

# CRS Report for Congress

## The Motion to Recommit in the House of Representatives: Effects, Recent Trends, and Options for Change

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Prepared for Members and  
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# The Motion to Recommit in the House of Representatives: Effects, Recent Trends, and Options for Change

## Summary

In practice, the motion to recommit is typically offered after the previous question has been ordered on a measure, but before the House votes on final passage. Preference in recognition for offering a motion to recommit is given to a member of the minority party who is opposed to the bill. It is not in order for the House Committee on Rules to report a special rule that would preclude the offering a motion to recommit a bill or joint resolution prior to its initial passage, including a motion to recommit which contains amendatory instructions.

Motions to recommit might be organized into three categories: “straight” motions without instructions, motions with “forthwith” instructions, and motions with “non-forthwith” instructions. If adopted, “straight” motions and motions with “non-forthwith” instructions send a measure to committee with no requirement for further consideration by the House. A successful motion to recommit with instructions to report back “forthwith” allows any amendatory language included in the motion to be adopted immediately without the measure leaving the House floor.

A motion to recommit may have various procedural effects, including amending an underlying measure, sending it to one or more committees, providing additional time for its consideration, or potentially disposing of the legislation. The motion to recommit might also have political effects. Because a motion to recommit allows a recorded vote on a policy alternative put forth by the minority party, it may create a politically difficult situation for Members who support both the underlying measure and the instructions in the motion to recommit, in some circumstances forcing them to choose between supporting a particular policy and delaying or possibly “killing” the bill.

Thus far in the 110<sup>th</sup> Congress, there have been three statistical trends pertaining to motions to recommit: an increase in the total number of motions to recommit, a disproportionate increase in motions with “non-forthwith” instructions, and a rise in the adoption of motions to recommit “forthwith.”

These trends have fostered discussion of changes to current House rules governing the use of the motion to recommit. Some have expressed support for changing chamber rules in a way that would limit specific difficulties for the majority posed by the motion to recommit, while still preserving the original intent of the motion to allow the minority to have an opportunity to get a vote on a policy option of their choosing. Others have argued that no change in present rules is warranted or desirable.

This report provides an overview of House rules and precedents governing the motion to recommit, examines the use of the motion in the 110<sup>th</sup> Congress, and discusses arguments both favoring and opposing changing House procedures governing the motion. This report will be updated to reflect any changes in House rules governing the usage of the motion to recommit.

## Contents

House Rules Governing the Motion to Recommit . . . . .	1
Types of Motions to Recommit . . . . .	2
Restrictions on Instructions in Motions to Recommit . . . . .	4
A Brief History of the Motion to Recommit . . . . .	5
Potential Procedural Effects of the Motion to Recommit . . . . .	9
Potential Political Effects of the Motion to Recommit . . . . .	11
Recent Trends Related to the Motion to Recommit . . . . .	14
Recent Trends in Total Number of Motions to Recommit . . . . .	14
Recent Trends in Types of Motions to Recommit . . . . .	15
Recent Trends Related to the Adoption of Motions to Recommit . . . . .	18
Controversy Related to the Motion to Recommit and Options for Change . . . . .	19
Options for Change with No Formal Change in House Rules . . . . .	20
Raise the Measure Under Suspension of the Rules . . . . .	20
Amend the Motion to Recommit . . . . .	21
Options for Change Involving Amending House Rules . . . . .	22
Revert to the Past Form of the Rule . . . . .	22
Restrict the Form of Motions to Recommit . . . . .	22
Amend House Rules to Require Pre-Filing of Motions to Recommit with Instructions . . . . .	23
Potential House Rules Changes Enhancing the Minority's Rights Related to the Motion to Recommit . . . . .	24
Allow Ten Minutes of Debate on a "Straight" Motion to Recommit . . . . .	24
Allow the Minority Leader the Right to Request an Hour of Debate on a Motion to Recommit with Instructions . . . . .	24

## List of Figures

Figure 1. Effects of the Adoption of Each Type of Motion to Recommit . . . . .	4
Figure 2. Evolution of the Motion to Recommit . . . . .	8
Figure 3. Comparison of Opportunities to Offer the Motion to Recommit with Instances in Which the Motion Was Offered . . . . .	15
Figure 4. Composition of the Types of Motions to Recommit Offered 101 <sup>st</sup> -110 <sup>th</sup> Congress (as of November 1, 2008) . . . . .	18
Figure 5. Adoption Rates of Motions to Recommit with "Forthwith" Instructions 101 <sup>st</sup> -110 <sup>th</sup> Congress (As of Nov.November 1, 2008) . . . . .	19

## List of Tables

Table 1. Instances in Which the Motion to Recommit Was Used . . . . .	14
Table 2. Motions to Recommit and Adoption Rates by Type, 101 <sup>st</sup> -110 <sup>th</sup> Congress . . . . .	17

# The Motion to Recommit in the House of Representatives: Effects, Recent Trends and Options for Change

## House Rules Governing the Motion to Recommit<sup>1</sup>

When the House considers legislation, one of the last steps it takes is to consider a motion to recommit. The motion to recommit represents the last chance of the House to affect a measure. In practice, that means either to offer amendatory language or to send the bill back to committee.

In practice, the motion to recommit, as authorized by Rule XIX, is offered after the previous question has been ordered on passage.<sup>2</sup> For these motions, the Speaker affords priority in recognition to those opposed to the measure,<sup>3</sup> giving preference among those opposed to a minority party Member<sup>4</sup> which has resulted in the motion being dubbed, “the minority’s motion.” Among minority opponents, priority to offer the motion is given first to the Minority Leader or his designee, and then to members from the reporting committee in order of their committee seniority.<sup>5</sup>

Only one proper motion to recommit is in order. If a motion to recommit is ruled out of order, a second, proper, motion to recommit may be offered.<sup>6</sup> Although uncommon in practice, a motion to recommit may be amended, but only if the

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<sup>1</sup> CRS Intern, Benjamin Tycz, assisted in gathering statistical data for this report.

<sup>2</sup> The motion to recommit may also be in order pending the motion for the previous question although in practice it is typically offered only after the previous question has been ordered. The information in this report involves those motions to recommit in order after the previous question has been ordered on the measure. The rules and practices described do not necessarily apply to motions to recommit conference reports. For more information regarding the recomittal of conference reports, see CRS Report RL33860, *The Motion to Recommit in the House: The Minority’s Motion*, by Betsy Palmer, or William Holmes Brown and Charles W. Johnson, *House Practice, A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2003), p. 358 (Referred to hereafter as *House Practice*).

<sup>3</sup> Rule XIX, clause 2(a).

<sup>4</sup> A Member, Delegate or the Resident Commissioner.

<sup>5</sup> *House Practice*, p. 809.

<sup>6</sup> *Ibid.*, p. 810.

previous question has not yet been ordered on the motion. A motion to recommit offered after the previous question has been ordered on the bill may not be tabled.<sup>7</sup>

House rules specifically prohibit the House Committee on Rules from reporting a special rule which prevents the motion to recommit from being offered on initial final passage of a bill or joint resolution,<sup>8</sup> and guarantees that the motion may include instructions which include an amendment otherwise in order, if offered by the Minority Leader or his designee.<sup>9</sup> This guarantee does not apply to consideration of a Senate bill for which the text of a House-passed measure has been substituted because the motion would have already been protected during consideration of the House-passed measure.

## Types of Motions to Recommit

Motions to recommit might be characterized as being one of three types, two of which include instructions. The first type, referred to as a “simple” or “straight” motion to recommit, includes no instructions and is non-debatable. If adopted by the House, it returns the underlying measure to committee. When a “straight” motion to recommit is offered, the clerk will report it in the following form:

Mr. Obey of Wisconsin moves to recommit the bill, H.R. 3010 to the Committee on Appropriations.<sup>10</sup>

The other two types of motions to recommit both include some type of instruction, and are debatable for 10 minutes.<sup>11</sup> The majority floor manager of a bill or joint resolution may ask that debate time be extended to one hour. In either case, debate time is equally divided between the Member making the motion and a Member opposing it. The two types of motions to recommit with instructions may be distinguished by the inclusion or absence of the term “forthwith.”

