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CLOTURE PROCEDURE

Cloture is the means by which the Senate limits debate on a measure or matter. A cloture motion "to bring to a close the debate on any measure, motion or other matter pending before the Senate, or the unfinished business" must be signed by at least sixteen Senators, and (with few exceptions) may be presented at any time. It may even be presented over the objections of the Senator who has the floor, but such presentation is merely an interruption and does not remove the Senator from the floor. When a cloture motion is presented, it is immediately reported by the Clerk at the direction of the Chair. The motion is applicable to the pending measure or matter or amendment pending thereto, or the unfinished business.

Under Rule XXII, the vote occurs on the motion on the second day of session after it is filed, and by precedent this is the case even if the consideration of the matter to which the motion applies had been suspended or displaced in the interim. One hour after the Senate convenes on the second day of session after the motion is presented, the Presiding Officer lays the motion before the Senate and directs the Clerk to call the roll to ascertain the presence of a quorum. If a quorum is present, a roll call vote occurs on the motion without debate. Adoption of the motion requires an affirmative vote of three-fifths of the Senators duly chosen and sworn, unless it applies to an amendment to the Senate rules, in which case an affirmative vote of two-thirds of the Senators voting (a quorum being present) is necessary.

If cloture is invoked, total consideration of the measure or matter to which it applies is limited to 30 hours, and a vote occurs on the clotured matter at the expiration of that time to the exclusion of all amendments not actually pending, and all motions except a motion to reconsider and table, and one quorum call (and motions required to establish a quorum). All time used for debate, votes, quorum calls, points of order and inquiries addressed to the Chair and responses thereto, the reading of amendments and for anything else that occurs while the Senate is considering the clotured matter, is charged against the allotted 30 hours. However, the time may be extended by a vote of three-fifths of the Senators duly chosen and sworn, and any such additional time is controlled by the two Leaders. Only one motion to extend time is in order on any calendar day.

Each Senator may speak for no more than one hour on the clotured matter and all amendments and motions affecting such matter. The Majority and Minority Leaders and the managers of the measure or matter may each be yielded up to two hours by other Senators, and the recipient of such time may yield time to other Senators. No other yielding of time is permitted except by unanimous consent. Any Senator who did not use or yield 10 minutes before the expiration of the 30 hours may thereafter speak only for the balance of the guaranteed 10 minutes.

Once cloture is invoked, no first degree amendment may be offered if it had not been filed with the Journal Clerk while the Senate was in session by 1:00 p.m. on the day following the day

the cloture motion was filed, and no second degree amendment may be offered if it had not been so filed at least 1 hour prior to the beginning of the cloture vote. Amendments must be correctly drafted, and may not be modified (except to conform page and line designations to a reprinted matter). Amendments which have been available in printed form on Senators' desks for at least 24 hours need not be read. No Senator may call up more than two amdendments until every Senator has had the opportunity to do likewise.

Nongermane amendments are out of order, as are all dilatory motions, quorum calls or amendments, and the Chair is authorized to make such determinations on its own initiative or in response to a point of order. The Chair is also authorized to count a quorum. Appeals are decided without debate.

Rule XXII, Paragraph 2

[Procedure To Invoke Cloture]

Notwithstanding the provisions of rule II or rule IV or any other rule of the Senate, at any time a motion signed by sixteen Senators, to bring to a close the debate upon any measure, motion, other matter pending before the Senate, or the unfinished business, is presented to the Senate, the Presiding Officer, or clerk at the direction of the Presiding Officer, shall at once state the motion to the Senate, and one hour after the Senate meets on the following calendar day but one, he shall lay the motion before the Senate and direct that the clerk call the roll, and upon the ascertainment that a quorum is present, the Presiding Officer shall, without debate, submit to the Senate by a yea-and-nay vote the question:

"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. 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. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

After no more than thirty hours of consideration of the measure, motion, or other matter on which cloture has been invoked, the Senate shall proceed, without any further debate on any question, to vote on the final disposition thereof to the exclusion of all amendments not then actually pending before the Senate at that time and to the exclusion of all motions, except a motion to table, or to reconsider and one quorum call on demand to establish the presence of a quorum (and motions required to establish a quorum) immediately before the final vote begins. The thirty hours may be increased by the adoption of a motion, decided without debate, by a three-fifths affirmative vote of the Senators duly chosen and sworn, and any such time thus agreed upon shall be equally divided between and controlled by the Majority and Minority Leaders or their designees. However, only one motion to extend time, specified above, may be made in any one calendar day.

If, for any reason, a measure or matter is reprinted after cloture has been invoked, amendments which were in order prior to the reprinting of the measure or matter will continue to be in order and may be conformed and reprinted at the request of the amendment's sponsor. The conforming changes must be limited to lineation and pagination.

No Senator shall call up more than two amendments until every other Senator shall have had the opportunity to do likewise.

Notwithstanding other provisions of this rule, a Senator may yield all or part of his one hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than two hours so yielded to him and may in turn yield such time to other Senators.

Notwithstanding any other provision of this rule, any Senator who has not used or yielded at least ten minutes, is, if he seeks recognition, guaranteed up to ten minutes, inclusive, to speak only.

After cloture is invoked, the reading of any amendment, including House amendments, shall be dispensed with when the proposed amendment has been identified and has been available in printed form at the desk of the Members for not less than twenty-four hours.

Amendments After Cloture:

See also "Amendments on Table," pp. 32–33; "Reoffering of," pp. 46–48.

Except by unanimous consent,[1] no amendment shall be in order after the vote to bring the debate on a proposition to a close,[2] unless the same has been previously presented

[1] May 24, 1946, 79–2, *Record*, pp. 5613, 5626, 5636.

[2] The following references cite precedents prior to amending the rule in 1979 when the amendments were required to be presented and read before the vote on cloture occurred: Sept. 13, 1972, 92–2, *Record*, pp. 30422–23; Sept. 25, 1975, 94–1, *Record*, pp. 30346–55; Feb. 28, 1927, 69–2, *Journal*, p. 248; Jan. 17, 1933, 72–2, *Record*, p. 1935; Feb. 1, 1921, 66–3, *Record*, p. 2364; Feb. 15, 1927, 69–2, *Record*, p. 3827; *see also* Feb. 29, 1960,

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before the vote to invoke cloture occurs, as stipulated in paragraph 2 of Rule XXII, namely:

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.

It is not in order, in considering a measure under cloture, to offer to an amendment previously presented an amendment in the second degree unless it had been presented in accordance with the rule at least one hour prior to the beginning of the vote to invoke cloture.[3]

Any or all amendments at the desk to a pending measure on which a cloture motion has been filed may be made eligible as far as the presentation requirements of the rule are concerned by the granting of a unanimous consent request to that effect.[4]

In 1964, amendments previously offered to the House Civil Rights Bill for later consideration in the event cloture was adopted, which were ordered to lie on the table and be printed, were, by unanimous consent made applicable to a substitute for the bill with appropriate changes made in page and line numbers.[5]

Amends Measure in Two or More Places—Out of Order on Its Face:

See also "Amends Bills at Different Places," pp. 112–114.

A proposed amendment consisting of provisions amending a measure at different places, and not contiguously is

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86-2, *Record*, pp. 3747–55; June 28, 1945, 79-1, *Record*, pp. 6926, 6928–29; May 21, 1965, 89-1, *Record*, pp. 11188–89; June 4, 1964, 88-2, *Record*, p. 12708; Feb. 22, 1972, 92-2, *Record*, pp. 4912–13. *See also* pp. 209–212 of the 1974 edition of *Senate Procedure* for precedents before Rule XXII was amended in 1979, so as to qualify amendments under the old requirements of the rule.

[3] For prior practices of this nature, *see* Feb. 28, 1927, 69-2, *Journal*, p. 248, *Record*, p. 5010; *see also* Feb. 25, 1927, 68-2, *Record*, p. 4766; Feb. 22, 1972, 92-2, *Record*, pp. 4912–13.

[4] For prior practices of this nature previous to the 1979 amendments to Rule XXII, *see* the following citations: Jan. 19, 1933, 72-2, *Journal*, p. 114, *Record*, p. 2074; Mar. 1, 1960, 86-2, *Record*, pp. 3960–62; Feb. 26, 1927, 69-2, *Record*, pp. 4892–93, 4895; Feb. 25, 1927, 69-2, *Record*, p. 4759; May 24, 1946, 79-2, *Record*, pp. 5570–71, 5600–01, 5632, 5636; Feb. 7, 1946, 79-2, *Record*, pp. 1066–67; Nov. 20, 1942, 77-2, *Record*, pp. 9058–59; Jan. 17, 1933, 72-2, *Record*, pp. 1942–43; Feb. 14, 1938, 75-3, *Journal*, p. 165, *Record*, p. 1888; July 26, 1954, 83-2, *Record*, p. 11937; Mar. 1, 1960, 86-2, *Record*, pp. 3960–62; Feb. 1, 1921, 66-3, *Record*, p. 2364; Feb. 25, 1927, 69-2, *Record*, pp. 4759–60; Aug. 11, 1962, 87-2, *Record*, pp. 16195, 16188–94, 16216–18, 16227; Mar. 3, 1960, 86-2, *Record*, p. 4324; Oct. 2, 1970, 91-2, *Record*, pp. 34756–57; June 9, 1964, 88-2, *Record*, p. 13099; *see also* proceedings in Senate in the *Record* for Sept. 27, and 30, and for Oct. 3, 6, 9, 10, 11, and 12, 1972.

[5] *See* June 9, 1964, 88-2, *Record*, p. 13099.

in fact more than one amendment and is not in order. Amendments consisting of two provisions and amending a bill at two different points or in more than one place is in fact two amendments and not in order,[6] and is subject to a point of order. An amendment that hits a bill in more than one noncontiguous place is technically out of order as being more than one amendment, and if the Senate is operating under cloture the Presiding Officer is required to hold such a purported "amendment" out of order on his or her own initiative.[7] In 1977, the Vice President on his own initiative ruled out of order 26 such amendments when the Senate was operating under cloture.[8]

The Chair during the consideration of a measure under cloture sustained a point of order against an amendment which proposed to add a new section to a bill and at the same place in the bill specified that succeeding sections be renumbered accordingly,[9] but several days later reversed itself during the consideration of an amendment which was drafted in the same manner, and stated further that "amending the bill in two places, where the second one is simply redesignating another section, does not hit in two places".[10] The Chair has ruled amendments out of order, which hit the bill in two or more places, before they were read holding the reading of such amendments was not necessary prior to a ruling by the Chair thereon.[11]

Chair Takes Initiative To Rule Amendments Out of Order:

The Vice President took "judicial notice of the fact that we have now been for some 13 days, I believe, on this measure, well over 100 votes having been taken" and sustained a point of order made by the Majority Leader that required the Chair to take the initiative to rule out of order amendments which were dilatory or out of order on their face. An appeal was taken and laid upon the table, sustaining the ruling of the Vice President.[12] Soon thereafter, the Vice President took the initiative to rule out of order 33 consecutive amendments (26 of which hit the bill

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[6] Oct. 10, 1978, 95-2, *Record*, p. 35262; Sept. 26, 1977, 95-1, *Record*, p. 30828; Sept. 27, 1977, 95-1, *Record*, pp. 31241-42, 31246-47; Sept. 28, 1977, 95-1, *Record*, p. 31422; *see* Apr. 22, 1982, 97-2, *Record*, pp. 7450-51.

