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Senate Floor Privileges: History and Current Practice

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SUMMARY

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Jane A. Hudiburg
Analyst on Congress and the Legislative Process

Senate Floor Privileges: History and Current Practice

Senate Standing Rule XXIII, Privilege of the Floor, designates those afforded access to the Senate floor while the Senate is in session. In addition to sitting Senators, the rule lists several eligible positions, including certain current and former congressional, executive, and judicial officials; state and territorial governors; the mayor of the District of Columbia; members of foreign national legislatures; the nation's highest ranking military leaders; and, under specified circumstances, congressional staff members assisting Senators on the floor.

Over its history, the Senate has amended the floor privilege rule to add or clarify positional categories. The Senate has also agreed to a number of resolutions and unanimous consent (UC) agreements that affect the interpretation of the rule. The Senate, by resolution or UC, frequently provides temporary floor access to non-designated individuals. Less commonly, it has agreed to temporarily restrict access to the Senate floor. Such restrictions have occurred in advance of the Senate's move to its current chamber in 1859 and during the impeachment trials of Presidents Andrew Johnson (1868), Bill Clinton (1999), and Donald Trump (2020). In 2007, the Senate amended Rule XXIII to exclude lobbyists from the floor, even if these individuals would otherwise be granted floor privileges under the rule.

Rule XXIII permits certain staff members of individual Senators and Senate committees and joint committees to have access to the floor "when in the discharge of their official duties." Staff access is further regulated by policies outlined in a recurring UC agreement approved at the start of each Congress, as well as those policies established by the Senate Rules and Administration Committee. For instance, each Senator is limited to two staff members on the floor at the same time. The Office of the Sergeant at Arms (SAA) enforces Senate Rule XXIII, as well as any associated resolutions or UC agreements, regarding floor access.

This report analyzes the evolution of the floor privileges rule over time. Notable changes to the rule or its interpretation are provided, such as the first time a female staff member accessed the Senate floor (1946); when the Senate agreed to resolutions to accommodate staff with disabilities (e.g., allow the use of a service dog in the chamber, 1997); and when it permitted Senators, accompanied by their infant children, to vote on the Senate floor (2018).

The report also addresses how staff members are granted floor privileges and how that access is limited by Rule XXIII and its associated regulations. Access via the SAA's web portal, TranSAAct, is discussed, as well as the use of unanimous consent requests to afford access to individuals not listed in TranSAAct or to enable more than two staff members from the same Senate office on the floor at one time.

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Introduction

Senate Rule XXIII lists, by position category, individuals who, other than Senators, shall be permitted floor privileges in the Senate chamber when the Senate is in session. As President of the Senate, the Vice President is afforded floor privileges, even when not expected to perform formal or ceremonial duties. Additional categories include former Senators and other high-level officials and certain staff members conducting Senate business in the chamber. However, as amended in 2007, the rule excludes individuals who would otherwise be allowed if they are registered lobbyists or acting as an agent of a foreign principal.

Over its history, the Senate has amended its floor privileges rule to add or modify the list of those granted access. The Senate has also agreed to resolutions and unanimous consent (UC) agreements that have further clarified the rule, established procedures regarding staff access, or allowed individuals not designated in the rule onto the floor.

This report discusses the current positional categories listed in Rule XXIII, as well as the history of Senate floor privileges, beginning with the first identified Senate resolution regulating non-Senator access to the chamber in 1798. Additionally, relevant standing orders and biennial UC agreements are discussed in the report's "evolution of the rule" section.

The final section of the report offers guidance in obtaining temporary staff access under the Sergeant at Arms's floor pass system or by unanimous consent. This report will be updated as necessary.

Current Senate Rule XXIII

Positions Granted Floor Privileges

Rule XXIII designates the individuals who are granted floor privileges in the Senate chamber. This list contains many of the same categories that were in place during the late 19th century, as well as official positions that were established at a later time: the mayor of Washington, DC; the Joint Chiefs of Staff, and members of the European Parliament.[1]

Rule XXIII, Privilege of the Floor, clauses 1 and 2, states:

> 1. Other than the Vice President and Senators, no person shall be admitted to the floor of the Senate while in session, except as follows:
>
> The President of the United States and his private secretary.
>
> The President elect and Vice President elect of the United States.
>
> Ex-Presidents and ex-Vice Presidents of the United States.
>
> Judges of the Supreme Court.
>
> Ex-Senators and Senators elect, except as provided in paragraph 2.[2]

[1] The office of an elected mayor of the District of Columbia was provided for in the District of Columbia Home Rule Act (P.L. 93-198). The first mayor took office in January 1975. The Joint Chiefs of Staff was established under the National Security Act of 1947 (P.L. 80-253). The members of the European Parliament were first elected in 1979.

[2] The Senate has afforded Senators-elect in contested elections floor privileges as well as "the right to address the Senate in support of their claim to a seat." Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, S.Doc. 101-28, 101st Cong., 2nd sess. (Washington: GPO, 1992), p. 845.

The officers and employees of the Senate in the discharge of their official duties.

Ex-Secretaries and ex-Sergeants at Arms of the Senate, except as provided in paragraph 2.

Members of the House of Representatives and Members elect.

Ex-Speakers of the House of Representatives, except as provided in paragraph 2.

The Sergeant at Arms of the House and his chief deputy and the Clerk of the House and his deputy.

Heads of the Executive Departments.[3]

Ambassadors and Ministers of the United States.

Governors of States and Territories.

Members of the Joint Chiefs of Staff.

The General Commanding the Army.

The Senior Admiral of the Navy on the active list.

Members of National Legislatures of foreign countries and Members of the European Parliament.

Judges of the Court of Claims.

The Mayor of the District of Columbia.

The Librarian of Congress and the Assistant Librarian in charge of the Law Library.

The Architect of the Capitol.