A motion to recommit with instructions that a committee report back “forthwith” always contains language seeking to amend the underlying measure. If the House adopts such a motion, the measure remains on the House floor and the committee chair (or designee) immediately rises and reports the bill back to the House with any amendment(s) contained in the instructions of the recommittal motion. The House votes on agreeing to the amendment(s) before moving to final passage of the bill as it may have been amended. The inclusion of the term

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<sup>7</sup> U.S. Congress, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, H.Doc. 109-157, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2007), §1002a (Hereafter cited as *House Manual*).

<sup>8</sup> In instances when the previous question is operating.

<sup>9</sup> Rule XIII, clause 6(c)(2).

<sup>10</sup> *Congressional Record* (daily edition), vol. 151, June 24, 2005, p.H5163.

<sup>11</sup> Because House Rule XIX, clause 2(b) specifically provides for debate only when the motion is offered to a bill or joint resolution, there is none on a simple or concurrent resolution.

“forthwith,” meaning “at once,” allows the motion to amend the bill without it ever leaving the floor. When this type of motion to recommit is offered, the clerk will report it in the following form:

Mr. Hunter moves to recommit the bill, H.R. 3159, to the Committee on Armed Services with instructions to report the same back to the House forthwith, with the following amendments. In subsections (a)(1) and (b)(1) of section 2, strike “No unit” each place it appears and insert the following: “Subject to section 3, no unit”...<sup>12</sup>

If the House adopts a motion to recommit with instructions that do not include the term “forthwith” (hereinafter referred to as motions with “non-forthwith”<sup>13</sup> instructions), the measure would return to the specified committee whose eventual report, if any, would not be immediately or automatically before the House. Motions to recommit that direct a committee to report back to the House “promptly” are included in this category (it should be noted that the inclusion of the term “promptly” conveys no special parliamentary significance, only the motion’s lack of “forthwith”). “Non-forthwith” instructions in a motion to recommit may include amendatory language, or may instruct specified committee(s) to take some action, such as conducting further research or holding hearings. “Non-forthwith” instructions in a motion to recommit are considered advisory and do not compel a committee to take any action. When this type of motion to recommit is offered, the clerk will report it in the following form:

Mr. Cannon moves to recommit the bill, H.R. 2016, to the Committee on Natural Resources with instructions to report back to the House promptly with the following amendment. At the end of section 4 of the bill, add the following: In addition, nothing in this Act shall affect the right to bear arms under the Second Amendment within the National Landscape Conservation System.<sup>14</sup>

Both “straight” motions to recommit and motions to recommit with “non-forthwith” instructions, if adopted, send a measure back to committee in its original, unamended, form, to allow the committee to start over unencumbered by any amendments adopted earlier in House consideration, unless otherwise stipulated in the motion’s language, as in the example below:

Mr. Hoekstra moves to recommit the bill, H.R. 5959, to the Permanent Select Committee on Intelligence with instructions to report the same back to the House promptly *in the form to which perfected at the time of this motion* [italics added] with the following amendment....<sup>15</sup>

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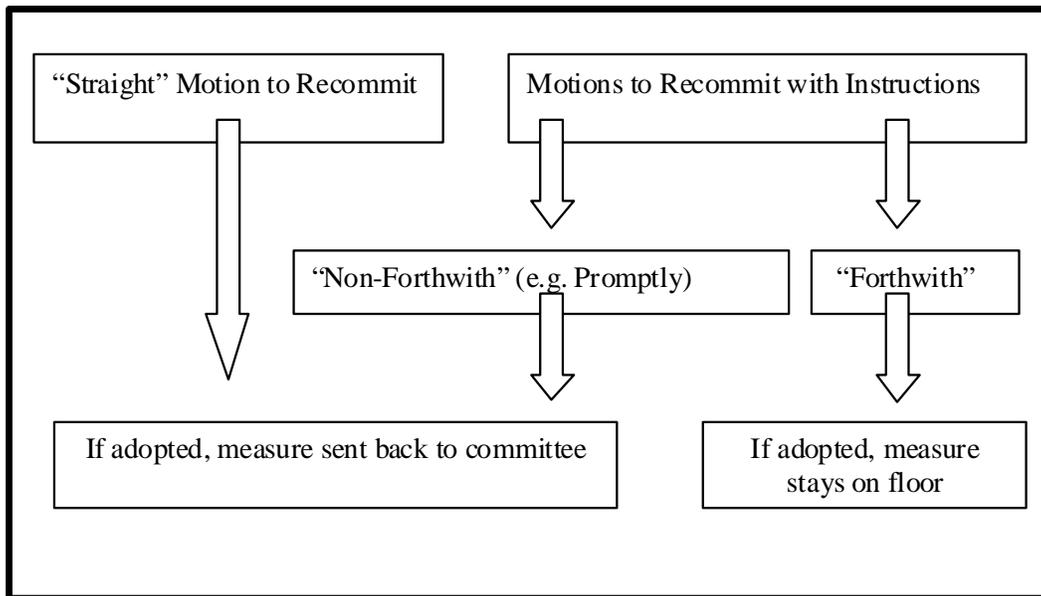
<sup>12</sup> *Congressional Record* (daily edition), vol. 153, August 2, 2007, p. H9576.

<sup>13</sup> “Non-forthwith” is a term that has been used by the presiding officer to describe motions to recommit not including the term “forthwith.” For example, “Unlike the case of a motion to recommit with instructions to report back forthwith, a motion to recommit with “non-forthwith” instructions would not occasion an immediate report on the floor.” *Congressional Record* (daily edition), vol. 153, October 10, 2007, p. H11444.

<sup>14</sup> *Congressional Record* (daily edition), vol. 154, April 9, 2008, p. H2117.

<sup>15</sup> *Congressional Record* (daily edition), vol. 154, July 16, 2008, p. H6626.

**Figure 1. Effects of the Adoption of Each Type of Motion to Recommit**



## Restrictions on Instructions in Motions to Recommit

Instructions in a motion to recommit generally may not propose to do that which may not be done by amendment under the rules of the House.<sup>16</sup> For example, instructions that do any of the following would be out of order:

- Propose an amendment that is not germane to the measure;
- Amend or eliminate an amendment already adopted by the House, unless permitted by a special rule;
- Propose an amendment in violation of Rule XXI clause 2, 4, or 5 if the motion is offered “forthwith”;<sup>17</sup>
- Propose an amendment in violation of Rule XXI, clause 10, “the PAYGO rule,”<sup>18</sup> if the motion is a offered “forthwith,” and
- Authorize a committee to report at any time or direct a committee to report by a date certain.<sup>19</sup>

<sup>16</sup> *House Manual*, §1002b.

<sup>17</sup> Generally these rules prohibit consideration of unauthorized appropriations, legislation on an appropriations bill, appropriations on bills not reported by the Committee on Appropriations, and taxes or tariffs in bills not reported from the Committee on Ways and Means.

<sup>18</sup> The House PAYGO rule requires that legislation affecting direct spending or revenues must not increase the deficit.

<sup>19</sup> *House Manual*, §1002b.

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Members may sometimes prefer to offer a motion to recommit with “non-forthwith” instructions instead of a motion with “forthwith” instructions because of differing restrictions on each type of motion. For example, the restriction on language that would violate Rule XXI, clause 10, the “PAYGO” rule, applies to a motion with “forthwith” instructions (since if successful, the amendment to the bill would be reported immediately), but not to a motion with “non-forthwith” instructions (whereby a measure is sent to committee for further consideration and would be subject to “PAYGO” requirements only if re-reported). A Member, therefore, with a motion to recommit with amendatory instructions that violate that rule might choose to offer the motion with “non-forthwith” instructions to avoid an immediate point of order. An example of a Member providing such an explanation for offering a motion to recommit with “non-forthwith” instructions to avoid a specific point of order is presented below:

As the majority knows, the housing fund in this bill, section 139 on page 127, is a violation of Rule XXI, clause 4, because it is appropriating on an authorizing bill. The Democrat rule waives this rule for the underlying bill, but does not provide a waiver for the motion to recommit or any amendments. Therefore, the minority was given no other option than to offer a motion to recommit promptly [with non-forthwith instructions] and comply with House rules.<sup>20</sup>

## A Brief History of the Motion to Recommit

The motion to recommit has its antecedents in the British Parliament and has existed since the First Congress. Prior to 1909, however, it operated differently than it does today, and priority in recognition for the offering of the motion to recommit was not reserved for a member opposed to the measure. Instead, as former Speaker of the House Joseph G. Cannon remarked:

The object of this provision [for a motion to recommit] was, as the Chair has always understood, that the motion should be made by one friendly to the bill ...<sup>21</sup>

Often, the majority floor manager of a bill would make a “straight” motion to recommit with the expectation that it would be defeated. Since only one proper motion to recommit is in order, this would preclude anyone else from trying to use the motion in order to defeat or amend the measure.