[7] Sept. 13, 1984, 98-2, *Record*, p. 25291.

[8] Oct. 3, 1977, 95-1, *Record*, pp. 31927-31.

[9] Sept. 27, 1977, 95-1, *Record*, pp. 31243-45.

[10] Oct. 1, 1977, 95-1, *Record*, pp 31860-62.

[11] Sept. 28, 1977, 95-1, *Record*, pp. 31257-62.

[12] Oct. 3, 1977, 95-1, *Record*, pp. 31916-20.

in more than one place, and 7 of which were nongermane) as each was called up and before any of them were read by the Clerk.[13]

Therefore, when the Senate is operating under cloture, the Chair must hold out of order an amendment which is out of order on its face, and has so stated this when a question was raised about an amendment that proposed to strike matter not at the place designated by the instructions in the amendment.[14] Once cloture has been invoked, the Chair is required to take the initiative to rule out of order dilatory amendments, and the Chair makes the determination regarding dilatory intent.[15]

Under the precedents of the Senate, in the event that cloture is invoked on a measure and amendments are pending thereto or are later offered which are nongermane, the amendments may be automatically ruled out of order by the Chair without a point of order being made.[16]

An amendment that hits a bill in more than one noncontiguous place is technically out of order, and if the Senate is operating under cloture the Presiding Officer is required to hold such an amendment out of order on his or her own initiative.[17]

Under cloture, the Chair has taken the initiative to rule out of order amendments that were dilatory, nongermane or improperly drafted as each was called up and before the amendment could be reported.[18]

Division of Amendments After Cloture:

Under cloture an amendment may not be divided by a Senator as a matter of right.[19]

Drafted Improperly:

See also "Drafted Improperly," p. 116.

During the consideration of a measure under cloture, the Chair has on several occasions taken the initiative to rule amendments out of order as soon as they were stated without a point of order being made, on the grounds that

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[13] Oct. 3, 1977, 95-1, *Record*, pp. 31927-31.
[14] Aug. 21, 1980, 96-2, *Record*, p. 22482.
[15] Feb. 9, 1982, 97-2, *Record*, pp. 1176-77.
[16] Sept. 20, 1982, 97-2, *Record*, p. 24210; May 27, 1982, 97-2, *Record*, p. 12249; May 27, 1982, 97-2, *Record*, pp. 12273-74.
[17] Sept. 13, 1984, 98-2, *Record*, p. 25291.
[18] Feb. 24, 1982, 97-2, *Record*, pp. 2342-47.
[19] Apr. 22, 1982, 97-2, *Record*, pp. 7450-51.

they were not properly drafted.[20] Such amendments have also been held out of order by the Chair after points of order were made.[21] These decisions were either sustained on appeal,[22] or not appealed.

On one occasion, a request for the count of the division vote sustaining the Chair on one such ruling was denied, with the Chair stating, "we are not allowed to know what the count was."[23] After one amendment was stated, the Chair ruled it out of order on the grounds that it proposed to strike a figure that was no longer in the bill,[24] and on another occasion the Chair held an amendment out of order on its "face".[25]

On another occasion under cloture, the Chair declined to sustain a point of order against an amendment, but following a quorum and considerable colloquy, another point of order against the same amendment was made and the Chair ruled it out of order, his attention having been called to the fact that it was improperly drafted.[26]

Filing of Amendments:

Amendments may not be filed when the Senate is in recess unless unanimous consent has been granted to that effect, notwithstanding the provisions of Rule XXII which require the timely filing of amendments pending the results of a cloture vote (such provisions being restrictive and not permissive).[27]

The provisions of Rule XXII which require that amendments in the first degree be filed by 1:00 p.m. on the day following the day a cloture motion is filed, and amendments in the second degree be filed one hour before the vote, does not permit Senators to file amendments if the Senate is not actually in session.[28]

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[20] Sept. 29, 1977, 95-1, *Record*, pp. 31586-87, 31587-89, 31589-90, 31590-95, 31605; Sept. 30, 1977, 95-1, *Record*, pp. 31749-51, 31751, 31752, 31753-54, 31775, 31776; Oct. 1, 1977, 95-1, *Record*, pp. 31853, 31860-61.

[21] Oct. 1, 1977, 95-1, *Record*, pp. 31856-57, 31860.

[22] Oct. 1, 1977, 95-1, *Record*, pp. 31856-57, 31870.

[23] Sept. 30, 1977, 95-1, *Record*, pp. 31750-52.

[24] Oct. 1, 1977, 95-1, *Record*, pp. 31867-68.

[25] Aug. 21, 1980, 96-2, *Record*, pp. 22480-82.

[26] Sept. 30, 1977, 95-1, *Record*, pp. 31753-54.

[27] Sept. 20, 1984, 98-2, *Record*, p. 26208.

[28] Sept. 21, 1982, 97-2, *Record*, p. 24443.

Germaneness of Amendments Under Cloture:

Amendments to a bill,[29] or all amendments to any measure upon which cloture has been invoked must be germane,[30] even though they had been properly filed;[31] and if they are not germane they are subject to a point of order,[32] and will be ruled out of order if a point of order is made and sustained.[33] If cloture is invoked on an amendment, all amendments which are pending (and which by their status must be disposed of before the clotured amendment) would fall if they were not germane either to the clotured amendment or the bill, and only such germane amendments could be called up for the duration of the time spent on the clotured amentment.[34]

When the Senate invokes cloture on a matter the Chair is required to hold out of order the amendment which is the pending question at that time, if that amendment is not germane to the matter on which cloture was invoked,[35] if disposition of the non-clotured amendment must occur before the vote on the clotured matter.[36] If cloture is invoked on a second degree amendment, the underlying amendment is not affected. However, if cloture is invoked on the bill, all amendments then pending, previously offered and set aside, or offered thereafter must be germane or they will fall.[37]

If cloture is invoked on a measure, a pending amended non-germane amendment thereto (even though the Senate has voted on an amendment to that amendment) must meet the germaneness requirement of rule XXII; and if a point of order is made against such an amendment and it is ruled non-germane, the amendment as amended would be ruled out of order.[38]

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[29] *See* Rule XXII, paragraph 2; Sept 26, 1977, 95-1, *Record*, pp. 30877-80; *see also* Feb. 29, 1960, 86-2, *Record*, pp. 3747-55.

[30] Rule XXII; Dec. 17, 1979, 96-1, *Record*, pp. 36442-52, 36485-87; Dec. 17, 1974, 93-2, *Record*, pp. 40360-74; 40385-86, 40388-94; Sept. 26, 1977, 95-1, *Record*, pp. 30823-25, July 26, 1937, 75-1, *Journal*, p. 439; Mar. 8, 1968, 90-2, *Record*, pp. 5838-39; Mar. 5, 1968, 90-2, *Record*, pp. 5200-14; *see also* June 28, 1945, 79-1, *Record*, pp. 6926, 6928-29; Mar. 4, 1960, 86-2, *Record*, p. 4473; June 4, 1964, 88-2, *Record*, p. 12708; Mar. 20, 1975, 94-1, *Record*, p. 7821.

[31] Oct. 10, 1978, 95-2, *Record*, pp. 35268-69.

[32] Oct. 9, 1978, 95-2, *Record*, pp. 34781-86.

[33] Oct. 10, 1978, 95-2, *Record*, pp. 35268-69, 35292; Oct. 9, 1978, 95-2, *Record*, p. 34794; Sept. 29, 1977, 95-1, *Record*, p. 31605; Sept. 27, 1977, 95-1, *Record*, pp. 31158-60.

[34] Aug. 6, 1986, 99-2, *Record*, pp. 19573-74.

[35] May 15, 1980, 96-2, *Record*, p. 11336.

[36] Sept. 29, 1984, 98-2, *Record*, pp. 27826-34.

[37] Oct. 1, 1987, 100-1, *Record*, p. S 13320.

[38] *See* Nov. 17, 1975, 94-1, *Record*, pp. 36892-93.

The Chair ruled that when cloture is invoked on an amendment in the nature of a substitute for a committee substitute for the bill, all amendments must be germane whether offered to the committee substitute or to the bill.[39]

Any portion of an amendment that is not germane contaminates the whole amendment and the point of order cannot be made just against a portion of the amendment; if a point of order is made and sustained the amendment falls in its entirety.[40]

Germaneness of any amendment to a bill does not apply until cloture thereon has been invoked and then amendments must be germane even though called up for consideration before the motion was adopted,[41] including a pending substitute amendment for the bill.[42]

The granting of a consent that all amendments presented before a cloture vote were to be treated as having been properly filed in order to comply with the provisions of rule XXII would in no way affect the germaneness requirement of that rule.[43]

An amendment that is specified in a unanimous consent agreement and sequenced for a vote, must be germane if a successful cloture vote interrupts the voting sequence.[44]

An amendment that was offered after a cloture motion had been filed on a bill and then withdrawn pursuant to a unanimous consent agreement which provided that it could be brought up again prior to the passage of the bill (and under a limitation of debate), was required to be germane once cloture was invoked.[45] When the Senate was operating under cloture and two Senators sought unanimous consent to sequence the consideration of duly filed amendments upon the disposition of the pending amendment, the Chair stated in response to an inquiry that unanimous consent to call up an amendment under cloture did not waive the requirement postcloture that amendments be germane.[46]

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[39] Mar. 5, 1968, 90-2, *Record*, pp. 5200-14.
[40] Dec. 17, 1979, 96-1, *Record*, pp. 36454-55.
[41] *See* Feb. 29, 1960, 86-2, *Record*, pp. 3799-3800; Mar. 10, 1960, 86-2, *Record*, p. 5118.
[42] *See* Nov. 19, 1979, 96-1, *Record.*, pp. 33076-79.
[43] *See* Oct. 2, 1970, 91-2, *Record*, pp. 34756-57.
[44] *See* Mar. 1, 1983, 98-1, *Record*, p. 3256.
[45] *See* Oct. 10, 1978, 95-2, *Record*, pp. 35238-39.
[46] *See* Oct. 9, 1978, 95-2, *Record*, p. 34783.

