

Senate Rules Committee
Hearing on “Ideas to Reduce Delay and Encourage Debate in the Senate”
Statement of Senator Tom Udall
September 29, 2010

Mr. Chairman,

Thank you for holding this hearing.

Today’s hearing on “Ideas to Reduce Delay and Encourage Debate in the Senate” highlights once again why our Rules are in desperate need of reform. I have been speaking for months about reforming the Senate Rules – not just the filibuster – and I am happy that we have the opportunity to discuss some of the other issues today.

Today we are discussing several ways to make the Senate a more functional body, while also ensuring that it retains its unique deliberative qualities. But until we agree that on the first day of the next Congress, a majority of the Senate has the constitutional right to change its rules, I am afraid that any proposed changes will never get a vote.

One idea we are discussing today illustrates my point. Making the motion to proceed non-debatable, or limiting debate on such a motion, has had bipartisan support for decades. This recommendation is often mentioned as a way to weaken the power, and abuse, of holds. Yet we are discussing it again today because the rules are unconstitutionally entrenched against change.

I was privileged to be here for Senator Byrd’s final Rules Committee hearing, where he stated, “I have proposed a variety of improvements to Senate Rules to achieve a more sensible balance allowing the majority to function while still protecting minority rights. For example, I have supported eliminating debate on the motion to proceed to a matter ... or limiting debate to a reasonable time on such motions.”

In January 1979, Senator Byrd – then Majority Leader – took to the Senate Floor and said that unlimited debate on a motion to proceed, “makes the majority leader and the majority party the subject of the minority, subject to the control and the will of the minority.”

Despite the moderate change that Senator Byrd proposed – limiting debate on a motion to proceed to thirty minutes – it did not have the necessary 67 votes to overcome a filibuster. At the time, Senator Byrd argued that a new Senate should not be bound by that rule, stating:

“The Constitution in article I, section 5, says that each House shall determine the rules of its proceedings. Now we are at the beginning of Congress. This Congress is not obliged to be bound by the dead hand of the past.”

Efforts to reform the motion to proceed have continued since. In 1984, a bi-partisan “Study Group on Senate Practices and Procedures” recommended placing a two-hour limit on debate of a motion to proceed. That recommendation was ignored.

In 1993, Congress convened the Joint Committee on the Organization of Congress. The Committee was a bipartisan, bicameral attempt to look at Congress and determine how it can be a better institution. Senator Pete Domenici, my immediate predecessor, was the co-vice chairman of the committee. Senator Domenici stated at a hearing before the Joint Committee, “If we abolish [the debatable motion to proceed], we have gone a long way to diffusing the validity of holds.”

But here we are again today – more than thirty years after Senator Byrd tried to make a reform that members of both parties have agreed is necessary. And there is one major obstacle to achieving rules reform – the Senate Rules themselves.

The current rules – specifically Rule V and XXII – effectively deny a majority of the Senate the opportunity to ever change its rules. This is something the drafters of the Constitution never intended.

I believe the Constitution provides a solution to this problem. Colleagues, as well as constitutional scholars, agree with me that a simple majority of the Senate can adopt or amend its rules at the beginning of a new Congress because it is not bound by the rules of the previous Congress.

I again thank the Chairman for holding these important hearings. But talking about change, and reform, does not solve the problem alone. We must act. We can hold hearings, convene bipartisan committees, and study the problem to death, but until we agree that the Constitution provides the right for each Senate to adopt its rules of proceedings by a simple majority vote, there will be no real reform.

It’s our chance to fix the rules that are being abused, like the filibuster, secret holds, and the amendment process. This is our chance to bring accountability back to the Senate and to return power to the American people.

The predecessor of my Senate seat, Clinton Anderson, was one of the first proponents of adopting rules at the beginning of a Congress. In 1957 he said on the Senate floor that, “It is our duty to take responsibility for the rules which will govern our procedures, and not to cast that responsibility upon the dead hands of past Congresses.” I agree with him, and I hope that my colleagues will join me in fulfilling our duty next January.

In the meantime I am looking forward to the testimony of our distinguished panel today and am confident this will be as illuminating and interesting as the previous five hearings on this topic have been.

Thank you, Mr. Chairman, and I ask unanimous consent for all of the items I cited in my testimony be included in the record.

for the introduction of bills, resolutions, and statements at the desk be in order until 5 p.m. today.

The PRESIDING OFFICER (Mr. CRANSTON). Without objection, it is so ordered.

ORDER FOR THE REFERRAL OF TREATIES AND NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that for the duration of the 96th Congress it be in order to refer treaties and nominations on the days when they are received from the President, even when the Senate has no executive session that day.

The VICE PRESIDENT. Without objection, it is so ordered.

AUTHORIZATION FOR COMMITTEE ON ETHICS TO MEET DURING SENATE SESSIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that for the duration of the 96th Congress, the Ethics Committee be authorized to meet at any time during the session of the Senate. This would put the Ethics Committee in the same category as the Appropriations Committee and the Budget Committee now enjoy.

The VICE PRESIDENT. Without objection, it is so ordered.

AUTHORIZATION FOR RECEIPT OF BILLS, JOINT RESOLUTIONS, CONCURRENT RESOLUTIONS AND SIMPLE RESOLUTIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the 96th Congress Senators may be allowed to bring to the desk bills, joint resolutions, concurrent resolutions and simple resolutions.

The VICE PRESIDENT. Without objection, it is so ordered.

ORDER FOR TIME LIMITATION ON ROLL CALL VOTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that for the duration of the 96th Congress there be a limitation of 15 minutes each on any roll call vote with warning signal to be sounded at the midway point, beginning at the last 7½ minutes, and when roll call votes are of 10-minutes duration the warning signal be sounded at the beginning of the last 7½ minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

STANDING ORDER TO RECEIVE REPORTS AT THE DESK DURING 96TH CONGRESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the 96th Congress it be in order for the proper members of the staff to receive reports at the desk when presented by a Senator at any time during the day of the session of the Senate.

The VICE PRESIDENT. Without objection, it is so ordered.

SENATE RESOLUTION 9—PROPOSED AMENDMENT OF STANDING RULES OF THE SENATE

Mr. ROBERT C. BYRD. Mr. President, I would hope to have the attention of the Members at this point. They may relax. I do not intend to pull any fast ones at the moment.

[Laughter.]

I am about to send to the desk a resolution which would change certain rules of the Senate. I will be speaking for a few minutes and Members may take it easy. But I would like to have their attention.

I believe the time has come for the Senate to modify Senate rule XXII. At the present time, there is no Senate rule XXII, for all intents and purposes. Cloture may be invoked on a matter and, after having been invoked by 60 Senators—a constitutional three-fifths—that matter may be drawn out interminably by a single Senator, by two or three Senators, or by a larger group of Senators.

They may offer dilatory motions and amendments in spite of the rule. They may call up 100 amendments, 200 amendments, 500 amendments, 1,000 amendments, any number of amendments. There is no rule providing for a second cloture motion to stop the kind of so-called debate.

Thus, one Senator, two Senators, three Senators, or a minority of Senators of any number may thwart the will not only of a majority but of a three-fifths majority of the Senate, which, having voted for cloture, signifies its will that the debate shall come to a close and that the pending matter shall be acted upon one way or another.

I do not believe that this is in the national interest, and I do not believe it is fair play. The majority of the Senate is entitled to fair play. Three-fifths of the Senators who vote in a given instance to invoke cloture are entitled to fair play. They are entitled to see a matter come to a final decision at some point after a reasonable amount of debate. All Senators are entitled to offer motions and amendments, but not to abuse the rules of the Senate and to impose upon the courtesy of their colleagues and make the Senate a spectacle before the Nation.

And so, Mr. President, I have come to the conclusion, after a lot of wrestling with my own conscience, that the time has come to do something about this situation.

We live in the 20th century, and we live near the end of the 20th century. We are about to begin the 8th decade of the 20th century. I say to you that certain rules that were necessary in the 19th century, and in the early decades of this century must be changed to reflect changed circumstances.

It is becoming more and more necessary, as we face this mad rush of life and today's new issues, international and domestic, that the Senate have rules that will allow it to deal with these issues effectively, in a timely and orderly fashion.

