



## Motions to Recommit in the 116th Congress

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**Table 1.** *MTRs by the numbers (Jan. 2019-Oct. 2020)*

<b>78</b>	MTRs offered
<b>8</b>	MTRs adopted
<b>15.1</b>	Democrats on average voted for MTRs
<b>2.8</b>	Democrats on average voted against underlying bill when MTR adopted
<b>3.1</b>	Democrats on average voted against underlying bill when MTR rejected
<b>1.2</b>	Republicans on average voted against MTRs
<b>6.5</b>	Republicans on average voted for underlying bill when MTR adopted
<b>17</b>	Republicans on average voted for underlying bill when MTR rejected

Two months into the 116th Congress, the House was preparing to pass the Bipartisan Background Checks Act (H.R. 8), a gun violence prevention bill. The House debated the bill for an hour. It considered both Democratic and Republican amendments. But before the vote on final passage, Rep. Doug Collins of Georgia offered a motion to recommit (MTR).

The MTR required notification to Immigration and Customs Enforcement when an undocumented immigrant attempts to buy a gun.<sup>1</sup> Twenty-six Democrats joined with 194 Republicans in support of the motion so the bill was amended. That last-minute change effectively pitted immigration advocates against gun safety advocates. In the end, though, every Democrat that voted against the MTR still voted for the bill – albeit less enthusiastically. All but eight Republicans who voted for the MTR voted against the bill. Immigrants were once again caught in the political crossfire.

That was just one of 78 times between January 2019 and October 2020 that an MTR was offered, one of eight times an MTR was adopted, and one of 13 times that an MTR targeted immigrant communities.

The motion to recommit is usually the penultimate vote before the House votes on final passage. It provides the minority party in the House with a final opportunity to modify legislation. In principle, the MTR promotes a more open process in the House. In practice, the MTR has become a vessel for “gotcha” votes and fuel for misleading campaign ads.

MTRs in the 116th Congress have touched on heated topics from immigration to antisemitism. Although the MTR provides the minority party a chance to offer its

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<sup>1</sup> Dylan Scott. “The arcane procedural drama that has House Democrats seething, explained.” Vox. 1 March 2019. <https://www.vox.com/policy-and-politics/2019/3/1/18244934/motion-to-recommit-bipartisanbackground-check-act>

ideas on the House floor, most MTRs in the 116th Congress have not reflected good faith efforts to move bills in a bipartisan direction. In fact, 10 fewer Republicans on average voted for bills on which their party's MTR was adopted. (See Table 1.)

This report lays out the rules and history surrounding MTRs. It analyzes roll call votes on MTRs during the 116th Congress and on the underlying bills on which Republicans, as the minority party, offered those motions. It also examines the topics of the MTRs that Republicans offered. Finally, it considers possible reforms to the motion to recommit.

## House Rules on the Motion to Recommit

House Rule XIX provides the minority party the ability to offer a motion to “recommit (or commit, as the case may be) the measure, with or without instructions, to a standing or select committee.”<sup>2</sup> In current practice, most motions to recommit are motions to recommit with instructions. A motion to recommit without instructions sends the bill back to committee, delaying further floor consideration. (Republicans used three motions to recommit without instructions in the 116th Congress – all on appropriations bills.) A motion to recommit with instructions keeps the bill on the floor, even if the motion is adopted. The instructions propose an amendment that, upon adoption of the motion, is added to the bill. Then the bill can immediately continue to a vote on final passage.

A motion to commit works the same as a motion to recommit.<sup>3</sup> The only distinction is that a motion to commit occurs when a bill has not previously been considered by a House committee. This situation can emerge, for example, when a Senate bill goes directly to the House floor without a committee referral.

While the MTR provides the opportunity to amend a bill, it sidesteps the House Rules Committee process for floor amendments. Under that process, Members of Congress file amendments with the Rules Committee in advance of floor debate. The Rules Committee considers the submitted amendments and selects which ones will be made in order so they can be considered on the floor. As the Rules Committee considers amendments, Members of Congress can submit testimony. Members of the Rules Committee can debate an amendment and ask questions of the amendment's sponsor. Of course, the Rules Committee amendment process also enables the majority party to block amendments on which its members would rather not cast recorded votes. (The majority party has a 9-to-4 supermajority on the Rules Committee.)

Members and staff can see the list of amendments made in order by the Rules Committee before floor debate begins, giving them time to study the amendments and weigh how to vote. Anyone can read the text of filed amendments on the House Rules Committee website before the bill comes to the House floor. This provides

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<sup>2</sup> Rules of the House of Representatives, 116th Congress, p. 33. 11 January 2019.

<https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf>

<sup>3</sup> Given the similarities between motions to commit and motions to recommit, this report generally does not distinguish between them and uses “MTR” to refer to them collectively.

outside groups an opportunity to mobilize, sending out action alerts to activists and vote recommendations to Members of Congress before votes are called.