A unanimous consent agreement entered into before cloture was invoked on a measure which provided a sequence for the offering of amendments to that measure did not waive the requirement that those amendments be germane.[47]

Under Senate precedents, the Chair may take the initiative and rule amendments out of order as not being germane without a point of order being made,[48] 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.[49] As is the case with any decision by the Chair such actions are subject to appeal (but a motion to table any appeal from the decision of the Chair is in order).[50] On appeal the Senate sustained the foregoing position taken by the Chair.[51] The Chair has taken the initiative to rule out of order amendments pending in two degrees to a substitute for a bill, and amendments pending in two degrees to the bill itself, after cloture was invoked on a substitute for the bill.[52]

Germaneness of amendments should be strictly construed, and if an amendment is not germane when a point of order is made against it and sustained the amendment will be ruled out of order.[53] When a question arises as to the germaneness of an amendment to an underlying measure, the burden of making the case for germaneness rests on the proponents of the amendment.[54]

On one occasion while responding to a series of parliamentary inquiries, the Chair gave its opinion that the germaneness test had never been interpreted as a subject matter test, that it was basically a technical test. The Chair stated that amendments that added language to a bill that expanded the powers available under that bill would be ruled nongermane, and amendments that restricted powers granted by the bill would be ruled germane. In addition, the Chair stated that amendments that proposed to strike language in the bill regardless of

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[47] Dec. 17, 1979, 96-1, *Record*, pp. 36442-52.

[48] Sept. 13, 1984, 98-2, *Record*, p. 25287; June 11, 1980, 96-2, *Record*, p. 14202; Oct. 10, 1978, 95-2, *Record*, pp. 35237, 35272, 35283.

[49] May 15, 1980, 96-2, *Record*, p. 11352; Sept. 27, 1977, 95-1, *Record*, pp. 31158-60, 31242-43.

[50] May 15, 1980, 96-2, *Record*, p. 11352; *see* May 16, 1978, 95-2, *Record*, p. 13814; Mar. 10, 1960, 86-2, *Record*, p. 5118.

[51] Sept. 27, 1977, 95-1, *Record*, pp. 31242-43.

[52] Apr. 9, 1987, 100-1, *Record*, p. S 4944.

[53] Sept. 29, 1977, 95-1, *Record*, p. 31605.

[54] May 16, 1988, 100-2, *Record*, p. S 5920.

their effect upon the powers granted in the bill would be considered germane *per se.*[55]

An amendment which introduces new subject matter,[56] or if introduced as a new bill would be referred to a committee other than the one which reported the bill, would not be germane.[57]

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.[58]

When cloture is invoked on an amendment to a bill, an amendment which on its face restricts the effect of the bill or the amendment on which cloture was invoked is germane.[59] An amendment which restricts the effect of a bill or which merely expresses the sense of the Senate is germane, whereas an amendment which expands the scope of a bill or introduces new subject matter is not germane.[60]

An amendment which is germane to an amendment previously adopted is germane.[61]

Once language has been stricken from a Senate bill, it no longer forms part of the basis for germaneness.[62]

An amendment adding a new title to the Civil Rights Act, proposing certain amendments to the Labor-Management Reporting and Disclosure Act of 1959, was held by the Chair to be germane, but that decision was not sustained by the full Senate,[63] and when the issue again arose several years later a similar amendment was held by the Chair not to be germane.[64]

An amendment to the Civil Rights Act of 1964, prohibiting the abrogation or modification of treaties with Indian tribes unless authorized by law thereafter enacted, was held not to be germane,[65] which was sustained by a vote of Senate on appeal. In 1968 an amendment relative to Indian rights involving Indian treaties and tribal courts was ruled out of order as not being germane to a Civil

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[55] *See* Apr. 22, 1982, 97-2, *Record*, pp. 7450-51.
[56] June 11, 1980, 96-2, *Record*, p. 14202; May 15, 1980, 96-2, *Record*, p. 11352.
[57] Mar. 8, 1968, 90-2, *Record*, pp. 5838-39.
[58] *See* May 15, 1980, 96-2, *Record*, p. 11339.
[59] Dec. 19, 1982, 97-2, *Record*, p. 32504.
[60] Feb. 9, 1982, 97-2, *Record*, pp. 1176-77.
[61] Feb. 24, 1982, 97-2, *Record*, p. 2245.
[62] *See* Apr. 22, 1982, 97-2, *Record*, pp. 7451.
[63] June 11, 1964, 88-2, *Record*, pp. 13448, 13456-57.
[64] Mar. 8, 1968, 90-2, *Record*, pp. 5838-39.
[65] June 13, 1964, 88-2, *Record*, p. 13726.

Rights bill; an appeal was taken and the Chair was overruled, 28 yeas, 58 nays; the amendment was unanimously adopted.[66]

An amendment on Federal control of riots to a Civil Rights bill of 1968 was held not to be germane. An appeal was taken and the yeas and nays were ordered and both were withdrawn by unanimous consent on condition a direct vote would be taken on the amendment.[67]

An amendment relative to a study regarding the utilization of women in the Armed Forces of the United States offered to a bill on the extension of the Military Selective Service Act of 1967, was held nongermane on the grounds that there was nothing in the bill relative to the drafting of females. The Chair was sustained on an appeal.[68]

After cloture was invoked on a measure which transferred funds to the Selective Service System from unobligated balances for Air Force personnel, and which prohibited any such funds from being used to institute or take any action to draft any individual into military service, the Chair on its own initiative ruled out of order as nongermane the reported committee amendment which prohibited the use of such funds for the production of any Selective Service registration form unless that form gave the registrant the option of stating that such registrant was conscientiously opposed to participation in war in any form. On appeal, the decision of the Chair was overturned.[69] Shortly thereafter the Chair again took the initiative to rule out of order as nongermane an amendment to the committee amendment at issue above which proposed to add at the end of that amendment "or shall be made available for implementing a system of registration which does not include women." Once again, the decision of the Chair was overturned.[70]

In 1978, cloture was invoked on a tax bill (H.R. 13511) with the sole purpose being to require that amendments be germane.[71]

An amendment relative to the price of oil was held out of order as not being germane to any provision in a bill to

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[66] Mar. 8, 1968, 90-2, *Record*, pp. 5837-38.
[67] Mar. 5, 1968, 90-2, *Record*, pp. 5200-14.
[68] June 24, 1971, 92-1, *Record*, p. 21944.
[69] June 10, 1980, 96-2, *Record*, pp. 13864-65, 13869.
[70] June 10, 1980, 96-2, *Record*, pp. 13876-77.
[71] Oct. 9, 1978, 95-2, *Record*, pp. 34779-81.

deregulate the price of natural gas or to the committee substitute on which cloture had been invoked.[72]

An amendment on the minimum tax would not be germane to the committee substitute amendment for the upholstery tax bill because there was no provision of the bill relating to minimum tax and therefore it could not be germane.[73]

An amendment relating to the tariff on footwear was not held germane to the committee substitute amendment for the upholstery tax bill, on the grounds that there was nothing in the substitute involving footwear.[74]

An amendment on the pricing of oil offered to an Act on Emergency Petroleum Allocation Act of 1973, was ruled out of order as not being germane on the grounds that there was nothing in the bill or the pending substitute about the price of oil.[75]

An amendment involving portfolio debt investments in the United States of non-resident aliens and foreign corporations to the committee substitute on which cloture was invoked was held not germane since there was nothing in the bill on that subject; a like amendment, with slight variations in content, was likewise ruled out of order, as not germane.[76]

After cloture is invoked on a motion to concur in a House amendment, amendments pending to that House amendment will fall if they are not germane to it.[77]

If an amendment is ruled out of order by the Chair as not being germane, under cloture, and the decision of the Chair is reversed by the Senate, the amendment is then in order and before the Senate.[78]

Germaneness of Amendments Under Cloture—General Appropriations Bills:

Rule XVI relating to the germaneness of amendments to general appropriation bills would not be changed by the adoption of a cloture motion on a general appropriation bill.[79]

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[72] Sept. 29, 1977, 95-1, *Record*, p. 31605.
[73] Dec. 17, 1974, 93-2, *Record*, pp. 40360-74.
[74] Dec. 17, 1974, 93-2, *Record*, pp. 40385-86.
[75] Sept. 29, 1977, 95-1, *Record*, p. 31605.
[76] Dec. 17, 1974, 93-2, *Record*, pp. 40388-94.
[77] July 30, 1984, 98-2, *Record*, p. 21524.
[78] Sept. 28, 1977, 95-1, *Record*, pp. 31412-15.
[79] June 28, 1945, 79-1, *Record*, p. 6929; June 30, 1945, 79-1, *Record*, pp. 7051-52.

If cloture is invoked on a general appropriations bill nongermane amendments will be ruled out of order by the Chair, but if cloture is not invoked such amendments may be offered subject to challenge from the floor.[80]

The Chair has stated in response to a parliamentary inquiry, that after cloture had been invoked on a general appropriations bill, if a point of order were made against an amendment on the grounds that it contained legislation and the defense of germaneness were raised, the question of germaneness would be submitted to the Senate for its decision.[81]

Modification Out of Order:

Once cloture is invoked, it requires unanimous consent for a Senator to modify his amendment,[82] and if the amendment is not properly drafted it could be ruled out of order should a point of order to that effect be made and sustained; [83] nor may an amendment be offered to a pending amendment unless it were properly drafted when submitted, and done before cloture was invoked.[84]

An amendment may be modified by unanimous consent to eliminate any portion thereof that is not germane.[85]

Rule XXII was amended in 1979 to allow authors to make slight changes in otherwise qualified amendments when there is a reprint of any measure or matter so as to bring their amendments in conformity with lineation and pagination, as follows:

> If, for any reason, a measure or matter is reprinted after cloture has been invoked, amendments which were in order prior to the reprinting of the measure or matter will continue to be in order and may be conformed and reprinted at the request of the amendment's sponsor. The conforming changes must be limited to lineation and pagination.

