without amendments being entertained, after which Rep. Dalzell moved the previous question. The previous question was adopted by voice vote, after which the resolution was adopted, 178 to 159.

**57th Congress (1901-03):** On December 2, 1901, Rep. Dalzell called up H. Res. 2, adopting the rules of the 56th Congress as the rules of the 57th Congress with four modifications: (1) carrying forward the special orders of 1900 regarding the consideration of pension, claims and private bills; (2) converting a Select Committee on the Census into a standing committee; (3) creating a Select Committee on Industrial Arts and Exhibitions; and (4) continuing a Select Committee on Documents. After debate on the resolution, Rep. Dalzell moved the previous question which was adopted, 180-143. Rep. Richardson

(D-TN) then offered a motion to commit the resolution to the Committee on Rules when it was appointed. The motion was rejected, 143 to 186. A demand was then made to divide the question on the resolution and both parts were adopted by voice vote.

**58th Congress (1903-05):** On November 9, 1903, Rep. Dalzell, still the second ranking Republican on the Rules Committee<sup>15</sup> offered H. Res. 1, adopting the rules of the 57th Congress as the rules of the 58th Congress together with two modifications: (1) carrying forward the special orders of 1900 on the consideration of pension, claims and private bills; and (2) converting the Select Committee on Industrial Arts and Exhibitions into a standing committee. After debate, the previous question was ordered by voice vote and the resolution was adopted, 193 to 167.

**59th Congress (1905-1907):** On December 4, 1905, Rep. Dalzell called up H. Res. 8 adopting the rules of the 58th Congress as the rules of the 59th Congress with one modification, carrying forward the special orders of 1900 for consideration of pension and claims bills. After debate, the previous question was ordered, 228 to 196, and the resolution was subsequently adopted by voice vote.

**60th Congress (1907-1909):** On December 2, 1907, Rep. Dalzell called up H. Res. 28, adopting the rules of the 59th Congress as the rules of the 60th Congress. After debate, the previous question was ordered, 199 to 164, after which the resolution was adopted, 198 to 160.

**61st Congress (1909-1911):** Notwithstanding Galloway's claim that no significant rules changes were adopted between 1895 and 1910, the facts indicate otherwise with respect to the opening day of the 61st Congress. The beginning of this Congress marked the opening round in the revolt against Speaker Cannon by Republican progressive insurgents and the minority Democrats. On opening day of the 61st Congress, March 16, 1909, when the usual resolution adopting rules from the previous Congress was offered, the Republican insurgents joined with the Democratic minority and successfully defeat the previous question. House Minority Leader Champ Clark (D-Mo.) was then recognized to offer his own amendment which would have limited the powers of the Speaker to appoint committees and also would have enlarged the Rules Committee. Clark immediately moved the previous question on his substitute. But Cannon, anticipating this action, had conspired with a conservative Democrat from New York, Rep. John Fitzgerald, who protested being gagged and urged defeat of the previous question on the Clark substitute so that he could offer his own amendments to the rules. Fitzgerald prevailed by defeating the previous question, 180 to 203. He then offered his amendments that provided for a new, unanimous consent calendar, strengthened the Calendar Wednesday rule, and permitted the motion to recommit to be offered by the opponents to a measure (previously the right to recommit was exercised by the bill's manager), and prohibited the Rules Committee from issuing a rule denying this right to the minority. The Fitzgerald substitute was adopted when 23 Democrats joined with him and the regular Republicans.



In 1910, the second session of the 61<sup>st</sup> Congress, Speaker Cannon did not dodge the bullet. This time Rep. Frank Norris (R-Neb.) called up a surprise resolution on the House floor to change House rules by removing the Speaker as a member and chairman of the Rules Committee, stripping him of his power to appoint the committee's members, and providing for House election of a 15-member Rules Committee. The majority coalition of Democrats and progressive Republicans overrode the Speaker's ruling that the move was impermissible since only the Rules Committee could report rules changes, and went on to adopt the change.