It is now possible for the Senate to engage in at least two filibusters on any

given issue. If the majority leader moves to take up a bill on the calendar, he can only do so by unanimous consent, or by motion, which is debatable—except within a tiny time frame within the first 2 hours of a new legislative day, and under certain circumstances only. Otherwise, on that motion to proceed to debate, the debate is unlimited. It makes the majority leader and the majority party the subject of the minority, subject to the control and the will of the minority. I am not speaking of a minority necessarily as a party, but it makes the majority leader subject to the will of a minority of Senators: as few as one Senator on either side of the aisle. If I move to proceed—or if any future majority leader moves to proceed to take up a matter, and unless he works it into that infinitesimally small time frame within the first 2 hours of a new legislative day—then one Senator can hold up the Senate for as long as he can stand on his feet.

Time and time again I seek to bring up bills on the calendar. Time and time again I am confronted with situations in which it is said, "Such-and-such a Senator is not here; he has a hold on that bill."

"Well, let us go to another bill."

"Well such-and-such a Senator has a hold on that bill, and he is not here, either."

"Well, let us go to this other bill."

"Well, such-and-such a Senator will object to that. He is here, but he will object."

So what kind of predicament is the majority leader in? He can move, but he is put in the position of making a debatable motion, so that any single Senator or any group of Senators, however small, can talk until such time as cloture is invoked.

So this rule needs to be changed to allow the leader of the majority party to move to take up a matter and, after a reasonable period for debate, proceed to vote on the motion to proceed. A majority of the Senate can vote to proceed to take up the matter, or can vote to reject the leader's motion. In any event, it gives the majority party and the majority leader an opportunity to work to get the business of the Senate transacted in timely and orderly fashion.

The present rule of the Senate allows two filibusters on any matter: A filibuster on the motion to proceed, and a filibuster on the particular matter once it is before the Senate. I say before all the world that Senators have a right to filibuster a matter, but the filibuster should be on the merits. There should not be a filibuster on the mere motion to proceed to take up the matter. If the opposition has 41 votes, they can kill any bill by filibustering the bill or resolution itself. They should not put the Senate through the misery of a double filibuster: A filibuster on the motion to proceed; and then, if the matter is taken up, a filibuster on the bill itself. They should allow the Senate to proceed to the consideration of the matter, and then conduct their filibuster. Otherwise, the Senate is put to the test of cloture after

cloture after cloture, on the motion to proceed and, if cloture is invoked, then cloture to shut off debate on the matter itself.

One filibuster is enough. If a minority of the Senate has enough votes, 41, to kill a bill, it should allow the bill to at least be brought up for debate on the merits.

This matter of the filibuster has gotten to the point that the Senate is continually being faced with the filibuster threat. The mere threat of a filibuster, these days, is nearly as bad as the filibuster itself. We have seen, in the last 9 years since 1970, more filibusters conducted in the Senate than occurred in the previous 30 years. I cannot make that statement with assurance of absolute accuracy, but I will not miss it by much. I will say it again: The Senate, beginning in 1970, inclusive of 1970, has seen more filibusters than were conducted in the 30 years prior to 1970. Let me just discuss that for a moment.

In 1935 there were three filibusters, and in 1 subsequent year between 1935 and 1970 there were three filibusters. So in each of 2 years out of the period 1935 through 1970, there were three filibusters. There were at least 10 years during that period in which no filibuster occurred at all in any one of the 10 years—not a 10-year period, but 10 separate years. There were another 10 or 11 or 12 years during that period of time in which one filibuster occurred—only one in each of such year. And there were a few years in which two filibusters occurred in each year.

But we have reached the point now where every year we can expect 4, 5, 6, and as many as 10. I believe that in one recent year there were as many as 10 or more filibusters. Yes; in 1975 there were 12 filibusters, according to the information I hold in my hand.

Now we are becoming more and more the victim of this ingenious procedure that allows, first, a filibuster threat; second, the filibuster on the motion to proceed; third, the filibuster on the matter itself; and fourth and finally, the cost cataclysmic and divisive filibuster of all, the postcloture filibuster.

Now, Senators know what happened the year before last on the filibuster on the natural gas pricing bill. A small number of Senators utilized the rules and created a situation in which the bill would have been killed had the majority leader not used extraordinary procedural tactics to save that bill. If I had to do it all over again tomorrow, I would do it over again tomorrow. But Senators know what happened. It created bad feelings. It was a very divisive thing.

I can understand that some Senators were outraged at the procedures that I used to save that bill. But if I had not used those procedures, the conference report on that bill would not have reached the floor at the end of the last session, and we would not have passed that bill. I did what I thought I had to do. In exactly the same circumstances, I would do it all over again, and I would understand the outrage that would meet that effort.

Now, ladies and gentlemen, my colleagues, this postcloture filibuster is the kind of thing that creates ill feelings and deep divisions in the Senate. It is fractious; it fragments the Senate, it fragments the party on either side of the aisle, and it makes the Senate a spectacle before the Nation. It is not in the national interest.

So these are among the rules that I propose to modify, or to change.

There is not change which I have proposed which is not a reasonable change and which I cannot, as majority leader, stand up here and justify.

Now, I am going to yield to the minority leader in a few minutes, but I am not quite ready to yield to anyone at this moment.

I have been majority leader 2 years. I was majority whip 6 years, and I was secretary of the Democratic conference for 4 years.

In those 12 years out of my 20 years in the Senate, I dare to say that it cannot be challenged that I have stayed on this floor more than any other Senator since the first Senate met in 1789. I have stayed on this floor more than any other Senator in all of the history of the Senate for an equal given period of time—12 years.

I know pretty well what the Senate rules and precedents are. No man ever becomes a master of them. But I know something about them. Having been in the leadership for 12 years, I know what the difficulties are of having to lead the Senate.

The minority leader has a different responsibility to some degree. He, too, must share the responsibility of leading the Senate. He has cooperated, and we have worked together well. I can say the same for the distinguished minority whip, and I do not have a better friend in the Senate than TED STEVENS. He is my ranking minority member on my Appropriations Subcommittee on the Department of the Interior.

These are men I love, and I value their friendship. I appreciate the cooperation and the courtesies that they have extended to me.

The minority leader does have some of the responsibilities of keeping the legislative process moving, and he has worked with me in that regard. But he has a responsibility, also, of protecting the members of his party. He carries out his responsibilities exceedingly well. He is to be commended. I understand the function and the role of the minority party. It has an adversary role in many instances. There are instances in which, thank heavens, we have worked together. In most instances we do, and that is in the best interest of the Nation. There are times when the minority feels it is in the best interests of the Nation that they take an adversary role, and I respect them for that.

But I say to Senators that the majority has the responsibility of leading. The majority has the responsibility of keeping the legislative process moving. I can tell Senators that after 12 years in the leadership, I am only proposing changes that make it reasonably possible for the

majority party, the majority leader, and, in certain instances, the majority of the Senate—forgetting party for a moment—the majority of the Senate on both sides to work its will on matters, especially after cloture has been revoked. It is for this combination of reasons that I am offering this resolution today.

I base this resolution on article I, section 5 of the Constitution. There is no higher law, insofar as our Government is concerned, than the Constitution. The Senate rules are subordinate to the Constitution of the United States. The Constitution in article I, section 5, says that each House shall determine the rules of its proceedings.

Now we are at the beginning of Congress. This Congress is not obliged to be bound by the dead hand of the past.

Take rule XXXII, for example, the second paragraph thereof which says that the rules of this Senate shall continue from Congress to Congress until changed in accordance with these rules.

That rule was written in 1959 by the 86th Congress. The 96th Congress is not bound by the dead hand of the 86th Congress.

The first Senate, which met in 1789, approved 19 rules by a majority vote. Those rules have been changed from time to time, and that portion of Senate rule XXXII that I just quoted was instituted in 1959. So the Members of the Senate who met in 1789 and approved that first body of rules did not for one moment think, or believe, or pretend, that all succeeding Senates would be bound by that Senate. The Senate of the 86th Congress could not pretend to believe that all future Senates would be bound by the rules that it had written. It would be just as reasonable to say that one Congress can pass a law providing that all future laws have to be passed by two-thirds vote. Any Member of this body knows that the next Congress would not heed that law and would proceed to change it and would vote repeal of it by majority vote.

I am not going to argue the case any further today, except to say that it is my belief—which has been supported by rulings of Vice Presidents of both parties and by votes of the Senate—in essence upholding the power and right of a majority of the Senate to change the rules of the Senate at the beginning of a new Congress.

I have not always taken that position, but I take it today in the light of recent bitter experience. The experience of the last few years has made me come to a conclusion contrary to the one I reached some years ago.

Now, Mr. President, I am going to offer a resolution, and I am going to make a motion, and I am not going to press the Senate into any vote today. I do not want to proceed in such a fashion. I want the Senate to take a week or 10 days to debate this resolution, and let any Senator any amendment that he wishes to offer. Let the Senate vote on amendments, and then vote up or down on the resolution. Vote it down if it is the majority of the Senate's wish. If the majority of the Senate wants to amend it, so be it.