By unanimous consent, authority can be given to all sponsors of proposed amendments before they are called up, to make corrections in page and line numbers.[86]

If a substitute for a committee substitute to a bill is offered and cloture is invoked on the substitute for the

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[80] *See* May 27, 1982, 97-2, *Record*, p. 12206.
[81] *See* Sept. 14, 1989, 101-1, *Record*, p. S 11064.
[82] *See* Sept. 14, 1972, 92-2, *Record*, pp. 30656-58; Dec. 4, 1975, 94-1, *Record*, pp. 38442-43; Feb. 22, 1972, 92-2, *Record*, pp. 4912-13.
[83] Sept. 30, 1977, 95-1, *Record*, pp. 31750-52.
[84] Oct. 9, 1978, 95-2, *Record*, p. 34786.
[85] Dec. 17, 1979, 96-1, *Record*, pp. 36454-55.
[86] *See* Mar. 1, 1968, 90-2. *Record*, pp. 4844-45.

committee substitute, the substitute would be open to amendment and amendments could be submitted thereto after a cloture motion is signed and before cloture is invoked thereon,[87] but an amendment could not be offered to a bill as contrasted to a substitute since no amendment had been so drafted and unanimous consent had not been given to make such modifications in the printed amendments.[88]

After a cloture motion on a bill has been laid before the Senate for a vote thereon, it is not then in order, except by unanimous consent, to submit an amendment intended to be subsequently proposed.[89] The Senate, on appeal, also decided that no further amendments to a resolution of ratification were in order under the cloture rule.[90]

Number of Amendments in Order by a Senator:

"No Senator shall call up more than two amendments until every other Senator shall have had the opportunity to do likewise." [91]

Printed Amendment—No Status:

Printed amendments have no parliamentary status until they are called up for consideration, one at a time.[92]

Printing Amendments:

When a cloture motion is pending, several amendments which are identical in substance but which have been drafted to enable that particular proposal to be offered to any of several possible pending questions may all be submitted for printing.[93]

Reading of Amendments:

Under Rule XXII, as now amended, amendments are not required to be read when presented for printing in order to qualify them for consideration after cloture is invoked.[94] Presently, amendments only have to be sub-

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[87] *See* Feb. 28, 1968, 90-2, *Record*, pp. 4569-70.
[88] *See* Mar. 5, 1968, 90-2, *Record*, pp. 5200-14.
[89] Feb. 26, 1927, 69-2, *Record*, p. 4900.
[90] Nov. 19, 1919, 66-1, *Record*, pp. 8786-89.
[91] Rule XXII, para. 2.
[92] *See* Sept. 29, 1977, 95-1, *Record*, pp. 31588-89.
[93] Nov. 30, 1982, 97-2, *Record*, pp. 28026-27.
[94] *See* 1974 edition of *Senate Procedure*, at pp. 218-19; also *Senate Manual*, 95th Cong. (S. Doc. 95-1), p. 24.

mitted 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." [95]

Generally, if dilatory procedure is not evident in post cloture procedure when an amendment is called up for consideration, cloture having been invoked, it is read, stated or properly identified before debate thereon begins, but the Chair has ruled that "there is no requirement to read a nongermane amendment." [96]

On several occasions in 1977 during the post cloture procedure on proposed energy legislation, the Chair took the initiative to rule various amendments out of order before they were stated or read,[97] but during the same debate the Chair on another occasion directed the Clerk to read an amendment, and a point of order having been made that the amendment was not germane, the Chair ruled the amendment would have to be read before he could rule; the Chair on this occasion, an appeal having been taken, was sustained by a vote of 47 yeas to 33 nays on a motion to table the appeal, and the amendment was read.[98]

These above decisions, however, were made before the cloture rule was amended in 1979, eliminating the requirement of reading all amendments. The amended rule provides that after cloture has been invoked on a measure or matter "the reading of any amendment, including House amendments, shall be dispensed with when the proposed amendment has been identified and has been available in printed form at the desk of the Members for not less than twenty-four hours." [99] Since the adoption of this amendment to Rule XXII in 1979, the Chair has on various occasions taken the initiative to rule amendments out of order even before they are read, as an obligation of the Chair.[100]

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[95] Rule XXII, para. 2.
[96] Oct. 1, 1977, 95-1, *Record*, pp. 31857-61.
[97] Sept. 30, 1977, 95-1, *Record*, pp. 31749-50; Oct. 1, 1977; 95-1, *Record*, pp. 31860-61.
[98] Oct. 1, 1977, 95-1, *Record*, pp. 31856-58.
[99] Rule XXII, par. 2.
[100] May 15, 1980, 96-2, *Record*, p. 11352.

Recall of Amendments:

Beginning in 1977, the Senate established a precedent that a Senator has "the right to recall his own amendments" in post cloture which were otherwise qualified (even while another amendment was pending) and have them removed from the desk prior to having them called up; this verdict was determined by the Senate by a vote of 59 yeas to 34 nays when the Vice President submitted the point of order to the Senate for its decision.[101] The Vice President, later in the same day made the same ruling.[102] One Senator, later in the same day recalled 11 of his amendments which the Chair stated he had a right to do.[103]

On one occasion two years later, a Senator was granted unanimous consent to recall his amendments which had been filed and complied with the requirements of cloture procedure, after the Chair first indicated that he had a right to do that and then indicated that consent was required.[104] Six months later a Senator recalled his amendment and the Chair stated "under cloture, the Senator has that right and the amendment is recalled from potential consideration." [105] Thus it is settled that amendments which have been printed and made available may be recalled by their author, thereby removing them from potential consideration.[106]

Ruling on Amendment Reversed:

The Chair in one instance in 1977 finding that an amendment had been improperly ruled out of order, reversed the decision of the Chair and held the amendment in order,[107] but the Chair refused to review all other previous decisions of that day to see if other amendments should be permitted to be in order or even a single one while another amendment was pending.[108]

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[101] Oct. 3, 1977, 95-1, *Record*, pp. 31922-24.
[102] Oct. 3, 1977, 95-1, *Record*, p. 31934.
[103] Oct. 3, 1977, 95-1, *Record*, p. 31935.
[104] Dec. 17, 1979, 96-1, *Record*, p. 36453.
[105] June 11, 1980, 96-2, *Record*, p. 14102.
[106] Feb. 24, 1982, 97-2, *Record*, pp. 2341-42.
[107] Sept. 29, 1977, 95-1, *Record*, pp. 31591-95, 31599, 31605.
[108] *Ibid.*

Senator's Time Exhausted—Call Up Amendment:

During the consideration of a bill upon which cloture has been invoked, a Senator who has exhausted the 60-minute period of debate permitted him under the rule may call up an amendment, but he has no time to debate it.[109]

Stricken Language Not Basis for Germaneness:

Once language has been stricken from a Senate bill, it no longer forms part of the basis for germaneness.[110]

Table—May Not Reoffer:

See also "Amendments Tabled—Reoffer," p. 1277.

An amendment which has been tabled may not be reoffered in identical form regardless of whether cloture has been invoked or not.[111]

In 1977, the Chair ruled, a point of order having been made, that an amendment which was called up was not in order because it had already been tabled, and he further sustained the point of order to the effect that the amendment was a substitute for the bill and was not in order since a substitute for that bill was then pending.[112]

Withdrawal of Amendments:

An amendment which was offered after a cloture motion had been filed on a bill, and then withdrawn pursuant to a unanimous consent agreement which provided that it could be brought up prior to final passage of the bill under a limitation of debate, was required to be germane once cloture was invoked.[113]

An amendment filed at the desk by one Senator pursuant to the cloture requirements of Rule XXII, paragraph 2, but called up by a second Senator after cloture is invoked is considered to be the amendment of the offeror, and may subsequently be withdrawn by the offeror.[114]

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[109] *See* June 4, 1964, 88-2, *Record*, p. 12708; *see also* May 25, 1964, 88-2, *Record*, pp. 11851-54.
[110] *See* Apr. 22, 1982, 97-2, *Record*, pp. 7450-51.
[111] *See* Feb. 28, 1968, 90-2, *Record*, p. 4569.
[112] Sept. 26, 1977, 95-1, *Record*, pp. 30826-27.
[113] *See* Oct. 10, 1978, 95-2, *Record*, p. 35238.
[114] Mar. 15, 1988, 100-2, *Record*, pp. S 2240-44.

Amendments to Cloture Rule:

See Rules, "Continuity of Senate Rules," pp. 1220–1224.

Appeals:

See also "Appeals, Debate of," pp. 724–726; "Appeals," pp. 145–149.

An appeal from the ruling of the Chair, under Rule XXII, is not debatable.[115]

The Chair has held an appeal to be dilatory under cloture on several occasions,[116] but in one of the foregoing instances after several Senators expressed concern about such a ruling, the Chair submitted to the Senate the point of order whether under the circumstances an appeal from the ruling of the Chair was dilatory. The Senate voted 9 yeas, 71 nays against the point of order, thereby holding the appeal not to be dilatory.[117] Since these rulings, the Chair has stated that the right to appeal is a basic right of each Senator and would be held dilatory only in the most extraordinary circumstances.[118]

On one occasion during the consideration of a bill under cloture, the Vice President on his own initiative ruled out of order as either improperly drafted or as nongermane 33 amendments as each was called up by the Majority Leader, and in so doing recognized the Majority Leader while other Senators were seeking recognition to take appeals from some of these rulings.[119]

Applicability of a Cloture Motion—Pending Business:

A cloture motion is applicable to the "measure, motion, or other matter pending before the Senate, or the unfinished business." [120] However, the Senate decided that cloture could not be filed on the unfinished business, immediately after it invoked cloture on a motion to proceed to another measure, and the Senate overturned a ruling of the Chair in so deciding.[121]

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[115] Mar. 8, 1968, 90-2, *Record*, pp. 5837–38; *see* July 21, 1975, 94-1, *Record*, pp. 23744–46.

[116] Sept. 26, 1977, 95-1, *Record*, pp. 30824–25, 30828; Oct. 1, 1977, 95-1, *Record*, pp. 31860–61; Oct. 14, 1978, 95-2, *Record*, pp. 37401–03.

[117] Oct. 1, 1977, 95-1, *Record*, pp. 31867–70.

[118] Feb. 9, 1982, 97-2, *Record*, pp. 1176–77.

[119] Oct. 3, 1977, 95-1, *Record*, pp. 31927–31.

[120] Rule XXII, para. 2, as amended by S. Res. 15, Mar. 17, 1949, 81-1, *Record*, p. 2724.

[121] July 21, 1975, 94-1, *Record*, pp. 23737–38, 23742–48.