**62nd Congress (1911-1913):** Democrats regained control of the House in the 1910 midterm elections, and proceeded to replace "Czar Speaker" with "King Caucus." The energized Democratic Caucus fully assumed the role of reporting significant rules changes on opening day. The precedent had already been set in the 1909 fight for the vote on the previous question to be the central focus for highlighting the minority's rules alternative rules package. On April 4, 1911, Rep. Robert Henry (D-Tex.), chairman of the Rules Committee called up H. Res. 11 adopting rules for the 62<sup>nd</sup> Congress. On April 5, Rep. Henry offered a special rule (H. Res. 30) for consideration of the resolution adopting House rules. It provided for four hours of debate, one-substitute to be offered by the minority, followed by votes on the substitute and the resolution. The previous question on the special rule was adopted, 205-130, and the special rule was then adopted, 200-135. Rep. Mann, the Republican Leader, offered the substitute to the rules resolution, which was rejected by voice vote. The rules resolution was subsequently adopted by voice vote. [Note: the special rule had the advantage of giving extra debate time as well as giving the minority a direct vote on an alternative. The trade-off was that the minority could not also attempt additional amendments by defeating the previous question or offering a motion to commit with instructions—both of which were precluded by the language of the special rule.]

**63<sup>rd</sup> Congress (1913-1915):** On April 7, 1913, the first day of a special first session, Rep. Robert L. Henry (D-Tex.) offered a resolution adopting House rules from the previous Congress as rules of the 63<sup>rd</sup> Congress. He moved the previous question which was adopted by voice vote. Rep. Abraham Lafferty (R-Oregon) then offered a motion to commit the rules resolution to a seven-member select committee with instructions to report back its recommendations on a substitute set of rules contained in his motion. A point of order was made that the motion to commit was not allowed under general parliamentary law, but Speaker Clark overruled the point of order, upholding the minority's right to offer the motion going back to the 1909 rule change. The motion to commit was subsequently rejected by voice vote and the rules resolution was then adopted by voice vote.<sup>16</sup>

**64<sup>th</sup> Congress (1915-1917):** On December 6, 1915, Rep. Robert Henry (D-Tex.), the Rules Committee Chairman, obtained a unanimous consent request that the resolution adopting House rules for that Congress be considered for 60 minutes of general debate equally divided between the majority and minority, that the previous question be considered as ordered to final adoption. Following debate on the resolution, Rep. James Mann (R-Ill.), the minority leader, offered a motion to commit the resolution with

instructions to report back “forthwith” to a select committee of seven members to be charged with reporting further changes in the rules no later than Jan. 17, 1916. The motion was rejected, 193 to 209, and the resolution adopting rules from the previous Congress was adopted by voice vote.

**The Motion to Commit Rules Resolutions:** It seems strange, in retrospect, that the motion to commit with instructions that was used on opening day rules resolutions in both 1913 and 1915 went out of use thereafter. The next reference found in the precedents to a possible motion to recommit an opening day rules package occurs on Dec. 7, 1931. Rep. Carl Mapes (R-Mich.) rose to a parliamentary during debate on the resolution adopting House Rules. He asked whether a motion to recommit was permitted on adopting House rules. Speaker John Nance Garner (D-Tex.) affirmed it was, citing Clark’s ruling from 1913.<sup>17</sup> However, the Journal does not indicate any attempt to utilize the motion to commit. Instead, there was a vote on the previous question which was adopted, 227 to 193. The resolution adopting the rules for that Congress was then adopted, 403 to 7. An examination of the Journals in the next two Congresses also reveal no attempts to commit with instructions. Nor are there any instances of motions to commit rules resolutions in more recent Congresses between 1963 until 1981 when the old precedents from 1915 and 1917 were rediscovered by minority Republicans and put into use ever since.

Part of the reason for this institutional memory lapse may be the confusion sown by the more recent set of House precedents. *Deschler’s Precedents of the House of Representatives* was published in the mid-1970s. In it we find two potentially conflicting interpretations on the issue of whether a motion to commit is permissible on a resolution adopting House rules—one interpretation being general, and the other specific.