For most of the history of the House, the purpose of the motion to recommit more closely resembled the current usage of the motion to reconsider. Recommittal provided Members with a final opportunity to correct errors within the measure, and in 1891, the Speaker ruled that a bill could be recommitted “forthwith,” meaning the

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<sup>20</sup> Statement of Rep. Cantor in reference to H.R. 1427. *Congressional Record* (daily edition), vol. 153, May 22, 2007, p. H5570.

<sup>21</sup> Clarence Cannon, *Cannon's Precedents of the House of Representatives of the United States* (Washington: GPO, 1936), vol VIII, § 2762 (hereinafter referred to as *Cannon's Precedents*).

committee chair would report the amendments in the motion at once, without the bill having to be sent back to committee formally.<sup>22</sup>

The use of the motion to recommit changed substantially in 1909 as a result of changes made in House procedures championed largely by a coalition of Democrats and Progressive Republicans who opposed the autocratic rule of Speaker Cannon. During debate on the adoption of the rules package for the 61<sup>st</sup> Congress (1909-1910), the previous question was defeated, allowing Representative John Fitzgerald to propose a set of rules changes, one of which guaranteed priority in recognition to offer the motion to recommit to a Member opposed to the bill. This rules change was offered with the stated purpose of giving “the minority the right ... to have a vote upon its position upon great public questions.”<sup>23</sup> Further, the Fitzgerald amendment prohibited the Rules Committee from reporting any special rule that would prevent the offering of a motion to recommit. This amended rules package passed 211 to 173.

It was not until 1932, however, that precedent definitively established giving priority in recognition to offer the motion to a *minority party* Member opposed to the bill.<sup>24</sup> This solidified the motion as a “minority right.”

At the beginning of the 92<sup>nd</sup> Congress, the language now contained in House Rule XIX, clause 2(b), was added to the standing rules, allowing ten minutes of debate on a motion to recommit with instructions, equally divided between a proponent and an opponent.<sup>25</sup>

Also in the 92<sup>nd</sup> Congress, a new rule made recorded votes in the Committee of the Whole in order for the first time,<sup>26</sup> causing some to question whether the motion to recommit had become redundant or unnecessary. An earlier ruling by the Speaker pro tempore noted that in the Committee of the Whole, “... there is no roll-call vote, so that the only opportunity that a minority may have to go on record is by means of a motion to recommit in the House.”<sup>27</sup> Since the rules now allowed for recorded votes in the Committee of the Whole, some argued that the motion’s main purpose could be achieved in other ways, making the motion to recommit “much less necessary.”<sup>28</sup> The right of the minority to offer a motion to recommit, however, remained intact, even in light of the expanded rules on voting.

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<sup>22</sup> Asher C. Hinds, *Hinds’ Precedents of the House of Representatives of the United States* (Washington: GPO, 1907), vol V, §5545-47.

<sup>23</sup> Remarks of Rep. John Fitzgerald, *Congressional Record*, vol. 55, March 15, 1909, p. 23.

<sup>24</sup> *Cannon’s Precedents*, vol. VIII, § 2697.

<sup>25</sup> *House Manual*, §1002a.

<sup>26</sup> H.Res. 1123 (92<sup>nd</sup> Congress), agreed to in the House on October 13, 1972.

<sup>27</sup> The ruling was made on May 19, 1932. *Cannon’s Precedents*, vol VIII, § 2698.

<sup>28</sup> Statement of Stanley Bach, U.S. Congress, Committee on Rules of the House, *Roundtable Discussion on the Motion to Recommit*, committee print, 102<sup>nd</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), p. 12 (hereinafter cited as *Roundtable Discussion on the Motion to Recommit*).

Following the successful adoption of a motion to recommit in 1984 that included the Crime Bill as amendatory instructions, the House decided that ten minutes of debate might not always be sufficient since these motions had the potential of adding substantial portions of legislation to an underlying measure.<sup>29</sup> At the start of the 99<sup>th</sup> Congress, the current language in clause 2(c) of the rule was added, allowing the majority floor manager to demand that debate time on the motion be extended to one hour, equally divided and controlled by the proponent and an opponent. To date, the one hour extension has been demanded only once.<sup>30</sup>

During the 1980s and 1990s the Rules Committee issued what the minority perceived to be an increased number of special rules restricting both the amending process as well as the motion to recommit.<sup>31</sup> In 1995, the House added language now in Rule XII, clause 6(c) prohibiting the Rules Committee from reporting a special rule that would prevent the offering of a motion to recommit with instructions, thereby preventing the Rules Committee from restricting the scope or content of the motion to recommit.

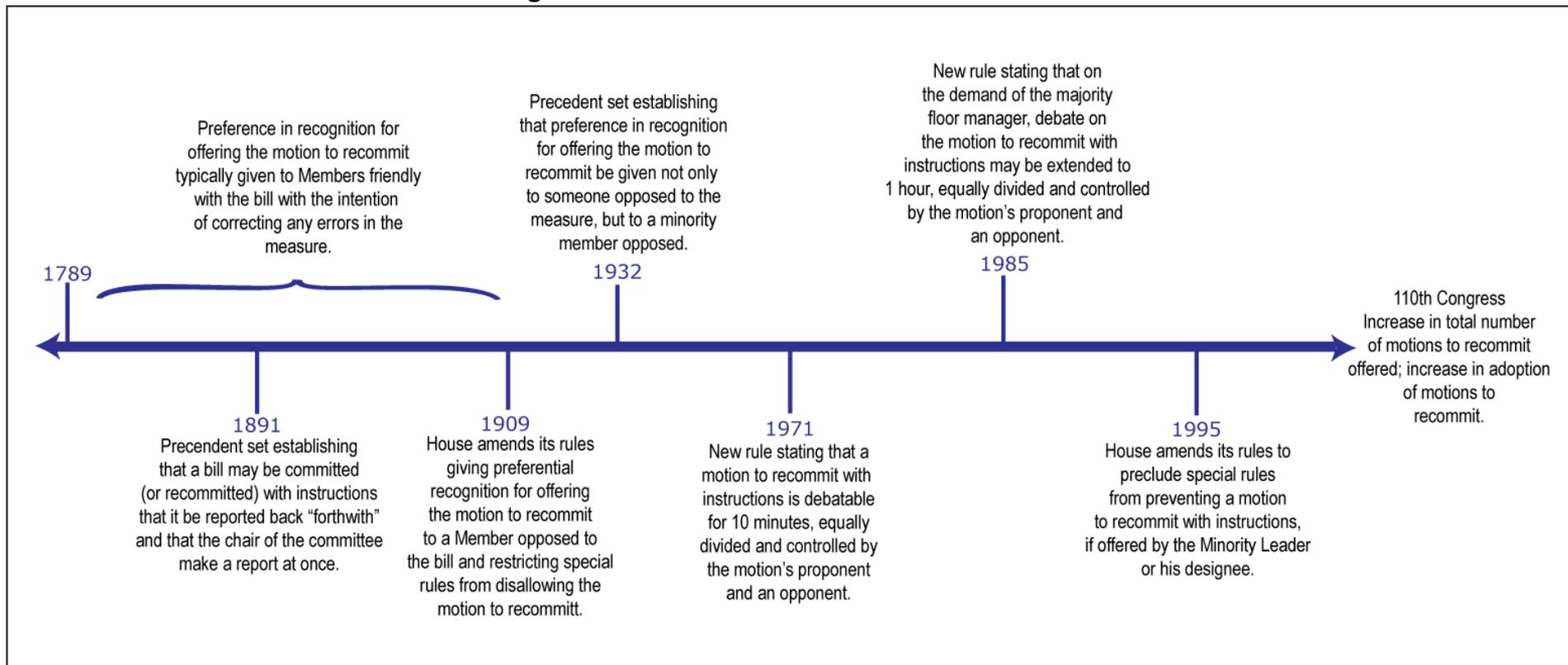
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<sup>29</sup> On September 25, 1984, the text of H.R. 5963: Comprehensive Crime Control Act of 1984 was successfully added as an amendment in a motion to recommit forthwith to H.J.Res. 648, a joint resolution making continuing appropriations for FY1985, and for other purposes. *Congressional Record* (daily edition), vol. 140, September 25, 1984, p. H10078-H10130.