A cloture motion, under the rule as amended, could be presented on an amendment to the main question itself.[122] A cloture motion may be filed on any proposed amendment to a measure, even though that amendment has a lower precedence than another amendment which is the pending question before the Senate.[123] Therefore, a cloture motion could be filed on an amendment (a substitute for the bill) even when other amendments are pending to the underlying text of the bill.[124]

A cloture motion may be filed on a first degree amendment to the language to be stricken by a motion to strike while a second degree amendment is pending thereto.[125] In fact, two cloture motions were filed on the same day on the same first degree amendment to strike language from a bill, while amendments were pending in several degrees to the language to be stricken by that amendment.[126]

A motion to invoke cloture on an amendment includes all amendments that may be offered to that amendment.[127]

The Chair in response to a parliamentary inquiry stated that when cloture is invoked on a complete substitute for a bill (in this case Pearson-Bentsen substitute for S. 2104) that cloture was applicable to all amendments to the substitute and amendments to the bill but that cloture was not applicable to the bill itself.[128]

If cloture is adopted, debate is limited only on the issue to which the cloture motion is directed, in that case the Dirksen substitute amendment to its final adoption; and if cloture is directed to an amendment, after the amendment is finally disposed of the bill to which the amendment was offered would still be open to unlimited debate.[129]

If the matter on which a cloture motion had been filed is removed from consideration on the floor, as is the case when a cloture motion is filed on a motion to proceed to the consideration of a measure and the Senate sets that motion aside or adjourns,[130] the cloture motion would

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[122] *See* Mar. 4, 1960, 86-2, *Record*, p. 4473.
[123] Apr. 8, 1987, 100-1, *Record*, p. S 4831.
[124] Aug. 20, 1980, 96-2, *Record*, p. 22096.
[125] *See* Sept. 27, 1984, 98-2, *Record*, p. 27496.
[126] Sept. 28, 1984, 98-2, *Record*, pp. 27665-66.
[127] *See* May 12, 1964, 88-2, *Record*, p. 10616.
[128] *See* Sept. 26, 1977, 95-1, *Record*, pp. 30817.
[129] *See* Mar. 1, 1968, 90-2, *Record*, pp. 4844-45.
[130] July 28, 1975, 94-1, *Record*, pp. 25363, 25368, 25463.

bring the matter back before the Senate for a vote on the cloture motion on the second succeeding day of session, one hour after the Senate convenes, unless otherwise determined by unanimous consent.[131] If the cloture motion is not agreed to, the matter on which it was filed is not back before the Senate, unless it was before the Senate without regard to the cloture motion.[132]

If the matter on which the motion was filed has been temporarily laid aside or displaced, the motion will be laid before the Senate for action thereon at the time prescribed by the rule, and the vote at such hour would not be to close debate on the then pending business, but upon the bill pending at the time the cloture motion was presented.[133]

A cloture motion may be filed on a motion to concur in a House amendment, even while an amendment is pending to the House amendment.[134]

A cloture motion has been filed on a nondebatable question.[135]

Note the following with respect to the development of the cloture rule:

The original cloture rule (known as the Martin Resolution, for its author, Majority Leader Thomas S. Martin, of Virginia), was adopted in 1917 and applied to "any pending measure * * *" [136]

In 1919 a point of order was sustained by the President *pro tempore* against a cloture motion on "the pending conditions and reservations * * * to be added to and incorporated in, the resolution of ratification of the treaty with Germany, and all substitutes, amendments, and additions thereto," on the grounds that the motion attempted "to prescribe a parliamentary procedure and determine in advance what that procedure shall be." An appeal from this ruling was tabled.[137] Two days later, the Vice President overruled a point of order against a cloture motion filed on "the pending measure—the treaty of peace with Germany" after the Senator making the point of order had contended that only the reservation pending to the

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[131] *See* July 30, 1975, 94-1, *Record*, p. 26004.
[132] Sept. 27, 1984, 98-2, *Record*, p. 27452.
[133] Feb. 26, 1927, 69-2, *Journal*, pp. 237-238, *Record*, p. 4900; Feb. 28, 1927, 69-2, *Journal*, p. 247, *Record*, p. 4985; *see also* Feb. 24, 1927, 69-2, *Record*, pp. 4661-63.
[134] July 27, 1984, 98-2, *Record*, p. 21398.
[135] *See* Sept. 10, 1985, 99-1, *Record*, pp. 23226-27.
[136] S. Res. 5, Mar. 8, 1917, 65-Special Session, *Record*, pp. 19-45.
[137] Nov. 13, 1919, 66-1, *Record*, pp. 8413-17.

resolution of ratification was subject to a cloture motion at that time; the Vice President further stated that cloture "continues through all the proceedings in connection with the treaty." [138] In 1925 a cloture motion was filed on the Isle of Pines Treaty with Cuba.[139]

Until 1949 it was generally understood that cloture would apply to the pending measure, and not motions, although there had been some early instances of cloture being filed on some matter other than a bill, treaty, or resolution. A cloture motion had been filed on a motion that the Senate recede from certain of its amendments to a House bill, and agree to amendments of the House to certain Senate amendments to that bill; [140] a cloture motion had also been filed on "amendments of the House" to a Senate bill.[141] In 1933 a cloture motion was filed on a motion to proceed to a measure,[142] but by unanimous consent that motion was later withdrawn.[143]

In 1948 the issue arose as to the scope of the cloture rule. The President *pro tempore* reluctantly sustained a point of order against a cloture motion filed on a motion to proceed to the consideration of the anti-polltax bill,[144] although he indicated that in his opinion "the rules of the Senate should permit cloture upon the pending motion to take up the anti-poll-tax measure; but * * * no such authority presently exists." The President *pro tempore* stated that he understood the implications of the ruling he was about to make meant "in the final analysis, the Senate has no effective cloture rule at all."[145] When an appeal was taken from this ruling, the President *pro tempore* responded to a parliamentary inquiry that a cloture motion could not be filed on the appeal.[146]

The rule was amended in 1949 to make cloture applicable to "any measure, motion or other matter pending before the Senate, or the unfinished business * * *" During the consideration of the motion to proceed to the

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[138] Nov. 15, 1919, 66-1, *Record*, p. 8554.
[139] *See* Mar. 12, 1925, 69-Special Session, *Record*, p. 156.
[140] *See* Feb. 12, 1927, 69-2, *Record*, p. 3573.
[141] *See* Feb. 25 and 28, 1927, 69-2, *Record*, pp. 4799, 4984-85.
[142] *See* Feb. 14, 1933, 72-2, *Record*, p. 4059.
[143] Feb. 16, 1933, 72-2, *Record*, p. 4211.
[144] Aug. 2, 1948, 80-2, *Record*, pp. 9597-9605.
[145] Aug. 2, 1948, 80-2, *Record*, p. 9603.
[146] Aug. 2, 1948, 80-2, *Record*, p. 9604. The appeal was debated until Aug. 4, when the Senate adjourned, causing the motion to proceed to lapse with the understanding of the Majority and Minority Leaders that the appeal would lapse with it. *See* Aug. 4, 1948, 80-2, *Record*, p. 9736-38.

resolution that would make this change in the rule (and at least implicitly make cloture apply to motions to proceed to measures generally), a cloture motion was filed on the motion to proceed. A point of order was made against this cloture motion, which the Vice President overruled. However, on appeal the ruling of the Chair was not sustained.[147] Five days later the motion to proceed was agreed to (78 yeas, 0 nays), and immediately thereafter a substitute was offered to this resolution which contained most of the language of the resolution as reported.[148] In addition to this, the substitute added a third paragraph to Rule XXII which excluded "any motion to proceed to the consideration of any motion, resolution, or proposal to change any of the Standing Rules of the Senate" from the purview of cloture (and which also excluded such motions to proceed from the nondebatability provided such motions generally when made in the Morning Hour). The substitute also increased the vote necessary for cloture to two-thirds of the Senators duly chosen and sworn.[149] The resolution as amended by this substitute was adopted two days later.[150]

In 1959 the rule was once again amended, this time to remove the exclusion of motions to proceed to changes in the Standing Rules from the application of the rule. (The resolution also restored the vote necessary for cloture to two-thirds of the Senators present and voting, and amended Rule XXXII to state that the rules of the Senate continue from one Congress to the next.) [151]

Budget Act Under Cloture:

An amendment in violation of Section 301 of the Congressional Budget Act is subject to a point of order under cloture proceedings.[152]

Consideration, Order of:

See "Two Cloture Motions Pending—Order of Consideration," pp. 327-328.

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[147] Mar. 10, 1949, 81-1, *Record*, pp. 2166-75, 2274-75.
[148] Mar. 15, 1949, 81-1, *Journal*, p. 161, *Record*, p. 2509.
[149] Mar. 15, 1949, 81-1, *Record*, pp. 2510.
[150] S. Res. 15, Mar. 17, 1949, 81-1, *Record*, p. 2724.
[151] S. Res. 5, Jan. 12, 1959, 86-1, *Record*, p. 495.
[152] Oct. 9, 1978, 95-2, *Record*, pp. 34786-92, 35284-89.

Debate:

See also "Recognition," p. 324; "Germaneness of Debate," p. 310.

After the adoption of a cloture motion, "no Senator shall be entitled to speak in all more than 1 hour on the measure, motion, or other matter pending before the Senate, or the unfinished business amendments thereto, and motions affecting the same * * *," [153] but no Senator is restricted to one speech; he may divide his time as he sees fit or proper,[154] but all time is charged to the Senator having the floor, even if he yields for an interruption.[155]

However, on three occasions the principle expressed in these early precedents was not followed, and the Chair stated that the two speech rule would apply under cloture.

On September 22, 1982, following a parliamentary inquiry the Chair stated "the two speech rule," which is to be found in paragraph 1(a) of Rule XIX, applies regardless of whether the Senate is operating under cloture.[156] On December 20, 1982, the Chair stated that in response to a parliamentary inquiry that Rule XIX, paragraph 1(a) which prohibits any Senator from speaking more than twice on any one question on the same legislative day, applies when the Senate is operating under cloture.[157] On September 25, 1986, the Chair again held that the two speech rule applied when the Senate was operating under cloture.[158]

The need for the two speech rule is greatly reduced when the Senate is operating under cloture, and the Chair has stated under cloture that it did not think the two speech rule should apply when the Senate was operating under restricted debate.[159] This is consistent with the understanding expressed when the cloture rule was originally adopted.[160]

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[153] Rule XXII, para. 2; *see also* July 23, 1954, 83-2, *Record*, p. 11431; Mar. 3, 1960, 86-2, *Record*, p. 4324; May 25, 1964, 88-2, *Record*, pp. 11851-54.

[154] Jan. 25, 1926, 69-1, *Record*, p. 2686; *see also* Feb. 29, 1960, 86-2, *Record*, pp. 3747-55; Aug. 14, 1962, 87-2, *Record*, pp. 16432-33, 16447.

[155] Nov. 17, 1919, 66-1, *Record*, pp. 8633, 8640; *see* June 24, 1975, 94-1, *Record*, p. 20529.

[156] *See* Sept. 22, 1982, 97-2, *Record*, p. 24596.

[157] *See* Dec. 20, 1982, 97-2, *Record*, pp. 32664-65.

[158] Sept. 25, 1986, 99-2, *Record*, pp. 26138-39.

[159] *See* July 18, 1990, 101-2, *Record*, p. S 9900.

[160] *See* Remarks of Senator Norris, Mar. 8, 1917, 65-Special Session, *Record*, p. 27.

Under cloture the one hour limitation of debate for each Senator to speak applies to any matter he talks to until that measure on which cloture was invoked is disposed of.[161]

If cloture is adopted on a proposition, each Senator is entitled to 1 hour of debate on all issues to which the cloture is directed, and he may not yield it to another Senator on objection,[162] except that under Rule XXII as amended in 1979 "a Senator may yield all or part of his one hour to the majority or minority floor managers of the measure, motion, or matter or to the Majority or Minority Leader, but each Senator specified shall not have more than two hours so yielded to him and may in turn yield such time to other Senators." [163]

Under cloture a Senator may control a maximum of thirteen hours through the device of multiple yielding. The two leaders and the two managers of the proposal may have two hours each yielded to them and they may in turn yield that time to any other Senator.[164]

Any Senator may yield back to the Chair some or all of his 1 hour for debate under cloture, but such yielding would not reduce the total time available for consideration of the clotured matter.[165] This decision by the Chair was consistent with the position taken by the Senate when it tabled an amendment which would have changed the total time for consideration on a clotured matter from the proposed 100 hours to the "aggregate of the one hour of time to which each Member is entitled."[166]

Any Senator could be denied the 1 hour of debate permitted to each Senator under the rule as amended,[167] since thirty Senators could monopolize all debate time. Also, the time used for roll call votes, quorum calls, reading of amendments, points of order and inquiries to and

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[161] *See* Sept. 26, 1977, 95-1, *Record*, p. 30814.