Almost all bills come to the floor either under suspension of the rules or under a “special rule.” Under suspension of the rules, the bill must pass with a two-thirds majority, but it is not subject to amendment or a motion to recommit. A special rule is, despite its name, very common. It is a primary way that the majority party controls the House floor. When a special rule comes to the floor, the House can adopt it on a majority vote and then that rule structures the debate on the bill(s) it covers, including the length of debate and which amendments (if any) are in order for debate on the House floor. However, House Rule XIII specifically guarantees opponents of the bill a motion to recommit: “The Committee on Rules may not report a rule or order that would prevent the motion to recommit a bill or joint resolution from being made....”<sup>4</sup> The minority party’s right to offer an MTR exists, regardless of whether the rule makes other minority amendments in order.

In the flow of floor debate on a bill, the motion to recommit comes after general debate and amendment debate. Once the previous question is ordered (bringing the bill to a final vote), an opponent of the bill can rise to offer the MTR. The lack of time to consider the text of the MTR makes it especially problematic. Unlike a typical amendment considered by the Rules Committee, the MTR is not filed days in advance. The majority usually sees it only minutes before it receives a vote. A print copy of the minority’s motion is literally handed to a majority floor staffer who then scrambles to circulate it so that Members are prepared to debate and vote on the MTR.

However, the MTR is not a blank check for the minority to propose any amendment under the sun. The main restriction on the motion to recommit with instructions is germaneness, meaning that the amendment must be related to the bill that it amends. If the MTR violates germaneness (or any other limits), it can be ruled out of order.

Once an opponent of the bill offers the MTR, the House debates the motion for ten minutes – five minutes for supporters of the motion (opponents of the underlying bill) and five minutes for opponents of the motion. The majority does have the right to extend debate time to an hour equally divided, but that right has only been used once since its creation. The majority cannot table the MTR; the minority can force a recorded vote. If the minority wins the vote on a motion to recommit with instructions (which necessarily takes some votes from the majority party), it successfully amends the bill.<sup>5</sup>

Regardless of whether a motion to recommit with instructions passes or fails, the House can proceed to final passage of the bill. In other words, Members may see a proposed amendment for the first time, vote on it, and vote on the bill that includes

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<sup>4</sup> Rules of the House of Representatives, 116th Congress, p. 28. 11 January 2019.

<https://rules.house.gov/sites/democrats.rules.house.gov/files/116-1/116-House-Rules-Clerk.pdf>

<sup>5</sup> Megan S. Lynch. “The Motion to Recommit in the House of Representatives.” Congressional Research Service. 6 January 2016. <https://crsreports.congress.gov/product/pdf/R/R44330>

that amendment – all within a matter of minutes. Members have virtually no time to study the text, consult with stakeholders, or hear from constituents.

## The Evolution of MTRs

The motion to recommit emerged as a tool for a bill's opponents in 1909. The House subsequently adopted rules and precedents around debate time and restrictions on MTRs.<sup>6</sup> The current era of the MTR began with a Republican rules change in 1995, which ended the restrictions on MTRs that were previously allowed in special rules.<sup>7</sup>

While the modern MTR was a Republican creation, House Republicans did not have the opportunity to deploy it until after the 2006 election. As the minority party in the 110th Congress (2007-2008), Republicans could still offer motions to recommit with instructions that did not call for the bill to be immediately reported back to the full House. That meant Republicans could – with a single motion – amend the bill and delay final passage by sending it back to committee.

In 2009, Democrats responded with a change to the House Rules that forced the Republican minority to choose between sending the bill back to committee (the current motion to recommit without instructions) or proposing an amendment immediately before final passage (the current motion to recommit with instructions).<sup>8</sup>

From 2007 to 2010, the House adopted 23% of MTRs.<sup>9</sup> Republicans used MTRs on guns and terrorism to take down or delay Democratic bills. Norm Ornstein of the American Enterprise Institute observed in 2010, "Far more often than not the minority has eschewed the chance to use the MTR to offer constructive amendments to bills or to show a minority alternative vision, and instead has used the 'gotcha' route. Expect a slew of attack ads portraying Members as backers of child molestation and government-subsidized porn."<sup>10</sup>

When Democrats entered the minority in 2011, they offered their own MTRs, but Republicans were more unified in opposing them. The House adopted no MTRs from 2011 to 2018.<sup>11</sup> (See Table 2.) However, Republican votes against the Democratic MTRs still showed up in campaign ads. For example, ads against Republicans in the 2018 election cycle highlighted votes against a Democratic MTR on protecting coverage for preexisting conditions under the Affordable Care Act.<sup>12</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Norman J. Ornstein. "The Motion to Recommit, Hijacked by Politics." American Enterprise Institute. 19 May 2010. <https://www.aei.org/articles/the-motion-to-recommit-hijacked-by-politics/>

<sup>8</sup> Lynch 2016

<sup>9</sup> Ashley Killough. "House Democrats split over Republicans' use of 'Motion To Recommit.'" CNN. 1 March 2019. <https://www.cnn.com/2019/03/01/politics/house-democrats-procedural-tools/index.html>

<sup>10</sup> Ornstein 2010

<sup>11</sup> Killough 2019

<sup>12</sup> Glenn Kessler. "Democratic attack ad falsely knocks Republican on preexisting conditions."