If the majority of the Senate does not

like a single provision I have put in that resolution that is quite the Senate's prerogative, and I will bow to the will of the Senate. I do not want to be pushed into a situation where a majority of the Senate at the beginning of a new Congress will change the rules. But I make this prediction:

The majority of the Senate may not back me up today. This is the opening day, and we will recess so that we will still be in the opening legislative day when we come back on Thursday. I make a prediction that if the majority of the Senate does not back me up in this effort, if we cannot get a time agreement; if we cannot work out something—but I feel that we can, that is why I am not going to press it to a vote today; I feel that we can work out a resolution; I believe that there are members of the minority who want to see something done about this postclosure situation; I want to be a reasonable man; I do not want to be put in the corner of having a proceed by majority vote.

But I will say this to Senators: I might have to do just that, and I am going to leave the way open to do that, and if I do that and fail, I will not be ashamed of having tried. If a majority of the Senate does not want to change the rules, I will have done what I think is best. But the time will come when every Member of the Senate will rue the day that we did not change that rule XXII in such a way that these very devious postclosure situations can be eliminated and the Senate can get on to work its will and serve the national interests.

I predict further that if these postclosure filibusters continue, the day will come when the majority of this Senate will rise up and will strike down that rule and will change it; and there may then be greater and more far-reaching changes proposed than I have proposed today.

I may not be around here when that happens, but a majority of the Senate is not going to be patient much longer and the Nation is not going to stand for government by postclosure filibuster on the part of one, two, three or a small minority of the Senate, flaunting the will and defying the will and thwarting the will of the majority of Senators who have voted to invoke cloture on a given matter.

So, I say to Senators again that the time has come to change the rules. I want to change them in an orderly fashion. I want a time agreement. But, barring that, if I have to be forced into a corner to try for a majority vote, I will do it because I am going to do my duty as I see my duty, whether I win or lose.

If 51 Senators do not back me up in that, I will have done my duty. They will have done theirs as they see fit. I believe that they will come to see that, if we can only change an abominable rule by a majority vote, that it is in the interests of the Senate and in the interests of the Nation that the majority must work its will. And it will work its will.

Having said that, I say no more today. I will certainly yield to the distinguished minority leader. I want to retain my right to hold the floor. I want to protect myself in this matter. I do not relish

the idea of hogging the floor, but I do want to protect my position in this situation.

It is not my intention to put the Senate to the test today. I intend only to call up the resolution and make a motion to proceed to its consideration. Then it will be my intention to move to recess over until Thursday, thus giving the minority leader and myself and other Senators an opportunity to discuss it.

So, Mr. President, I do not intend to yield the floor today, and I do not say that dictatorially or dogmatically, I just say it out of necessity; I am going to protect the rights of the minority leader—I send to the desk a privileged resolution to amend the standing rules of the Senate, and I move that pursuant to article I, section 5 of the Constitution, the Senate proceed to its immediate consideration without debate of the motion.

The VICE PRESIDENT. The resolution will be stated.

The legislative clerk read as follows:

S. RES. 9

Resolved, That paragraph 1 of rule III of the Standing Rules of the Senate is amended by striking out all after the words "unless by unanimous consent" and inserting in lieu thereof the following: "or on motion decided without debate. Motions to correct the Journal shall be privileged, shall be confined to an accurate description of the proceedings of the preceding day, and shall be determined without debate."

Sec. 2. That rule VIII of the Standing Rules of the Senate be amended by inserting a new sentence at the end of section 2, as follows: "Debate on such motions made at any other time shall be limited to thirty minutes, to be equally divided and controlled by the Majority and Minority leaders."

Sec. 3. That rule XV of the Standing Rules of the Senate is amended by adding at the end thereof the following new paragraph: "The demand for the reading of an amendment when presented to the Senate for consideration, including House amendments, may be waived on motion decided without debate when the proposed amendment has been identified by the clerk and is available to all Members in printed form."

Sec. 4. That rule XVIII of the Standing Rules of the Senate is amended—

(1) by inserting after "QUESTION" in the caption a semicolon and the following: "GERMANENESS";

(2) by inserting "1." before "If"; and

(3) by adding at the end thereof the following new paragraph:

"2. (a) At any time during the consideration of a bill or resolution, it shall twice be in order during a calendar day to move that no amendment other than the reported committee amendments which is not germane or relevant to the subject matter of the bill or resolution, or to the subject matter of an amendment proposed by the committee which reported the bill or resolution, shall thereafter be in order. Such a motion shall be privileged and shall be decided without debate.

"(b) If a motion made under subparagraph (a) is agreed to by an affirmative vote of three-fifths of the Senators present and voting, then any floor amendment not already agreed to (except amendments proposed by the committee which reported such bill or resolution) which is not germane or relevant to the subject matter of such bill or resolution, or to the subject matter of an amendment proposed by the committee which reported such bill or resolution, shall not be in order.

"(c) When a motion made under subpara-

graph (a) has been agreed to as provided in subparagraph (b) with respect to a bill or resolution, points of order with respect to questions of germaneness or relevancy of amendments shall be decided without debate, except that the Presiding Officer may, prior to ruling on any such point of order entertain such debate as he considers necessary in order to determine how he shall rule on such point of order. Appeals from the decision of the Presiding Officer on such points of order shall be decided without debate.

"(d) The provisions of this paragraph shall not apply to amendments subject to the rules of germaneness and relevancy contained in paragraph 4 of rule XVI and paragraph 2 of rule XXII."

Sec. 5. A. That (a) line 5 of the first paragraph of paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by striking out "or the unfinished business," and in the line above inserting "or" before the words "other matter pending before the Senate," and lines 6 and 7 of the second paragraph of paragraph 2 is amended by striking out "or the unfinished business."

(b) The second paragraph of paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by inserting at the end thereof a new paragraph as follows: "After one hundred hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The amount of time specified in the preceding sentence may be increased, or decreased (but to not less than ten hours), by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn. At any time after ten hours of consideration, any remaining time may be reduced, but to not less than ten (10) hours, by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to reduce time and only one motion to extend time, specified above, may be made in any one calendar day."

(c) The last paragraph of paragraph 2 of rule XXII of the Standing Rules of the Senate is amended by striking out the first sentence and inserting in lieu thereof the following: "After cloture has been invoked, no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks."

B. That Rule XXII of the Standing Rules of the Senate be amended by inserting a new paragraph at the end of section 2 as follows:

"After September 1 of each calendar year until the end of the session, the application of the provisions of section 2 of rule XXII shall be modified to provide that if a proper motion to invoke cloture has been filed pursuant to section 2, it shall be in order to proceed immediately to the consideration thereof, and after three hours of debate, equally divided and controlled by the Majority and Minority Leaders, the Senate shall proceed to vote on the adoption of that motion, and if that question shall be decided

in the affirmative by a three-fifths vote of the Senators duly chosen and sworn, then said measure, motion, or other matter pending before the Senate shall be the unfinished business to the exclusion of all other business until disposed of. All other provisions of section 2 of rule XXII shall be applicable to any question on which cloture is invoked pursuant to this paragraph."

Sec. 6. That rule XXVII of the Standing Rules of the Senate is amended by adding at the end thereof the following: "The demand for the reading of a conference report when presented may be waived on motion decided without debate when the report is available to all Members in printed form."

Sec. 7. That section 133(f) of the Legislative Reorganization Act of 1946, as amended, be amended to strike the words: "at least three calendar days (excluding Saturdays, Sundays and legal holidays)" and insert in lieu thereof the words: "at least two calendar days (excluding Saturdays, Sundays, and legal holidays, except when the Senate is in actual session on such days)".

Sec. 8. That (a) the Committee on Rules and Administration is authorized and directed to provide for installation of an electronic voting system in the Senate Chamber.

(b) The expenses incurred in carrying out the provisions of subsection (a) shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the Committee of Rules and Administration.

Mr. ROBERT C. BYRD. Mr. President, there is one area that I modify. I modify on page 3 the words "to recommit." Strike those words.

Mr. President, before I yield to the distinguished minority leader, and I beg his indulgence—if I may have the attention of all Senators—I said that I would attempt to get a unanimous-consent agreement.

