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**To:** Interested Parties

**From:** Hugh Nathanial Halpern, Rules Committee Republican Staff Director

**Subject:** The "Slaughter Solution" — What makes it different?

The Majority has attempted to deflect the procedural criticism surrounding its health care strategy by saying that "deeming" or "self-enacting" legislation through a rule is no big deal; it's all been done before. To be fair, while the Majority's review encompassed the years primarily when the Republicans were in the Majority, it's important to note that the earliest reference to this procedure is in 1933 when the Democrats were in the majority and both parties have used it in the years since.

## The history of "deeming"

At issue here is a rule that provides for passage of a measure. This has been confused by some with a rule which "self-executes" amendments to a measure, which only changes the underlying text of the bill to be considered by the House. That procedure still allows a vote on the bill itself, so those particular statistics are inapplicable in this case.

Excluding the use of the "Gephardt Rule" (House Rule XXIII) for the raising of the debt limit, the use of these kinds of rules for passage of legislation is relatively rare. For instance in the 109th Congress, it was used only 3 times; of those, only a single rule was moved to use a bill to the President (H.Res. 653). Of the 18 times cited by the Majority since the 101st Congress where the Rules Committee has reported a rule "deeming" legislation passed, only four times has this procedure been used to pass a bill and send it to the President:

- H.J. Res. 45 (raising the debt limit) in the 111th Congress;
- S. 1932 (concurring in the Senate amendments to the Deficit Reduction Act) in the 109th Congress;
- S. 4 (the Line Item Veto Act) in the 104th Congress; and,
- H.R. 1 (the Family Medical Leave Act) in the 102nd Congress.

With respect to the Deficit Reduction Act, that rule was used to approve the final version of the bill, after the House had already adopted the conference report that was subject to modification under the Byrd Rule and subsequently returned to the House. In all of the other instances cited by the Majority, these rules were used either for matters applicable to the House alone (such as establishing new earmark standards), or for correcting enrollment mistakes in legislation already cleared for the President.

## Why this is different

What makes the Majority's health care strategy different than all the other uses of this procedure is the uncertainty of it. Traditionally, when the House has used this

procedure it has been to address internal matters or to move legislation to the President at the very end of the process.

In this case, the rule will dispose of the Senate amendments to H.R. 3590 to clear the legislation for the President's signature. If it ended there, it wouldn't be terribly different than the handful of past examples. The difference in this case is that the Senate health care bill isn't the ultimate goal; the Democrats intend to make further changes through reconciliation.

**The only certainty for any Member who votes for a rule that "deems" or otherwise passes the Senate health care bill is that the Senate health care bill will become law.** The "fixes" contained in reconciliation are subject to the Byrd Rule, amendment, and the other vagaries of the Senate process. The outcome of reconciliation is by no means certain.

There's another historical fact that's important to note: in the 22 times Congress has considered reconciliation legislation since 1980, there has only been a single instance, the Omnibus Reconciliation Act of 1982 (which initially passed both Houses without amendment by a voice vote), where the Senate has not amended the reconciliation bill. To assume that we'll have a repeat performance defies the historical record.

If you have any questions, please contact the Rules Committee Republican staff at 202-225-9191.