<sup>30</sup> In reference to H.R. 4848. *Congressional Record* (daily edition), vol. 134, July 13, 1988, p. H18054.

<sup>31</sup> As argued by Donald Wolfensberger in “*The Motion to Recommit in the House: The Rape of a Minority Right.*” *Roundtable Discussion on the Motion to Recommit*, pp. 93-159.

**Figure 2. Evolution of the Motion to Recommit**



## Potential Procedural Effects of the Motion to Recommit

A motion to recommit may have several procedural effects. First, it allows the minority to offer and obtain a vote on policy language of their design, an opportunity which might otherwise be unavailable if the measure is being considered under the terms of a special rule that restricts or prevents the offering of amendments.

Further, a motion to recommit grants the minority the *last* opportunity to amend legislation before final passage. The motion to recommit even allows the offering of an amendment previously rejected by the House during consideration in Committee of the Whole.<sup>32</sup>

House approval of a “straight” motion to recommit or a motion to recommit with “non-forthwith” instructions could have the effect of sending the bill back to the committee from which it was reported for further work on the measure. If the underlying legislation was not first reported by the committee of jurisdiction before coming to the floor, either because it was never referred to committee or because the committee was discharged from further consideration of the bill, the minority might try to use the motion as a way to put the legislation before the committee for their consideration.<sup>33</sup>

A motion to recommit can also send a measure to a committee to which the bill had not been originally referred.<sup>34</sup> This kind of action could be tied to the creation of an ad hoc committee, such as in the following example:

Mr. Ryan of Wisconsin moves to commit the resolution (H.Res. 6) to a select committee composed of the Majority Leader and the Minority Leader with instructions to report back the same to the House forthwith with only the following amendment:....<sup>35</sup>

An ad hoc committee like this has no permanence and is not required to meet. Such motions to commit are frequently used in conjunction with the House rules package on the opening day of Congress, before standing committees have been established.

Additionally, the motion to recommit might seek to send the bill to a committee to which it wasn’t referred due to jurisdictional issues. For example, in 1975, a “straight” motion to recommit attempted to send a bill which had been reported by the Committee on Ways and Means, not only to that committee, but also to the Committee on Interstate and Foreign Commerce as well. This motion to recommit

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<sup>32</sup> *Deschler’s Precedents of the United States House of Representatives*, H. Doc. 94-661, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1977), vol. 9, §35.27, p. 827.

<sup>33</sup> This would technically be a motion to commit if the measure has not previously been referred to a committee, but it would be treated the same as a motion to recommit under House rules and precedents.

<sup>34</sup> *House Practice*, Ch. 45, §3, p. 805.

<sup>35</sup> *Congressional Record* (daily edition), vol. 153, January 5, 2007, p. H83.

appeared to suggest that the goal of the underlying legislation might be achieved in additional ways under the jurisdiction of this second panel.<sup>36</sup>

A successful motion to recommit with “non-forthwith” instructions may have the effect of providing more time for both formal and informal debate and consideration of the subject of the underlying legislation, or the motion to recommit. Debate time for the underlying measure is often limited by the terms of a special rule, and the minority is provided only five minutes on a motion to recommit. A motion to recommit with “non-forthwith” instructions, therefore, may have the effect of delaying a vote on the measure’s final passage until further consideration has occurred. In the 108<sup>th</sup> Congress (2003-2004), Representative Mike Thompson stated:

Unfortunately, for America’s seniors, our [motion to recommit] will only get 5 minutes of discussion tonight, 5 minutes to protect Medicare from privatization, 5 minutes to ensure rural seniors have a benefit if the PPOs do not come to their areas. And for all of the Members tonight who have said they are supporting the Republican bill in order to move the debate, the best way to do that is to support this recommit so we can promptly get a measure back here in the morning to vote on.<sup>37</sup>

Both “straight” motions to recommit without instructions, and motions to recommit with “non-forthwith” instructions could also create a situation that would effectively dispose of the underlying measure, since once the measure is recommitted, a committee is not obligated to take further action. As a Speaker pro tempore stated, “at some subsequent time, the committee could meet and report the bill back to the House.”<sup>38</sup> It could be argued, however, that it would be unlikely for a committee to report back a measure which the House has voted to remove from the floor.

A committee’s decision whether to act on a recommitted measure might be influenced by House and committee rules. For instance, a Speaker pro tempore observed in response to a parliamentary inquiry, “The Chair cannot say what in the rules of a committee might constrain the timing of any action it might take. Neither can the Chair render an advisory opinion whether points of order available under the rules of the House might preclude further proceedings on the floor.”<sup>39</sup>

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<sup>36</sup> Motion to recommit offered in reference to H.R. 6860. *Congressional Record*, vol. 121, June 19, 1975, p. 19786-88.

<sup>37</sup> Motion to recommit offered in reference to H.R. 1. *Congressional Record* (daily edition), vol. 149, June 26, 2005, p. H6254.

<sup>38</sup> Motion to recommit offered in reference to H.R. 5819. *Congressional Record* (daily edition), vol 154, April 23, 2008. p. H2627.

<sup>39</sup> Motion to recommit offered in reference to H.R. 3773. *Congressional Record* (daily edition), vol. 153, November 15, 2007, p. H14061.

## Potential Political Effects of the Motion to Recommit

As previously stated, the motion to recommit underwent fundamental changes in 1909 with the stated purpose of giving “the minority the right ... to have a vote upon its position upon great public questions.”<sup>40</sup> This seems to imply that the motion was intended to have not only procedural effects, but also political ones, allowing Members to go on record as supporting or opposing a specific policy, an opportunity that may be important for demonstrating their policy preference to constituents, that might not otherwise occur in the absence of the motion.

Besides providing a policy vote, the motion to recommit can have additional political effects. A motion to recommit may combine several proposed amendments, providing the opportunity to package together a set of views as a way to create a comprehensive public record to emphasize the minority party’s differences from the platform of the majority.

Further, a motion to recommit with “non-forthwith” instructions may have the effect of creating a difficult political choice for Members who support both the underlying measure and the amendment contained in the motion to recommit. If such proponents of the measure vote for the motion to recommit with “non-forthwith” instructions, they are voting to send the measure back to committee, delaying or potentially “killing” the bill and perhaps breaking with their party. However, if such Members vote against the motion to recommit with “non-forthwith” instructions in order to move the underlying bill to passage, they may be on public record as having voted against a policy that they (and perhaps their constituents) strongly support. This may result in the Member’s vote being “used by an opponent in a political commercial.”<sup>41</sup> Some have argued that motions to recommit with “non-forthwith” instructions are designed to trap majority party members reluctant to vote against the motion’s amendment, forcing them into a “lose-lose” situation.<sup>42</sup> During the 110<sup>th</sup> Congress, for example, there were two instances in which a motion to recommit with “non-forthwith” instructions was offered, and proceedings were then postponed (pursuant to a special rule).<sup>43</sup> Some have further argued that the use of motions to recommit with “non-forthwith” instructions including specific policy amendments should not be allowed since the motion could usually be offered “forthwith,” which if successful would immediately incorporate the motion’s amendments.

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<sup>40</sup> Remarks of Rep. John Fitzgerald, *Congressional Record* (daily edition), vol. 55, March 15, 1909, p. 23.

<sup>41</sup> “Let ‘Em Move,” *Roll Call*, November 14, 2007, p.4.

<sup>42</sup> “The Republicans continue to use the motion to recommit for political purposes, not substantive purposes. Substantive purposes would be trying to change policy. For the most part, what they do with their motions to recommit are not change policy, but try to construct difficult political votes for Members. We understand that. To some degree, we did that as well.” Remarks made by Majority Leader, Rep. Steny H. Hoyer in Jennifer Yachnin, “Democrats Again Look to Change GOP Motions; After Defeats, Leaders Studying Ways to Neuter Republicans’ Motions to Recommit,” *Roll Call*, October 31, 2007, p. 3.