[162] July 23, 1975, 94-1, *Record*, p. 24215; Mar. 7, 1968, 90-2, *Record*, pp. 5654-56; *see also* Mar. 1, 1968, 90-2, *Record*, pp. 4844-45; Feb. 22, 1972, 92-2, *Record*, pp. 4915-16.

[163] Rule XXII, para. 2; Dec. 5, 1980, 96-2, *Record*, p. 32696.

[164] Dec. 13, 1982, 97-2, *Record*, p. 30128. Advice was given at that time that those Senators authorized to yield time could yield from their own hour under cloture, as well as from time yielded to them by other Senators, up to a total of three hours for each of the Senators so authorized.

[165] June 10, 1980, 96-2, *Record*, p. 13873-74.

[166] *See* proceedings on unprinted Amendment No. 17, offered by Senator Stevens of Alaska (subsequently numbered Amendment No. 60), to S. Res. 61 on February 21, 1979, and tabled the following day. Feb. 21 and 22, 96-1, *Record*, pp. 2840-55, 3008-10.

[167] S. Res. 61, 96-1, adopted Feb. 22, 1979, imposed an overall limitation of 100 hours for the consideration of a matter under cloture. S. Res. 28, 99-2, adopted temporarily on Feb. 27, 1986 and made permanent by a vote of the Senate on July 29, 1986, reduced the 100 hour limit to 30 hours.

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 rule does guarantee that each Senator will have up to 10 minutes for debate only, and the balance of this guaranteed time is available after the expiration of the 30 hours.[168]

The time taken for parliamentary inquiries is charged to the Senators making such inquiries.[169]

The time consumed in a quorum call while the Senate is on a clotured item counts against the total time for consideration allowed on that item under Rule XXII.[170]

The time consumed in reading an amendment or for calling a quorum is not taken out of a Senator's 1 hour of allotted time.[171]

When the Senate is considering a measure and cloture has been invoked on an amendment thereto, time taken on another amendment to a different part of that measure which is considered by unanimous consent counts against the postcloture limit (now 30 hours) for consideration of the clotured amendment.[172]

When the Chair must interrupt a Senator who has the floor to obtain order in the Senate, that time is not charged against the Senator's time under cloture.[173]

When the Senate is operating under cloture, the time consumed in a quorum call is not charged to the 1 hour that a Senator might use; however, the Chair has the authority to hold any such quorum call dilatory.[174]

A Senator may use his hour at any point in the consideration of the issue to which cloture has been invoked.[175]

When a Senator's time under cloture has expired, that Senator no longer has the floor.[176]

It is not in order, during cloture proceedings, for a Senator having the floor to reply to a question asked him by a Senator on the latter's time.[177]

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[168] Rule XXII, para. 2.
[169] June 16, 1964, 88-2, *Record*, pp. 13898-99.
[170] *See* Oct. 1, 1984, 98-2, *Record*, p. 27937.
[171] *See* Sept. 14, 1972, 92-2, *Record*, pp. 30622-23, 30628-30.
[172] Oct. 2, 1984, 98-2, *Record*, p. 28280.
[173] Dec. 20, 1982, 97-2, *Record*, p. 32680.
[174] *See* Sept. 14, 1972, 92-2, *Record*, pp. 30628-30; Jan. 31, 1974, 93-2, *Record*, pp. 1617-18.
[175] *See* Mar. 1, 1968, 90-2, *Record*, pp. 4844-45.
[176] Sept. 25, 1986, 99-2, *Record*, p. 26146.
[177] June 16, 1964, 88-2, *Record*, p. 13931.

A unanimous consent agreement limiting debate on a bill will not be affected by the rejection of a cloture motion, subsequently offered.[178]

When the Senate is considering a matter under cloture and a unanimous consent agreement for the consideration of a matter under a sublimit of controlled time has been entered into, a Senator who controls time under that agreement may suggest the absence of a quorum, and the time consumed counts against that Senator's share of the sublimit of time but not against that Senator's hour under cloture.[179]

If, after cloture has been invoked on a matter, the Senate considers an amendment thereto under a unanimous consent agreement limiting debate thereon, Senators are not entitled to use part of their hour for debate allowed under cloture once the time under unanimous consent agreement has expired on that amendment.[180]

The fact that the Senate is operating under cloture does not affect the standing order for 10 minutes to each of the leaders at the beginning of a daily session of the Senate.[181]

Debate and Yielding:

Except as provided by the rule, it is not in order for one Senator to yield his time to another except by unanimous consent,[182] without losing his right to the floor.[183] A Senator cannot yield to another except for the purpose of a question when the regular order is called for; [184] he may yield for a question without losing his right to the floor.[185] He can yield on his own time for a question, but not for a statement.[186]

The Senator who has been recognized can yield only for a question when the regular order is called for, and he

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[178] *See* May 25, 1946, 79-2, *Record*, p. 5712.

[179] Oct. 1, 1984, 98-2, *Record*, p. 27928.

[180] May 27, 1982, 97-2, *Record*, p. 12236.

[181] Dec. 20, 1982, 97-2, *Record*, p. 32519.

[182] June 16, 1964, 88-2, *Record*, pp. 13898-99; Sept. 25, 1970, 91-2, *Record*, pp. 33811, 34033-34; Nov. 18, 1919, 66-1, *Record*, pp. 8719-22; *see also* Aug. 16, 1962, 87-2, *Record*, pp. 16669-71; Aug. 14, 1962, 87-2, *Record*, pp. 16432-33, 16447; Mar. 3, 1960, 86-2, *Record*, p. 4324; Mar. 1, 1968, 90-2, *Record*, pp. 4844-45.

[183] *See* Aug. 15, 1962, 87-2, *Record*, pp. 16563, 16615, 16573.

[184] Oct. 1, 1977, 95-1, *Record*, pp. 31860-61.

[185] Oct. 3, 1977, 95-1, *Record*, pp. 31936-37.

[186] Feb. 22, 1972, 92-2, *Record*, p. 4915-16; *see* Aug. 15 and 16, 1962, 87-2, *Record*, pp. 16669-71, 16563, 16573, 16615.

may not yield time to another Senator,[187] except as set forth in Rule XXII, and as spelled out above.

A Senator who has the floor may yield on his time for a question, but he cannot interrogate another Senator.[188]

A Senator who has the floor, during proceedings under cloture, may yield for a question, but he may not ask another Senator a question.[189]

A Senator having time available may not ask a question of another Senator and yield his own time for the answer to that question.[190]

A Senator who yields for a question will have the time charged to himself, and he cannot yield time to another Senator.[191]

The Chair in 1971 advised the Senate that a Senator had a right to assert that he yielded back his allotted time if he so desired.[192]

When the Senate is considering a matter under cloture, only the following four Senators have a right to yield time to another Senator—the Majority and Minority Leaders, and the majority and minority floor managers, but other Senators could ask unanimous consent to yield time.[193] In the absence of an official designation, the Senator who occupies the seat of the Majority Leader is assumed to be the majority manager as the presumed designee of that Leader.[194]

A Senator who has the floor under cloture and yields to another Senator with unanimous consent for that second Senator to make a parliamentary inquiry, provided that the time be charged against the time of the second Senator, retains his right to the floor and may regain the floor when he wishes.[195]

Debate Before Vote To Invoke:

See "Vote on Motion," pp. 328–332.

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[187] Mar. 7, 1968, 90–2, *Record*, pp. 5654–56.
[188] June 16, 1964, 88–2, *Record*, pp. 13898–99.
[189] June 17, 1964, 88–2, *Record*, pp. 14194, 14234–35.
[190] June 17, 1964, 88–2, *Record*, pp. 14194, 14234–35; *see also* June 16, 1964, 88–2, *Record*, pp. 13898–99, 13931.
[191] June 16, 1964, 88–2, *Record*, p. 13931.
[192] June 23, 1971, 92–1, *Record*, p. 21600.
[193] Sept. 13, 1984, 98–2, *Record*, p. 25306.
[194] *See* Oct. 4, 1988, 100–2, *Record*, p. S 14433.
[195] Dec. 21, 1982, 97–2, *Record*, p. 32682.

Debate, Germaneness of Debate:

When the Senate is proceeding under cloture, debate must be germane; however, a Senator may make a nongermane statement by unanimous consent.[196] The Chair has held on two other occasions that debate under cloture must be germane, but that the Chair awaits a point of order from the floor; he does not take the initiative in enforcing the rule.[197] The rule reads:

"Thereafter no Senator shall be entitled to speak in all more than 1 hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same."

On one occasion in 1978, the time for debate under cloture was utilized for tributes to retiring Senators but no point of order was raised.[198]

Debate—Time Kept by:

It is the duty of the Presiding Officer to keep the time of every Senator who speaks, but by unanimous consent, a clerk may be directed to perform that duty.[199]

Dilatory Procedure:

See also "Dilatory Motions," pp. 800–801; "Dilatory," pp. 1053–1054; "Quorum Calls," pp. 314–318; "Quorum," pp. 1038–1078.