Washington Post. 15 October 2018.

<https://www.washingtonpost.com/politics/2018/10/15/democraticattack-ad-falsely-knocks-republican-preexisting-conditions/>

**Table 2.** Adoption rate of MTRs in the House

<b>Years</b>	<b>Rate</b>	<b>Majority party</b>	<b>Minority party</b>
2007-2010	23%	Democrats	Republicans
2011-2018	0%	Republicans	Democrats
2019-2020	10%	Democrats	Republicans

### **MTR Votes in the 116th Congress**

House Republicans returned to offering MTRs when they became the minority party after the 2018 election. From January 2019 to October 2020, the House adopted MTRs votes at a 10% rate. While far lower than the 23% adoption rate during the 2007-2010 Democratic majority, 10% is notably higher than the 0% rate during the 2011-2018 Republican majority.

Republicans offered 78 motions to commit or recommit.<sup>13</sup> All but three included instructions. Of those 78 motions, the House adopted MTRs on eight bills:

- H.J.Res.37, Yemen War Powers Resolution (February 13, 2019)
- H.R. 8, Bipartisan Background Checks Act (February 27, 2019)
- H.R. 3351, Financial Services and General Government (FSGG) Appropriations Act (June 26, 2019)
- H.R. 3239, Humanitarian Standards for Individuals in Customs and Border Protection Custody Act (July 18, 2019)
- H.R. 5377, Restoring Tax Fairness for States and Localities Act (December 19, 2019)
- H.R. 1140, Rights for Transportation Security Officers Act (March 5, 2020)
- H.R. 2, INVEST in America Act (July 1, 2020)
- H.R. 2574, Equity and Inclusion Enforcement Act (September 16, 2020)

Passage of those MTRs required more than 18 Democrats to vote against their party and join with a unified Republican minority.

Most House Democrats have only voted for two MTRs in the 116th Congress: the MTRs on the Yemen War Powers Resolution and Restoring Tax Fairness for States and Localities Act. Both were atypical cases in which Democratic leadership gave members the clear to support the Republican MTR. Of the 236 House Democrats who served for all or part of the 116th Congress, 161 did not vote for a third MTR. An additional 207 Democrats voted for Republican MTRs less than 10% of the time. However, a surprising number of Democrats became regular MTR supporters. (See Table 3.) An average of 15.1 House Democrats voted with Republicans on any given MTR. This created a very tight margin for defeating MTRs.

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<sup>13</sup> Three were motions to commit. This report includes those with 75 motions to recommit and refers to all 78 together as “MTRs” for convenience’s sake.

**Table 3.** *Frequency of votes with other party on MTRs (Jan. 2019-Oct. 2020)*

<b>Frequency of votes with other party</b>	<b># of House Democrats (voting for MTRs)</b>	<b># of House Republicans (voting against MTRs)</b>
0-4.9% of the time	184	202
5-9.9% of the time	23	1
10-19.9% of the time	14	1
20-29.9% of the time	7	0
30-49.9% of the time	5	0
50+% of the time	3	1

Those regular MTR supporters shared several characteristics. Of the 29 Democrats who supported MTRs more than 10% of the time, 23 were freshmen and a significantly overlapping 23 were designated by the Democratic Congressional Campaign Committee as “Frontline Members.”<sup>14</sup> All but five were white. Looking across the ideological caucuses within the Democratic Caucus, 20 were in the New Democrat Coalition, 14 were in the Blue Dog Coalition (over half of that caucus), and only 4 were in the Congressional Progressive Caucus.<sup>15</sup> A few Members truly stand out. Reps. Anthony Brindisi (NY), Joe Cunningham (SC), and Jefferson Van Drew (NJ) – all Blue Dogs – voted for MTRs more than half of the time. (Rep. Van Drew switched his party affiliation to Republican in the middle of the 116th Congress.)

Across the 78 bills on which Republicans offered MTRs, the number of Democratic votes for MTRs varied considerably. (See Table 4.) On 44 bills, fewer than 10 Democrats voted for the MTR. (On 11 bills, no Democrat voted for the MTR.) On 26 bills, the number of Democratic votes for the MTR reached double digits but stayed below the threshold for adoption. And on the eight bills mentioned above, Democratic yes votes soared above 18, allowing Republicans to amend the bill.

