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Proposals to Reform Holds in the Senate

Walter J. Oleszek, Government and Finance Division

December 20, 2007

Abstract. Holds are an informal senatorial custom unrecognized in Senate rules or precedents. They allow Senators to give notice to their respective party leader that certain measures or matters should not be brought up on the floor. This report examines, over a more than three decade period, a wide range of proposals to reform holds. In general, the objective of these recommendations is not to abolish holds but to infuse more accountability, uniformity, and transparency in their use and to make it clear that holds are not a veto on the majority leader's prerogative of calling up measures or matters. The historical record underscores that it has been difficult to revise a practice, now a regular feature of the Senate's workways, that provides parliamentary influence and leverage to every Senator.

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Proposals to Reform “Holds” in the Senate

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December 20, 2007

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Summary

"Holds" are an informal senatorial custom unrecognized in Senate rules or precedents. They allow Senators to give notice to their respective party leader that certain measures or matters should not be brought up on the floor. Implicit in the practice is that a Senator will object to taking up a bill or nomination on which he or she has placed a hold. The Senate's majority leader, who exercises primary responsibility for determining the chamber's agenda, traditionally in consultation with the minority leader, is the final arbiter as to whether and for how long he will honor a hold placed by a Member or group of lawmakers.

The origin of holds has been lost in the mists of history. Their ostensible purpose is to provide advance notice to Senators as to when a measure or matter, in which they have expressed an interest by placing holds, is slated to be called up by the majority leader. However, since the 1970s, holds came into greater prominence in the Senate as more Members began to employ holds as a way to try to accomplish their policy or political objectives.

In a Senate with a large and complex workload, and more dependent than ever on unanimous consent agreements to process its expanding business, holds provide significant leverage to Members who wish to delay action on legislation or nominations. Given the heightened potency of holds, there have been many initiatives over the years to reform the Senate's hold practices.

This report examines, over a more than three decade period, a wide range of proposals to reform holds. In general, the objective of these recommendations is not to abolish holds but to infuse more accountability, uniformity, and transparency in their use and to make it clear that holds are not a veto on the majority leader's prerogative of calling up measures or matters. The historical record underscores that it has been difficult to revise a practice, now a regular feature of the Senate's workways, that provides parliamentary influence and leverage to every Senator. The reform proposals examined are as follows:

- (1) Impose time limits
- (2) Abolish holds
- (3) Uniform procedure for holds
- (4) No indefinite, or permanent, holds
- (5) Prohibit blanket holds
- (6) End secret holds
- (7) Require more than one Senator to place a hold
- (8) Permit a privileged resolution to terminate holds
- (9) Restrict filibuster opportunities
- (10) Determination by majority leader to proceed

This report will be revised and expanded as events warrant.

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Background

A "hold," according to Senator Charles Grassley, R-Iowa, is "a notice by a Senator to his or her party leader of an intention to object to bringing a bill or nomination to the floor for consideration."¹ A hold is an informal custom of the Senate, which is neither recognized in the Senate's formal rules nor in its precedents. As former Majority Leader Howard Baker, R-Tenn. (1981-1985), pointed out: "Senators are aware, of course, that holds on both calendars, the calendar of general orders and the calendar of executive business, are matters of courtesy by the leadership on both sides of the aisle and are not part of the standing rules of the Senate."² In general, Senators place holds on measures or matters by writing a letter to their party leader requesting a delay in floor consideration of these propositions. Holds, according to one account, "can be placed on virtually all matters, including nominations."³

Although scheduling the Senate's business is the prime prerogative of the majority leader, the Democratic and Republican leaders consult constantly about the floor agenda. Each notes on his copy of the Senate calendar the names of party colleagues who have placed holds on legislation or nominations. The majority leader can still act to call up such measures or matters, but he also recognizes that holds are linked to the Senate's tradition of extended debate and reliance on unanimous consent agreements. Any Senator whose hold is not honored has an array of parliamentary resources that he or she might employ to cause gridlock in an institution that is usually workload packed and deadline driven. Top floor aides to each Leader assist in keeping track of Democratic or Republican holds. Information on who places holds is closely held by the two party leaders and generally not made available to the public. This circumstance means that, compared to other parliamentary features of the Senate, rather little is known about the chamber's system of holds, such as who places them (Senators, of course, may publicly disclose that they have holds on measures or matters), how often they are employed, and whether the two parties use different hold procedures.