The Chaplain of the House of Representatives.

The Secretary of the Smithsonian Institution.

The Parliamentarian Emeritus of the Senate.

Members of the staffs of committees of the Senate and joint committees of the Congress when in the discharge of their official duties and employees in the office of a Senator when in the discharge of their official duties (but in each case subject to such rules or regulations as may be prescribed by the Committee on Rules and Administration). Senate committee staff members and employees in the office of a Senator must be on the payroll of the Senate and members of joint committee staffs must be on the payroll of the Senate or the House of Representatives.

2. (a) The floor privilege provided in paragraph 1 shall not apply, when the Senate is in session, to an individual covered by this paragraph who is—

(1) a registered lobbyist or agent of a foreign principal; or

(2) in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any Federal legislative proposal.

(b) The Committee on Rules and Administration may promulgate regulations to allow individuals covered by this paragraph floor privileges for ceremonial functions and events designated by the Majority Leader and the Minority Leader.[4]

[3] The Senate has interpreted *Heads of the Executive Departments* to mean members of the Cabinet. See *Riddick's Senate Procedure*, p. 846.

[4] U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual Containing the Standing Rules,*

Provision Excluding Lobbyists

In 2007, the Senate amended Rule XXIII to exclude from the chamber persons who are otherwise allowed entrance if they are registered as lobbyists, acting as foreign agents, or representing an entity for the "purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any Federal legislative proposal." This exclusion, adding a new subparagraph 2(a), applies when the Senate is in session. More information on the lobbyist exclusion is presented in the evolution of the rule section of this report.[5]

Regulation and Enforcement of the Rule

Senate Rule XXIII, clause 2(b), states that "it shall be the duty of the Committee on Rules and Administration to make all rules and regulations respecting such parts of the Capitol … as are or may be set apart for the use of the Senate and its officers."[6] Accordingly, the committee issues a "Rules for Regulation of the Senate Wing," which is printed in the *Senate Manual*.

Rule I of the document specifies that the Senate Sergeant at Arms, under the direction of the presiding officer, enforces the rules associated with the Senate chamber. This officer supervises the Senate floor at all times and ensures that designated subordinates are in performance of their chamber-related duties. In addition, the Sergeant at Arms "shall see that the messengers assigned to the doors upon the Senate floor are at their posts and that the floor, cloakrooms, and lobby are cleared at least five minutes before the opening of daily sessions of all persons not entitled to remain there."[7]

Exceptions to the Rule

Pursuant to clause 2(b) of Rule XXIII, the Committee on Rules and Administration may promulgate regulations to allow individuals covered under clause 2(a) floor access "for ceremonial functions and events designated by the Majority Leader and the Minority Leader." Thus, on certain occasions, such as opening day of a Congress, former Senators and other individuals may be invited into the chamber, even if they would otherwise be prevented by the ban on registered lobbyists.

Temporary floor access may also be granted by unanimous consent. For instance, in 1929, unanimous consent enabled a Senator-elect to have his physician accompany him into the Senate chamber.[8] Unanimous consent is often used to grant temporary access to House officials, such as the House Parliamentarian, or Senate interns or fellows who are not on the Senate payroll.[9]

Orders, Laws, and Resolutions Affecting the Business, prepared by Matthew McGowan, 113th Cong., 1st sess., 2014, S.Doc. 113-1 (Washington: GPO, 2014), §23.1.

[5] Clause 3 of Rule XXIII was added at the same time as clause 2. Clause 3 states: "A former Member of the Senate may not exercise privileges to use Senate athletic facilities or Member-only parking spaces if such Member is—(a) a registered lobbyist or agent of a foreign principal; or (b) in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any Federal legislative proposal."

[6] *Senate Manual*, 113th Cong., 1st sess., §33.2.

[7] *Senate Manual*, 113th Cong., 1st sess., §150.

[8] *Riddick's Senate Procedure*, p. 846.

[9] *Riddick's Senate Procedure*, p. 847.

Evolution of Rule

1789-1977

In the earliest years of Congress, 1789-1795, the Senate closed its chamber to the public and the press. In 1795, the Senate, then meeting in the temporary capitol in Philadelphia, installed a public gallery but apparently had no official rules regarding floor access for non-Senators.

First Identified Senate Policy Regulating Floor Privileges (1798)

The first identified policy concerning floor access was established in 1798. The Senate resolved, "That no motion shall be deemed in order to admit any person, or persons, whatever, within the doors of the Senate chamber, to present any petition, memorial, or address, or to hear any such read."[10] The Senate continued to follow this policy after it moved to the north wing of the Capitol Building in 1800. In 1806, the policy was codified in the first major revision of the standing rules, and it remained in the rules until the general revision of 1877.[11]

In the 1820 revision of the rules, the Senate established an additional rule regarding floor access. Standing Rule 38 then stated, "When acting on confidential or executive business, the Senate shall be cleared of all persons, except the Secretary, the Sergeant-at-Arms, and Door-Keeper, or, in his absence, the assistant door-keeper."[12]

On the opening day of the 24th Congress (1835-1837), the Senate agreed to a resolution, dated December 7, 1835, that set aside the circular gallery for the "accommodation of ladies and the gentlemen accompanying them" and provided, "The reporters shall be removed from the east gallery, and placed on the floor of the Senate, under the direction of the Secretary." Furthermore, the resolution listed positional categories, in addition to reporters, that were allowed access to the floor. It stated, "No person, except members of the House of Representatives, their Clerk, Heads of Departments, Treasurer, Comptrollers, Register, Auditors, Postmaster General, President's Secretary, Chaplains to Congress, Judges of the United States, foreign Ministers and their Secretaries, officers who by name have received or shall hereafter receive the thanks of Congress for their gallantry and good conduct displayed in the service of their country, the Commissioners of the Navy Board, Governor for the time being of any State or Territory of the Union, such gentlemen as have been heads of Departments, or members of either branch of the Legislature, and, at the discretion of the President of the Senate, persons who belong to such Legislatures of foreign Governments as are in amity with the United States, shall be admitted on the floor of the Senate."[13]

By resolution, in 1854, the Senate amended its floor privilege rule (then Senate Rule 48). While the updated rule did not grant floor access to reporters, who at the time observed the chamber's proceedings from a reporters' gallery, it did expand the list of other categories admitted. The new list formed the basis for the current Rule XXIII. It included government officials serving in the District of Columbia, state judges and legislators, and individuals who had previously served in positions with floor privileges.