I ask unanimous consent that the Senate proceed immediately to the consideration of the resolution, that during the consideration of the resolution, debate on any amendment be limited to 2 hours, to be equally divided between and controlled by the mover of such and the Senator from West Virginia (Mr. BYRD); that debate on any debatable motion, appeal, or point of order which is submitted or on which the Chair entertains debate shall be limited to 1 hour, to be equally divided between and controlled by the mover of such and the Senator from West Virginia (Mr. BYRD); *Provided*, In the event the Senator from West Virginia (Mr. BYRD) is in favor of any such amendment or motion, the time in opposition thereto shall be controlled by the minority leader or his designee; *Provided further*, That no amendment that is not germane to the provisions of the said resolution shall be received; *Provided further*, That the Senate proceed to vote on the question of agreeing to the resolution no later than 3 p.m. on Tuesday, January 23, 1979, without further amendment, motion, point of order, or appeal, unless pending, with the exception of one request to ascertain the presence of a quorum; *Provided, further*, That on each day between now and the time for final action on the resolution when the Senate meets, there be 6 hours allotted for debate on the resolution, to be equally divided between and controlled, respectively, by the majority leader and the minority leader; that the

said Senators, or either of them, may, from the time under their control on the question of agreeing to the resolution, allot additional time to any Senator during consideration of any amendment, debatable motion, appeal, or point of order. That completes my request.

Mr. President, I do not lose the floor by virtue of Senators reserving the right to object. Am I correct?

The VICE PRESIDENT. The Senator is correct.

Mr. ROBERT C. BYRD. I do not yield for any purpose other than reservations for rights to object or for an objection.

I yield now to the distinguished minority leader.

Mr. BAKER. Mr. President, reserving the right to object, I begin, if I may, by commending the majority leader for—

Mr. ROBERT C. BYRD. Mr. President, before the Senator begins, I yield to the distinguished minority leader not for the purpose of his reserving the right to object, but for the purpose of his making a statement. That is, if he wishes to reserve the right to object, he may object. I do not want to put him under that condition. I do not yield for any purpose other than a statement or a reservation or an objection.

Mr. BAKER. That will save torturing some verbs in the course of this presentation.

Mr. President, I begin by commending the majority leader for his judgment and discretion in approaching this matter in this manner.

I will say in a few moments a few things about the unanimous consent request and the restrictions that I believe it lays on us. But I am genuinely pleased and happy that the majority leader has chosen to proceed in what I think is a more deliberate and profound way than might otherwise have been the case.

As is his custom, the majority leader advised me in advance of his intention to proceed on the first day with proposals for rules changes. On last Friday, he delivered to me a copy of the resolution which he has now offered, together with a section-by-section analysis.

It seems to me that his options were clear: that he could proceed, as he described, under the precedent and rules of the Senate, as he interprets them and as previous Presiding Officers have interpreted them.

I am speaking particularly of the situation in 1975, when the then occupant of the chair, Vice President Rockefeller, indicated that the question of the adoption of a rules change by majority vote presented a constitutional question which must be presented to the Senate. The effect of that ruling and subsequent motions, in the view of this Senator, was to provide the unhappy circumstance whereby the rules of the Senate might not only be changed by majority vote on the first day, but also, it is possible to do so without debate.

I reiterate: I am pleased that the majority leader has not chosen to do that. We are approaching a matter of some delicacy and difficulty with a degree of care which is also characteristic of the majority leader.

Mr. President, I do not know what we

can agree to on this side, and I will elaborate that point in just a moment. But before I do that, I point out, as I am sure most of our colleagues are aware and will recall, that in the case of the most recent post-cloture filibuster, it was the majority leader and the minority leader, with the distinguished occupant of the chair, the Vice President, in the chair at the time, who managed to establish a line and series of precedents that created the possibility to at least accelerate the disposition of the controversy and conflict.

The point of the matter is that this is not, nor has it been, a matter that is purely partisan in its character. I rather suspect that there may be as many Members on his side of the aisle as there are on my side of the aisle who have a concern for that precedent and how it may affect us in the future. But that is, at best, only tangential and collateral to the matter that is before us now.

The matter at hand, in my view, is this: How can we avoid reiterating an unfortunate precedent, meet the procedural challenge of these times, and promote the best interchange of ideas between us to create a new rules situation with which we all can live, whether we are in the majority or the minority, now or in the future?

Mr. President, I can only speculate how the Members of the Senate on this side of the aisle will react to this resolution in detail; therefore, I will not do that. Rather, I will advise the minority leader and my colleagues that today, in anticipation of this dilemma, I have appointed an ad hoc committee, to be chaired by the Senator from Alaska (Mr. STEVENS), consisting as well of the Senator from New York (Mr. JAVITS), the Senator from Idaho (Mr. McCURE), the Senator from Rhode Island (Mr. CHAFFEE), and the Senator from North Carolina (Mr. HELMS), to serve in an ad hoc capacity, to examine this proposal and propose to our conference our reaction, in an appropriate way, at the proper time.

Mr. President, I am not sure, frankly, that that can be undertaken with the deliberation that I believe it requires in order to bring this matter to a conclusion on January 23.

I hope would that there might be some flexibility in that timing. I would hope, for instance, that we might proceed on some basis that would give us a discretion to determine a final date, or, rather, even to leave the request without a final disposition date and to limit instead the consideration of amendments which may be proposed.

This is, of course, a matter which addresses itself to the majority leader and in no way suggests that I disapprove of what he has done because I recognize his responsibility. But I am sure he recognizes mine as well, because the protection of minority rights happens to be my special province in this Congress at this time.

I would hope that he would consider eliminating that provision of the unanimous-consent request for a final determination, as I understood his request, on January 23.

Mr. President, I have a number of amendments I prepared in anticipation

of this resolution. I do not propose to offer them now. I think I could not do so under the rules except to offer them for printing, under the restrictions which would occur by reason of the yielding by the majority leader to me for a special purpose. But I think it is likely there will be a series of other amendments.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator, of course, may send those amendments to the desk for their printing.

Mr. BAKER. I thank the Senator.

Mr. ROBERT C. BYRD. I continue to hold the floor but I yield for the stated purpose to the distinguished minority leader.

Mr. BAKER. Mr. President, I believe that is all I have to say at this time except to say that I share with the majority leader the belief that the post-cloture filibuster, a creature of fairly young age and recent development, is one that the Senate has not focused on adequately. I am prepared to do that and I want to do that. I believe we can do that. I am less sanguine about the possibility of dealing with the rules of the Senate which deal with matters before the invocation of cloture. I indicate this present frame of mind only by way of information to the majority leader.

Mr. JAVITS. Will the Senator yield?

Mr. BAKER. I see the distinguished Senator from New York on his feet. I wonder if the majority leader will consider yielding to him to speak on this matter.

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from New York, reserving my right to the floor. I know that the distinguished Senator from New York wants to make only a similar statement. I yield only for that purpose.

The VICE PRESIDENT. The Senator from New York.

Mr. JAVITS. Mr. President, I might first state what I think ought to be done, and then to discuss the question. I think the precedent which was laid down when we began to fight the battles to amend rule XXII goes back 22 years, the length of my service here in the Senate. I believe the majority leader and the minority leader will find it highly artificial to proceed as he has to proceed today, by keeping his right to the floor and yielding only for very limited purposes, et cetera. This was preserved by Mike Mansfield by a unanimous-consent agreement. I hope it will be again. There was freedom of give and take. There was one unanimous-consent agreement which would be the rights of the majority leader to be fully preserved including the right for a summary vote on a motion to take up as well as the right to decide by a majority what should be the rule.

Second, I believe that the Senate can change what it did before. I am having our staff of this side run it down, but I believe in 1959 when we wrote into rule XXXII that the Senate Rules cannot be changed except according to rule XXII, I said at the time that it was pure rhetoric and that the Senate, of course, could change its rules because that was, in my judgment, and has been for 20 years, the dictate of the Constitution. Of course, I would have to maintain that

position, and I believe it is the proper position under the Constitution.

That being said, I also would like to suggest to both Senators, because they have both shown a very equitable frame of mind as indeed they should, if possible, that it is going to be quite difficult to draft what we should do on the floor. The one thing upon which we should agree is a time limit because otherwise it might never be done. We should reserve the right of the Senate to vote on the constitutional issue because we would have to vote again to undo what it did before in the vote in 1975.

Within that framework, I deeply believe that it is going to take collaboration between the two sides with the best brains we have and the best outside brains we can consult to develop what we ought to do. I will say why.

While I consider what took place horrendous in terms of frustrating the will of the Senate and endangering the Nation perilously through the fact that we might not have passed any energy bill at all, though Lord knows as on Senator I think we have done infinitely too little and if I were President I would ration gasoline in this country tomorrow, but be that as it may I believe that equally horrendous without its being witting and without impugning remotely the patriotic motivation of the majority leader, was the sweeping aside of every right of the minority or of any Senator and not considering amendments, motions, requests for quorums, all of which went down the drain in one torrent.