The ostensible purpose of holds is to provide advance notice to Senators as to when a measure or matter in which they have expressed an interest is slated to be called up by the majority leader. The origins of the practice are unclear and lost in the mists of history. The practice probably emerged from features long associated with the Senate, such as its emphasis on minority and individual interests, the informality and flexibility of its procedures, and a legislative culture that encourages accommodation for individual Senators' policy and personal goals.

Holds appeared to become widespread during and after the 1970s as the Senate changed from the "communitarian" institution of the 1950s and 1960s—where Senators were expected to serve an apprenticeship, defer to an "inner club" of seniority leaders, and exercise restraint in using rules to gain procedural advantage—to today's individualistic and more partisan Senate where independent-minded members are not reluctant to exploit rules, precedents, and customs for their parliamentary benefit.⁴ As a congressional scholar noted, "By the late 1970s, holds became a serious impediment to moving measures to the floor."⁵

¹ *Congressional Record*, daily edition, vol. 148, April 17, 2002, p. S2850.

² *Congressional Record*, daily edition, vol. 128, December 6, 1982, p. S13901.

³ Toby J. McIntosh, "Senate 'Holds' System Developing As Sophisticated Tactic for Leverage, Delay," *Daily Report for Executives*, no. 165 (August 26, 1991), p. C-1.

⁴ Two studies that highlight different Senate eras are Donald Matthews, *U.S. Senators And Their World* (Chapel Hill, (continued...))

The contemporary Senate's greater reliance on unanimous consent agreements "to move an expanding volume of legislation" also contributed to the heightened potency of holds.⁶ Holds are now a prominent feature of today's Senate because assertive Senators recognize the political and policy potential inherent in this so-called "silent filibuster." Only Senators may place holds, but they may do so at the request of House members, lobbyists, or executive officials. Senate staff have also been known to place holds on behalf of their Member.

Today, holds are often used to stall action on legislation or nominations in order to extract concessions from other Senators or the Administration. They are also employed to "take hostages." Senators may delay bills or nominations, which they do not oppose, so they might gain political or procedural leverage to achieve other extraneous objectives. There have been times, said then Senate GOP Leader Trent Lott, Miss., when holds have been applied to "every piece of a committee's legislation...by an individual or group of senators, not because they wish to be involved in consideration of those bills, but as a means of achieving unrelated purposes or leverage."⁷ From being a courtesy to keep Senators informed about impending action on measures or matters, holds have evolved to become a parliamentary weapon for stalling or obstructing floor decision making. "There are holds on holds on holds. There are so many holds, it looks like a mud wrestling match," exclaimed Senate Democratic Leader Tom Daschle, S.D., near the close of the 104th Congress.

On another occasion, Senator Daschle jokingly observed that holds on executive nominees are so common that if a Senators does not have one, he or she ought to feel lonely. "You know, who's your holder? That seems to be the question of every nominee. It's almost a status symbol among Senators. 'I have no holds. I'm going to have to pick out a nominee to get to know him or her a lot better.' It works that way.... 'Hello, I'm your holder. Come dance with me.'"⁸ An important virtue of holds was noted by Robert Dove, former parliamentarian of the Senate. "They are in many ways a favor to the leadership by letting them know how Senators feel about a bill," he said. "It lets them know how to plan their time."⁹ Holds, too, may sometimes be employed by Senators not to block measures or matters but to impose a temporary delay to accommodate their scheduling preferences.

Reform Proposals

Since the 1970s, Democratic and Republican leaders, as well as individual Members, have proposed various reforms of the hold system. Scholars and think tanks, too, have joined in

(...continued)

N.C.: University of North Carolina Press, 1960) and Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore, Md.: The Johns Hopkins University Press, 1989).

⁵ Steven S. Smith, *Call to Order: Floor Politics in the House and Senate* (Washington, D.C.: The Brookings Institution, 1989), p. 110.

⁶ Carroll J. Doherty, "Senate Caught in the Grip Of Its Own 'Holds' System," *Congressional Quarterly Weekly Report*, August 15, 1998, p. 2242.

⁷ Doherty, "Senate Caught in the Grip Of Its Own 'Holds' System," p. 2243.

⁸ Lawrence Goodrich, "Congressional Journal," *Christian Science Monitor*, November 28, 1997, p. 4.

⁹ Janet Hook, "Busting the Silent Filibuster," *Congressional Quarterly Weekly Report*, November 13, 1993, p. 3095.

encouraging some alteration of holds. They argue, for example, that holds unduly delay the confirmation of executive and judicial branch nominations.¹⁰

In general, the objective of most reform proposals is not to abolish holds, but to infuse more accountability, uniformity, and transparency in their use and to make clear that holds are not a veto on the majority leader's prerogative of calling up measures or matters. Listed below in no special order are reform recommendations that have either been tried or suggested during the past three decades. Although no claim is made that this compilation is exhaustive, it does highlight many of the most common suggestions. The compilation also underscores how difficult it has been for Democratic and Republican leaders to institute lasting changes in the holds system.