The closest vote on which the MTR was adopted came during debate on the Bipartisan Background Checks Act, with 26 Democrats voting for the MTR. From there, the Democratic yes votes on MTRs totaled 37 on FSGG appropriations, 39 on the INVEST In America Act, 42 on the Humanitarian Standards for Individuals in Customs and Border Protection Custody Act, 42 on the Rights for Transportation Security Officers Act, 66 on the Equity and Inclusion Enforcement Act, 195 on the Restoring Tax Fairness for States and Localities Act, and all 230 Democrats present on the Yemen Wars Powers Resolution.

<sup>14</sup> Democratic Congressional Campaign Committee. “Frontline.” 7 February 2019. <https://dccc.org/frontline/>

<sup>15</sup> There is some overlap between the Congressional Progressive Caucus and New Democrat Coalition and the New Democrat Coalition and Blue Dog Coalition. (There is no overlap between the Congressional Progressive Caucus and the Blue Dog Coalition.)

**Table 4.** Number of members voting with other party on MTRs (Jan. 2019-Oct. 2020)

<b># of members voting with other party on an MTR vote</b>	<b># of MTR votes</b>	
	<b>Democrats (voting for MTRs)</b>	<b>Republicans (voting against MTRs)</b>
0	11	23
1-9	23	55
10-18	26	0
>18	8	0

As Democrats dealt with a sizable group of crossover MTR supporters, Republicans stuck together in supporting MTR votes. On average, only 1.2 Republicans voted against any given MTR.<sup>16</sup> During the 116th Congress, 178 out of 205 Republicans voted for every MTR. An additional 19 voted against only one MTR. The only Republicans who voted against MTRs more than 5% of the time were Reps. Chip Roy (TX), Thomas Massie (KY), and Justin Amash (MI). Rep. Amash left the Republican Conference in July 2019.

No more than eight Republicans ever voted against their party on an MTR vote in the 116th Congress. On 23 of 78 MTR votes, all Republicans voted for the MTR. On 36, only a single Republican voted against the MTR. Only two MTR votes had more than four Republicans in opposition: seven voted against striking large portions of the Violence Against Women Reauthorization Act (H.R. 1585) on April 4, 2019 and eight voted against an MTR on the Additional Supplemental Appropriations for Disaster Relief Act (H.R. 2157) on May 10, 2019.

Overall, the roll call vote data on MTRs underscore that these were highly partisan votes. However, the party cohesion was asymmetrical. Republicans voted in almost total lockstep. Democrats stayed mostly in opposition, but the number of Democrats regularly voting for MTRs gave Democratic leadership little margin for error.

### **Votes on Final Passage**

While Republicans were more unified on MTR votes in the 116th Congress, Democrats were more unified on final passage of the underlying bills.

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<sup>16</sup> Rep. Justin Amash is counted with Republicans until he left the party and became an Independent in July 2019. He voted more than 3 in 5 Republican MTRs while in the party and continued at that rate as an Independent.



**Table 5.** Frequency of votes with other party on final passage after MTR offered (Jan. 2019-Oct. 2020)

<b>Frequency of votes with other party</b>	<b># of House Democrats (voting against passage)</b>	<b># of House Republicans<sup>17</sup> (voting for passage)</b>
0-4.9% of the time	224	79
5-9.9% of the time	7	83
10-19.9% of the time	3	26
20-29.9% of the time	2	8
30-49.9% of the time	0	5
50+% of the time	0	4

While an average of 15 Democrats voted yes on MTRs, fewer than three Democrats on average voted against their party on passage of the underlying bills. Of the 236 House Democrats, 147 voted for final passage of all 78 bills on which MTRs were offered from January 2019 to October 2020. An additional 47 Democrats only voted against final passage once. (See Table 5.) With that solid block, House Democrats have passed every bill brought to a final passage vote during the 116th Congress.

Democratic leaders had very few “close calls” on whipping final passage of bills relative to MTRs. On 40 of 78 bills, every single Democrat voted for final passage. On an additional 32 bills, Democratic votes in opposition stayed in the single digits. Only six bills had 10 or more Democratic no votes. Notably, the Restoring Tax Fairness for States and Localities Act (H.R. 5377) had 16 Democratic votes in opposition after the Republican MTR was adopted. That is the closest House Republicans came to defeating a bill after adding an MTR.

Democrats are slightly more likely to vote against final passage if an MTR is adopted. An average of 3.1 Democrats voted against final passage of the 8 bills on which MTRs were adopted. Only 2.8 Democrats on average voted against final passage of the 70 bills on which MTRs failed.

The Democratic members voting against final passage are not necessarily the same members frequently voting for MTRs.<sup>18</sup> The twelve Democrats who voted against final passage more than 5% of the time were nearly split between members of the Blue Dog Coalition and Congressional Progressive Caucus. The Democrats most likely to vote no on final passage were Reps. Kendra Horn (OK), Ben McAdams (UT) and Collin Peterson (MN) on the right and Reps. Alexandria Ocasio-Cortez (NY) and

<sup>17</sup> This includes four bills where a majority of Republicans voted with Democrats on final passage.