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[10] *Journal of the Senate*, 5th Cong., 2nd sess. (April 27, 1798), p. 481.

[11] U.S. Congress, Senate, *History of the Committee on Rules and Administration*, prepared by Floyd M. Riddick, 96th Cong., 1st sess., S.Doc. 96-27 (Washington: GPO, 1980), pp. 7, 21.

[12] *Journal of the Senate*, 16th Cong., 1st sess. (January 3, 1820), p. 67.

[13] *Journal of the Senate*, 24th Cong., 1st sess. (December 7, 1835), p. 5.

The resolution also provided regulations relating to chamber access. No person—excepting Senators, Senate officers, and House Members—would be allowed entrance to the chamber via its side doors, and "no person except members of the Senate" would be "allowed within the bar of the Senate, or to occupy the seat of any senator." Prior to entry, all persons "claiming admission on the floor of the Senate" were to "enter their names, together with the official position in right of which they claim admission, in a book to be provided and kept at the main entrance to the Senate chamber."[14] This policy, requiring a record of individuals accessing the floor while the Senate is in session, remains in effect today.[15]

Notwithstanding the policy established in 1854, Senators could, by resolution, obtain temporary floor access for individuals not otherwise permitted. For instance, in 1855, the Senate considered by unanimous consent and agreed to the following resolution: "*Resolved*, That the officers and soldiers of the war of eighteen hundred and twelve, now holding a convention in this city, be invited to occupy seats upon the floor of the Senate, without the bar, during the sitting of such convention."[16]

As the Senate prepared to move into its new (and current) chamber in the Capitol's north extension, it agreed to a resolution that temporarily restricted access to the Senate floor. The resolution of December 23, 1858, stated that "until the Senate otherwise order [*sic*], no person except senators, the officers of the Senate, and members of the House of Representatives, be admitted to the floor of the Senate while in session."[17]

Following the Senate's transition to the new chamber in January 1859, the Senate amended Rule 48 to state, "No person shall be admitted to the floor of the Senate, while in session, except as follows, viz: The officers of the Senate, members of the House of Representatives and their Clerk, the President of the United States and his private secretary, the heads of departments, foreign ministers, ex-Presidents and ex-Vice-Presidents of the United States, ex-senators, senators elect, and judges of the Supreme Court."[18] However, the Senate could, by motions and resolutions, grant temporary access to individuals for particular reasons. For instance, to address structural problems associated with the new chamber, the Senate agreed to a motion submitted on December 14, 1859: "*Ordered*, That the assistant engineer in charge of heating and ventilating have the privilege of the floor of the Senate, so far as in the opinion of the presiding officer his duties make it necessary."[19]

In 1862, the Senate amended Rule 48 to add "governors of States and Territories."[20] In the next general revision of the Senate rules, agreed to on March 25, 1868, the Senate re-numbered the floor privilege rule as Rule 47 and approved a minor amendment: The phrase *foreign ministers* became "ministers of the United States and foreign ministers."[21]

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[14] *Journal of the Senate*, 33rd Cong., 1st sess. (January 23, 1854), pp. 122-123.

[15] The daily roster was originally noted in a bound book. It is now logged in an electronic database. See the "Obtaining Staff Floor Privileges" section of this report.

[16] *Journal of the Senate*, 33rd Cong., 2nd sess. (January 9, 1855), p. 99.

[17] *Journal of the Senate*, 35th Cong., 2nd sess. (December 23, 1858), pp. 92-93.

[18] *Journal of the Senate*, 35th Cong., 2nd sess. (January 10, 1859), p. 123.

[19] *Journal of the Senate*, 36th Cong., 1st sess. (December 14, 1859), pp. 10-11.

[20] *Journal of the Senate*, 37th Cong., 2nd sess. (February 7, 1862), p. 183.

[21] *History of the Committee on Rules and Administration*, p. 27.

President Johnson Impeachment Trial (1868)

The Senate adopted its 1868 rules shortly after the House approved articles of impeachment against President Andrew Johnson on March 2 and 3. Following the commencement of the Senate trial on March 5, the Senate voted to restrict, during the impeachment proceedings, "that portion of the Capitol set apart for the use of the Senate and its officers" to those "who now have the privilege of the floor, and clerks of the standing committees of the Senate" and gallery spectators in possession of tickets issued by the Sergeant at Arms.[22]

Three weeks into the impeachment trial, the Senate rejected a resolution providing an exception to the floor privilege rule. By a vote of 19 yeas to 20 nays, the Senate refused "to admit the agent of the Associated Press on the floor of the Senate during the trial of the impeachment."[23]

First Regular Senate Staff Members Given Floor Privileges Under Standing Rules (1872)

In 1872, the Senate included regular Senate employees, in addition to Senate officers, to the list of positional categories afforded floor privileges under a standing rule.[24] On motion, the Senate amended Rule 47 to add the following: "General of the Army, Admiral of the Navy, members of the national legislatures of foreign countries, private secretaries of Senators duly appointed in writing, and the Librarian of Congress."[25] By including the phrase *duly appointed in writing*, the Senate ensured that employee admission would be limited to officially recognized staff members.