I. Impose Time Limits on Holds

A number of proposals either have been tried or suggested to institute time limits on holds. A few examples will make the point.

1. A Three-Day Limit

In 1973, the Senate Democratic Policy Committee unanimously agreed to a three-day limitation. As Robert C. Byrd, W.Va., then majority whip, explained:

Once a measure or nomination is placed on the Senate calendars, no "hold" will be honored for more than three days of session, unless it is a committee "hold." In other words, a "hold" placed by an individual or group of individuals—not representing a committee position—will not be obligatory on the leadership for more than three days, once a measure or nomination is placed on the legislative or executive calendars.¹¹

There is no record, so far as is known, as to the effectiveness of this limitation.

2. A Two- or Three-Week Limit

Former Senator Howard Metzenbaum, D-Ohio, often served informally as a legislative guardian on the floor. He would place holds on scores of bills so he could learn what was in them. Senator Carl Levin, D-Mich., noted that his office had forms to keep track of bills that were stalled: "a box for Republican holds, one for Democrats, and one for Senator Metzenbaum."¹² Nonetheless, Senator Metzenbaum believed that the tradition of holds required modification. He said: "I believe a 'hold' should automatically expire in perhaps two or three weeks unless special circumstances exist."¹³ Senator Metzenbaum did not elaborate on what he meant by "special circumstances."

¹⁰ See, for example, Al Kamen, "Confirmation Delays Hobble Administration," *The Washington Post*, May 20, 2001, p. A1. The Brookings Institution established "The Presidential Appointee Initiative" to examine the burdens and difficulties associated with nominating and confirming Administration appointees. See *To Form A Government: A Bipartisan Plan To Improve the Presidential Appointments Process*, The Presidential Appointee Initiative, A Project of The Brookings Institution, April 2001.

¹¹ *Congressional Record*, daily edition, vol. 119, December 20, 1973, p. S23610.

¹² Quoted in a newspaper article reprinted in the *Congressional Record*, daily edition, vol. 141, March 3, 1995, p. S3478.

¹³ Howard M. Metzenbaum, "Senate, Heal Thyself," *The Washington Post*, February 16, 1983, p. A19.

3. A 45- or 60-Day Limitation on Executive Nominations

Political scientist Norman Ornstein has suggested that "any hold (or set of holds by several Senators, for that matter) on an executive nominee should be allowed to last [no more] than 45 or 60 days."¹⁴

4. 24-Hour Holds

According to press accounts, Senator Ron Wyden, D-Ore., drafted a proposed rules change that would "limit holds to 24 hours unless a bill's sponsor or the committee chairman and ranking member shepherding a nomination agree to a longer delay."¹⁵ Further, the proposed rules change would "give Senators a total of 24 hours per hold and would ban multiple holds by one Senator on a piece of legislation or nomination."¹⁶

5. 14 Days Total on Executive Nominations

A recommendation of the Presidential Appointee Initiative of The Brookings Institution states: "The Senate should adopt a rule that limits the imposition of 'holds' by all Senators to a total of no more than 14 days on any single nominee."¹⁷

II. Abolish Holds

On May 11, 1982, the Senate adopted a resolution (S.Res. 392) establishing a Study Group on Senate Practices and Procedures. The study group's mission was to review the practices and procedures of the Senate and to make recommendations for improvements to the Committee on Rules and Administration no later than June 1, 1983. Upon recommendation of the majority and minority leaders, the president of the Senate named former Senators James Pearson, R-Kan., and Abraham Ribicoff, D-Conn., as members of the study group. They were assisted in their work by the parliamentarian emeritus, Dr. Floyd M. Riddick, and staff of the Committee on Rules and Administration. Among the study group's many recommendations was the following: "Abolish the practice of individual holds on the consideration of matters before the Senate."¹⁸

III. Uniform Procedure for Holds

In 1989, Majority Leader George Mitchell, D-Me., and Minority Leader Robert Dole, R-Kan., discussed the need for a uniform policy regarding how Senators notify the leaders of potential problems with bills or nominations. The policy was presented to both party conferences in June 1989. Four years later, because of "some confusion over the definition and use of holds in the Senate," Majority Leader Mitchell restated the 1989 policy and read into the *Congressional*

¹⁴ Norman Ornstein, "Senators Are Putting Chokehold on Bush Administration Picks," *Roll Call*, August 13, 2001, p. 7.