<sup>43</sup> Proceedings on H.R. 1433 on March 22, 2007, and H.R. 5876 on June 24, 2008.

On a number of occasions, members of the majority have voiced opposition to motions including amendatory language that merely repeats or reiterates current law or a provision of the underlying legislation. Such instructions, some have argued, have no legislative value, and are included solely to put the majority in a losing political situation, one that might be misleading to constituents. For example in one instance a majority member stated:

Mr. Speaker ... The fact is that under the bill [H.R. 3043] money in the Safe and Drug Free Schools account can already be used for exactly the same purpose.<sup>44</sup>

In other examples, a member of the majority argued:

Mr. Speaker ... The issue of this motion to recommit [H.R. 100] is redundant, not necessary, and I would urge its defeat and urge passage of the legislation.<sup>45</sup>

Mr. Speaker ... the Altmire amendment ... dealt with this issue and dealt with it effectively by reaffirming the right of gun owners and hunters in those public lands ... This to me is clearly a bait and switch. It's a gotcha move. These issues have been dealt with in the legislation [H.R. 2016].<sup>46</sup>

As described above, using a “straight” motion to recommit without instructions or a motion to recommit with “non-forthwith” instructions can also have the effect of delaying or even “killing” a measure since a committee to which the measure is recommitted would never be required to act. Some Members in the majority have expressed concern that such motions are therefore designed, not to amend or improve the underlying legislation before passage, as might be done in a motion with “forthwith” instructions, but to defeat the underlying legislation. In the 107<sup>th</sup> Congress, for example, Representative William M. Thomas stated:

... because that little word [forthwith] is missing and it requires it to be reported promptly, the effect of this motion to recommit is to kill this bill.<sup>47</sup>

In the 108<sup>th</sup> Congress, Representative John A. Boehner stated that the motion to recommit with “non-forthwith” instructions:

... refers it back to the committee and we are promptly to deal with it. For those of you who are not that familiar with the nuance, that means the bill is dead forever.<sup>48</sup>

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<sup>44</sup> Remarks of Rep. Obey in reference to the motion to recommit offered to H.R. 3043. *Congressional Record* (daily edition), vol. 153, July 19, 2007, p. H8171.

<sup>45</sup> Remarks of Rep. Grijalva in reference to the motion to recommit offered to H.R. 100. *Congressional Record* (daily edition), vol. 153, May 23, 2007, p. H5667.

<sup>46</sup> Remarks of Rep. Grijalva in reference to the motion to recommit offered to H.R. 2016. *Congressional Record* (daily edition), vol. 154, April 9, 2008, p. H2117.

<sup>47</sup> Motion to recommit offered in reference to H.R. 4954. *Congressional Record* (daily edition), vol. 146, June 27, 2002, p. H4319.

<sup>48</sup> Motion to recommit offer in reference to H.R. 1261. *Congressional Record* (daily edition), (continued...)

In the 110<sup>th</sup> Congress, Representative David R. Obey stated,

... the membership should also understand that this recommit kills the bill. It is dressed up in language on fees, but in fact it calls for the bill to be referred to the committee and reported back, not forthwith. And, as Members know, that is a device that kills the bill.<sup>49</sup>

Other Members have voiced frustration when the issue addressed in the motion's amendatory instructions could have been offered during committee hearings or during consideration in the Committee of the Whole, but was not.

... No amendment like this was offered in our committee. This was never brought up in our deliberations. In fact, the gentleman was very clear in his arguments for the motion to recommit. He is against the bill. He was against the bill in committee, and he is against the bill now.... Now, I think we ought to understand that if this were a serious amendment, it would have been a "forthwith" motion. But it is not. It is a "promptly" motion to kill the bill.<sup>50</sup>

The minority has sometimes acknowledged that their purpose in offering a motion to recommit is to achieve a political goal, such as slowing or defeating legislation. In 2007, Representative David Dreier inserted into the *Congressional Record* an article that stated in part:

... one important role of an opposition party ... is to oppose ... Opposition may include not only trying to defeat a bill, but also ... slow[ing] it down, including sending it back to a committee for more work.... Yes, a straight motion to recommit without instructions would accomplish this same purpose. But who is to say that the minority should not be able to score its own political points by sending a bill back to committee with a message attached?<sup>51</sup>

Motions to recommit may also have the effect of providing an outlet for the minority to express its discontent with restrictions related to the openness or fairness of the legislative process. For example, a minority dissatisfied with the number of measures brought up under suspension of the rules, or the number of amendments its members have been allowed to offer in the Committee of the Whole, may make use of their right to offer a motion to recommit with instructions as a means for expressing their opposition to the policies of the majority party.

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<sup>48</sup> (...continued)  
vol. 149, May 8, 2003, p. H3818.

<sup>49</sup> Motion to recommit offered in reference to H.R. 3043. *Congressional Record* (daily edition), vol. 153, July 19, 2007, p. H8171.

<sup>50</sup> Remarks of Rep. Waxman in reference to the motion to recommit offered to H.R. 5781. *Congressional Record* (daily edition), vol. 154, June 9, 2008, p. H5609.

<sup>51</sup> Donald Wolfensberger, "Minority's Motion to Recommit Should Not Be Curtailed" *Roll Call*, November 12, 2007, reprinted in *Congressional Record* (daily edition), vol. 153, November 14, 2007, p. H13869.

## Recent Trends Related to the Motion to Recommit

In the 110<sup>th</sup> Congress (2007-2008) there were several significant statistical trends pertaining to motions to recommit. Specifically, there was an increase in usage of motions to recommit, a disproportionate increase in the offering of motions to recommit with “non-forthwith” instructions, and an increase in the adoption of motions to recommit “forthwith.”

### Recent Trends in Total Number of Motions to Recommit

As shown in **Table 1**, over the past twenty years, the total number of motions to recommit offered each Congress has remained relatively steady overall with two exceptions. From the 101<sup>st</sup> Congress (1989-1990) to the 102<sup>nd</sup> Congress (1991-1992), the total number of motions to recommit almost doubled, going from a total of 28 to 52. A similar phenomena has occurred in the 110<sup>th</sup> Congress with the total number of motions to recommit offered being 120, more than twice as many as the 54 offered in the 109<sup>th</sup>, and more than four times the total number offered in the 101<sup>st</sup> Congress.<sup>52</sup>

**Table 1. Instances in Which the Motion to Recommit Was Used**

Congress (Majority Party Control)	Total Number of Instances in Which Offering a Motion to Recommit Was in Order	Total Number of Motions to Recommit Offered	Percentage of Occasions on Which the Motion to Recommit Has Been Used
101 <sup>st</sup> 1989-1990 (D)	89	28	31%
102 <sup>nd</sup> 1991-1992 (D)	109	52	48%
103 <sup>rd</sup> 1993-1994 (D)	99	58	59%
104 <sup>th</sup> 1995-1996 (R)	141	65	46%
105 <sup>th</sup> 1997-1998 (R)	148	41	28%
106 <sup>th</sup> 1999-2000 (R)	178	48	27%
107 <sup>th</sup> 2001-2002 (R)	103	49	48%
108 <sup>th</sup> 2003-2004 (R)	114	57	50%
109 <sup>th</sup> 2005-2006 (R)	119	54	45%
110 <sup>th</sup> 2007-2008 (D)	154	120	78%
<b>Totals</b>	1254	572	46%