The Senate codified the "private secretaries" position in the next general revision of Senate rules in 1877. Re-numbered Rule 60, the floor privileges rule stated:

> No person shall be admitted to the floor of the Senate while in session, except as follows:
>
> The officers of the Senate.
>
> Members of the House of Representatives and their Clerk.
>
> The President of the United States and his Private Secretary.
>
> The heads of Departments.
>
> Ministers of the United States.
>
> Foreign ministers.
>
> Ex-Presidents and Ex-Vice Presidents of the United States.
>
> Ex-Senators and Senators-elect.
>
> Judges of the Supreme Court.
>
> Governors of States and Territories.

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[22] *Journal of the Senate*, 40th Cong., 2nd sess. (March 10, 1868), p. 288.

[23] *Journal of the Senate*, 40th Cong., 2nd sess. (April 3, 1868), p. 365.

[24] The 1872 motion is the first identified occasion on which Senate rules were amended to include non-officer Senate employees as a permanent category for admission to the Senate. However, there was at least one previous, unsuccessful attempt to add a category of Senate employees. Shortly after the new Senate chamber opened in 1859, the Senate voted to strike "clerks of the committees of the Senate for the particular occasion, upon a special order signed by the chairman of the committee" from the resolution amending the floor privilege rule; *Journal of the Senate*, 35th Cong., 2nd sess. (January 10, 1859), p. 120.

[25] *Journal of the Senate*, 42nd Cong., 2nd sess. (March 5, 1872), p. 327.

> General of the Army.
>
> Admiral of the Navy.
>
> Members of national legislatures of foreign countries.
>
> Private secretaries of Senators, duly appointed in writing, and the Librarian of Congress.[26]

George Bancroft: Only Individual Identified by Name Afforded Floor Privileges Under the Standing Rules (1879-1891)

In 1879, for the first (and only) identified time, the Senate amended its standing rules to grant permanent floor privileges to a named individual: George Bancroft, the former Secretary of the Navy, renowned historian, and author of the acclaimed multi-volume *History of the United States*. The Senate resolved "that the Hon. George Bancroft be admitted to the privileges of the floor of the Senate."[27] (Following Bancroft's death in 1891, newspapers reported that this privilege had been extended as a means to honor this "most illustrious man of letters."[28])

In 1884, the next general revision of Senate rules re-codified the rules using Roman numerals and titles to distinguish each rule. The re-numbered Rule XXXIII, Privilege of the Floor, specified the Honorable George Bancroft as an individual allowed admittance; retained the positional categories listed in the 1877 rule; and added the House Sergeant at Arms, the Assistant Librarian in charge of the Law Library, judges of the Court of Claims, and the Architect of the Capitol extension. It also contained a second clause that further regulated the admittance of non-officer Senate employees:

> No person shall be admitted to the floor as private secretary of a Senator until the Senator appointing him shall certify in writing to the Sergeant-at-Arms that he is actually employed for the performance of the duties of such secretary and is engaged in the performance of the same.[29]

Shortly after the 1884 revision, the Senate agreed to resolutions adding the Secretary of the Smithsonian, the commissioner of Agriculture, and the commissioners of the District of Columbia and changing the Architect of the Capitol extensions to the Architect of the Capitol.[30] In 1888, the Senate added ex-Speakers of the House, and in 1889, it added the President-elect and Vice President-elect.[31]

The floor privilege rule was further amended in 1891 following the death of Bancroft, as well as the deaths of the general of the Army and the admiral of the Navy. The amendment struck the Bancroft reference and broadened the Army and Navy categories to the "General Commanding the Army" and the "senior admiral of the Navy on the active list." It also incorporated the former clause 2, regulating the admission of Senate employees, into clause 1. The revised Senate-employee provision stated, "Clerks to Senate committees and clerks to Senators when in the actual discharge of their official duties. Clerks to Senators to be admitted to the floor must be

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[26] *History of the Committee on Rules and Administration*, p. 38.

[27] *Journal of the Senate*, 45th Cong., 3rd sess. (January 16, 1879), p. 123.

[28] "America's Dead Historian," *Indianapolis Journal* (January 20, 1891), p. 5.

[29] *History of the Committee on Rules and Administration*, p. 52.

[30] The positional category "Commissioners of the District of Columbia" was changed, by resolution, to "Commissioner of the District of Columbia" in 1967; *Journal of the Senate*, 48th Cong., 1st sess. (April 22, 1884), p. 565; 48th Cong., 1st sess. (June 13, 1884), p. 762; 90th Cong., 1st sess. (November 30, 1967), p. 896.

[31] *Journal of the Senate*, 50th Cong., 1st sess. (July 25, 1888), p. 1173; 50th Cong., 2nd sess. (January 4, 1889), p. 113.

regularly appointed and borne upon the rolls of the Secretary of the Senate as such." According to the Senator offering the amendment, the change regarding Senate clerks defined "a little more clearly who shall be entitled to admission as such."[32]

After 1891, there were a few additions to the positions given floor privileges: ex-Secretaries of the Senate (1895), House Members-elect (1895), ex-Sergeants at Arms of the Senate (1896), Chaplain of the House (1971), and Parliamentarian Emeritus of the Senate (1975).[33] The rules recodification of 1979 provided floor privileges to offices created in 1947 (the Joint Chiefs of Staff), 1975 (mayor of the District of Columbia), and 1979 (members of the European Parliament).