¹⁵ Matthew Tully, "Wyden Launches New Effort To Curb 'Holds' in Senate," *CQ Daily Monitor*, April 6, 2001, p. 1.

¹⁶ *Ibid.*, p. 5.

¹⁷ *To Form A Government: A Bipartisan Plan To Improve the Presidential Appointments Process*, p. 13.

¹⁸ *Report of the Study Group on Senate Practices and Procedures to the Committee on Rules and Administration*, S. Prt. 98-242, 98th Cong., 2nd sess. (Washington: GPO, 1984), p. 2.

Record a document entitled "Leadership Policy on Schedule Notifications." The leadership policy stated:

Over a period of time, the Democratic and Republican leadership have developed a system by which Senators ask the leaders to consult them regarding reservations or problems with particular legislation. These notifications are commonly called "holds."

The leaders will find it necessary to schedule matters on which Senators have requested consultation. When it is necessary to consider an issue, any Senator with an interest should be prepared to be on the floor to defend his or her interest.

In order to develop a common understanding of what notifications mean, the leaders have agreed on the following principles:

1. It is the responsibility of every Senator to notify his or her respective leader, in writing, about any need to consult with that Senator on a bill or nomination. This notification should be made in a timely fashion. Each leader will develop his own notification system.

2. The leaders will respect the [confidentiality] of communications from Senators. However, in order to facilitate the scheduling of legislation, Senators, who ask to be consulted prior to the scheduling of a bill or nomination should be prepared to discuss the issue with the relevant committee chairman and/or ranking member or sponsor of the measure. The leaders will encourage this type of consultation between Senators prior to floor consideration.

3. The leaders will give as much advance notification as possible to any Senator who has asked to be consulted prior to the scheduling of legislation and nominations. Whenever possible, the leaders will announce a specific time for a unanimous consent request to go to a matter. Any Senator wishing to object to a unanimous consent request to go to legislation or to be involved in the arrangements under which a measure will be considered should be on the floor at the announced time.¹⁹

Senator Mitchell emphasized that every Senator is entitled to a reasonable time to prepare for legislation or to consult with a nominee, but "a Senator cannot reasonably expect that a hold can be used as a way of indefinitely postponing or killing outright a bill or a nomination, simply because the Administration does not agree with the Senator's position on a particular policy or a project."²⁰

IV. No Indefinite, or Permanent, Holds

Various Senate leaders, such as Senator Mitchell, have stated they will not honor indefinite holds. Senator Byrd said that he would recognize a hold only for a reasonable time period. "But as to holds, I do not recognize those as being legitimate reasons to delay indefinitely, ad infinitum, the action on a bill."²¹ As majority leader, Senator Lott explained that he would not honor holds indefinitely. "At some point," he said, "we will move [the matter] to the floor and [the opponents]

¹⁹ *Congressional Record*, daily edition, vol. 139, May 18, 1993, p. S5983.

²⁰ *Ibid.*

²¹ *Congressional Record*, daily edition, vol. 133, September 10, 1987, p. S11953.

will have to come forward, say what they're going to say, and filibuster if they're going to filibuster."²² Senate Democratic Leader Daschle concurred with Lott's position. "I don't support permanent holds," he said. "I would suggest that at some point we take it to the floor and that person filibuster if that's his or her choice."²³

V. Prohibit Blanket Holds

On January 27, 1997, Majority Leader Lott sent a "Dear Colleague" letter to all Members informing them that he was instituting a new policy on holds. He discussed two changes that he planned to implement on a trial basis during the 105th Congress. First, "a hold must be specific. I will not honor holds on blocks of legislation, on the work of an entire committee, or on that of a specific Senator or group of Senators." Senator Lott also stated that after a Senator (or someone acting on his or her behalf) receives precise notification as to when a matter is slated for floor action, he "may have to come to the floor to express his objection after being notified of the intention to move the matter to which he objects." Second, Senator Lott said, "I am hereby establishing an order that *no matter on which the leadership has been notified of a hold will be cleared after 7:00 p.m., or the "no more votes" announcement has been made, whichever is later*" (emphasis in original). He explained that relinquishing the "option of clearing the calendar late at night is a necessary trade-off for the right to demand that a 'hold' be restored to its original purpose: notification of a likely UC. With late-night wrap-up discontinued, I *can* (emphasis in original) reasonably expect Senators to come to the floor once their 'request for notification' has been honored."²⁴ Part of the apparent reason for these changes was Senator Lott's desire to infuse greater certainty and predictability into the daily Senate schedule.