<sup>18</sup> The correlation between a Democratic member voting for MTRs and against final passage of bills is very weak. In a simple linear regression, for every 8-9 votes for an MTR, a House Democrat takes 1 vote against final passage ( $R^2 = 0.14$ ).

Rashida Tlaib (MI) on the left. While eight were freshmen, only four were Frontline members.

An average of 15.9 Republicans voted yes (with Democrats) on final passage after MTRs were offered. On 14 bills, not a single Republican voted for final passage. On 37 bills, Republican votes in favor of passage stayed in the single digits. On 23 bills, Republican votes in favor broke into the double digits but with the majority of Republicans still voting in opposition. And on four bills, the majority of Republicans joined with Democrats on voting for passage. Those were the Veterans Access to Child Care Act (H.R. 840) on February 8, 2019; SECURE Act (H.R. 1994) on May 23, 2019; FY 2021 National Defense Authorization Act (H.R. 6395) on July 21, 2020; and Pregnant Workers Fairness Act (H.R. 2694) on September 17, 2020. Notably, Republicans offered partisan MTRs (unsuccessfully) even in four instances when the underlying bill had bipartisan support.

Theoretically, adoption of an MTR means the bill changes toward Republicans' preferences. However, Republicans were less likely to support a bill after an MTR was adopted. An average of 6.5 Republicans voted for the eight bills with MTRs adopted while an average of 17.0 Republicans voted for the 70 bills on which MTR votes failed. This is further evidence that MTRs are primarily used to interfere with bills that the minority will never support rather than to improve legislation.

Although Republicans largely voted in lockstep on MTRs, many more Republicans voted against their party on final passage. (There is no correlation between the Republicans who voted against MTRs and for final passage.<sup>19</sup>) While 75 Republicans voted for final passage less than 5% of the time, 83 Republicans voted for final passage 5-10% of the time and 26 voted for final passage 10-20% of the time. The remaining 17 voted for passage even more often. Reps. Brian Fitzpatrick (PA), John Katko (NY), Chris Smith (NJ), and Jefferson Van Drew (NJ) voted with Democrats the majority of the time on final passage even as they consistently voted for Republican MTRs.<sup>20</sup>

## Topics of Motions to Recommit

The germaneness restriction, which requires an amendment to be connected to the subject matter of the bill, somewhat limits the topics of MTRs. That said, the minority party can be creative within those bounds. Republican MTRs over the course of the 117th Congress developed some recurring themes. (See Table 6.)

Three MTRs were motions to recommit without instructions. Combined, those MTRs drew one Democratic vote as they only served to delay a final vote. One MTR was ruled out of order due to lack of germaneness.<sup>21</sup> The remaining 75 were motions to recommit with instructions that were germane to the underlying bills.

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<sup>19</sup> The  $R^2$  for a simple linear regression is 0.001.

<sup>20</sup> The calculation for Rep. Van Drew only includes his votes as a Republican after January 7, 2020.

<sup>21</sup> A point of order was sustained against the MTR offered on H.R. 1309, the Workplace Violence Prevention for Health Care and Social Service Workers Act (November 21, 2019). All Democrats voted to table the appeal of the ruling of the chair. Given that the vote was on the motion to table, not the MTR itself, this vote was not included in MTR votes analyzed in this report.

**Table 6.** *Most common topics of MTRs (Jan. 2019-Oct. 2020)*

<b># of MTRs</b>	<b>Topic</b>
<b>13</b>	Immigration
<b>6</b>	China
<b>5</b>	Antisemitism
<b>5</b>	Crime and policing
<b>5</b>	Government shutdown
<b>4</b>	Reproductive health

Immigration was, by far, the most common subject of Republican MTRs. Thirteen MTRs (1 in 6) related in some way to immigration. On bills like the Dream and Promise Act (H.R. 6), an immigration-related MTR should be expected. But immigration MTRs also showed up on bills regarding gun violence prevention (H.R. 8), democracy reform (H.R. 1), election security (H.R. 2722), and COVID-19 relief (H.R. 6800). The House adopted the immigration-related MTRs for the Bipartisan Background Checks Act (H.R. 8) and the Humanitarian Standards for Individuals in Customs and Border Protection Custody Act (H.R. 3239).

The next most common theme was China (6 MTRs). The House adopted an MTR offered on the INVEST in America Act (H.R. 2) that would prohibit contracting with Chinese state-owned companies. Republicans also offered China-related MTRs on the Climate Action Now Act (H.R. 9), United States Export Finance Agency Act (H.R. 4863), an appropriations package (H.R. 7608), the Clean Economy Jobs and Innovation Act (H.R. 4447), and the Uyghur Forced Labor Disclosure Act (H.R. 6270).