First Female Staff Member Granted Floor Privileges (1946)

The 1891 amendment to Senate rules replaced the term *secretary* with *clerk* in reference to Senate staff working for individual Senators or Senate committees. It also removed the gendered pronoun *him* from the provision regulating who may obtain floor access. Thus, there were no restrictions under Senate rules that prevented female staff members from entering the Senate chamber while the Senate was in session. However, as noted by the author Lewis Gould, until 1946, "informal tradition dictated that only male secretaries could come to the Senate floor to consult with their bosses," even though the Senate employed about two dozen women clerks at the end of World War II, and five women had previously served as Senators.[34]

The first female staff member reportedly granted floor privileges, Frances Dustin, had served as a secretary to Senator Ralph Owen Brewster for 20 years prior to her admission to the floor, which, not coincidently, occurred three days after the Senate failed to achieve the two-thirds vote necessary to approve an Equal Rights Amendment (S.J.Res. 61, 79th Congress). Initially, Senator Brewster considered submitting a resolution providing women staffers with floor access. Once he learned that the rules did not prevent female clerks on the Senate floor, however, he instead sought a clarification from the presiding officer.[35] Addressing the chair, he said, "Apropos of our extended discussion last week regarding equal rights … I should like to have a ruling … as to whether, under the rules, female clerks may be allowed the privileges of the floor." The Senator serving as President pro tempore read the floor privilege rule out loud, then stated, "The Chair believes, and the Parliamentarian concurs in the opinion, that a woman clerk to any Senator or to any committee has the same rights as a man clerk, as if she were a man clerk. Therefore, under that ruling, the Chair holds that they are entitled to the floor."[36]

According to *Newsweek*, the ruling provided the "cue" for Dustin's "historic entrance" into the chamber. Dustin, "very gratified," conferred with Senator Brewster for about 10 minutes, then exited the floor, vowing that women would not "abuse the privilege."[37] The President pro tempore

[32] *Congressional Record*, vol. 23, 52nd Cong., 1st sess. (December 14, 1891), p. 45.

[33] *Journal of the Senate*, 53rd Cong., 3rd sess. (January 28, 1895), p. 75 (ex-Secretaries of the Senate); *Senate Manual*, 54th Cong., 1st sess. (1896), p. 29 (ex-Sergeant at Arms,); *Journal of the Senate*, 53rd Cong., 3rd sess. (January 26, 1895), p. 72 (House Members elect); *Journal of the Senate*, 92nd Cong., 1st sess. (October 4, 1971), p. 705 (Chaplain of the House); *Journal of the Senate*, 94th Cong., 1st sess. (July 10, 1975), p. 712 (Parliamentarian Emeritus).

[34] Lewis L. Gould, *The Most Exclusive Club: A History of the Modern United States Senate* (New York: Basic Books, 2005), p. 180.

[35] "Ladies Invited," *Newsweek* (August 5, 1946), p. 22.

[36] *Congressional Record*, vol. 92, 79th Cong., 2nd sess. (July 22, 1946), p. 9616.

[37] "Ladies Invited," p. 22.

later confirmed that this was "the first time in 160 years that a woman has had the privilege of the floor of the Senate as clerk to a Senator."[38]

1978-Present

Recurring Unanimous Consent Agreement: Two Staff Members per Senator on Floor at One Time with Pre-Notification of Journal Clerk (1978)

Until 1978, Senators generally enabled eligible staff members to access the floor via unanimous consent (UC) requests. According to then Majority Leader Robert C. Byrd, under this practice, Senators would "have to stand up on the floor, get the attention of the Chair, and obtain unanimous consent all the time." In order to "do away with all the jumping up and down" of Senators seeking recognition, the majority leader supported a procedure, proposed by Senator Warren Magnuson, that would allow Senators to pre-notify the Journal clerk regarding staff admissions.[39]

On September 30, Majority Leader Byrd requested "unanimous consent that for the remainder of this session, Senators may enter at the desk with the Journal clerk, the names of whatever people they wish to have on the floor, indicating the legislative subject matter which they want to have attended on the floor by their people, and the date and time; and that, subject to conditions in the rear of the chamber, those staff members be allowed on the floor for the specified dates and times and purposes, with the understanding that the Sergeant at Arms be required to implement this order in a reasonable way that will not allow overcrowding in the rear of the chamber. This would mean that the Sergeant at Arms might have to ask some of the staff people to rotate, so that we would not have too many in here." Senator Ted Stevens indicated his support for the UC agreement provided that Senators "must specify the bill and the date on which the staff member would be admitted in this fashion" and that no Senator "would be permitted to have more than two staff members on the floor at any one time." Majority Leader Byrd accepted the modification and received unanimous consent to put the procedure into practice.[40]

The following January, the majority leader established, by unanimous consent, a Senate policy providing "for the duration of the 96th Congress, Senators be allowed to leave at the desk with the Journal clerk a list of no more than two staff members who will be granted the privilege of the floor during the consideration of specific matter noted on the list, and that the Sergeant at Arms be instructed to rotate such staff members as space allows." At the start of subsequent Congresses, the majority leader has made nearly identical UC requests, re-establishing the pre-notification procedure while not codifying it in the Senate's standing rules. The former Senate Parliamentarian, Floyd Riddick, however, noted in *Riddick's Senate Procedure: Precedents and Practices* that Senators continue to use UC requests to obtain floor privileges for individuals otherwise not eligible or to enable more than two staff members to access the floor at one time.[41]

Rules Revisions of 1979 and 1980

In 1979, the Senate agreed to S.Res. 274 (96th Congress) "to revise and modernize the Standing Rules of the Senate." The Privilege of the Floor rule, then still Rule XXXIII, remained the same

[38] *Congressional Record*, vol. 92, 79th Cong., 2nd sess. (July 22, 1946), p. 9616.

[39] *Congressional Record*, vol. 124, 95th Cong., 2nd sess. (September 30, 1978), pp. 32820-32821.

[40] *Congressional Record* (September 30, 1978), pp. 32820-32821.