VI. End Secret Holds

For more than a decade various Senators have urged an end to secret holds. In 1984, for example, Senator James Exon, D-Neb., lamented that "this Senator cannot even find out which Senator or the staff of which Senator has placed a hold on that bill (S. 1407)."²⁵ Several initiatives to revise the practice of secret holds have been taken since Senator Exon's statement.

1. The 1985 Initiative

On December 5, 1985, in a highly unusual session, all Senators were invited to attend a meeting in the Mansfield Room to discuss their frustrations with the "quality of life" in the Senate. Sixty Senators attended with no staff present in the room.²⁶ Senators accepted four changes that were to take effect immediately. One of the changes addressed anonymous holds.

The practice by which a Senator privately can place a "hold" on a bill to keep it from the floor will be changed so that other Senators can learn who is blocking the bill's

²² Matthew Tully, "Lott Won't Allow 'Holds' To Block Action Indefinitely," *CQ Daily Monitor*, February 27, 2001, p. 5.

²³ Ibid.

²⁴ Information on this recommendation is derived from Senator Lott's January 27, 1997, "Dear Colleague" letter and "Lott Sets New Limits On Use of 'Holds' to Delay Senate Action," *CQ Daily Monitor*, February 3, 1997, p. 5.

²⁵ *Congressional Record*, daily edition, vol. 130, October 5, 1984, p. S13779.

²⁶ See *Congressional Record*, daily edition, vol. 131, December 5, 1985, pp. S16915-S16916.

consideration. Currently, only party leaders are aware who places the hold. [Senator David] Pryor [D-Ark.] said this change would make it easier for a bill's sponsor to negotiate with the measure's opponents. Assistant Majority Leader Alan K. Simpson, R-Wyo., said the change would prevent a hold from being used, in effect, as a veto by one Senator.²⁷

2. The 1997 and 1999 Initiatives

Despite the 1985 revision, Senators still complain about secret holds. Senators Ron Wyden, D-Ore., and Charles Grassley, R-Iowa, took the lead to make all holds public. In 1997, for example, they were successful in amending a District of Columbia appropriations bill to establish a new standing order of the Senate. It stated:

It is a standing order of the Senate that a Senator who provides notice to leadership of his or her intention to object to proceeding to a motion or matter shall disclose the objection (hold) in the Congressional Record not later than 2 session days after the date of said notice.²⁸

The Wyden-Grassley amendment was dropped in conference, but the two Senators voluntarily continued their practice of announcing publicly, and within 48 hours, their own use of holds.

The two Senators continued their negotiations with Republican Leader Lott and Democratic Leader Daschle to work out a way to end secret holds. Shortly after the start of the 106th Congress, Senators Lott and Daschle jointly informed all Senators in a "Dear Colleague" letter (printed in the *Congressional Record* of March 3, 1999) of a new policy regarding holds. As the two party leaders wrote:

[A]t the beginning of the first session of the 106th Congress, 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. Further, written notification should be provided to the respective leader stating their intentions regarding the bill or nomination. Holds placed on items by a Member of a personal or committee staff will not be honored unless accompanied by a written notification from the objecting Senator by the end of the following business day.

However, there was no enforcement mechanism associated with this policy and secret holds continued in the 106th Congress. "Unfortunately, an anonymous 'hold' ...prevented enactment [of the bill] before the Senate recessed in July [2000]," noted Senator Patrick Leahy, D-Vt.²⁹ On another occasion, Senator John McCain, R-Ariz., said: "I hope those Senators who have a hold on this bill will step forward and identify themselves."³⁰ On occasion, Senators placed anonymous

²⁷ Diane Granat, "Senators Seeking to Improve 'Quality of Life'," *Congressional Quarterly Weekly Report*, December 7, 1985, p. 2569.

²⁸ *Congressional Record*, daily edition, vol. 143, September 24, 1997, p. S9872. On June 25, 1998, the Senate adopted a substantially identical standing order to eliminate secret holds offered by Senators Grassley and Wyden. Their amendment was added to the Senate's version of the National Defense Authorization Act (S. 2057). See *Congressional Record*, daily edition, vol. 144, June 25, 1998, pp. S7142-S7144, S7150. The two Senators apparently opted to establish a standing order rather than amend Senate rules because Rule XXII requires a two-thirds vote of the Members present and voting to end a filibuster on a motion to amend Senate rules. To end extended debate on other measures or matters, Rule XXII specifies a three-fifths vote of the Senators duly chosen and sworn.

²⁹ *Congressional Record*, daily edition, vol. 146, October 5, 2000, p. S9879.