This Government is built not only upon solarly but upon justice. Justice requires opposing briefs. That was a way of obliterating opposing briefs. I deeply believe, with all respect, we have to be as solicitous, if not more solicitous, about that right, about that freedom which we have to amend or to move even if it is a pain and an anguish as we do to facilitate our business.

(Mr. CRANSTON assumed the chair.)

Mr. JAVITS. I believe it can be done, I say to Senator BYRD. The human mind can contrive ways to meet this problem. Mr. BAKER has ideas. I am sure I have, and our committee will have.

Therefore, I conclude as I began, that this is an extremely critical effort. I see quite a few new Members in the Chamber. I hope they will realize how important this is to them. They will be here a lot longer when many of us are gone. They will have to live under these rules which will be prepared, manacles put upon our wrists, in their original pristine form even as we hear their form today.

I would suggest, therefore, that the majority leader and the minority leader contrive the unanimous-consent request which will give us the auspices for conducting this debate freely and easily and being able to work our will without constraints which at the moment are upon us. That has been done before and it can be done again.

Second, that we agree on a date by which this matter is to be determined. I believe that, again, that can be contrived. My belief would be that it is a matter, as I believe Senator BAKER indicated, of a month or a month and a

half, something like that. Committees will have to be organized and begin to function.

Third, that we having appointed a small committee I would most respectfully suggest that it might be a good idea for the majority as well so that the two committees might meet together, might exchange ideas, might negotiate, might get all the expertise they humanly can. Then the Senate would vote on the constitutional question at a given time and then proceed to vote on amendments and motions up or down, again under unanimous consent, which would assure us we are not going to have a post-filibuster filibuster notwithstanding our unanimous-consent agreement.

Mr. President, I am deeply oppressed by the lawless state into which the Congress has fallen. There are reasons for it and the reasons are very impressive, of incompetence, of banality, of crime, and of the general dereliction in what the public perceives to be our services. I am a lawyer so that ancient adage applies to us: It is not what the facts are, we may be very virtuous, but it is what the jury thinks they are, and that is what the jury thinks they are.

I deeply believe, Senator BYRD, may I say to both of you, that we are starting in a very auspicious way if we deal with this question, and I hope that decency, the cooperation, the considerateness with which we deal with it will begin to restore us in the eyes of our fellow countrymen.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. BAKER. Mr. President, reserving the right to object—

Mr. ROBERT C. BYRD. Mr. President, if the Chair will withhold putting that question at the moment, I am very impressed by what both the distinguished minority leader and the distinguished Senator from New York have said. I am particularly impressed by the suggestion by the Senator from New York that there be a time limit—that there be a final vote. I have said Tuesday, January 23. I am not wedded to that date. It can be Tuesday or a month from then so far as I am concerned. I certainly would want to remove the constraints that obtain at the moment on all Senators.

I am willing to try to work out an agreement that will assure a vote without a filibuster, but a vote. If it is 6 weeks from today, that is all right with me, but I want a vote on this resolution. I want the Senate to have its opportunity to work its will on it, to make whatever changes the majority of the Senate feel necessary. That is all I am asking. I am asking for the majority of the Senate on both sides of the aisle to have its day, and then let us vote.

Now, I believe that, if I understand the distinguished Senator from New York correctly, that if there is going to be an objection to a final vote on the 23d, perhaps we had better just recess now and go out for a couple of days, and work out a time agreement that does provide a date for a final vote, and then proceed in accordance with that kind of agreement. If that is the consensus, I will not press

any further with this request at this time. It is a request that gives us something to work with. I will leave it pending, and as soon as Senators have had their say on this matter, I will then move to recess for 2 days. In the meantime, perhaps, we can work out a time frame that will be suitable to all Senators. I am very agreeable to that.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. I think the Senator ought to withdraw the request because it means an overhanging problem for everybody to be on the qui vive.

The Senator's rights are fully preserved. He still will have the floor, and he will when we recess. The Senator can have it when we come back by unanimous consent, and I would not leave that pending.

Other than that I agree with the Senator.

Mr. ROBERT C. BYRD. I shall withdraw the request. The reason I am going to withdraw this request is that I believe that reasonable minds are going to prevail, and I think there are 100 reasonable minds in this Senate.

Based on what the distinguished Senator from New York has said, I think this is a reasonable way to approach the matter. I hope that we can work out an agreement that would allow us a final vote on this resolution.

I am not wedded to the 23d. I just want a final vote on the resolution. I want Senators to have the opportunity to debate it. I want them to have an opportunity to amend it. I want them to have an opportunity to vote on it up or down as amended, if amended and, therefore, for the time being, with the understanding that I still hold the floor, I withdraw the unanimous-consent request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, without losing my right to the floor—and I do not lose the floor by asking unanimous consent—that a section-by-section analysis of the resolution to amend certain rules of the Senate be inserted in the RECORD. Of course, this analysis does not include the last provision in the resolution that dealt with electronic voting, but that speaks for itself.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF THE ENCLOSED RESOLUTION TO AMEND CERTAIN RULES OF THE SENATE

1. Section 1 of the resolution proposes to amend Rule III of the Senate to make motions to suspend the reading of the Journal in order without debate. Under the existing rules this can only be done by unanimous consent. Motions to correct the Journal would also be in order and not debatable under the proposed change.

2. Section 2 of the resolution would amend Rule VIII to provide that debate on motions to proceed to the consideration of any matter made at any time outside of the morning hour would be limited to not to exceed 30 minutes, to be equally divided and

controlled by the majority and minority leaders, whereas under the existing procedure there is no limitation of debate on such motions.

3. Section 3 would amend Rule XV to provide that where an amendment is available to all members in printed form when presented, the demand for its reading may be waived by a majority without debate.

4. Section 4 of the resolution would amend Rule XVIII of the Senate by providing that during the consideration of a bill or resolution it would be in order to move without debate by a 2/3 vote that all subsequent floor amendments be required to be germane except for amendments recommended by the committee reporting the bill. Since there is a germaneness requirement on general appropriations bills under Rule XVI, paragraph 4 and under Rule XXII once cloture has been invoked on a matter, the provisions of this section would not apply in those two situations.

5. Section 5 of the resolution would amend paragraph 2 of Rule XXII to provide for a fixed time limitation on a measure or matter upon which cloture has been invoked. The fixed time of 100 hours of consideration would apply to all action including votes, quorum calls, etc., and at the end of that time no amendments, motions, etc., not then pending would be in order. However, one live quorum call to establish the presence of a quorum would be in order. The one hundred hour limitation could be increased or decreased on motion without debate by an affirmative vote of 60 Senators. However, a motion to reduce could not be made until after at least 10 hours of consideration of the measure on matter, and if then reduced it may not be to less than 10 hours, which time would be divided between the majority and minority leaders.

Rule XXII would also be amended by striking out in three places the expression "or the unfinished business". This is to conform the rule to the existing precedent that the measure or matter, including the unfinished business, must be before the Senate when a cloture motion is filed on it.

Rule XXII is proposed to be further amended to provide that after September of each calendar year, if a cloture motion is filed the Senate may proceed to its immediate consideration instead of having to wait 2 days, and after 5 hours of debate, the Senate would proceed to vote on such motion.

6. Section 6 would amend Rule XXVII to provide that when a conference report is available to all members in printed form, the demand for its reading when presented may be waived on motion without debate.

7. Section 7 would amend 133(f) of the Legislative Reorganization Act of 1946 by providing that the "3-day rule" on committee reports be changed to "2 days", excluding Saturdays, Sundays and legal holidays except when the Senate is in session on such days. Under the current rule, Saturday, Sundays and legal holidays are exempt from the computation of the 3 days in any event.

Mr. DOLE said subsequently: Mr. President, on January 15, we discussed proposed changes in the rules. I think the distinguished minority leader and the majority leader worked out some accommodation of discussing proposed changes. Perhaps we can work out some agreement on proposed changes.

Mr. President, the resolution proposed by the distinguished majority leader puts several distressing constraints on the minority. When I say minority, however, I do not necessarily mean myself and my colleagues on this side of the aisle. The legislation before us now can threaten a minority of 1 or a minority of 49. It can

tread on the rights of the minority, whether that minority is the minority party or a minority of Senators. And it is the function and the duty of the U.S. Senate to protect the minority, to assure that each Senator is guaranteed the right to express his views, no matter how solitary or unpopular they may be. The result of this carefully devised system, I admit, is to slow down the process of legislation, which may prove frustrating to those who would prefer to see our business whisked through with a minimum of time and a maximum of results visible to the constituency.