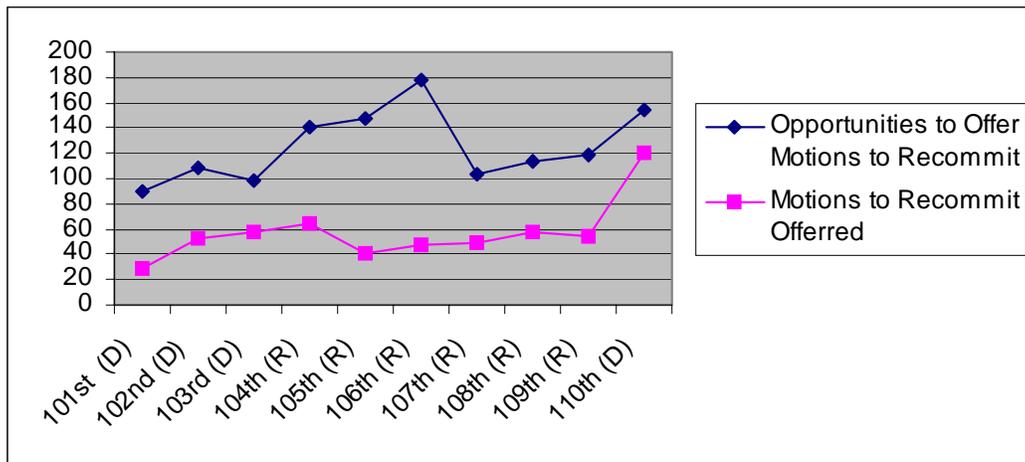
**Source:** The *Congressional Record* was searched for the terms “motion to recommit” and “motion to commit” and cross-checked by searching the bill status data in the Legislative Information System (LIS). In order to obtain the complete list of instances in which offering the motion to recommit would

<sup>52</sup> As of November 1, 2008.

be in order, the Legislative Information System (LIS) was searched for special rules reported from the House Committee on Rules that provided for a “motion to recommit” or “motion to commit.” In some cases, a single special rule provided for more than one motion to recommit or commit. It has been the practice of the House Committee on Rules to always include language stating that the motion to recommit is in order in special rules providing for the initial consideration of bills and joint resolutions, even though since 1995 such a motion to recommit would be in order without such language being included in the special rule. While infrequently a bill or joint resolution has been considered under the terms of a unanimous consent agreement which provided for a motion to recommit, the overwhelming majority of bills and joint resolutions that allowed a motion to recommit are considered under the terms of a special rule. This table does not include motions to recommit that fell to a point or order or motions to recommit conference reports to a conference committee. All data current as of November 1, 2008.

As demonstrated by the data in **Table 1** and in **Figure 3**, these increases can not be attributed solely to an increase in the number of opportunities available for the minority to offer the motion to recommit. In the 109<sup>th</sup> Congress, the minority offered motions to recommit on 45% of the occasions in which they had the right to do so, while in the 110<sup>th</sup> Congress, the minority offered them on 78% of the occasions in which they had the option.

**Figure 3. Comparison of Opportunities to Offer the Motion to Recommit with Instances in Which the Motion Was Offered**



### Recent Trends in Types of Motions to Recommit

Of the 120 motions to recommit offered in the 110<sup>th</sup> Congress, one was a “straight” motion, 72 were motions with “forthwith” instructions, and 47 were motions with “non-forthwith” instructions. The number of “straight” motions to recommit in the 110<sup>th</sup> Congress is comparable with totals of straight motions to recommit in the recent past, with the range over the past five congresses being between zero and three (see **Table 2**).

Motions to recommit with “forthwith” instructions fluctuated between 20 and 48 during the period from the 101<sup>st</sup> Congress through the 109<sup>th</sup>. However, the 110<sup>th</sup> Congress has seen a significant rise with 72 motions to recommit with “forthwith”

instructions, 50% higher than the 48 offered in the 109<sup>th</sup>, and 86% higher than the average of 38.7 for the past ten congresses.

The most significant increase in motions to recommit in the 110<sup>th</sup> Congress, however, can be seen in the offering of motions with “non-forthwith” instructions. Between 1989 and 2006, the number of motions with “non-forthwith” instructions have ranged from 1 to 16 per Congress, with an average of 8.2. The current total of motions to recommit with “non-forthwith” instructions in the 110<sup>th</sup> Congress is 47, more than 500% higher than the average.

# Pocket Constitution



The Declaration of Independence  
The Constitution of the United States  
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Amendments XI–XXVII



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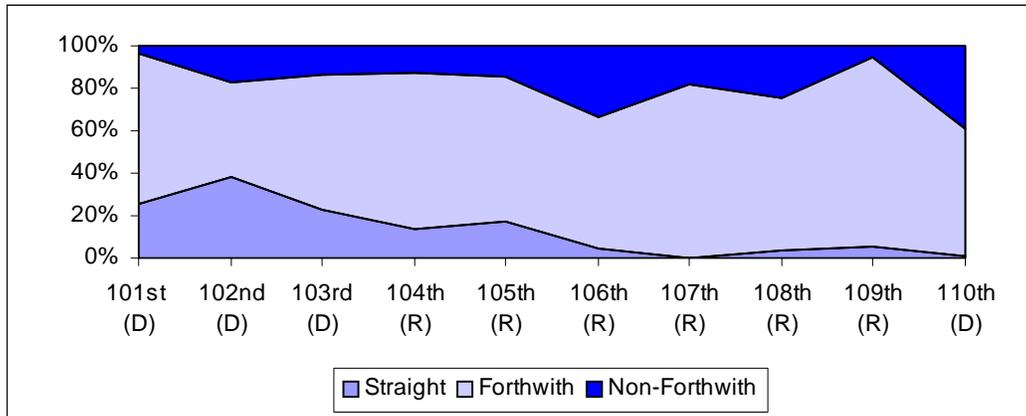
**Table 2. Motions to Recommit and Adoption Rates by Type, 101<sup>st</sup>-110<sup>th</sup> Congress**

Congress (Majority Party Control)	Straight Motions to Recommit without Instructions	Motions to Recommit with Instructions				Total Motions to Recommit	Motions to Recommit Adopted					
		Forthwith	Non-Forthwith				Straight Total	Straight Adoption Rate (%)	Forthwith Total	Forthwith Adoption Rate (%)	Non- Forthwith Total	Non- Forthwith Adoption Rate (%)
			Total	Promptly	Other							
101 <sup>st</sup> 1989-1990 (D)	7	20	1	1	0	28	0	0%	4	20%	0	0%
102 <sup>nd</sup> 1991-1992 (D)	20	23	9	4	5	52	1	5%	6	26%	0	0%
103 <sup>rd</sup> 1993-1994 (D)	13	37	8	6	2	58	0	0%	6	16%	0	0%
104 <sup>th</sup> 1995-1996 (R)	9	48	8	3	5	65	0	0%	3	6%	0	0%
105 <sup>th</sup> 1997-1998 (R)	7	28	6	1	5	41	0	0%	2	7%	0	0%
106 <sup>th</sup> 1999-2000 (R)	2	30	16	9	7	48	0	0%	3	10%	0	0%
107 <sup>th</sup> 2001-2002 (R)	0	40	9	7	2	49	0	0%	3	8%	0	0%
108 <sup>th</sup> 2003-2004 (R)	2	41	14	13	1	57	0	0%	2	5%	0	0%
109 <sup>th</sup> 2005-2006 (R)	3	48	3	3	0	54	0	0%	0	0%	0	0%
110 <sup>th</sup> 2007-2008 (D)	1	72	47	46	1	120	0	0%	24	33%	0	0%
<b>Totals</b>	64	387	121	93	28	572	1	2%	53	14%	0	0%

**Source:** The *Congressional Record* was searched online for the terms “motion to recommit” and “motion to commit” and cross-checked by searching the bill status data in the *Legislative Information System (LIS)*. This table does not include motions to recommit that fell to a point or order, or motions to recommit conference reports to a conference committee. It should be noted that prior to the 104<sup>th</sup> Congress, special rules sometimes restricted the type of motion to recommit that could be offered by the minority. Data current as of November 1, 2008.

Another noteworthy trend is the varying proportion by type of the total number of motions to recommit in each Congress. (See **Figure 4**.) Early in the time period analyzed, the total number of motions to recommit per Congress were comprised of a larger share of “straight” motions to recommit than motions to recommit with “non-forthwith” instructions. This may be due, in part, to the fact that until the 104<sup>th</sup> Congress, special rules could effect what types of motions to recommit could be offered.