³⁰ *Congressional Record*, daily edition, vol. 146, October 6, 2000, p. S10040. Also see Helen Dewar, "Senate Has A 'Hold' on Holbrooke, Policy Fails to Curtail Secret Delay Tactic," *The Washington Post*, July 3, 1999, p. A5.

"rolling" or "revolving" holds on measures or matters. A Senator, for instance, imposes a hold for a day "while a like-minded colleague imposed a new hold for the next day. The hold would then be traded back and forth indefinitely."³¹

3. A 2002 Recommendation

Secret holds continued in the 107th Congress. For instance, according to one account, "We know, for example, that John Negroponte, the Bush nominee for U.S. ambassador to the United Nations, is being blocked by a hold, as is the President's nominee for drug czar, John Walters—but we don't know who the perpetrators are."³² Thus, Senators Grassley and Wyden introduced S.Res. 244 to eliminate secret holds. Their proposed amendment to Senate Rule VII, on which no action was taken, stated:

A Senator who provides notice to party leadership of his or her intention to object to proceeding to a motion or matter shall disclose the notice of objection (or hold) in the Congressional Record in a section reserved for such notices not later than 2 session days after the date of the notice.³³

If the majority leader acts to take up a nomination or measure prior to the expiration of the two-day notice period, the Senator with the secret hold could either lodge a public objection or allow the matter to move forward.

4. 2003 Proposals

On May 21, 2003, Senators Grassley and Wyden, along with Richard Lugar, R-Ind., and Mary Landrieu, D-La., introduced S.Res. 151 to eliminate secret holds. The Resolution recommended adding the following sentence at the end of Senate Rule VII: "A Senator who provides notice to party leadership of his or her intention to object to proceeding to a motion or matter shall disclose the notice of objection (or hold) in the Congressional Record in a section reserved for such notices not later than 2 session days after the date of the notice."

The Senate Rules and Administration Committee conducted a hearing on S.Res. 151 on June 17, 2003, but there was no further Senate action on the measure. A number of scholars and a former Secretary of the Senate testified before the Rules and Administration Committee. The witnesses examined the potential positive and negative effects of adopting S.Res. 151, and suggested several ways to alter the Senate's informal practice of holds. The suggestions for change included limiting or prohibiting debate on the motion to proceed; requiring three to five Senators to object to a unanimous consent request to call up a measure or to limit debate or amendments; and devising special procedures to circumvent holds placed by only one or a few Members, such as establishing a weekly suspension procedure for taking up and agreeing to bills or nominations by a two-thirds vote.

Almost six months later, on November 7, 2003, the majority and minority leaders sent a "Dear Colleague" letter to all Senators. They noted that the leadership letter of 1999 contained "no

³¹ Matthew Tully, "Wyden Launches New Effort To Curb 'Holds' in Senate," *CQ Daily Monitor*, April 6, 2001, p. 5.

³² Ornstein, "Senators Are Putting Chokehold on Bush Administration Picks," p. 7.

³³ *Congressional Record*, daily edition, vol. 148, April 17, 2002, p. S2850.

specific mechanisms" for enforcing the disclosure of holds. As a result, they outlined a procedure to ensure the limited disclosure of holds. The two party leaders stated that all Senators who place a hold on measures or nominations shall, within 72 hours of placing the hold, notify the bill's sponsor and notify the senior party member on the jurisdictional committee. "If this policy is not observed," they wrote, "then we will disclose the hold to the senior committee member of our respective party and to the legislation's sponsor, if a member of our respective party, upon inquiry from such individuals." The two party leaders added that the "purpose of these limited-disclosure notifications is to encourage communications that may resolve 'holds' and ease the Senate's way to addressing its business."

5. 2006 Initiative

In 2006, the two principal proponents of ending secret holds succeeded in winning adoption of an amendment to an ethics, lobbying, and rules reform package (S. 2349) that would end the practice by establishing a new standing order of the Senate. Their amendment required the majority and minority leaders to recognize a hold—called a "notice of intent to object to proceeding"—only if it was provided in writing by a Member of their caucus. Moreover, noted a former party leader, "for the hold to be honored, the Senator objecting would have to publish his objection in the *Congressional Record* 3 days after the notice is provided to a leader."³⁴ One of the principal authors of the amendment provided this explanation of their proposal:

Our proposed standing order would provide that a simple form be filled out, much like we do when we add co-sponsors to a bill. Senators would have a full 3 session days from placing the hold to submit the form [to their respective party leader]. The hold would then be published in the CONGRESSIONAL RECORD and the Senate Calendar. It is just as simple as that.³⁵

S. 2349 required enactment into law before the new holds policy could take effect, but the 109th Congress adjourned before this could occur.

