

March 21, 2010

To: Interested Parties

From: Ranking Republican David Dreier

Subject: From the “Slaughter Solution” to “Supermax” — The Rule for Debating the Health Care bill

While the Democratic leadership has abandoned the “Slaughter Solution” of “deem and enact” for their health care plan, they weren’t content to allow debate to continue according to the Rules of the House. Rather, they expanded their use of the “lock-down” procedures that have become commonplace in rules under the Democratic Majority to even further limit the Minority’s ability to participate in the process. While both parties have used many of these tools individually in the past, we have never before seen them used in tandem. Thus, the Majority has graduated from merely “locking-down” debate in the House to the procedural equivalent of a “Supermax” prison.

The Basics

There are two items that the House must dispose of in order to pass health care reform: (1) the Senate amendments to H.R. 3590 (referred to as the “Senate bill”) and (2) H.R. 4872 (the reconciliation “sidecar”). After the outcry of the American people successfully derailed the “Slaughter Solution,” the rule does provide an up-or-down vote on the Senate bill.

The rule provides for the following general steps to passage of both health care bills:

1. Under the rules of the House, the rule is subject to debate and vote on any points of order that could lie against the rule, such as the Unfunded Mandates Reform Act point of order (debatable for 20 minutes on a question of consideration);
2. Debate and vote on the rule for consideration of the bills;
3. Debate the “topic” of the two bills for 2 hours, equally divided;
4. Vote on the motion to adopt the Senate bill without debate (if passed, the Senate bill is cleared for the President and will be enacted);
5. If the Senate bill passes, the majority will call up the reconciliation bill without debate;
6. Debate for 10 minutes and vote on a Republican motion to recommit the reconciliation bill;
7. Vote on the motion to adopt the reconciliation bill.

At the conclusion of that process (assuming that the Democratic majority prevails), House action on the Senate bill will be complete, clearing that legislation for the President. Upon the President’s signature, ***the Senate bill will be the law of the land***. However, the reconciliation bill is still subject to Senate consideration including

the Byrd Rule (or other) points of order and the Senate's normal amendment process for reconciliation bills. It is almost certain that the House will need to vote on the reconciliation bill again.

The “Supermax” Provisions

As I mentioned, the Majority wants nothing to derail their plans to deliver the Senate bill to the President. Like a rogues' gallery of procedural provisions, the Majority has assembled virtually every conceivable mechanism for restricting the actions of the Minority from the time the rule is adopted until the House passes the reconciliation bill. The rule denies—

- The guaranteed 40 minutes of debate that arises when the previous question is ordered on a bill without debate;
- The question of consideration on either the Senate bill or the reconciliation bill;
- The ability to have the motion to recommit, or any other motion, read in full;
- The ability of any Member (including the Minority Leader) to notice or get consideration of a resolution outlining something affecting the safety, dignity, and integrity of the proceedings of the House; and,
- The ability of a Member to make any motion other than the 3 motions specifically outlined in the rule, such as a motion to reconsider a vote.

However, it is important to note that the language of the rule states that “the Chair *may* decline to entertain” the motions and questions described above. That means that the Chair *may* also entertain those same motions if made by a Member of the Majority party. So the Majority is giving itself the ability to use all of the procedural options available under the rules, while at the same time denying those same tools to the Minority.

Finally, as if those advantages weren't enough (particularly when combined with their 75 seat majority), the Democratic Majority also grants itself unlimited “time-out” authority to assess and deal with anything unexpected. That means the House could be in the middle of debate, about to vote, or virtually anywhere along the process and the Majority could simply call a time out for anywhere from a few minutes to several hours to break arms or cut deals.

While the Majority finally listened to the American People and abandoned the “Slaughter Solution,” they still managed to hit a new low by restricting the rights of the Minority so completely they have advanced to a new class of “lock-down” rules: the “Supermax” rule.

If you have any questions regarding how this rule operates, please contact the Rules Committee Republican staff at (202) 225-9191.

H. RES. 1203

[Report No. 111-448]

Providing for consideration of the Senate amendments to the bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes, and providing for consideration of the bill (H.R. 4872) to provide for reconciliation pursuant to section 202 of the concurrent resolution on the budget for fiscal year 2010.

IN THE HOUSE OF REPRESENTATIVES
March 21 (legislative day, March 20), 2010

Ms. Slaughter, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the Senate amendments to the bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes, and providing for consideration of the bill (H.R. 4872) to provide for reconciliation pursuant to section 202 of the concurrent resolution on the budget for fiscal year 2010.

Resolved, That upon the adoption of this resolution it shall be in order to debate the topics addressed by the Senate amendments to the bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes, and the topics addressed by the bill (H.R. 4872) to provide for reconciliation pursuant to section 202 of the concurrent resolution on the budget for fiscal year 2010, for two hours equally divided and controlled by the Majority Leader and Minority Leader or their respective designees.

Sec. 2. After debate pursuant to the first section of this resolution, it shall be in order to take from the Speaker's table the bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes, with the Senate amendments thereto, and to consider in the House, without intervention of any point of order except those arising under

clause 10 of rule XXI, a single motion offered by the Majority Leader or his designee that the House concur in the Senate amendments. The Senate amendments and the motion shall be considered as read. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

Sec. 3. If the motion specified in section 2 is adopted, it shall be in order to consider in the House the bill (H.R. 4872) to provide for reconciliation pursuant to section 202 of the concurrent resolution on the budget for fiscal year 2010 if called up by the Majority Leader or his designee. All points of order against consideration of the bill are waived except those arising under clause 10 of rule XXI. The amendment in the nature of a substitute printed in part A of the report of the Committee on Rules accompanying this resolution, modified by the amendment printed in part B of the report of the Committee on Rules, shall be considered as adopted. The bill, as amended, shall be considered as read. All points of order against provisions in the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except one motion to recommit with or without instructions.

Sec. 4. Until completion of proceedings enabled by the first three sections of this resolution—

(a) the Chair may decline to entertain any intervening motion (except as expressly provided herein), resolution, question, or notice;

(b) the Chair may decline to entertain the question of consideration;

(c) the Chair may postpone such proceedings to such time as may be designated by the Speaker;

(d) the second sentence of clause 1(a) of rule XIX shall not apply; and

(e) any proposition admissible under the first three sections of this resolution shall be considered as read.

Sec. 5. In the engrossment of H.R. 4872, the Clerk shall amend the title so as to read: “An Act to provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).”.