First we find a precedent that simply repeats the parliamentary inquiry and Speaker’s response from the 1931 precedent found in *Cannon’s Precedents* referred to above, affirming the minority’s right to offer a motion to recommit with instructions before the rules are adopted. The heading to this restatement reads as follows: “A ruling to admit the motion to recommit after the order of the previous question, before the adoption of rules, was based upon a construction of the standing rules of prior Congresses.” However, in this case, no mention is made in the precedent or the footnote to it that the question was raised during consideration of the resolution to adopt House Rules, even though the person raising the question in 1931 had cited the earlier 1913 precedent in which such a motion was actually offered by the minority to the rules resolution.<sup>18</sup>

However, in the very next session of *Deschler’s Precedents* are two precedents on the specific point of rules resolutions that at least imply that motions to recommit may not be used to amend such resolutions. In the first instance cited in the precedents, on January 3, 1953, the opening day of the 83d Congress, the member controlling the rules resolution indicated he would not yield for the introduction of amendments. Rep. Emanuel Celler (D-N.Y.) then propounded the following parliamentary inquiry of the Speaker: “Do I understand correctly that...if the motion for the previous question is not

voted down, no opportunity will be given to offer an amendment by way of liberalizing the rules?” Speaker Joe Martin (R-Mass.) replied, “The gentleman states the situation accurately.” The heading to that precedent read: “When the Member in control of the resolution adopting the rules refused to yield for the introduction of amendments, they may be offered only if the previous question on the resolution is first voted down.<sup>19</sup>”

The heading on the next precedent in *Deschler's* reads: “Although generally, an amendment may be offered only after the previous question is voted down on the resolution to adopt rules, there are exceptions to this rule.” The exception cited occurred on the opening day of the 79<sup>th</sup> Congress, January 3, 1945, in which a Member offered an amendment that was adopted by unanimous consent, even though the manager of the resolution had not yielded for that purpose.<sup>20</sup> It was either a case of both the manager of the resolution and the Speaker, who is not named in the footnote, being asleep at the switch, or of one or both simply turning a blind eye. Nevertheless, the head note repeats the notion that “generally” the only way an amendment can be offered to a resolution adopting House rules (other than by the manager), is to defeat the previous question. The motion to recommit is not mentioned as another exception.

**Return of the Motion to Commit Rules Resolutions:** As mentioned above, it wasn't until 1981 that minority Republicans began using motions to commit on opening day rules resolutions. As minority staff of the House Rules Committee with responsibility for helping to prepare minority alternative rules proposals and strategies for their consideration. I stumbled across the 1913 and 1915 precedents from *Cannon's Precedents*. Republicans have used the previous question vote plus the motion to commit in every Congress they were in the minority between 1981 and 1993. The dual votes allow the minority to offer their comprehensive package of rules changes if the previous question is defeated, and then focus on a more discrete change or controversy in their motion to commit. Since Democrats became the minority in 1995, they too have used the same strategy on opening day rules packages to highlight their differences with the majority and their alternative reforms.

Today this motion to commit typically reads as follows:

Mrs. Slaughter moves to commit the resolution H. Res. 5 to a select committee composed of the Majority Leader and the Minority Leader with instructions to report the same back to the House forthwith with the following amendments:....<sup>21</sup>

**Conclusions:** Although the House considered its rules at the beginning of each Congress on a free-wheeling an open manner for the first century of its existence, the emergence of party governance in the late 19<sup>th</sup> Century brought gradual changes that shifted the responsibility for proposing rules from the Rules Committee to the majority party caucus. This shift also brought with it a more restrictive process for considering the resolution adopting rules—in essence a closed amendment process.

From the foregoing study we find that the shift occurred around 1895. Prior to that, the newly appointed Rules Committee would meet and often hold hearings and

deliberations before reporting a resolution containing proposed rules changes back to the House, shortly after the beginning of a Congress. Those recommendations would be subject to extensive debate and further amendments on the floor. While the 54<sup>th</sup> Congress also acted on a later report of the Rules Committee, on opening day it adopted the rules of the 51<sup>st</sup> Congress (when Republicans were last in the majority), and not those of the preceding Congress. This was the first instance in which a change in the previous Congress's rules was made before the Rules Committee had even been created—a clear shift to a unilateral, majority party determination of what the rules should be.

The next instance in which changes were made on opening day occurred in 1901, the opening day of the 57<sup>th</sup> Congress, when the resolution called up by the second ranking Republican on the Rules Committee made four changes from the rules of the previous Congress. This is also the first time an attempt was made by the minority to commit the resolution to the Rules Committee when it was appointed (even though it would be another eight years before the right to commit or recommit was officially given to the minority). In 1903, two changes in the rules from the previous Congress were included in the resolution adopting House Rules for the 58<sup>th</sup> Congress.