[41] For examples of UC requests that allowed individuals not listed in the rule, or as an exception to the two-staff member limit, see *Riddick's Senate Procedure*, pp. 847-848.

with the exception of two additional position categories: the Joint Chiefs of Staff and the mayor of the District of Columbia (replacing the DC commissioner category, established in 1884). The following year, S.Res. 389 recodified and consolidated Senate rules, leading to a general renumbering, as well as minor revisions. The Privilege of the Floor rule became Rule XXIII and now included the position members of the European Parliament in the "Members of National Legislatures of foreign countries" provision. Thus, 1980 marked the last year a new position category was added to the Privilege of the Floor rule.

Standing Order: Disability Accommodations for Staff (1997)

In 1997, the Senate agreed to a standing order that allows individuals with disabilities using guide dogs, wheelchairs, or other accommodations to access the Senate floor. Earlier that year, Senator Ron Wyden had requested unanimous consent to enable a legislative fellow, accompanied by a service dog, onto the floor. The UC request was objected to on the Senate floor.[42] The following day, Majority Leader Trent Lott proposed a policy, by UC, that *did* receive Senate approval: "*Ordered*, That an individual with a disability who has, or is granted, the privilege of the Senate floor may bring those supporting services (including service dogs, wheelchairs, and interpreters) on the Senate floor which the Sergeant at Arms determines are necessary and appropriate to assist the disabled individual in discharging the official duties of his or her position until the Rules and Administration Committee has the opportunity to consider properly the matter."[43] The Senate then agreed to Senator Wyden's second UC request to allow his energy-policy fellow and her guide dog into the chamber.[44]

Senator Wyden subsequently sponsored S.Res. 110 (105th Congress) "to permit an individual with a disability with access to the Senate floor to bring necessary supporting aids and services." The resolution, based on the majority leader's UC agreement, resolved:

> That an individual with a disability who has or is granted the privilege of the Senate floor under rule XXIII of the Standing Rules of the Senate may bring necessary supporting aids and services (including service dogs, wheelchairs, and interpreters) on the Senate floor, unless the Senate Sergeant at Arms determines that the use of such supporting aids and services would place a significant difficulty or expense on the operations of the Senate in accordance with paragraph 2 of rule 4 of the Rules for Regulation of the Senate Wing of the United States Capitol.[45]

In debate, Senator Wyden clarified that the resolution's "undue burden language is intended to apply only in very unusual circumstances, such as where significant architectural modifications might be necessary." The resolution had several additional proponents, including the chair of the Senate Committee on Rules and Administration, John Warner, who stated, "By adopting this resolution, the Senate hopes to be a model for the country in its treatment of individuals with disabilities."[46] The staff disability accommodation policy continues to apply as one of the Senate's non-statutory standing orders, which operate as standing rules of the Senate.[47]

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[42] *Journal of the Senate*, 105th Cong., 1st sess. (April 14, 1997), p. 203; H. Josef Hebert, "Senate Defuses Byrd-Dog Dispute," *AP News* (April 15, 1997).

[43] *Journal of the Senate*, 105th Cong., 1st sess. (April 15, 1997), p. 205.

[44] *Congressional Record*, vol. 143 (April 15, 1997), pp. 5398-5399.

[45] *Senate Manual*, 113th Cong., 1st sess., §63.

[46] *Congressional Record*, vol. 143 (July 31, 1997), pp. 17204-17205.

[47] *Senate Manual*, 113th Cong., 1st sess., §63.

Also in 1997, the Senate agreed to another resolution relating to disability that applied only in that Congress. This resolution concerned a Senator, a wounded veteran, who needed assistance traveling to and from his seat in the Senate chamber. S.Res. 8 resolved:

> That an employee in the office of Senator Max Cleland, to be designated from time to time by Senator Cleland, shall have the privilege of the Senate floor during any period when Senator Cleland is in the Senate chamber during the 105th Congress.

President Clinton Impeachment Trial (1999)

On January 6, 1999, the day before the Senate commenced the impeachment trial of President Clinton, Majority Leader Lott requested unanimous consent to implement policies regarding "Senate access during impeachment proceedings." The UC agreement required that individuals eligible for floor access under Rule XXIII enter the chamber through the Republican and Democratic cloakrooms only and that "such access will be limited to the number of vacant seats available on the Senate floor based on protocol considerations enforced by the Secretaries for the Majority and Minority and the Sergeant at Arms."[48]

Access to the floor would be limited "to those having official impeachment proceedings duties" using the following "guidelines":

- (not more than) three assistants to the majority leader;
- (not more than) three assistants to the minority leader;
- (not more than) two assistants to the majority whip;
- (not more than) two assistants to the minority whip;
- Secretary of the Senate (or designee);
- Sergeant at Arms (or designee);
- Secretary for the Majority (or designee);
- Secretary for the Minority (or designee);
- the Senate Legal Counsel, Deputy Legal Counsel, and Counsel for the Secretary and Sergeant at Arms (as needed);
- Cloakroom staff (as needed), "under supervision of secretaries for the majority or minority, as appropriate";
- the Secretary of the Senate's legislative staff (as needed), "under supervision of the Secretary"; and
- Doorkeepers (as needed), "under the supervision of the Sergeant at Arms."

The UC agreement stipulated that "committee and Member staff will not be permitted on the Senate floor other than as noted above; and that, accordingly, all messages to Members will be processed in the regular manner through the party cloakrooms or the reception room message desk." Further, "the Sergeant at Arms shall enforce the above provisions and take such other actions as necessary to fulfill his responsibilities."

In addition to the Rule XXIII position categories, the UC agreement also ordered that "the following shall be admitted to the floor of the Senate while the Senate is sitting for impeachment proceedings":

[48] *Journal of the Senate*, 106th Cong., 1st sess. (January 6, 1999), pp. 6-7.