Politicization of antisemitism was another recurring theme (5 MTRs). Republicans successfully offered a condemnation of antisemitism on the Yemen War Powers Resolution (H.J.Res. 37). While Democrats decided to support the MTR en masse, its adoption ended up interfering with the resolution's privileged status in the Senate, forcing the House to vote again on a Yemen resolution (S.J.Res. 7) several weeks later.<sup>22</sup> On two retirement security bills (H.R. 1994 and H.R. 397), Republicans offered MTRs against the boycott, divest, and sanction (BDS) movement directed at Israel. On the Equity and Inclusion Enforcement Act (H.R. 2574), the House adopted an MTR to designate antisemitism as discrimination under the bill. Antisemitism is tied with immigration as the most common topic for MTRs adopted by the House (2 each). Following those votes, 21 Jewish members wrote to House Minority Leader Kevin

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<sup>22</sup> Under the War Powers Act of 1973, the Yemen War Powers Resolution – before the MTR – could not be filibustered in the Senate, meaning it could pass the Senate with a simple majority. Because the antisemitism language in the MTR had nothing to do with war powers, the entire resolution no longer qualified for privileged status under the War Powers Act, opening it up to a filibuster and 60-vote threshold for cloture.

McCarthy: “To be clear, every clearly partisan maneuver in which House Republicans seek to play ‘gotcha’ politics with Jewish lives—including partisan motions to recommit on anti-Semitism—makes the fight against anti-Semitism harder. This is especially true when members then vote against the underlying bill after a motion to recommit passes, thereby clearly demonstrating that those members are only interested in the partisan maneuver.”<sup>23</sup>

Republicans offered 5 MTRs on crime and policing. For instance, the House adopted the MTR on the Rights for Transportation Security Officers Act (H.R. 1140), which purported to ban the Transportation Security Administration hiring individuals convicted of sex crimes, offenses involving minors, violent crimes, or terrorism. In a more idealized use of an MTR, Republicans offered an alternative police reform bill as a substitute amendment to the George Floyd Justice in Policing Act (H.R. 7120). In that case, every Democrat voted against the motion.

At the beginning of the Congress, Republicans offered 5 MTRs particular to the government shutdown and continuing resolutions, none of which were adopted. Four MTRs related to reproductive health, and none of those were adopted either.

Most of the remaining 37 MTRs were one-off “gotcha” votes that either injected contentious issues into floor debate or forced most Democrats to vote against popular positions or groups (e.g. domestic violence survivors, small businesses, and rural broadband). The MTR adopted on the Restoring Tax Fairness for States and Localities Act (H.R. 5377) fell into this category: the Republican MTR increased tax deductions for educators and first responders. A few MTRs were substantive, reflecting a full alternative legislative proposal. Those more substantive MTRs got some of the lowest vote totals.

The number of votes for MTRs on the same general topic varied widely. Actually, some members were even inconsistent on how they voted for the same MTR. Both the January 9, 2019 MTR on the FY 2019 FSGG appropriations bill and the June 26, 2019 MTR on the FY 2020 FSGG appropriations bill shifted money from the General Services Administration to the Office of Terrorism for Iran sanctions enforcement. Oddly, the January MTR only received 8 Democratic votes while the June MTR passed with 37 Democrats in favor. This seems as clear an indication as any that members’ votes on MTRs depend more on their political considerations in the moment than their firmly held beliefs.

## **The Effects of MTRs**

The effect of MTRs extends beyond the bills on which they are adopted. Members, particularly those expecting competitive elections, fear political consequences on their MTR votes. Those fears had some basis in the 116th Congress. MTR votes made

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<sup>23</sup> Office of Rep. Eliot L. Engel. “Jewish Members of Congress Send Letter to McCarthy on Partisan Anti-Semitic Tactics.” 24 September 2020. <https://engel.house.gov/latest-news/jewish-members-of-congress-send-letter-to-mccarthy-on-partisan-antisemitic-tactics/>

repeated appearances in misleading videos and social media content throughout the 2020 election cycle, including in content amplified by House Republicans.<sup>24</sup>

Despite campaign ads, it is questionable how well-grounded political concerns around MTRs truly are. Republicans stayed in lockstep against MTRs during their eight years in the majority from 2011 to 2018. They appeared to do so largely without consequence. Regardless of whether their votes were rational, several Democratic members who consistently supported the underlying bills on the floor were also unreliable votes against the MTRs put forward by the bills' Republican opponents.

Once members start to vote for MTRs, the problem for the majority party builds on itself. Following a blanket rule of opposing MTRs makes it possible to defend those votes as procedural rather than having to speedily weigh each one on its substance. A Member of Congress can argue (accurately) that the MTR is a partisan procedural tactic by the minority, not a good faith amendment to the bill. However, a substantial number of members engaging with the substance of each individual MTR makes it harder to collectively dismiss them as meaningless procedural votes.