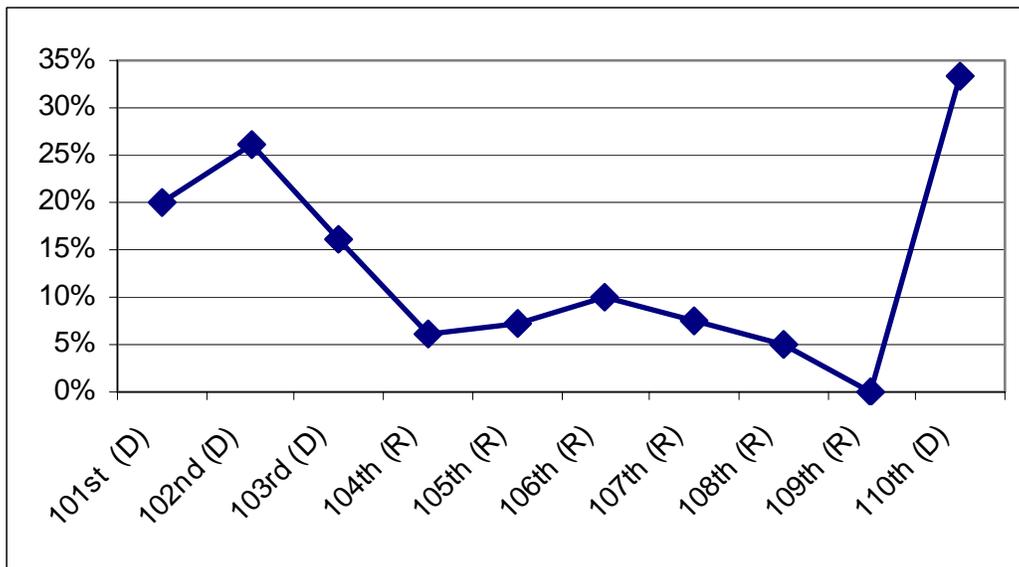
**Figure 4. Composition of the Types of Motions to Recommit Offered 101<sup>st</sup> -110<sup>th</sup> Congress (as of November 1, 2008)**



## Recent Trends Related to the Adoption of Motions to Recommit

During the period of the past ten congresses, one “straight” motion to recommit without instructions was adopted (in the 102<sup>nd</sup> Congress). No motions to recommit with “non-forthwith” instructions have been adopted in the time period studied. Motions to recommit with “forthwith” instructions, however, have occasionally been adopted. The average number of motions to recommit with “forthwith” instructions adopted over the past ten congresses has been 5.3 (14%). There has been a significant increase, however, in the adoption of motions to recommit with “forthwith” instructions offered in the 110<sup>th</sup> Congress. Of the 72 motions to recommit with “forthwith” instructions offered, 24, or 33% were adopted. This differs substantially from the motions to recommit with “forthwith” instructions adoption rate of the 109<sup>th</sup> Congress which was 0%, and the average adoption rate during the 101<sup>st</sup> to the 110<sup>th</sup>, which was 14%. (See **Figure 5**.)

**Figure 5. Adoption Rates of Motions to Recommit with “Forthwith” Instructions 101<sup>st</sup> -110<sup>th</sup> Congress (As of Nov. November 1, 2008)**



## Controversy Related to the Motion to Recommit and Options for Change

The rule to recommit was one of the most troublesome that ever pestered the House.... It was used as a sort of legislative trick frequently.<sup>53</sup>

Since Champ Clark of Missouri, Speaker of the House from 1911-1919, made this statement in 1916, Members in the majority from both parties have often expressed similar views. As one of the only procedural rights explicitly assigned to one political party in House rules, it is a procedural motion that has frequently sparked controversy. For instance, in 1992, the Committee on Rules convened a roundtable discussion centered exclusively on the motion to recommit in response to concerns from both sides of the aisle. As stated during the discussion,

There are conflicting interpretations of what the House’s standing rules do and should mean as they affect the right of Members of the minority party to move to recommit bills and joint resolutions, to committee, and especially to propose recommittal motions directing committees to report measures back to the floor “forthwith” with an amendment incorporated in the motion.<sup>54</sup>

More recently, there has been a surge of concern regarding the increased use, and perceived misuse by some lawmakers, of motions to recommit with “non-forthwith” instructions. The major concern focuses on the effect of certain motions to recommit with “non-forthwith” instructions which may force a Member supporting both the underlying legislation, and the amendment contained in the motion to

<sup>53</sup> *Cannon’s Precedents*, vol VIII, § 2264.

<sup>54</sup> Statement of Stanley Bach, *Roundtable Discussion on the Motion to Recommit*, p. 8.

recommit, effectively, to have to choose between them. This has generated controversy and fostered some discussion of options to change the rules governing its practice.<sup>55</sup> In thinking about a rules change, it bears considering how the original stated purpose of the 1909 rules change (to give the minority the right to have a vote on its position upon great public questions) fits with the current practices given all of the changes that have taken place since then. Some may view change options as a way to pare back modern effects and restore the motion to recommit to its initial purpose as voiced in 1909, while others may view any rules change as placing limitations on what they view as the minority's well established right.<sup>56</sup> The proposals discussed below are broken into two categories: those not requiring a change in House rules and those that do. There is also a section that discusses potential rules changes that would enhance the potential impact of the motion for the minority.

## Options for Change with No Formal Change in House Rules

Just as the changes in frequency and success of the motion to recommit came not as a result of changes in House rules, but through changes in strategy, further changes could also be a result of changes in practice. If the rules of the House remain the same, the minority could revert to older patterns or continue to use the motion in the same manner it has recently: highlighting their preferred policy options and sometimes using motions with “non-forthwith” instructions with the effect of forcing Members to choose between policy options that they support. One important factor, however, is that the practices of the majority, in terms of how it brings measures to the floor and how it proceeds, can have an impact on the number or type of opportunities presented, and the effect the minority can have through the motion to recommit.

**Raise the Measure Under Suspension of the Rules.** A majority might choose to consider a measure under suspension of the rules. By doing so, no motion to recommit would be in order. The disadvantages of this option would be that a super-majority is required for passage, and that Members of neither the majority nor the minority would be able to offer amendments or raise points of order.<sup>57</sup> An advantage would be that a majority would be able to get a straight up or down vote on a question, and be able to avoid the effect of a motion to recommit with “non-

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<sup>55</sup> For example, in “Democrats Again Look to Change GOP Motions,” *Roll Call*, October 31, 2007, Vol. 53, No. 52, p. 3, the Chairwoman of the House Rules Committee was reported as saying that the committee's Democrats had met with both current and former Parliamentarians to discuss the chamber's rules and potential changes, focusing in part on the motion to recommit.

<sup>56</sup> For example, in “Rep. Boehner: If Majority Restricts Motions to Recommit, ‘Republicans Will have No Choice But To Shut Down the House,’” *US Fed News*, October 31, 2007, the House Republican leader was quoted as saying, “House Republicans deserve to represent the men and women in our districts in exactly the same way the Minority Party has since 1822.... If the Democratic leadership takes this right [the motion to recommit] away, they can expect the most vigorous fight yet from House Republicans....”

<sup>57</sup> For information regarding suspension of the rules, see CRS Report 98-314, *Suspension of Rules in the House: Principle Features*, by Elizabeth Rybicki.

forthwith” instructions without having to make any change in the rules. A change in practice like this, however, would likely mean using suspension to consider a wider spectrum of measures than is currently the case. Although both Democratic and Republican majorities have used suspension of the rules to act expeditiously on relatively noncontroversial legislation, both have used it infrequently to consider major policy or funding questions. A change in practice of this nature could allow the majority to avoid difficult votes on motions to recommit in some instances, but the practical limitation on the use of suspensions would still leave a significant number of such opportunities on other measures.

**Amend the Motion to Recommit.** Another option not involving a change in House rules would be for the majority to amend the motion to recommit. In the case of motions to recommit with “non-forthwith” instructions, an amendment could be proposed to include or substitute the term “forthwith,” relieving some Members from having to choose between two policy options that they support. Amending the motion to recommit could be done either by unanimous consent, or by defeating the previous question and proposing changes to the motion.

One disadvantage of requesting unanimous consent to amend a motion to recommit to include the term “forthwith” would be that consensus may be hard to achieve. Although it is not unheard of to amend a motion to recommit by unanimous consent, a request to change the instructions from “non-forthwith” to “forthwith” could prove to be more controversial since it is reasonable to believe that the motion’s sponsor purposely chose to exclude “forthwith.” For instance, on February 26, 2008, the Majority Leader, Representative Steny Hoyer asked Representative Michele Bachmann, the sponsor of a motion to recommit with instructions, if she would agree to a unanimous consent request to add “forthwith” to the motion’s instructions. Representative Bachmann stated that she would not because the goal she wished to achieve could not be attained by a motion with “forthwith” instructions.<sup>58</sup>

A disadvantage of defeating the previous question to amend the motion to recommit would be that it might be viewed as limiting the minority’s right, and may violate any implicit understanding between the parties to allow the minority a straight vote on the motion as they wrote it. It might also arguably contradict the stated purpose of the motion to recommit — to give the minority an opportunity to vote

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<sup>58</sup> *Congressional Record* (daily edition), vol. 154, February 26, 2008, p. H1056.