It was not until the 61st Congress in 1909, however, that a serious effort was made and succeeded in defeating the previous question to provide for the consideration of changes in the rules resolution offered by the majority. Among other things the substitute that was adopted shifted the control over the motion to recommit legislation with instructions (a final amendment to a bill) from the proponents to the opponents of a bill (essentially, from the majority party to the minority party). This important change would come into play four years later, in 1913 and again in 1915, in considering an opening day resolutions adopting House rules.

For whatever reason, that minority option of committing a rules resolution to a select committee with instructions to report back certain amendments immediately was forgotten or discarded over the next 65 years, finally to be rediscovered and used again in 1981. It has been fully utilized in every Congress since by the minority party in the House.

Notwithstanding this doubling of potential options for the minority to participate in making the rules of a new Congress, the fact remains that the political deck is stacked against the minority succeeding because majority party Members are drilled in their party caucus to vote with their party on opening day on electing a Speaker and adopting House rules. Thus Members are confronted in essence with a closed process for adopting House rules on opening day—one hour of debate, and no amendments. This makes a mockery of the constitutional provision that “each *house* may determine the rules of its proceedings.” The reality of the modern partisan Congress is that only majority party Members of the House have any say in determining the rules of House proceedings, and that is done behind the closed doors of the party's caucus. It is a supreme anomaly and irony that in a representative democracy designed to represent all the people, that not all of the people's elected representatives can participate in making the rules that will govern their lawmaking activities.

**Appendix A.**  
**Votes on Adopting House Rules**  
**On the Opening Day of a New Congress,**  
**88th-109th Congresses (1963-2005)**

**88th Congress:** H. Res. 5, Jan. 9, 1963, adopting House Rules making permanent the enlargement of the Rules Committee from 12 to 15: Previous question adopted, 249-183 (7 Democrats opposed); Adoption of resolution, 235-196 (with 48 Democrats opposed). [Note: On Jan. 31, 1961, in the 87th Congress, the House voted to adopt H. Res. 127, enlarging the Rules Committee from 12 to 15 members, 217 to 212, with Republicans voting 22-148, and Democrats voting 195-64.]

**89th Congress:** 1965, Adoption of House Rules on opening day, including restoration of 21-day rule: Previous question adopted, 224-202 (87 Democrats opposed). Resolution adopted by voice vote.

**90th Congress:** Jan. 10, 1967, H. Res. 7, adopting House Rules. Previous question rejected, 196-225 (44 Democrats opposed). Smith motion to delete 21-day rule adopted, 233-185 (76 Democrats voting for).

**91st Congress:** 1969 - Rules adopted, voice vote.

**92nd Congress:** 1971 - Rules included a new 31-day rule. PQ rejected, 134-254 (91 Democrats opposed); Sisk motion on previous question adopted, 213-174; Sisk amendment adopted, 234-153 (91 Democrats for). Rules adopted, 226-156.

**93rd Congress:** 1973 - Rules include expansion of suspension days. Previous question adopted, 208-206, (21 Democrats opposed); resolution adopted by voice vote.

**94th Congress:** 1975 - Previous question adopted, 247-172 (29 Democrats opposed); resolution adopted, 259-150 (14 Democrats opposed).

**95th Congress:** 1977 - Previous question adopted, 261-140 (No Democrats opposed); res. Adopted, 256-142 (2 Democrats opposed).

**96th Congress:** 1979 - Previous question adopted, 241-156 (5 Democrats opposed); Resolution adopted by voice vote.

**97th Congress:** 1981- Previous question adopted, 216-179 (3 Democrats opposed); Rep. Michel motion to commit rejected, 180-220 (1 Democrat for); Resolution adopted by voice vote.

**98th Congress:** 1983 - Previous question adopted, 249-156 (2 Democrats opposed); Rep. Michel motion to commit: rejected, 156-250 (2 Democrats for). Resolution adopted by voice vote.

**99th Congress:** 1985 - Previous question adopted, 238-176 (1 Democrat opposed); Rep. Lott motion to commit rejected, 176-237 (0 D); Resolution adopted, 235-174 (0 D).

**100th Congress:** 1987 - Previous question adopted, 236-168 (1 Democrat opposed); Rep. Lott motion to commit rejected, 175-240 (2 Democrats for); res. adopted 245-172 (no Democrats opposed).