Lack of unity among Democrats on MTRs in the 116th Congress was due, in part, to a lack of personal discipline. In addition, it reflected inconsistent guidance from Democratic leadership on whether all members should vote against MTRs.<sup>25</sup> Whatever the reason, several Members habituated weighing the substance of MTRs. External organizations responded in turn by including MTRs on more legislative scorecards and vote summaries.<sup>26</sup>

Stronger unity among Democrats on final passage than the motion to recommit has created an odd dynamic throughout the 116th Congress. Votes on MTRs became the most uncertain votes on the floor schedule. Democratic leadership and committee staff prepared contingency plans to counter the various MTRs that Republicans might spring upon Democratic members, sometimes teeing up preemptive votes on related amendments. Bills' external supporters increasingly advocated against MTRs, though they effectively had no time to mobilize grassroots supporters or contact congressional offices once an individual MTR's text became public. Over the course of an entire Congress, this presented real costs in terms of congressional and organizational capacity.

Democratic leadership has reshaped consideration of some bills to mitigate the risks of MTRs. Given concerns around immigration-related MTRs, the House Rules Committee advanced the NO BAN Act (H.R. 2214) and Access to Counsel Act (H.R. 5581) as House amendments to the Senate amendment to H.R. 2486, an unrelated piece of legislation. This move effectively blocked Republicans' opportunity to use an MTR because an MTR can only be offered the first time a bill is considered on the floor. The Rules Committee used the same tactic for two bills regarding Iran (H.R.

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<sup>24</sup> Angelo Fichera. "A Misleading Take on Immigrant, Veterans Health Care." FactCheck.org. 9 December 2019. <https://www.factcheck.org/2019/12/a-misleading-take-on-immigrant-veterans-health-care/>

<sup>25</sup> Heather Caygle and Sarah Ferris. "Pelosi's freshmen fracture amid GOP pressure." Politico. 14 February 2019. <https://www.politico.com/story/2019/02/14/house-democrats-freshmen-voting-gop-1169554>

<sup>26</sup> This is based on the authors' direct experience and conversations with congressional staff and progressive organizations.

550).<sup>27</sup> Similarly, the House considered a concurrent resolution, which does not go to the President, instead of a joint resolution on Iran (H.Con.Res. 83).<sup>28</sup> Simple and concurrent resolutions are not subject to MTRs, but joint resolutions are.

With limited opportunities to avoid MTRs, House leadership likely keeps some bills with majority support from the floor altogether due to MTR concerns. While there is no public list of bills kept from consideration due to MTRs, it seems likely from observable patterns that bills concerning immigration, civil rights, and progressive foreign policy are particularly disadvantaged. In other words, the threat of MTRs tends to work against the interests of marginalized and underserved communities, both domestically and abroad.

## Reforming the MTR

MTRs have reshaped the legislative process in the House – and not for the better. They have become fuel for partisan attacks, putting progressive priorities at a disadvantage in the process. Given these issues, the House may consider a number of reform options when it puts together the rules package for the 117th Congress.

Potential reforms basically fall into four buckets: (1) limit the ability to offer MTRs, (2) limit the content of MTRs, (3) provide more time to consider MTRs, and (4) make MTRs harder to adopt. Below is a list of specific options with a brief discussion of each.

### Limit the ability to offer MTRs

- *Eliminate the MTR altogether:* If the MTR was eliminated entirely, the minority party would have no ability to offer any amendment to a bill unless the House Rules Committee made minority amendments in order. This would necessarily remove any need to prepare for or whip MTR votes as well as end their use in misleading campaign ads. However, it would be a noticeable diminishment of minority rights in the House.
- *Allow MTR only if no minority amendments made in order:* The MTR could be reengineered as a safeguard for consideration of the minority amendments in the Rules Committee, allowed only if no minority amendment is made in order by the special rule. This would protect the opportunity for the minority party's input but steer it through the Rules Committee. If the minority party wanted to offer an MTR, it would have to pass up the opportunity to have other amendments made in order. A more relaxed version of this proposal would allow MTRs unless there was an open rule allowing all germane amendments to be offered.

