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Cloture: Its Effect on Senate Proceedings

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Long known for its emphasis on lengthy deliberation, the Senate in most circumstances allows its Members to debate issues for as long as they want. Further, the Senate has few ways either to limit the duration of debates or to bring filibusters (extended “talkathons”) to an end. For instance, a Senator may offer a non-debatable motion to table (or kill) an amendment or he or she might ask unanimous consent to restrict debate on pending matters. The Senate has one formal rule—Rule XXII—for imposing limits on the further consideration of an issue. Called the cloture rule (for closure of debate), Rule XXII became part of the Senate’s rulebook in 1917 and has been amended several times since.

Under its current formulation, Rule XXII requires a cloture petition (signed by 16 Senators) to be presented to the Senate. Two days later, and one hour after the Senate convenes, the presiding officer is required to order a live quorum call (often waived by unanimous consent) and, after its completion, to put this question to the membership: “Is it the sense of the Senate that debate shall be brought to a close?” If three-fifths of the entire Senate membership (60 of 100) votes in the affirmative, cloture is invoked and the Senate is subject to post-cloture procedures that will eventually end the debate and bring the clotured question (a bill, amendment, or motion, for example) to a vote. (To end debate on a measure or motion to amend Senate rules requires approval by two-thirds of the Senators present and voting.)

If cloture is invoked under the terms of Rule XXII, then Senate floor activity is thereafter subject to a variety of conditions and constraints. Several of the main post-cloture features include:

30-Hour Time Cap

Thirty hours of further consideration is permitted on the clotured question with time used for such things as roll-call votes or quorum calls charged against the 30-hour cap. As Senate precedents state, “the time used for roll call votes, quorum calls, reading of amendments, points of order and inquiries to and responses by the Chair, and the like, is charged against the 30 hours. Therefore, it is quite possible that the total debate by Senators could be far less than 30 hours.” The 30-hour period may be extended if three-fifths of all Senators duly chosen and sworn agree to the increase.

One-Hour of Debate Per Senator

Under cloture, each Senator is entitled to an hour of debate on a “first come, first served” basis. Senators may yield all or portions of their one hour to a floor manager or a party leader but neither may be yielded more than two additional hours. “Any Senator may yield back to the Chair some or all of his 1 hour for debate under cloture,” say the precedents, “but such yielding would not reduce the total time available for consideration of the clotured matter.”

Pre-Filing of Amendments

Only amendments that have been filed before the cloture vote may be considered once cloture is invoked. First-degree amendments must be filed by 1:00 p.m. on the day after the filing of the cloture petition; second-degree amendments may be filed until at least one hour prior to the start of the cloture vote. As Rule XXII explains:

Except by unanimous consent, no amendment shall be proposed after the vote to bring the debate to a close, unless it had been submitted in writing to the Journal Clerk by 1 o’clock p.m. on the day following the filing of the cloture motion if an amendment in the first degree, and unless it had been so submitted at least one hour prior to the beginning of the cloture vote if an amendment in the second degree.

Role of the Presiding Officer

Under cloture, the presiding officer has authority that he or she does not have during regular Senate proceedings. For example, on his or her initiative, the presiding officer may rule out-of-order dilatory motions or amendments, including quorum calls. The chair also has the authority to count to determine the presence of a quorum. During regular Senate sessions, the chair is obligated under Senate Rule VI, if a Senator suggests the absence of a quorum, to “forthwith direct the Secretary to call the roll.... ”

No Nongermane Amendments

The Senate does not have a general rule of germaneness for amendments. However, once cloture is invoked, all amendments (and debate) are to be germane to the clotured proposal. Senate precedents state that “the Chair may take the initiative and rule amendments out of order as not being germane without a point of order being made, and when obviously non-germane the Chair may rule the amendment out of order even before it has been read or stated by the clerk.” Senate precedents add that under cloture “one of the tests of germaneness is whether the amendment limits or restricts the provisions contained in the bill. If it is clearly restrictive it would be held germane.”

Points of Order and Appeals Not Debatable

Rule XXII states that points of order, “including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.” Senate precedents make plain that the chair occasionally has held appeals to be dilatory, but precedents also underscore that “the right to appeal is a basic right of each Senator and would be held dilatory only in the most extraordinary circumstances.” Worth noting is that on one occasion, in 1977, “the Chair denied a Senator the right to make a point of order.”

The Unfinished Business

The invocation of cloture on a measure or matter means, as stated in Rule XXII, that it “shall be the unfinished business to the exclusion of all other business until disposed of.” Senate precedents buttress this point by adding that the “adoption of a cloture motion on a measure prohibits the consideration of any other business except that which is transacted by unanimous consent.”

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