In 1977 the Chair stated in response to a parliamentary inquiry that "there is no dilatory rule in the absence of rule XXII." [200] Note however, that since then certain proceedings with respect to the approval of the *Journal* have been held dilatory by precedent.[201]

Under rule XXII "No dilatory motion, or dilatory amendment * * * shall be in order" during the consideration of a measure or matter on which cloture has been invoked.[202]

Under certain circumstances the taking of an action or making of a motion otherwise allowable may be held dilatory if the intent is dilatory.[203] The question of whether a

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[196] Oct. 20, 1987, 100–1, *Record*, p. S 14571.
[197] May 25, 1965, 89–1, *Record*, pp. 11466–67, 11470; May 15, 1980, 96–2, *Record*, pp. 11337–38.
[198] Oct. 14, 1978, 95–2, *Record*, p. 37441.
[199] Nov. 15, 1919, 66–1, *Record*, p. 8556; Jan. 25, 1926, 69–1, *Record*, p. 2679.
[200] *See* Oct. 1, 1977, 95–1, *Record*, pp. 31856–58.
[201] Feb. 5, 1987, 100–1, *Record*, pp. S 1835–37; May 13, 1987, *Record*, pp. S 6346–50.
[202] Rule XXII, para. 2. *See also* June 10, 1976, 94–2, *Record*, pp. 17432–34.
[203] Feb. 9, 1982, 97–2, *Record*, pp. 1176–77.

motion is dilatory is "within the judgment of the Chair."[204]

The Vice President in 1977 sustained a point of order "that when the Senate is operating under cloture, the Chair is required to take the initiative under rule XXII to rule out of order all dilatory motions, including calls for a quorum, when it has been established by a quorum call that a quorum is present and the Chair's count reaffirms that a quorum is still present." [205]

The prohibition against dilatory amendments and motions is not affected by the imposition of an overall time cap for disposition of a matter on which cloture has been invoked; the Chair takes the initiative to determine dilatory intent, and this decision is subject to appeal.[206]

The Chair has exercised the authority under cloture to hold a request for a quorum dilatory, and this ruling was sustained on appeal.[207]

The question of whether an amendment to a treaty is dilatory and therefore is not in order post cloture is determined by the Chair on a case by case basis.[208]

Adjourn:

A motion to adjourn was held to be dilatory by the Chair on a point of order made by the Majority Leader, after a quorum call had been ruled out of order as dilatory when the Senate was proceeding under cloture.[209]

Amendments Ruled Out as Dilatory:

During the consideration of an amendment that proposed to authorize a regulatory commission to require certain actions of those that it monitored, the Majority Leader made a point of order that the amendment was dilatory because it would amend the underlying text of the bill when the Senate was operating under cloture on a substitute for the bill. The point of order further contended that the Chair was required to take the initiative to rule out of order amendments which were dilatory or out of order on their face. The Vice President took "judicial notice of the fact that we have now been for some 13 days,

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[204] Sept. 29, 1977, 95-1, *Record*, p. 31590.
[205] Oct. 3, 1977, 95-1, *Record*, pp. 31923-27.
[206] Feb. 9, 1982, 97-2, *Record*, pp. 1176-77.
[207] June 10, 1980, 96-2, *Record*, pp. 13903-04.
[208] May 24, 1988, 100-2, *Record*, p. S 6505.
[209] Oct. 14, 1978, 95-2, *Record*, pp. 37409-410.

I believe, on this measure, well over 100 votes having been taken" and sustained the point of order. An appeal was taken and laid upon the table, sustaining the ruling of the Vice President.[210] Later that day, the Chair declined to hold an amendment dilatory which was called up by one Senator but filed by another, and which proposed to strike a phrase from the pending amendment.[211]

Appeals:

See also, "Appeals," pp. 145–149.

The Chair has held an appeal to be dilatory under cloture on several occasions.[212] In the first such instance, an appeal from the ruling of the Chair was held dilatory following a denial by the Chair to entertain a motion to reconsider the vote of 60 yeas to 31 nays by which the Senate sustained a ruling of the Chair as to the germaneness of an amendment.[213] However, in the second of the foregoing instances, when the Chair had ruled out of order an amendment which proposed to strike material not at the designated place, several Senators expressed concern about the implication of the ruling that an appeal therefrom was dilatory. The Chair decided to submit to the Senate a point of order whether under these circumstances an appeal from the ruling of the Chair was dilatory. The Senate voted 9 yeas, 71 nays against the point of order, thereby holding the appeal not to be dilatory. On appeal the Senate then sustained the original ruling of the Chair holding the amendment out of order, 77 yeas, 3 nays.[214]

Since these rulings, the Chair has stated that the right to appeal is a basic right of each Senator and would be held dilatory only in the most extraordinary circumstances.[215] Note some precedents that occurred before that date:

The Chair has held that an appeal was in order from the ruling of the Chair to the effect that a recess motion was dilatory,[216] as well as a ruling by the Chair that an

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[210] Oct. 3, 1977, 95–1, *Record*, pp. 31916–20.
[211] Oct. 3, 1977, 95–1, *Record*, p. 31935.
[212] Sept. 26, 1977, 95–1, *Record*, pp. 30824–25, 30828; Oct. 1, 1977, 95–1, *Record*, pp. 31860–61.
[213] Sept. 26, 1977, 95–1, *Record*, pp. 30824–25.
[214] Oct. 1, 1977, 95–1, *Record*, pp. 31860–61, 31867–70.
[215] Feb. 9, 1982, 97–2, *Record*, pp. 1176–77.
[216] Oct. 14, 1978, 95–2, *Record*, pp. 37401–03.

amendment was out of order on its face.[217] The Chair has also held an appeal not dilatory from a ruling of the Chair that an amendment that touches a bill in more than one place was out of order.[218] The Chair corrected itself to hold that an appeal was not dilatory when taken from a ruling that an objection to a unanimous consent request did not constitute intervening business for the purpose of another quorum call.[219] The Chair has declined to hold dilatory an appeal from a ruling of the Chair that a quorum call was dilatory.[220]

The Chair on another occasion, having ruled an amendment out of order denied recognition to a Senator who was seeking to take an appeal from the ruling of the Chair and re-recognized the same Senator who had called up the previous amendment to call up another amendment. This action in effect denied the Senator the right of appeal.[221] Finally, when the Senator seeking to take the appeal was recognized, the Chair held the appeal moot since the amendment had been disposed of.[222]

On one occasion during the consideration of a bill under cloture, the Vice President on his own initiative ruled out of order as either improperly drafted or as nongermane 33 amendments as each was called up by the Majority Leader, and in so doing recognized the Majority Leader while other Senators were seeking recognition to take appeals from some of these rulings.[223]

Motions:

During consideration of a measure under cloture in 1977, the Vice President sustained a point of order to the effect "that when the Senate is operating under cloture, the Chair is required to take the initiative under rule XXII to rule out of order all dilatory motions, including calls for a quorum, when it has been established by a quorum call that a quorum is present and the Chair's count reaffirms that a quorum is still present." [224]

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[217] Oct. 1, 1977, 95-1, *Record*, pp. 31867-71.
[218] Sept. 26, 1977, 95-1, *Record*, p. 30828.
[219] Oct. 14, 1978, 95-2, *Record*, p. 37402.
[220] Oct. 1, 1977, 95-1, *Record*, p. 31862.
[221] Sept. 30, 1977, 95-1, *Record*, pp. 31749-51.
[222] Sept. 30, 1977, 95-1, *Record*, pp. 31750-51.
[223] Oct. 3, 1977, 95-1, *Record*, pp. 31927-31.
[224] Oct. 3, 1977, 95-1, *Record*, pp. 31923-27.

It is not in order to move to reconsider the vote on a motion to increase debate time under cloture.[225]

Point of Order:

On one occasion in 1977, under cloture proceedings, the Chair denied a Senator the right to make a point of order.[226]

Postpone:

Under rule XXII during cloture proceedings, a motion to postpone an amendment indefinitely was held dilatory by a vote of the Senate.[227]

When the Senate has invoked cloture on a measure it is not in order to move to postpone that measure to a time certain, since the invocation of cloture requires that the Senate remain on that measure until it is disposed of,[228] but it is in order to move to postpone indefinitely the clotured matter.[229]

While a debatable motion to proceed to the consideration of a measure (on which a cloture motion has been filed) is pending, it is in order to move to postpone that motion to a date certain.[230]

Quorum Calls:

Under the precedents generally a quorum call is not in order unless business has intervened since a quorum was last established.[231] Debate does not constitute intervening business for the purpose of another quorum call.[232]

Under cloture, the right of a Senator to suggest the absence of a quorum is limited by precedents which give the Chair the authority to declare quorum calls dilatory regardless of whether business had intervened since a quorum was last established, by precedents authorizing the Chair to count a quorum, and by precedents that define business between quorum calls during cloture.

On several occasions, the Chair has stated that it had the authority to declare quorum calls dilatory when the

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[225] Dec. 20, 1982, 97-2, *Record*, pp. 32675-76.
[226] Sept. 30, 1977, 95-1, *Record*, p. 31751.
[227] June 10, 1976, 94-2, *Record*, pp. 17432-34.
[228] Dec. 20, 1982, 97-2, *Record*, p. 32669.
[229] Dec. 20, 1982, 97-2, *Record*, pp. 32676-77.
[230] Dec. 10, 1982, 97-2, *Record*, p. 29938.
[231] Feb. 24, 1982, 97-2, *Record*, pp. 2341-42.
[232] Sept. 25, 1986, 99-2, *Record*, p. 26137.

Senate was operating under cloture.[233] On one occasion when the Chair submitted the question to the Senate, the Senate voted that the suggestion of the absence of a quorum was dilatory although an amendment had been called up and the yeas and nays ordered since a quorum was last established.[234] Several days later, the Chair stated that "the Chair has no right to count a quorum or ascertain the presence of a quorum," [235] but shortly thereafter ruled that the suggestion of the absence of a quorum was dilatory, stating in response to a question at that time that "under the rules of the Senate, under rule XXII, any motion, amendment, or other matter that is put that is dilatory can be ruled out of order. The Chair makes that judgment.[236]

The Vice President ruled in response to a point of order, that when the Senate is operating under cloture, the Chair is required to take the initiative to rule out of order all dilatory motions, "including calls for a quorum, when it has been established by a quorum call or roll call that a quorum is present, and the Chair's count reaffirms that a quorum is still present." Immediately after making the foregoing ruling, the Vice President held another request for a quorum call out of order.[237] Later that day, the Vice President held that the Chair "possesses the authority to determine the existence of a quorum under cloture.[238]

Thus it has been established that under cloture the Chair has the authority to determine the existence of a quorum.[239] When the Senate is operating under cloture the Presiding Officer has the authority to note the presence of a quorum,[240] or to count a quorum to determine if a quorum call is dilatory.[241] When the Senate is operating under cloture, the Chair may respond to the suggestion of the absence of a quorum by noting that a quorum is present when a quorum is obviously present.[242] After cloture has been invoked, the only way the Chair can hold a quorum call dilatory is if there is obviously a quorum

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[233] *See* Sept. 14, 1972, 92-2, *Record*, pp. 30628-30; Jan. 31, 1974, 93-2, *Record*, pp. 1617-18.
[234] Sept. 26, 1977, 95-1, *Record*, pp. 30816-18.
[235] Sept. 29, 1977, 95-1, *Record*, pp. 31586-87.
[236] Sept. 29, 1977, 95-1, *Record*, pp. 31590-91.
[237] Oct. 3, 1977, 95-1, *Record*, p. 31927.
[238] Oct. 3, 1977, 95-1, *Record*, p. 31934.
[239] Feb. 9, 1982, 97-2, *Record*, pp. 1176-77.
[240] Dec. 20, 1982, 97-2, *Record*, pp. 32676-77.
[241] Feb. 24, 1982, 97-2, *Record*, p. 2346.
[242] Dec. 19, 1982, 97-2, *Record*, p. 32497.

present.[243] After cloture has been invoked the Chair will decline to hold a quorum call dilatory unless a quorum is obviously present.[244]