6. 2007: The Senate Adopts a New Holds Policy

On September 14, 2007, President George W. Bush signed into law the Honest Leadership and Open Government Act (S. 1). Section 512 of Title V of the law (P.L. 110-81) specifically dealt with the issue of secret holds. The fundamental purpose of Section 512, titled "Notice of Objecting to Proceeding," is to promote more openness and transparency in the holds process. Section 512 is neither a Senate rules change nor a standing order of the Senate, except as to the requirement that the Secretary of the Senate establish in the two Senate calendars (General Orders and Executive) a separate section identifying the Senator who filed a notice of intent to object, the measure or matter the Senator objects to, and the date the objection was filed. Section 512, however, is a directive to the majority and minority leaders of the Senate stating that before a hold is recognized by them, certain procedures must be observed by Senators. In effect, it is the responsibility of each Member to comply with the terms of the new policy. There is no enforcement device or method to ensure compliance, except the stipulation that party leaders shall not honor a "notice of intent" (or hold) if Senators do not follow the specified procedures.

³⁴ *Congressional Record*, daily edition, vol. 152, March 28, 2006, p. S2458.

³⁵ *Ibid.*, March 8, 2006, p. S1874.

Section 512 specifies the exact steps for making an anonymous hold public.³⁶ They are:

- The process begins when any Senator states that he or she, on behalf of a colleague, is objecting to a unanimous consent request—commonly made by the majority leader or majority floor manager—to proceed to or pass a measure or matter.
- That colleague must then submit a notice of intent (or hold letter to the appropriate party leader (or their designee) specifying the reason(s) for his or her objection(s) to a certain measure or matter.
- Not later than six session days after submission of the “notice of intent” letter, the Senator placing the hold submits the notice to be printed in the *Congressional Record* and in a separate section of the appropriate calendar.
- The majority leader and the minority leader (or their respective designee) are then obliged to recognize a hold placed by a Member of their caucus. (“Recognition” does not mean that the majority leader—who schedules the Senate’s business—must honor the hold.)
- A Senator may withdraw his or her hold prior to the expiration of the 6-session-day period. He or she is then under no obligation to have their hold letter printed in the *Congressional Record* and noted in the appropriate Senate calendar.
- To remove their hold from the appropriate Senate calendar, a Senator submits a notice for inclusion in the *Congressional Record* stating that he or she no longer objects to proceeding to a measure or matter.

It is useful to note that a Senator who publicly objects on his or her own behalf to a unanimous consent request to proceed to or pass a measure need not follow the Section 512 process. The disclosure has occurred publicly and Members know who is the objector. Thus, the name of the objector would not be required to be published in the *Congressional Record* or the appropriate calendar of the Senate.

VII. Require More than One Senator to Place a Hold

During his May 25, 1993, testimony before the Joint Committee on the Organization of Congress, Senator Exon declaimed, “I think that we have seen a proliferation of holds, counter-holds, retaliatory holds and so-called rolling holds. I say enough is enough. If the leadership is willing to move ahead with legislation, then one single Senator should not be able to stand in the way indefinitely.”³⁷ Accordingly, Senator Exon suggested that the Senate may need a new rule on holds that tracks the Rule XXII requirement that 16 Senators must sign a cloture petition. “I believe that it should also take the same number of Senators to place a hold on a bill,” said Senator Exon.³⁸

³⁶ For a more extensive discussion of the Senate’s policy, see CRS Report RL34255, *Senate Policy on “Holds”*: Action in the 110th Congress, November 20, 2007, by Walter J. Oleszek.

³⁷ U.S. Congress, Joint Committee on the Organization of Congress, *Floor Deliberations and Scheduling*, hearings, 103rd Cong., 1st sess., May 18, 20, and 25, 1993 (Washington: GPO, 1993), p. 122.

³⁸ *Ibid.*, p. 121.