Mr. HOYER. I thank the gentlelady. Would the gentlelady agree to a unanimous consent request to make your amendment a forthwith amendment so that it could be voted upon? My presumption is the gentlelady wants the amendment adopted, the gentlelady believes the majority of the House is for it. Would the gentlelady agree to such a unanimous consent?

Mrs. BACHMANN. Madam Speaker, I appreciate the request from the majority leader; however, the answer would be no. We are aware of this problem, and it’s very important that we send this back to the committee so that it will be fixed.

upon its policy alternative. Defeating the previous question on a motion to recommit is rare and has not occurred since the 107<sup>th</sup> Congress.<sup>59</sup>

## Options for Change Involving Amending House Rules

There are a number of ways in which House rules could be changed that would have a direct impact on the form or substance of the motion to recommit. Rules changes could be proposed at any time during a session, but would more likely be proposed at the beginning of a Congress as part of a new rules package.

**Revert to the Past Form of the Rule.** Before 1995, the content and form of motions to recommit could be directly or indirectly restricted by a special rule. In the rules of the 103<sup>rd</sup> Congress, Rule XI, clause 4(b) stated that the Rules Committee shall not “report any rule or order which would prevent the motion to recommit from being made as provided in clause 4 of Rule XVI.” This was interpreted as protecting the minority’s right to offer a motion to recommit, but not impeding the Rules Committee from reporting special rules that restricting what types of motions might be offered, sometimes disallowing the offering of motions to recommit with amendatory instructions. This differs from the current House Rule XIII, clause 6(c) which explicitly states that the Rules Committee may not report a special rule that would prevent the offering of a motion to recommit with instructions.

Reverting back to the past form of the House Rule could have the effect of preventing, or allowing the majority to avoid, motions to recommit with amendatory instructions, relieving Members of being caught off guard by a motion to recommit or having to choose between two policies that he or she supports. A disadvantage of this option would be that it might be viewed as regressing to a period when the original purpose of the motion to recommit, to give the minority a vote on their policy alternative, was not protected. In addition, under the previous form of the rule the amendment process could have a direct impact on the form of a motion to recommit. In particular, the use of amendments in the nature of a substitute for the entire text of the bill under consideration could make amendatory instructions in the motion to recommit out of order. Given the frequency with which such substitutes are used in current House practice, this form of the rule could be controversial.

**Restrict the Form of Motions to Recommit.** A straightforward method for addressing the issues resulting from motions to recommit with “non-forthwith” instructions would be to change House rules to allow only a “straight” motion to recommit, or a motion to recommit with “forthwith” instructions. This would disallow any motions with “non-forthwith” instructions and, like other options involving a rules change, may be viewed as tampering with or restricting the minority’s right. It would also limit, or eliminate altogether, the minority’s present ability to include non-amendatory instructions in the motion, such as referring it back to committee for further research or hearings.

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<sup>59</sup> On February 27, 2002, the previous question was rejected on the motion to recommit the bill H.R. 1542. The motion was then amended and adopted. *Congressional Record* (daily edition), vol. 148, February 27, 2002, pp. H605-H608.

The same concern might alternately be dealt with by amending Rule XIX, clause 2(a) to state that any amendatory instructions within a motion to recommit must provide for an immediate return of the measure to the floor. This way a motion to recommit with “non-forthwith” instructions might still be offered, but only if its instructions are non-amendatory. This would create a situation in which Members would have the option of attaining a vote on sending the measure back to committee for further hearings or research but would not be subjected to the effects of motions with “non-forthwith” instructions which force them to choose between two policies that he or she supports.

Because all “non-forthwith” instructions are non-binding, the issue of non-amendatory instructions might also effectively be dealt with by combining a restriction on the form of the motion with a House rules change allowing debate on a “straight” motion to recommit. Because non-amendatory instructions typically instruct the committee to conduct hearings or research, this desire might be expressed instead during debate on a “straight” motion to recommit. If this were a possibility, House rules could be amended to allow only “straight” motions to recommit and motions to recommit with “forthwith” instructions, without eliminating the minority’s ability to attain a vote on sending the measure to committee for the purpose of conducting further hearings or research, but still eliminating the challenge of choosing between the policies expressed in the bill and those expressed in “non-forthwith” instructions.

**Amend House Rules to Require Pre-Filing of Motions to Recommit with Instructions.** A majority also has the option of changing House rules to require that all amendatory instructions, including both motions with “forthwith” instructions and motions with “non-forthwith” instructions, be pre-filed, similar to the requirement sometimes set forth by the Rules Committee requiring that amendments to measures be pre-filed in the *Congressional Record*. This option might be helpful because Members would no longer be caught off guard by the subject of motions with amendatory instructions. Also, if the pre-filed motion contained language that a majority of Members would support, it might instead be considered in Committee of the Whole as an amendment.

This option, however, might not solve all of the potential issues arising from the offering of a motion to recommit with “non-forthwith” instructions since such a motion could still be offered, even if pre-filed. Also, such a rules change could be viewed as placing restrictions on the minority’s right by taking away both secrecy and the flexibility to respond to changes made in the measure during consideration on the chamber floor.

A motion to recommit may not amend or eliminate an amendment already adopted by the House.<sup>60</sup> If a motion to recommit must be pre-filed before amendments have been adopted on the floor, it may unintentionally seek to amend language that was already amended during consideration of the measure in the Committee of the Whole. In that case, the motion to recommit would be subject to a point of order. If the motion to recommit fell to a point of order, the minority

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<sup>60</sup> *House Practice*, Ch. 48, §20, p. 815.

would then need to be given the right to offer one proper motion to recommit. This may mean that more than one motion to recommit would need to be pre-filed, and if that were the case, deciding how many could be pre-filed would be difficult since any number of motions might fall to a point of order. For instance, on November 19, 1993, three motions to recommit fell to a point of order, resulting in a total of four motions being offered on one measure.<sup>61</sup>

## **Potential House Rules Changes Enhancing the Minority's Rights Related to the Motion to Recommit**

There are also options that would change House rules in ways that could be viewed as expanding the rights of the minority. Although these options could stand alone, they might also be offered in conjunction with one or more of the other propositions listed above in an attempt to make a rules change limiting or restricting the use of motions to recommit with “non-forthwith” instructions more palatable to the minority.

### **Allow Ten Minutes of Debate on a “Straight” Motion to Recommit.**

Both “straight” motions to recommit without instructions and motions to recommit with “non-forthwith” instructions have the effect of sending a bill back to committee; however, only a motion with “non-forthwith” instructions allows the minority debate time to state their reasons for recommitting the bill. If a “straight” motion to recommit was also debatable, it would allow the minority a forum for communicating specifically what they dislike about the underlying measure in its final form. A disadvantage of this option is that some may view any change allowing more debate as a tool for allowing the minority to cause delay.

**Allow the Minority Leader the Right to Request an Hour of Debate on a Motion to Recommit with Instructions.** The minority has stated that one of the intended effects of offering a motion to recommit with “non-forthwith” (as opposed to a “forthwith”) instructions is to secure additional time for consideration of the motion, as well as the underlying measure.<sup>62</sup> Allowing the minority to extend debate time to an hour on a motion to recommit would achieve this goal.

Criticisms of this option might include the view that the time extension could be used for dilatory purposes, or that it gives excessive rights to the minority party. It should be noted that although the majority currently holds such a right, they have used it only once.<sup>63</sup>

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<sup>61</sup> The measure being H.R. 3351. *Congressional Record* (daily edition), vol. 139, November 19, 2003, pp. H10217-H10254.

<sup>62</sup> Remarks of Representative Mike Thompson (D-CA). *Congressional Record* (daily edition), vol. 149, June 26, 2005, p. H6254.

<sup>63</sup> In reference to H.R. 4848. *Congressional Record* (daily edition), vol. 134, July 13, 1988, p. H18054.

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