But, Mr. President, the Senate is a body committed to the principle of free and unlimited debate. The trend of proposed rules changes in the past, particularly of rule 22, has been to gradually limit and narrow the extended debate rule and the few remaining devices available to the minority in the Senate today. This legislation means to further limit those devices and reduce the rights of the minority. On the surface, these changes seem harmless enough. They smooth out the flow, they quicken the pace, they iron out what the majority regards as the "wrinkles" in our legislative process. The Senator from Kansas feels, however, that these seemingly minor changes will serve, in the end, to rob the minority of its few remaining recourses and bestow an unfair advantage on the majority that is inequitable and unjust to the American people.

Mr. President, part of the genius of our political system is that the minority is in a better position to help shape public policy in our country than are parliamentary bodies of most other nations. The U.S. Senate is unique in that way. And I do not think that the American people are willing to forgo that distinctive mark of our democratic society. I think we owe it to our constituencies to uphold the rights of the minority and the equity of our political system.

The legislation proposed by the distinguished Senator from West Virginia seeks once again to curtail those privileges enjoyed by the minority. The resolution also fails to uphold the rights of individual Senators. It would grant the minority leader and majority leader an opportunity to control debate on a motion to proceed. Frequently, however, the side of an issue which needs airing and which could benefit from extended discussion might not include the leader of either the minority or majority. In that event, the opposition would not be protected.

RULE XXII

The resolution also presents a very serious alteration of rule 22. It would not only limit the amount of available time to each Senator, but would also create a situation in which some Senators could be cut completely out of their right to offer amendments. Because of the provision that quorum calls be charged against the maximum time limit, there is no guarantee that each senator will have time to speak.

This piece of legislation also shortens the waiting period after the filing of a cloture petition—it changes the period—from 2 days to "proceed immediately to

the consideration thereof, and after 3 hours of debate, equally divided and controlled by the majority and minority leaders, the Senate shall proceed to vote." A cut of the time for consideration from 2 days to 3 hours is a substantial reduction. I doubt if meaningful debate on an issue can always be accomplished in 3 hours.

SUSPENSION OF READING OF JOURNAL

Senator BYRD's legislation also provides that the reading of the Journal and of amendments and conference reports be dispensed with by a nondebatable motion, as well as by unanimous consent. The absence of any debating time in these instances only sets the stage for parliamentary abuse on the part of the majority. It seems to me that the Senate cannot very well decide such an issue without some discussion, even if it be limited to only 10 minutes. It is evident that these proposed changes could prove very restricting to the minority and form part of a pattern for maneuvering on the part of the majority.

The right to free expression belongs to all the Senators in this Chamber and is seriously threatened by this resolution. If we allow this right to be stifled we drastically reduce the effectiveness of the Senate and its usefulness to society. I strongly recommend to my colleagues on both sides of the aisle that we reject this legislation and to allow the Standing Rules of the Senate to remain as written until they can be thoroughly reviewed by the Rules and Administration Committee and by the full Senate.

Mr. President, one thing the Senator from Kansas might suggest is that we ought to work out something to avoid what many consider an unnecessary number of rollcall votes in this body. I hope that my new colleagues who join us in the Senate might ponder the necessity of repeated votes—vote after vote after vote—when there is no real reason for the same.

As I understand it, there was a time in this body when that determination was made by the distinguished leaders, the minority leader and the majority leader would decide many times whether or not a rollcall vote was necessary.

If that is not totally satisfactory, perhaps the ranking majority member and the ranking minority member on committees might join in a request for rollcall votes.

But I do believe when we talk about an effective and orderly flow of business in the Senate of the United States, we can all think of interruptions we have had during very important Senate hearings. We have had to rush back and forth to the floor. I would certainly cooperate as one Member of this body if we could work some accommodation, as far as the rollcall votes are concerned. Perhaps the leaders do not want that great responsibility, but maybe those of us who share responsibilities as ranking minority members or majority members on the committees might work with the leaders in the Senate to see if we cannot in some way hold down the number of rollcalls we have almost on a daily basis.

When I first came to the Senate, I think it was around 200 and some. I do not know the exact number last year, but I guess it was well up to 400 or 500 rollcalls.

Mr. BAKER. Will the Senator yield?

Mr. DOLE. I yield to my colleague, the distinguished minority leader.

Mr. BAKER. Mr. President, I could not agree with the Senator from Kansas more. I think that not only are many rollcalls unnecessary, but I think, frankly, a lot of them are impositions on the Senate and its membership.

I would be more than happy to work out some sort of de facto arrangement, de facto rule or arrangement, to provide, as he suggests, that the majority leader and the minority leader might consult with the ranking members of the jurisdictional committees, or effective committees, and decide whether the rollcalls were, in fact, desirable, or not.

I suppose we could never totally enforce it, but we could establish a good precedent, if our colleagues would back us up.

I applaud the Senator from Kansas for his suggestion. I represent to him that I would be more than pleased to do that. I will certainly explore that at the first opportunity on our side and will communicate it, as well, to the majority leader and his side and hope we can carry the Senator from Kansas' suggestion into effect.

Mr. DOLE. I thank the distinguished minority leader.

It is a matter we discussed, as he recalls, briefly, a few weeks ago.

Mr. President, I might also correct the record, there were 520 rollcall votes in 1978.

I think we might have survived with 200 or 250. Maybe the 520 were necessary, but I doubt it. I doubt that many of my colleagues, as they look back on it, feel the votes they may have asked for were totally necessary.

ROUTINE MORNING BUSINESS

PROPOSED AMENDMENT TO THE TARIFF ACT—MESSAGE FROM THE PRESIDENT—PM 5

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was referred to the Committee on Finance:

To the Congress of the United States:

I am today transmitting to the Congress a proposal for legislation to extend until September 30, 1979, the authority of the Secretary of the Treasury under Section 303(d) of the Tariff Act of 1930 to waive the application of countervailing duties. The Secretary's authority to waive the imposition of countervailing duties expired on January 2, 1979. Extension of this authority is essential to provide the Congress with time to consider the results of the Tokyo Round of Multilateral Trade Negotiations (MTN). Failure to extend this authority is likely to prevent the reaching of a conclusion to these negotiations and could set back our

national economic interests. Accordingly, I urge that the Congress enact the necessary legislation at the earliest possible date.

As stipulated by the Congress in the Trade Act of 1974, negotiation of a satisfactory code on subsidies and countervailing duties has been a primary U.S. objective in the Tokyo Round. We have sought an agreement to improve discipline on the use of subsidies which adversely affect trade. I am pleased to report that in recent weeks our negotiators have substantially concluded negotiations for a satisfactory subsidy/countervailing duty code which includes: (1) new rules on the use of internal and export subsidies which substantially increase protection of United States agricultural and industrial trading interests, and (2) more effective provisions on notification, consultation and dispute settlement that will provide for timely resolution of disputes involving trade subsidies in international trade.

My Special Representative for Trade Negotiations has informed me that negotiations on almost all MTN topics have been substantially concluded, and that those agreements meet basic U.S. objectives. However, final agreement is unlikely unless the waiver authority is extended for the period during which such agreements and their implementing legislation are being considered by the Congress under the procedures of the Trade Act of 1974.

Under current authority, the imposition of countervailing duties may be waived in a specific case only if, inter alia, "adequate steps have been taken to eliminate or substantially reduce the adverse effect" of the subsidy in question. This provision and the other limitations on the use of the waiver authority which are currently in the law would continue in effect if the waiver authority is extended. Thus, U.S. producers and workers will continue to be protected from the adverse effects of subsidized competition.

A successful conclusion to the MTN is essential to our national interest, as well as to the continued growth of world trade. If the waiver authority is not extended, such a successful conclusion will be placed in serious jeopardy. Accordingly, I urge the Congress to act positively upon this legislative proposal at the earliest possible date.

JIMMY CARTER.

THE WHITE HOUSE, January 15, 1979.

COMMUNICATIONS

The VICE PRESIDENT laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC-1. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a summary of the Weather-Water Allocation Study; to the Committee on Agriculture, Nutrition, and Forestry.

EC-2. A communication from the Acting Secretary of Agriculture, reporting, pursuant to law, as to the aggregate value of all agreements entered into under Title I of the Agricultural Trade Development and Assistance Act (Public Law 480) during fiscal year



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A DISCUSSION OF THE PEARSON-RIBICOFF
STUDY GROUP REPORT, APRIL 1983

Roger H. Davidson
Walter J. Oleszek

Congressional Research Service
April 28, 1983

DEBATE ON MOTION TO CONSIDER.