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<sup>27</sup> Melanie Zanona and Sarah Ferris. "Dems seeks to shield Iran bills from Republican floor tactics." Politico. 23 Jan 2020. <https://www.politico.com/news/2020/01/23/iran-trump-war-powers-democrats-102920>

<sup>28</sup> Rachel Oswald. "House approves resolution aimed at trimming Trump's power on Iran." Roll Call. 9 Jan 2020. <https://www.rollcall.com/2020/01/09/house-approves-resolution-aimed-at-trimming-trumps-power-on-iran/>

## Limit the content of MTRs

- *Eliminate the motion to recommit with instructions:* As noted above, there are two versions of the MTR: the motion to recommit with instructions and the motion to recommit without instructions. It is the instructions that contain the partisan amendment. If the instructions were eliminated, the MTR would simply be a motion to send a bill back to committee. That motion would be easier for the majority to defeat. Only one Democrat has voted for a motion to recommit without instructions in the 116th Congress.
- *Allow the Rules Committee to restrict MTRs:* Prior to 1995, special rules could limit a motion to recommit from containing instructions.<sup>29</sup> Rather than eliminating the motion to recommit with instructions altogether, restoring this practice would leave it to the Rules Committee whether a motion to recommit with instructions could be made in order.
- *Require full substitute amendments:* An amendment in the nature of a substitute replaces the entire text of a bill.<sup>30</sup> If a motion to recommit with instructions had to include a full substitute amendment, the minority would essentially get a vote on any bill it has that could avoid other points of order. This may encourage the MTR to be used to present a contrasting vision rather than force a vote on a “gotcha” amendment. It will probably also make the MTR easier for majority members to vote against. (The substitute amendments offered as MTRs in the 116th Congress received few Democratic votes.)

## Provide more time to consider MTRs

- *Require pre-filing of the MTR:* Requiring pre-filing of MTRs would end the last-minute scramble when the text of the MTR is released and reduce the inefficient use of time preparing for potential MTRs that are never offered. Effectively, this would make the MTR more like a normal amendment – with the exception that the Rules Committee would have no option to block it absent a point of order. However, this would also make MTRs harder to dismiss as procedural votes and may encourage additional members to weigh the substance of the instructions. The timing for pre-filing would be tricky. The MTR would need to be filed with sufficient time for review but structured so that it would not delay floor proceedings. The House already has the ability to extend MTR debate, but that ability is almost never used because the majority does not want to take up additional floor time due to the minority’s motion.

## Make MTRs harder to adopt

- *Raise the vote threshold for adoption:* Usually a motion passes in the House if there is a majority voting in favor. However, the House does require a  $\frac{2}{3}$

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<sup>29</sup> Lynch 2016

<sup>30</sup> Christopher M. Davis. “The Amending Process in the House of Representatives.” Congressional Research Service. 16 September 2015. <https://crsreports.congress.gov/product/pdf/RL/98-995>

majority to pass a bill under suspension of the rules. Rep. Stephanie Murphy (FL) has proposed subjecting the MTR to this same  $\frac{2}{3}$ -majority threshold.<sup>31</sup> Only two of the eight MTRs adopted in the 116th Congress would have cleared this threshold. Effectively, a higher threshold would give free passes to more members of the majority party to vote for MTRs without actually changing the legislation. Rather than preventing votes that target immigrants and reproductive rights, it would allow more majority members to vote for “gotcha” amendments without immediate consequence. Imposing a supermajority threshold would also be a significant departure for traditional House practice.

Full elimination of the MTR or raising the vote threshold represent the most dramatic changes to the House as an institution. Pre-filing and raising the vote threshold would still allow controversial amendments. In contrast, limitations on the content of MTRs could eliminate most “gotcha” votes while staying in line with historical House practice.

When the 117th Congress begins, the House will decide the rules under which it wishes to operate. The MTR as it exists today has not worked well for the current majority. MTRs have an established track record of promoting partisanship rather than thoughtful legislating. And they work to the disadvantage of the groups they target and the priorities they seek to obstruct. The House has repeatedly changed rules around the motion to recommit. In 2021, it should do so again.

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<sup>31</sup> Congressional Progressive Caucus Center. “6 Potential Rules Changes in the 117th Congress.” 6 October 2020.  
<https://www.progressivecaucuscenter.org/s/6-Potential-Rules-Changes-in-the-117th-Congress.pdf>



## Notes on Data

The authors analyzed roll call votes from the 1st and 2nd Sessions of the 116th Congress through October 2020 as reported by the Clerk of the U.S. House of Representatives and aggregated by Bloomberg Government. The data includes all motions to commit and recommit, both with and without instructions. Final passage votes only include bills on which Republicans offered a motion to commit or recommit. The authors classified MTRs by issue with outside input (see Acknowledgements). Unless otherwise noted, further bill and MTR information comes from the Congressional Record, Congress.gov, and Bloomberg Government.

Rep. Justin Amash is classified as Republican in the data until July 2019, when he changed his party affiliation to Independent. Rep. Jefferson Van Drew is classified as a Democrat through 2019 and then as a Republican after he changed his party affiliation at the end of 2019. Members of Congress, including members who resigned or died during 2019, are included in the data for all votes in which they participated. Members who were sworn in after the start of the 116th Congress are still included for the votes in which they participated.

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***This report is part of the CPCC's [Unrig the Rules](#) project, which examines the current rules and practices in Congress and proposes reforms to make our institutions more representative, inclusive, and democratic.***