- (not more than) two assistants to the Chief Justice;
- assistants to the House managers;
- and, counsel and assistants to counsel for the President of the United States.[49]

Exclusion of Lobbyists (2007)

In 2007, Congress enacted the Honest Leadership and Open Government Act (P.L. 110-81).[50] Among its provisions, the act eliminated Senate "floor privileges for former Members, Senate officers, and Speakers of the House who are registered lobbyists or seek financial gain." As amended by P.L. 110-81, Rule XXIII now contains two clauses following the list of positional categories. Clause 2(a) excludes lobbyists from the chamber with exceptions allowed, during certain events, as outlined by clause 2(b). (Clause 3 concerns access to other Senate privileges, including athletic and parking facilities.) Clause 2 states:

> (a) The floor privilege provided in paragraph 1 shall not apply, when the Senate is in session, to an individual covered by this paragraph who is—
>
> (1) a registered lobbyist or agent of a foreign principal;
>
> or
>
> (2) in the employ of or represents any party or organization for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any Federal legislative proposal.
>
> (b) The Committee on Rules and Administration may promulgate regulations to allow individuals covered by this paragraph floor privileges for ceremonial functions and events designated by the Majority Leader and the Minority Leader.

Infants on Floor During Votes (2018)

In 2018, the Senate agreed to S.Res. 463 (115th Congress), "authorizing a Senator to bring a young son or daughter of the Senator onto the floor of the Senate during votes." The resolution created a new Senate standing order:

> Notwithstanding rule XXIII of the Standing Rules of the Senate, a Senator who has a son or daughter (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) under 1 year of age may bring the son or daughter onto the floor of the Senate during votes.

The resolution addressed a concern conveyed by a Senator anticipating the birth of her baby daughter. Senate Rule XXIII does not grant children access to the floor while the Senate is in session, and it is not in order, as noted in Senate precedents, for the Senate to record the votes of Members who are not present.[51] Thus, Senators might be prevented from voting if they also need to care for their infant children. Under the new policy, on April 19, 2018, the day after the Senate agreed to S.Res. 463, Senator Tammy Duckworth voted in the chamber while accompanied by her newborn daughter.[52]

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[49] *Journal of the Senate*, 106th Cong., 1st sess. (January 6, 1999), pp. 6-7; U.S. Congress, Senate, *Impeachment Trial of President William Jefferson Clinton*, Volume 1: Preliminary Proceedings, prepared by Office of the Secretary of the Senate, 106th Cong., 1st sess., 1999, S.Doc. 106-4 (Washington: GPO, 1999).

[50] "Lobbying Overhaul Bill Takes Aim at 'Culture of Corruption,'" *CQ Almanac 2007*, 63rd ed., edited by Jan Austin (Washington, DC: Congressional Quarterly, 2008).

[51] *Riddick's Senate Procedure*, p. 1399.

[52] Sheryl Gay Stolberg, "'It's About Time': A Baby Comes to the Senate Floor," *New York Times*, April 19, 2018.

President Trump Impeachment Trial (2020)

On January 15, 2020, one day prior to the commencement of the President Trump impeachment trial, the Senate agreed to a unanimous consent request by Majority Leader Mitch McConnell that included "allocations and provisions" regarding "access to the Senate wing, the Senate floor, and the Senate Chamber Galleries during all of the proceedings involving the exhibition of consideration of the Articles of Impeachment" against the President. The UC agreement's section on Senate floor access contained three paragraphs. Paragraph (1) provided general policies related to entrance to the chamber and floor seating, and paragraphs (2) and (3) regulated floor access for specified trial assistants.

Paragraph (2) stated:

> Limited staff access.—Officers and employees of the Senate, including members of the staffs of committees of the Senate or joint committees of the Congress and employees in the office of a Senator, shall not have privileges under rule XXIII of the Standing Rules of the Senate to access the floor of the Senate, except as needed for official impeachment proceeding duties in accordance with the following:
>
> (A) The Majority Leader and the Minority Leader shall each be limited to not more than 4 assistants.
>
> (B) The Secretary of the Senate and the Assistant Secretary of the Senate shall each have access, and the legislative staff of the Secretary of the Senate shall be permitted as needed under the supervision of the Secretary of the Senate.
>
> (C) The Sergeant at Arms and Doorkeeper of the Senate and the Deputy Sergeant at Arms and Doorkeeper shall each have access, and doorkeepers shall be permitted as needed under the supervision of the Sergeant at Arms and Doorkeeper of the Senate.
>
> (D) The Secretary for the Majority, the Secretary for the Minority, the Assistant Secretary for the Majority, and the Assistant Secretary for the Minority shall each have access, and cloakroom employees shall be permitted as needed under the supervision of the Secretary for the Majority or the Secretary for the Minority, as appropriate.
>
> (E) The Senate Legal Counsel and the Deputy Senate Legal Counsel shall have access on an as-needed basis.
>
> (F) The Parliamentarian of the Senate and assistants to the Parliamentarian of the Senate shall have access on an as-needed basis.
>
> (G) Counsel for the Secretary of the Senate and the Sergeant at Arms and Doorkeeper of the Senate shall have access on an as-needed basis.
>
> (H) The minimum number of Senate pages necessary to carry out their duties, as determined by the Secretary for the Majority and the Secretary for the Minority, shall have access.

Paragraph (3) stated:

> Other individuals with Senate floor access.—The following individuals shall have privileges of access to the floor of the Senate:
>
> (A) Not more than 3 assistants to the Chief Justice of the United States.
>
> (B) Assistants to the managers of the impeachment of the House of Representatives.
>
> (C) Counsel and assistants to counsel for the President of the United States.[53]

[53] *Congressional Record*, vol., 166 (January 15, 2020), p. S235.

Obtaining Staff Floor Privileges

The Sergeant at Arms enforces the rules and regulations governing the Senate chamber. Accordingly, the Office of the Sergeant at Arms (SAA), including its Doorkeepers, supervises and restricts staff access to the floor. The SAA ensures that non-chamber staff members will not access the floor during a Senate session unless they are on the Journal clerk's pre-notification list or are allowed under the terms of a unanimous consent request. The SAA also ensures that, barring a UC request, no more than two staff members from the same Senator's office will be on the floor at the same time, as mandated in the recurring UC agreements agreed to at the start of each Congress.