Recommendation. The Study Group recommends that "some restrictions be placed on the length of debate of a motion to proceed to the consideration of a proposed piece of legislation. If the Senate, in its wisdom, should decide to place a restriction on the debate of a motion to consider, it could place a limit of two hours, to be equally divided and controlled by the two Leaders or persons acting in their behalf."

Discussion. From its beginning the Senate has had relatively few rules limiting debate. Almost any motion, as a result, can be the subject of prolonged debate. Filibustering, however, was not a major source of delay during the early years of the Senate. Wrote one student of the early Senate: "Although these first Senators did not establish filibustering as a characteristic feature of the Senate, they did not, on the other hand, adopt as a precedent any rule framed for the specific purpose of closing off all debate." ^{1/}

Today, each measure faces at least two potential filibusters: the first on the motion to take up the legislation and the second during consideration of the measure itself. The Pearson-Ribicoff blueprint limits debate on the motion to consider in order to expedite consideration of legislation. If the Senate chooses not to adopt the motion to consider, then the measure would likely be returned to the calendar. A 1979 version (S. Res. 9) of the Pearson-Ribicoff proposal would have more severely restricted debate on the motion to consider: thirty minutes equally divided.

^{1/} U.S. Congress. Senate. The United States Senate, 1787-1801; A Dissertation on the First Fourteen Years of the Upper Legislative Body. Senate Document No. 87-64, 87th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., 1962. p. 213.

In short, the Study Group's proposal only marginally affects the Senate's hallowed tradition of extended debate by limiting it on the procedural motion to consider. There is no interference with the right of extended debate on substantive issues. Thus, any Senator could still prevent hasty Senate action on legislation by discussing its merits at length. Yet the proposal, in concert with Study Group suggestions for setting priorities and forbidding repeated debates on the same question, could be a step toward reducing what many Senators see as multiple paralyses afflicting Senate proceedings.

On the other hand, there are major issues that arouse great public and senatorial concern. When these circumstances arise, Senators may want to employ every conceivable parliamentary device--including extended debate on the motion to proceed--to educate their colleagues and the citizenry about the import of these issues. For this purpose Senators need adequate time, some of which can be provided by debating procedural motions.

Another Study Group proposal--regular observance of the morning hour--might accomplish the same result as this recommendation. Motions to take up legislation during the second hour of the morning period, as noted previously, are nondebatable. Today, the Senate "seldom has a morning hour because it seldom adjourns," observed Senator Orrin Hatch, R-Utah. "(B)ut that could easily be remedied by the majority leader unilaterally if he chose to." ^{2/} Senator Hatch also questioned whether there were many filibusters on the motion to consider.

^{2/} Hatch, Orrin. Remarks in the Senate. Congressional Record, Daily Edition, v. 125, Jan., 25, 1979. P. S620.

[COMMITTEE PRINT]

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REPORT
OF THE
STUDY GROUP ON SENATE PRACTICES AND
PROCEDURES
TO THE
COMMITTEE ON
RULES AND ADMINISTRATION
UNITED STATES SENATE



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STUDY GROUP ON SENATE PRACTICES AND PROCEDURES

Established pursuant to Senate Resolution 392 (97th Cong., 2d Sess.),
agreed to May 11, 1982.

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ANTHONY L. HARVEY, Executive Director

7. *Debate on motion to consider*

It is evident that the Senate is very sensitive to any restrictions placed on debate, particularly when a controversial proposed piece of legislation is at stake. On the other hand, if debate is to be germane to the pending business, it would appear that the debate of the motion to consider a piece of business would be restrictive in nature on how much worthwhile debate could be given to that motion. Besides, once the Senate has agreed to proceed with the consideration of a piece of business, that proposed legislation is wide open for debate in every detail, unless cloture should be invoked or a unanimous consent could be reached providing for the contrary. Therefore, the Study Group recommends that some restrictions be placed on the length of debate of a motion to proceed to the consideration of a proposed piece of legislation. If the Senate, in its wisdom, should decide to place a restriction on the debate of a motion to consider, it could place a limit of two hours, to be equally divided and controlled by the two Leaders or persons acting in their behalf.

8. *Cloture rule*

The cloture rule has been amended to place a 100 hour cap on the time for the consideration of a bill once cloture has been invoked, and while the 100 hours places a definite time to conclude the consideration of any business on which cloture has been invoked, it does not assure that that time will be used wisely. Likewise, while the amendments must be germane once cloture is invoked, there is no assurance that these amendments will have been drafted for the purpose of giving constructive legislation to the country. Too often amendments have been submitted solely for the purpose of delaying final action on the pending business on which cloture has been invoked. The procedure for invoking cloture might be satisfactory and sufficient for the needs of the Senate, but possible delay in post cloture is evident and needs some changes in order to overcome that weakness. There is no limit to the number of amendments that each Senator may call up, and while each Senator, with a few exceptions, is limited to one hour of debate, a single Senator may contrive to use much or most of the 100 hours with little or no accomplishment by calling up amendments and getting roll call votes on which it was evident to begin with that they would not be agreed to; this is possible as long as one-fifth of the Senators present, a quorum being present, are willing to order a roll call vote. There is no limit on how long an amendment may be. Any Member may draft a 1,000-page amendment, submit it, and have it considered, as long as it is germane. A demand for the reading of such long amendments would take a great deal of the Senate's time.

To overcome some of the post cloture filibuster, certain restrictions should be placed in the rule which would certainly aid in shortening, if not eliminating, much of the post cloture filibuster. For example, it is recommended that no Senator, except the Leaders and the managers of the bill, be allowed to offer more than two amendments to be considered after cloture is invoked. It could be required that all amendments to be considered be read between the

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RESOLUTIONS

TEMPORARY SELECT COMMITTEE TO STUDY
THE SENATE COMMITTEE SYSTEM
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS
SECOND SESSION



DECEMBER 14, 1984

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ny on the two-year budget and is well aware that close cooperation will be needed between House and Senate to enact such legislation. However, the Committee believes that the two-year budget process can best be achieved through the normal legislative process rather than by establishing some special new mechanism.

The Select Committee notes that the need for a two-year process was recognized when the Budget Act was enacted. The Act called for the submission of advance authorizations. That provision has, however, not been followed by any administration. It appears that advance authorizations are not sufficient to accomplish the extension of the timetable that is required with the institution of a budget process. Therefore, the broader approach of the biennial budget would be a possible solution. The Select Committee is convinced that, with the expertise already residing in the Budget, Governmental Affairs, and Rules Committees, the new select committee will be able to produce recommendations within the 90-day time period.

IV. OTHER RECOMMENDATIONS

NONGERMANE AMENDMENTS

The Problem

Under current rules, amendments must be germane in the following cases: after cloture is invoked, on general appropriations bills, and under certain statutory procedures, most importantly on budget resolutions and reconciliation bills. Germaneness is also regularly required under unanimous consent agreements.

The opportunity to offer non-germane amendments lies at the heart of Senate procedure. It is an essential component of the principle of the protection of the minority. With this opportunity, the majority cannot foreclose debate and votes on issues that a minority wants brought to national attention. In addition, the opportunity to offer such amendments enables Senators to bring to the floor issues on which the committee of jurisdiction has not acted.

Recommendation

While non-germane amendments have a legitimate place in Senate procedure, they can also be used to divert the Senate from important policy debates and to impede action on essential legislation. One way to preserve the protection that non-germane amendments give, while protecting the ability of the Senate to conduct its business, is to provide for a special germaneness rule, invoked by 60% of those present and voting. To ensure that the rule can be effectively enforced, it would also be necessary to require a similar majority to overturn rulings of the chair holding an amendment non-germane. This proposal has a distinguished history, having been suggested by the present minority leader and the assistant majority leader. For a history of proposals limiting non-germane amendments, see Appendix D, p. 41.

FILIBUSTER AND CLOTURE

The Problem

The tradition of unlimited debate prevailed in the Senate until 1917. A procedure to cut off debate was adopted only as a result of

the blockage by a small group of Senators of the Wilson Administration's measure to authorize the arming of merchant ships immediately prior to World War I. The history of limitations on debate in the Senate is set forth in the Minority Leader's scholarly insertions in the *Congressional Record* of March 10, 1981, and no attempt to review that history will be made here. That history shows that this is another area in which the Senate has balanced the rights of the minority with the ultimate duty of the Senate to act on the important issues of the day.

