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Statement of Senator Chuck Grassley, of Iowa
Senate Committee on Rules and Administration
Eliminating Secret Senate Holds
Tuesday, June 17, 2003

I would like to thank Chairman Lott for holding this hearing and for his interest in pursuing the matter of secret holds. This is an issue that I've been involved with for some time along with Senator Wyden. We both feel strongly that the practice of placing secret holds is damaging to the proper functioning of the Senate as well as to public accountability. I know that you're familiar with my past efforts in this area, Mr. Chairman. In fact, we've worked together to make progress toward reforming secret holds. Although I know that you need no lecture on the workings of the Senate, I would like to take this opportunity to review the background of how holds work and why I've introduced a resolution to ban the use of anonymous holds in the Senate Rules.

Holds are not explicitly mentioned anywhere in the Senate Rules. Rather, they are a function of the rules and traditions that govern how the Senate operates. Because the Senate has come to rely on unanimous consent agreements to bring matters before the Senate, a single objection can throw a wrench in the gears of the Senate, grinding the legislative process to a temporary halt. In order to preserve the smooth operation of the Senate and ensure that the rights and interests of all members are protected, party leaders must take note of the concerns of individual senators. When a senator places a "hold" on a bill or nomination, it's essentially a notice to that senator's party leader that he or she intends to object to a unanimous consent agreement to move to consideration of that measure. If the Senate Majority Leader were to move forward with a unanimous consent request despite a hold and an objection is heard, the only other option would be to make the motion to proceed to the item. However, in most cases this motion is debatable and subject to a filibuster. Because of the threat implicit in a hold to significantly delay the business of the Senate, holds tend to be honored. Holds can therefore be a powerful tool for any senator.

I've used holds myself from time to time. Holds are a mechanism for protecting the rights of individual senators and I wouldn't suggest abolishing them altogether. However, I believe that such significant power must come with public accountability. For years now, I've made it my practice to make public every hold that I place on any matter before the Senate and I know Senator Wyden has done the same. Unfortunately, this is not yet standard practice in the Senate and anonymous holds continue to appear. I've yet to hear a good reason why a hold should remain anonymous. If I place a hold on a bill or a nomination, I think my colleagues and my constituents have a right to know it was me. In fact, the bill sponsor, the nominee, or anyone else could ask me

why I placed the hold and I would have to give some answer, whether they agree with my reasons or not. On the other hand, if I can't state my reason publicly, or even admit it was me that placed the hold, then the reason can't be very good to begin with.

I believe in the principle of open government. Lack of transparency in the public policy process leads to cynicism and distrust of public officials. I would maintain that the use of secret holds damages public confidence in the institution of the Senate. As a practical matter, other members of the Senate need to be made aware of an individual senator's concerns. How else can those concerns be addressed? As a matter of principle, the American people need to be made aware of any action that prevents a matter from being considered by their elected senators.

Senator Wyden and I have tried twice to amend the Standing Orders of the Senate by attaching the measure to other legislation. Although our measure passed the Senate both times with almost no opposition, it was removed in conference with the House. Then, at the beginning of the 106th Congress, Senator Wyden and I worked with then Senate Leaders Lott and Daschle on a letter of policy stating, "...all members wishing to place a hold on any legislation or executive calendar business shall notify the sponsor of the legislation and the committee of jurisdiction of their concerns."

Although this new policy was touted in the press as the end of secret holds, this practice continued to appear in the Senate. Last year, Senator Wyden and I decided that we needed to continue to pursue a permanent change in the Senate Rules to provide a stronger and more permanent solution. The Grassley-Wyden resolution that this committee is examining today would add a section to the Senate Rules requiring that senators make public any hold placed on a matter within two session days of notifying his or her party leadership.

Rather than placing the entire burden on the Majority Leader to establish and enforce a policy with respect to anonymous holds, a provision in the Senate Rules would represent the will of the Senate as an institution. It's my hope that this change to the Senate Rules, once adopted, will result in the final elimination of secret holds. Such a change would reduce secrecy and public cynicism along with it, thus improving the institutional reputation of the Senate. I look forward to working with you, Mr. Chairman, Ranking Member Dodd, and this committee toward that end.