Access Under the Pre-Notification Floor Pass Procedure

As approved by the Committee on Rules and Administration, the "Regulations Controlling the Admission of Employees and Senate Committees to the Senate Floor" are meant to "permit closer supervision over employees admitted to the Senate Floor" without depriving any employees the privilege of the floor if they are "entitled thereto under Rule XXIII." In view of these regulations, the Senate Doorkeepers provide Senate staff members with the following instructions regarding floor access.[54]

Pre-Notification via the Senate Sergeant at Arms's TranSAAct System

Senate office managers and other staff are issued credentials that allow them to submit, using the SAA TranSAAct web portal, a list of staff members to be granted Senate floor privileges. The submitted staff members should be eligible for floor access pursuant to clause 1 of Rule XXIII. That is, they must be Senate committee staff members or working in the office of a Senator and on the payroll of the Senate or joint committee staff members and on the payroll of the Senate or the House of Representatives. Should the Senate or joint committee office experience any personnel changes affecting its list of eligible individuals, the credentialed staff member should submit those changes to the SAA via TranSAAct.

While Senate offices may pre-submit the names of multiple staff members, the number of staff members from the same office allowed on the floor at one time is limited. The SAA restricts access to those individuals who are in temporary possession of floor passes provided by the Credentials Desk.

Floor Pass Allotment

Every committee of the Senate, as well as joint committees, are allotted six cards (floor passes) to be used when the committee has jurisdiction over pending legislation. Four cards may be used as needed without a time limit. Two cards are given with a 15-minute time limit, allowing staff members to perform brief official duties, such as assisting with poster boards and other visual displays.

Each Senator and the Vice President is allotted two cards. The Senate cards are issued to regular full-time Senate staff members working in a Senator's office. They are to be used while the staff member is performing official duties relating to a particular bill or matter under consideration.

[54] The information is this section is based on the Senate Doorkeepers' "Guidelines Regarding Floor Privileges," posted on *Webster*, the Senate's internal website (accessed on December 9, 2019).

One card is not time limited, while the other card has a 15-minute limit. The time-limited cards allow staff members to speak briefly to a Senator or transport materials to the floor.

Obtaining Floor Passes

During a Senate session and 30 minutes prior, an eligible staff member may sign in and obtain a pass at the Credentials Desk, located between the Senate Reception Room and the Senate chamber. The desk attendant checks the staff member's official Senate ID badge and verifies that the staff member's name has been pre-submitted via the TranSAAct system. (Unlisted staff members are advised to contact their offices and request to be added to the database.) The desk attendant also notes in the daily roster—now an electronic database—the staff member's name, office, and official business to be performed and the card number issued to the employee.[55]

Following the sign-in procedures, staff members granted floor access are to display both their Senate ID badges and the floor passes to the Doorkeeper at the entrance of the chamber. When their duties are completed, they are to exit the chamber and return the floor passes to the attendant at the Credentials Desk.

Limitations on Use of Floor Passes

If a Senator's office allotment has been met, any additional employees seeking floor access are to wait in the Senate lobby until one of the office employees returns from the floor. According to the Senate Doorkeepers' "Guidelines Regarding Floor Privileges," the Sergeant at Arms may also "rotate staff on and off the floor to eliminate congestion." Additionally, the SAA may restrict access due to restrictions imposed under the terms of a UC agreement or a Senate resolution. (See, for example, the Clinton impeachment UC agreement.) Staff members who wish to observe, but not assist in, Senate proceedings are advised to do so from the Senate galleries.

Staff members are to remain on the floor "only as long as necessary for the transaction" of the staff members' official business. During the time spent on the floor, they "shall in no way encroach upon the areas and privileges reserved for Senators only." Most floor passes permit staff members to use one designated door to access the chamber. However, each committee is given two full-floor passes, one for a majority staff member and one for a minority staff member, allowing those in possession to enter and exit the chamber throughout the day and through any door. At the start of roll-call votes, the Sergeant at Arms closes the floor for entry, except for those staff members granted access via unanimous consent or committee staff members "associated with the issue involved."

Access by Unanimous Consent

Reasons for UC Requests

In addition to the pre-notification procedures outlined above, Senators may use UC requests to provide access to staff members. UC requests may be used when an eligible staff member is needed on the floor but is not currently in the TranSAAct database. Additionally, Senators may seek UC approval to enable floor access for more than two staff members at one time or to provide access to an assistant who is not on the Senate payroll, such as a legislative fellow or

[55] The desk attendant (also known as the Credentialing Specialist) is an employee in the SAA. The attendant is stationed at the desk from 30 minutes prior to 30 minutes after a Senate session.

intern. Senators may also obtain UC agreements to provide temporary floor privileges to other individuals.

Language Used in UC Requests

Floor-privilege UC agreements usually include a time limitation, such as for the duration of the day, session, or Congress. If the Senator is requesting the assistance of more than two staff members, the UC request will likely include the reason why the maximum number should be temporarily increased.

The following are examples of UC request language that might be used to enable individuals to access the floor aside from the pre-notification floor pass procedure.

Allowing Assistants Not on the Senate Payroll

> Senator: Mr. [or Madam] President, I ask unanimous consent that my defense fellow, [named individual], be given floor privileges for the remainder of the first session of the 116th Congress.

Allowing More Than Two Staff Members on the Floor at One Time

> Senator: Mr. [or Madam] President, as manager of the pending bill, I require the assistance of more than two staff members on the floor today. I ask unanimous consent that the following staff members, [named individuals], be afforded the privilege of the floor during debate and all votes on the [named bill].

Author Information

Jane A. Hudiburg
Analyst on Congress and the Legislative Process

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