It is also abundantly clear from that history that neither unlimited debate—nor the authority to cut it off—were intended to be used lightly. The principle of unlimited debate was designed to protect the minority exercising its right to delay, or even prevent, action on issues of fundamental principle. The authority to cut off debate enabled a strong majority to act after the minority had exercised its rights. Filibuster and cloture were meant for great issues but they have become trivialized as recent history all too clearly demonstrates. In the last 6 weeks of the 98th Congress, more cloture votes took place than during the first 10 years of the existence of Rule 22. The Senate voted 7 times on cloture petitions; three of those votes were on the motion to proceed. Eight other cloture petitions were filed and later vitiated.

By comparison, from 1963 to 1965, when the Senate considered such controversial issues as amending Rule 22, the Civil Rights Act of 1964, legislative apportionment and the Voting Rights Act of 1965, only 4 cloture votes took place.

Cloture is not only invoked too often, it is invoked too soon and it is invoked on procedural as well as substantive issues. Each of the cloture petitions at the end of the 98th Congress was filed on the same day that the matter came before the Senate as compared to the cloture petitions on the Treaty of Versailles and the Civil Rights Act of 1964 which were filed after these matters had been pending in the Senate for 51 and 57 days respectively.

Recommendations

To restore the historic balance between unlimited debate and the invocation of cloture, it is necessary to ensure that unlimited debate is permitted only on substantive issues by providing for a two hour time limit on the motion to proceed and to make cloture not only more difficult to invoke but more effective once invoked.

ORGANIZATION OF THE CONGRESS

FINAL REPORT
OF THE
JOINT COMMITTEE ON THE ORGANIZATION OF CONGRESS
PURSUANT TO
H. CON. RES. 192
(102^d CONGRESS)



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1993

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[Authorized by H. Con. Res. 192, 102d Congress]

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and members using agency facilities; reports on these studies are to be considered as part of the reauthorization process for the support units.

In line with the above proposal to require greater disclosure through a cost accounting system, this recommendation could be the natural next step to guarantee greater disclosure and discipline within the Congress as a whole.

23. USE OF DETAILEES FROM CONGRESSIONAL INSTRUMENTALITIES AND EXECUTIVE AGENCIES

Recommendation: The Congress should require that any committee, Senator or House Member using the services on detail of an individual regularly employed by the General Accounting Office, the Congressional Budget Office, the Congressional Research Service, the Government Printing Office, the Office of Technology Assessment, or any executive branch agency, should fully reimburse such instrumentality or agency for the cost of that service.

This recommendation requires that detailees from congressional and executive agencies can only be provided to committees and Members on a reimbursable basis. The proposal builds on existing provisions in Senate Rule XXVII, cl. 4, providing that no staff employee of any department or agency of the Govern-

ment should be detailed or assigned to a committee of the Senate without the written permission of the Senate Rules and Administration Committee. The new proposal goes further and requires that committees and Members reimburse the Executive or support agency for such staff.

The services of detailees from the legislative support agencies and the Executive Branch are not truly free. Having staff detailed full-time limits the ability of the agency staffer to work for other congressional clients and to perform other responsibilities. Unreimbursed details reduce agency capabilities when they are already under pressure from downsizing. As Congress cuts back on its own operations, the availability of unreimbursed detailees would put great pressure on Senate and House offices and committees to use such detailees as replacement staff; detailees should not be an avenue for circumventing staff cutbacks.

If an office truly needs the fulltime services of an executive or support agency employee, then the office should pay for that service. Offices which cannot afford the reimbursement could continue to obtain assistance from agency staff so long as these staff remained available to perform other duties as well.

This proposal would not affect the ability of Members and committees to employ fellows, interns, and other staff provided through bona fide educational and professional development programs.

SENATE FLOOR PROCEDURE

24. THE MOTION TO PROCEED

Recommendation: Debate on the motion to proceed should be limited to 2 hours when made by the Majority Leader or his designee.

Currently, the motion to proceed to a measure is fully debatable in the Senate, except when the motion is offered during the Morning Hour. But, Senate custom reserves the use of the non-debatable form of the motion only for the most extreme circumstances. Typically, the motion to proceed is offered at times when it is fully debatable.

The chief limit on debatable motions to proceed has been the so-called "two-speech rule," limiting Senators to no more than two speeches on the same subject on the same legislative day. But, since 1986, the Senate has weakened the enforcement of the two-speech rule, thus making it a less effective control on debate time. Essentially, if a motion to proceed is con-

tested, it may be necessary for the Majority Leader to seek to invoke cloture (a three-fifths vote) although only a majority vote is needed to ultimately take up a measure. Protracted debate on the motion to take up, coupled with unlimited debate on the measure itself, and the possibility of unlimited debate at even later stages of the legislative process provides too great a protection for opposition Senators and gives too little authority to the floor leaders in setting the Senate's agenda.

This proposal would impose a 2-hour limit, equally divided, on motions to proceed when offered by the Majority Leader or his designee. Motions to proceed offered by any other Senator would be debatable without limit—an event, however, which rarely occurs given the custom of reserving such authority to the Leadership. In addition, motions to proceed to the consideration of a rules change would remain fully debatable, whether offered by the Majority Leader or not.

ROLL CALL

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Stevenson: In Senate, 'Motion To Proceed' Should Be Non-Debatable

April 19, 2010

By Charles A. Stevenson

Special to Roll Call

There's a simple step the Senate could take that would prevent a lot of the current delay and obstruction, while still permitting lawmakers to debate some controversial matters at length.



The "motion to proceed" should be made non-debatable and subject to an immediate majority-rule vote.

This may seem like an arcane parliamentary matter, but in practice the chance to kill a bill or nomination before it is open to debate and amendment is a key weapon in the hands of obstructionists. They don't even have to oppose the measure; they just argue that "now is not the time" to take it up. In fact, in the past 20 years, more than one-fourth of the cloture petitions to end debate have been on motions to proceed.

Maybe the Senate, under pressure from voters and stymied by the recent surge in filibusters, will change or repeal the current rule that requires a 60-vote supermajority to cut off debate. But that isn't likely, since it takes 67 votes to change the rules and since all Senators can envision circumstances when they might want to fight even though outnumbered.

Even if lawmakers eliminated the 60-vote rule, obstructionists would retain numerous tools to block or delay action.

A compromise might be found on the motion to proceed, which would have substantial additional benefits while still preserving the right of extended debate on substantive matters.

Right now, the motion to take up legislation is non-debatable only in very special circumstances: if the Senate has adjourned rather than recessing at the end of the previous day, if it has a period of morning business the next day and if it is in the second hour of the session. Even then, the bill goes back to the calendar if debate continues at the end of morning business.

The biggest problem in the Senate's current rules isn't that the majority can't work its will, but that a handful of Senators can clog the legislative stream, preventing action even on broadly supported measures.

Cutting off debate requires a day's wait after the first cloture petition is filed, and then 30 more hours of debate even if cloture is invoked. This means that the leadership needs at least four days just to end debate on the motion to proceed, plus many more on controversial amendments.

Four days on one measure is four days that can't be devoted to other matters — and the Senate has averaged only 167 days in session each year this decade.

Making the motion to proceed non-debatable would not only reduce the opportunities for filibusters but would also end the practice of individual "holds" on bills and nominations.

Those holds aren't in the rules, but they are the result of rules that require, for example, the Senate to take up bills and nominations in the order they were added to the calendar — that is, oldest first, with more urgent matters or more recent versions delayed until all previous matters have been disposed of.

A non-debatable motion to proceed could still be rejected by majority vote, and a matter being debated could still be filibustered, but the opponents would have to muster their troops, whereas now a single Member can hold the whole Senate hostage.

There are other rules changes that the Senate might adopt to have a more orderly and businesslike legislative process.

It could change the rule (XIX) that requires that "all debate shall be germane and confined to the specific question then pending before the Senate" for only the first three hours and it could enforce more rigorously the section of that rule that "no Senator shall speak more than twice upon any one question in debate on the same legislative day."

Senators could also drop the provision saying that the rules continue from one Congress to another unless changed by a two-thirds vote. That was added in 1959 under pressure from Senators fighting civil rights bills in order to overturn a ruling that would have allowed each new Congress to adopt rules by majority vote — as the House of Representatives does every two years.

But if Senators are unwilling to change the basic rule on filibusters, they should at least make the motion to proceed non-debatable so that the Senate can get to work without petty delays.

Charles A. Stevenson was a Senate staffer for 22 years; he now teaches at the Nitze School of Advanced International Studies at Johns Hopkins University.

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