**101st Congress:** 1989 - Previous question adopted, 231-162 (1 Democrat opposed); Rep. Edwards motion to commit rejected, 163-239 (no Democrats for); Resolution adopted by voice vote.

**102nd Congress:** 1991 - Previous question adopted, 250-162 (1 Democrat opposed); Rep. Michel motion to commit rejected, 160-256 (No Democrats for); Resolution adopted, 242-160 (No Democrats against).

**103rd Congress:** 1993 - H. Res. 5, Jan. 54, 1993. Gephardt motion to table Solomon motion to refer to select committee to study constitutionality of delegate voting rule, adopted, 224-176 (10 Democrats opposed); PQ: 249-176 (3 Democrats opposed); Michel motion to commit with instructions to strike delegate voting and add 6- year term limit for committee chairmen and ranking minority members, rejected, 187-238 (14 Democrats for); Adoption of resolution, 221-199 (27 Democrats opposed).

**104<sup>th</sup> Congress:** 1995- The House first adopted a special rule (H. Res. 5), 251-181, providing for consideration of the resolution adopting House rules (H. Res. 6). The previous question on the rule was earlier adopted, 232-199, and a motion by Rep. Bonior to commit the resolution with instructions to add a provision banning gifts from lobbyists. H. Res. 6 was then debated for 30 minutes followed by separate 20 minute debate and votes on nine parts of the resolution: (1), Section 101, regarding committees, subcommittees, and staff reforms, adopted, 416 to 12; (2) section 102, regarding truth-in-budgeting baseline reform, adopted, 421 to 6; (3) section 103, regarding term limits for the Speaker, committee and subcommittee chairmen, adopted 355 to 74; section 103 of the resolution regarding term limits for the Speaker, committee and subcommittee chairmen; (4) section 104, regarding a ban on proxy votes in any committee or subcommittee, adopted 418 to 13; (5) section 105, regarding sunshine rules concerning committee meetings, adopted, 431-0; (6) section 106, regarding limitations on tax increases, adopted, 279 to 152; (7) section 107, regarding a comprehensive House audit, adopted, 430 to 1; (8) section 108, providing that the Majority Leader and Minority Leader, or their designees, be authorized to call up for consideration on January 4, 1995 (or thereafter), the "Congressional Accountability Act of 1995", subject to one hour of debate, equally divided between the Majority Leader and Minority Leader, or their designees, and subject to one motion to recommit by the minority, which could include amendments, adopted , 249 to 178; and (9) title II of the resolution, providing for

House administrative reforms; changes in the committee system; oversight reform; Member assignment limit; multiple bill referral reform; accuracy of committee transcripts; elimination of "rolling quorums"; prohibition on committees sitting during House consideration of amendments; accountability for committee votes; affirmation of minority's rights on motions to recommit; waiver policy for special rules; prohibition on delegate voting in Committee of the Whole; accuracy of the Congressional Record; automatic roll call votes; appropriations reforms; ban on commemoratives; numerical designation of amendments submitted for the Congressional Record; requirement for the Pledge of Allegiance as the third order of business each day; publication of names of those signing discharge petitions; protection [/cgi-bin/query/R?r104:FLD001:D00006](#) of classified materials; structure of the Permanent Select Committee on Intelligence; abolition of legislative service organizations; and miscellaneous provisions and clerical corrections, adopted by voice vote.

**105<sup>th</sup> Congress:** 1997 – H. Res. 5, adopted, 226 to 202. Rep. McDermott motion to commit with instructions to strike an early termination date for the select ethics committee investigation of Rep. Newt Gingrich, rejected, 205 to 203.

**106<sup>th</sup> Congress:** 1999 – H. Res. 5, adopted, 217 to 204. Rep. Moakley motion to commit with instructions regarding equitable party ratios on committees and the New PAY-GO rule, rejected, 201 to 218.

**107<sup>th</sup> Congress:** 2001 – H. Res. 5, adopted, 215 to 206. Rep. Moakley motion to commit with instructions regarding committee ratios and election reform, rejected, 199 to 213.

**108<sup>th</sup> Congress:** 2003 – H. Res. 5, adopted, 221 to 203. Rep. Slaughter motion to commit with instructions on minority party committee ratios and minority party rights to fully participate in legislative process rejected, 200 to 225.