Political scientist Steven Smith also testified before the 1993 joint committee. He, too, urged a change in the holds system. Professor Smith said:

The Senate should reduce the bite of holds by making it more difficult for a single Senator to object to a floor leader's request to call up a measure, limit debate, or limit amendments. The objections of at least five Senators should be required in order to block such a request. If this were done, along with curbs on obstructionist quorum calls, the disruption caused by petty, personalistic use of holds would be reduced.³⁹

A 1996 Twentieth Century Fund task force, which included as members former Senators John Culver, D-Iowa, and Charles Mathias, R-Md., proposed that 10 percent of the Senate would need "to request a hold before one takes effect."⁴⁰

VIII. Permit a Privileged Resolution to Terminate Holds

A 1996 report of the Twentieth Century Fund, which dealt with delays in the nominations process, recommended that any Senator be allowed "to offer a privileged resolution on the Senate floor that could end another Senator's hold by a simple majority of those present and voting."⁴¹

IX. Restrict Filibuster Opportunities

Senator Pete Domenici, R-N.M., who served as co-vice chairman of the 1993 joint committee, suggested an indirect way to address holds during Senator Exon's testimony before the panel. He proposed elimination of debate on the motion to call up legislation. "If we abolish that, we have gone a long way to diffusing the validity of holds, because a hold is predicated on the fact that you can't get [a bill] up without a filibuster, and if you take that away from the inception and then establish some kind of guidelines [for holds], I think that we will be moving in the right direction."⁴²

Another indirect way to soften the delaying potential of holds was proposed in 1965 by Senator Joseph S. Clark, D-Pa. He recommended that the Senate adopt a three-hour rule: "Whenever a Senator has held the floor for more than three consecutive hours, an objection to his continued possession of the floor, if made by any Senator, would compel him to yield the floor."⁴³

X. Determination by Majority Leader to Proceed

Senators sometimes suggest that no formal change is required to deal with any abuses associated with holds. "[R]ather, what is necessary is the determination to proceed, and the majority leader should proceed with calling up items for consideration."⁴⁴ There are, of course, parliamentary

³⁹ Ibid., May 20, 1993, pp. 234-235.

⁴⁰ See Ed Henry, "Wyden Holds Up 'Holds' as Prime Candidates for Senate Rules Reform," *Roll Call*, December 2, 1996, p. 16.

⁴¹ Ibid.

⁴² *Floor Deliberation and Scheduling*, Hearings Before the Joint Committee on the Organization of Congress, p. 124.

⁴³ *Congressional Record*, April 29, 1965, p. 8663. At that time, two-thirds of the Senators present and voting were required to invoke cloture, instead of the present three-fifths of the full Senate.

⁴⁴ U.S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress*, final report, 103rd (continued...)

risks associated with this course of action. For example, when Robert Dole became the new majority leader in 1985, he wanted to rein in the use of holds at the outset of his tenure. His plan was to "roll" Senators who had holds and call up those measures or matters for floor action. "[He] soon found it easier said than done."

The risk of telling Senators with "holds" that the leader was going forward with the bill in question was to invite a double-barrelled filibuster—on the "motion to proceed" and the "bill" itself. Once a session gets beyond the summer recess, the remaining time is extremely valuable, and is more likely to be the target of filibusterers. With the diminishing time for the majority leader to meet his agenda and establish his party's record, he must think twice about trying to "roll" anybody....⁴⁵

Party leaders may also view holds as less than sacrosanct as legislative circumstances change, such as the approach of deadlines. For instance, on December 6, 1982, Majority Leader Baker stated on the floor: "In these final two weeks ... holds will be honored only sparingly and under the most urgent circumstances."

Summary Observations

There are many observations that can be made about holds but six may be especially pertinent. First, although holds are not formally recognized in the Senate's standing rules or precedents, they are an increasingly important feature of the contemporary Senate. Although little known outside the Senate, they have attracted wider attention from scholars, journalists, and pundits. Second, repeated efforts to reform the system of holds demonstrate that such initiatives are neither easy to accomplish nor to enforce. Third, Senators recognize that holds provide them with leverage to influence the Senate's agenda. They may be reluctant to change practices associated with holds because unexpected consequences might reduce their overall personal influence in the Senate.

Fourth, the majority leader is ultimately responsible for deciding whether to honor a hold and for how long. Party leaders often advocate revisions of this practice, but they also recognize that holds alert them to potential problems in scheduling measures or matters. Fifth, holds appear to be used more frequently by today's Senators, in part because they seem more willing than many of their predecessors to assert parliamentary prerogatives. Changes in the broader political environment, such as the increase in the number of interest groups, also may create additional incentives for the apparent heightened use of holds. Finally, holds allow Senators to be consulted on matters of importance to them, such as winning recognition in a unanimous consent agreement to speak for a longer period of time than other Senators or to offer certain non-relevant amendments.

(...continued)

Cong., 1st sess., S.Rept. 103-215, Vol. II (Washington: GPO, 1993) p. 52.

⁴⁵ Lawrence DeNardis, "The New Senate Filibuster: An Analysis of Filibustering and Gridlock in the U.S. Senate, 1977-1986" (Ph.D. diss., New York University, 1989), p. 247.

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