**109<sup>th</sup> Congress:** 2005 – H. Res. 5, adopted, 220 to 195. Rep. Slaughter motion to commit with instructions to delete changes in ethics rules rejected, 196 to 219.

## Endnotes

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<sup>1</sup> There are only three occasions mentioned in House precedents on which the previous question was defeated on an opening day rules package--in 1909 when the previous question was twice defeated over the majority Republican rules resolution and on a substitute offered by Democrats and Insurgent Republican package in the opening round in the revolt against Speaker Cannon; and on two other occasions in 1967 and 1971, regarding the 21-day rule for discharging the Rules Committee of bills not granted a special rule for consideration.

<sup>2</sup> *Jefferson's Manual of Parliamentary Practice*, sec. 1, reprinted in *House Rules and Manual, One Hundred Ninth Congress* (Washington: Government Printing Office, 2005), sec. 283, 125-126. Jefferson's Manual is still considered a part of the Rules of the House. House Rule XXVIII reads in part: "...the rules of parliamentary practice comprised by Jefferson's Manual shall govern the House in all cases to which they are applicable and in which they are not inconsistent with the Rules and orders of the House."

<sup>3</sup> *Journal of the House of Representatives*, First Congress, First Session, Thursday, April 2, 1789, p. 6, accessed at: < [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(hj00127\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(hj00127)))):> on Dec. 2, 2006.

<sup>4</sup> *House Journal*, Tuesday, April 7, 8-11, accessed at < [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(hj00131\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(hj00131)))):> on Dec. 2, 2006.

<sup>5</sup> *House Journal*, Monday, April 13, 1789, 13, accessed at: < [http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field\(DOCID+@lit\(hj00136\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/hlaw:@field(DOCID+@lit(hj00136)))):> on Dec. 2, 2006.

<sup>6</sup> *A History of the House Committee on Rules* (Washington: U.S. Government Printing Office, 1983), Chapter 1, "The Quiet Years, 1789-1880," 33-52.

<sup>7</sup> George Galloway, *History of the United States House of Representatives* (Washington: U.S. Government Printing Office, 1965), 48.

<sup>8</sup> Quoted in *Origins and Development of Congress* (Washington: Congressional Quarterly, Inc., 1982, 2d ed.), 121.

<sup>9</sup> Quoted in Ronald M. Peters, Jr., *The American Speakership* (Baltimore: The Johns Hopkins University Press, 1997, 2d ed.), 65.

<sup>10</sup> *A History of the House Committee on Rules*, 66.

<sup>11</sup> *Id.*, 72-73.

<sup>12</sup> *Id.*, 81.

<sup>13</sup> *Id.*, 99.



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<sup>14</sup> When Speaker Reed retired before the new Congress convened, Rep. David Henderson (R-Iowa) was elected Speaker and thus became chairman of the Rules Committee.

<sup>15</sup> Rep. Joe Cannon (R-Ill.) was the newly elected Speaker following Henderson's retirement, and as Speaker he became chairman of the Rules Committee.

<sup>16</sup> *Cannon's Precedents of the House of Representatives*, Vol.8, Ch. 252, sec. 2755.

<sup>17</sup> *Id.*, sec. 2756.

<sup>18</sup> *Deschler's Precedents of the House of Representatives* (Washington: Government Printing Office, 1977), Vol. 1, Ch. 1, sec. 9.5.

<sup>19</sup> *Id.*, sec. 10.9.

<sup>20</sup> *Id.*, sec. 10.10. The Speaker at the time was Rep. Sam Rayburn (D-Tex.), and he should have been in the chair during this debate unless he had temporarily vacated it. A unanimous consent request cannot be adopted unless the Speaker first recognizes somebody for the purpose and then, after it is propounded, ask whether there is any objection. In the absence of a vocal objection, the Speaker would then say, "Hearing none, it is so ordered." Usually, when rules resolutions are called up, the manager for the majority yields half the one-hour time to a minority member, "for the purposes of debate only," meaning not for the purpose of offering an amendment or of making unanimous consent requests.

<sup>21</sup> Motion to offered by Rep. Louise Slaughter (D-N.Y.) to recommit H. Res. 5, 109<sup>th</sup> Congress, Jan. 4, 2005, H-30.