When the pending question before the Senate was the adoption of an amendment, a point of order was made by a Senator, submitted to the Senate by the Chair and sustained that, "when the Senate is operating under cloture, a request by a Senator to conduct business which the Senate declines to conduct, for instance, the making of a motion which is ruled dilatory, the offering of an amendment which is ruled out of order as dilatory, a request for the yeas and nays which is refused, is not the transaction of business for the purpose of calling another quorum.[245] A point of order that "the granting of unanimous consent to insert matter in the *Congressional Record* does not constitute a transaction of business when operating under cloture for the purpose of calling another quorum" was made by the Majority Leader (Mr. Byrd) and sustained by the Chair; an appeal was taken but was tabled by a vote of 54 to 11.[246] Several years later it was once again ruled that the granting of unanimous consent to insert material into the *Congressional Record* does not constitute intervening business for the purpose of calling a quorum under cloture.[247]

After a cloture motion was agreed to and several unanimous consent requests for a vote at a time certain on the clotured matter were objected to, the Chair on its own initiative held that a quorum call was not then in order.[248] Post cloture, a refusal to order the yeas and nays does not constitute business for the purpose of suggesting the absence of a quorum.[249]

The Chair on various occasions, under cloture, has ruled that the suggestion of the absence of a quorum was dilatory, both on its own initiative and when a point of order to that effect was made,[250] even though much busi-

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[243] Feb. 24, 1982, 97-2, *Record*, p. 2245.
[244] Feb. 24, 1982, 97-2, *Record*, pp. 2341-42.
[245] Oct. 3, 1977, 95-1, *Record*, pp. 31926-27.
[246] Oct. 14, 1978, 95-2, *Record*, pp. 37431-32.
[247] Feb. 24, 1982, 97-2, *Record*, p. 2246.
[248] Sept. 25, 1986, 99-2, *Record*, p. 26137.
[249] Aug. 21, 1980, 96-2, *Record*, p. 22476.
[250] Sept. 28, 1977, 95-1, *Record*, pp. 31415; Sept. 29, 1977, 95-1, *Record*, pp. 31586-87, 31589-90, 31590-91; Oct. 1, 1977, 95-1, *Record*, pp. 31860-62, Oct. 14, 1978, 95-2, *Record*, pp. 37388-90; Sept. 26, 1977, 95-1, *Record*, pp. 30817-20; June 10-11, 1980, 96-2, *Record*, pp. 13903-04; Oct. 3, 1977, 95-1, *Record*, pp. 31923-27. For decisions to the contrary *see* Oct. 14, 1978, 95-2, *Record*, pp. 37409-410.

ness had been transacted since the last quorum call; [251] after the yeas and nays had been denied,[252] immediately following a roll call vote which showed that a quorum was present; [253] just before a vote to be taken on appeal from the decision of the Chair, ruling an amendment out of order; [254] after a point of order was made that no business had been transacted; [255] or on the grounds that a quorum had just been established on a previous roll call vote.[256]

On the other hand, the Chair under cloture has held that the suggestion of the absence of a quorum was in order and not dilatory in the following circumstances: preceding a vote on a motion to table a motion to recommit,[257] when the yeas and nays are requested and there are not sufficient Senators to grant that request (his Constitutional right to request the yeas and nays); [258] when the Senator was trying to take an appeal from the ruling of the Chair; [259] and on the grounds that a voice vote had occurred, and therefore business had been transacted.[260] The Chair declined to sustain a point of order that under cloture a quorum call was dilatory after a quorum was established and unanimous consent then granted in the interim for subcommittees to meet.[261]

The Chair in 1977 overruled a point of order against a quorum call as being dilatory even though a quorum call had just been concluded showing a quorum present, but immediately after which a request for the yeas and nays had been denied, holding that, denial to second the request for yeas and nays was business.[262]

Once a quorum call has begun, no business is in order, including a point of order that the quorum call was dilatory.[263]

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[251] Sept. 29, 1977, *Record*, pp. 31590–91; *see* a decision to the contrary in the same year on Oct. 3, 1977, 95–1, *Record*, p. 31939; Oct. 14, 1978, 95–2, *Record*, pp. 37431–32.

[252] Sept. 26, 1977, 95–1, *Record*, p. 30826; *see also* June 11, 1980, 96–2, *Record*, p. 14051.

[253] June 8, 1976, 94–2, *Record*, pp. 16942–43; Sept. 30, 1977, 95–1, *Record*, pp. 31750–52; *see also* Sept. 28, 1976, 94–2, *Record*, p. 32931.

[254] Sept. 29, 1977, 95–1, *Record*, pp. 31587–89.

[255] Oct. 14, 1978, 95–2, *Record*, pp. 37401–03, 37408–09, 37409–410.

[256] Sept. 28, 1977, 95–1, *Record*, pp. 31415–16.

[257] Oct. 14, 1978, 95–2, *Record*, p. 37438.

[258] Sept. 26, 1977, 95–1, *Record*, pp. 30817–20.

[259] Sept. 29, 1977, 95–1, *Record*, pp. 31586–87; *See* Oct. 14, 1978, 95–2, *Record*, pp. 37409–410.

[260] Oct. 3, 1977, 95–1, *Record*, pp. 31936–37.

[261] Feb. 24, 1982, 97–2, *Record*, p. 2241.

[262] Sept. 27, 1977, 95–1, *Record*, pp. 31157–58.

[263] Feb. 24, 1982, 97–2, *Record*, p. 2244.

The citation by a Senator that only four Senators were present while proceeding under cloture was held by the Chair not of itself sufficient to justify the calling of another quorum.[264]

Recess:

The Chair under particular circumstances under cloture ruled that a motion to recess was dilatory, but that an appeal from the ruling of the Chair on that matter would be in order; the appeal was taken and the decision of the Chair was sustained by a vote of 64 yeas to 21 nays to table that appeal.[265]

Several years later, the Chair declined to hold dilatory a motion to recess after cloture was invoked on a motion to concur in a House amendment.[266]

Reconsideration:

Under post cloture proceedings, a motion to reconsider has been ruled dilatory and out of order under different circumstances as follows: (1) on a vote of 64 yeas to 24 nays on tabling an appeal; [267] (2) on a vote of 60 yeas to 31 nays sustaining a ruling of the Chair that an amendment was not germane; [268] (3) on a vote of 63 yeas, 30 nays sustaining a ruling of the Chair that an amendment was germane; [269] (4) on a vote of 15 yeas to 69 nays to table an amendment; [270] and (5) to reconsider a vote by which a motion was tabled by 70 yeas to 28 nays.[271]

On one occasion, the Chair reversed itself to rule that it was not dilatory to offer a motion to reconsider the vote whereby a motion to postpone indefinitely was tabled 78 yeas to 8 nays.[272]

Yeas and Nays:

During post cloture proceedings in 1977, a request for the yeas and nays on a motion to table a motion to reconsider the vote by which an amendment had been tabled by a vote of 61 yeas to 28 nays did not obtain a sufficient

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[264] Oct. 14, 1978, 95-2, *Record*, pp. 37431-32.
[265] Oct. 14, 1978, 95-2, *Record*, pp. 37401.
[266] July 30, 1984, 98-2, *Record*, p. 21529.
[267] Oct. 14, 1978, 95-2, *Record*, pp. 37401-03.
[268] Sept. 26, 1977, 95-1, *Record*, pp. 30824-25.
[269] Feb. 24, 1982, 97-2, *Record*, p. 2245.
[270] June 10 and 11, 1980, 96-2, *Record*, p. 13905, 14051.
[271] Dec. 10, 1981, 97-1, *Record*, p. 30410.
[272] June 10, 1980, 96-2, *Record*, p. 13903.

second, and a request for a quorum call following that determination was held dilatory.[273] On the following day, during the same cloture proceedings, a point of order against a request for the yeas and nays as being dilatory was held by the Chair not to be well taken on the grounds that "any Senator has a right under the Constitution to ask for the yeas and nays on an amendment." [274]

Division of Question:

Under cloture an amendment may not be divided by a Senator as a matter of right.[275] On an earlier occasion, the Chair stated that the adoption of a cloture motion on an amendment would not affect the taking of several votes on sections thereof when a demand therefor is made.[276] On another occasion, the Chair stated that an amendment that had been modified on which a cloture motion was pending could be divided by any Senator if it were susceptible of division.[277]

Excludes Other Business:

The adoption of a cloture motion on a measure prohibits the consideration of any other business except that which is transacted by unanimous consent.[278]

When the Senate is operating under cloture it requires unanimous consent to consider any other matter, even such privileged matters as conference reports.[279]

The invocation of cloture on an amendment will delay the implementation of an order obtained during the pendency of the cloture motion to consider a specific amendment at a time certain until the matter on which cloture is invoked is disposed of, unless the order specifies to the contrary.[280]

The Senate has entered into a unanimous consent agreement which provided for the execution of a prior

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[273] Sept. 26, 1977, 95-1, *Record*, pp. 30826.
[274] Sept. 27, 1977, 95-1, *Record*, pp. 31157-58.
[275] Apr. 22, 1982, 97-2, *Record*, pp. 7450-51.
[276] *See* Mar. 7, 1960, 86-2, *Record*, p. 4696. In this case the amendment at issue was a substitute for the bill, and should not have been subject to division under any circumstances. Therefore, this precedent is of dubious value.
[277] Oct. 5, 1985, 99-1, *Record*, p. 26291.
[278] Nov. 17, 1919, 6619, *Record*, p. 8617; *see also* Dec. 21, 1982, 97-2, *Record*, p. 32682.
[279] Dec. 9, 1981, 91-1, *Record*, p. 30171.
[280] Sept. 9, 1981, 97-1, *Record*, pp. 19746-47.

unanimous consent agreement notwithstanding the provisions of the cloture rule.[281]

On one occasion, the Chair stated that the unfinished business then pending, or the pending question would be displaced by the adoption of a cloture motion on another bill.[282]

Hour Preceding Time for Vote on Cloture Motion:

See also "Vote on Motion," pp. 328–332.

"On the following calendar day but one" following an adjournment, morning business is in order during the hour preceding the time that the Chair lays the motion to invoke cloture before the Senate; [283] ordinary business of the Senate could be proceeded with for that first hour.[284] The hour is not necessarily spent on the consideration of the matter on which the cloture motion has been filed, and the Senate could very well be considering another matter during that hour. However, a unanimous consent agreement has often been reached to provide for the one hour of debate of the motion to invoke cloture with the time being divided and controlled,[285] or even extended beyond the one-hour under the rule.[286]

Journal, Reading of:

Under Rule IV, "Whenever the Senate is proceeding under paragraph 2 of Rule XXII, the reading of the *Journal* shall be dispensed with and shall be considered approved to date."

Managers of Bill:

The managers of a measure on which cloture has been invoked may be designated by the Majority and Minority Leaders.[287] In the absence of an official designation, the Senator who occupies the seat of the Majority Leader is

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[281] Mar. 24, 1986, 99–2, *Record*, p. 5997.
[282] *See* Feb. 28, 1927, 69–2, Journal, p. 246, *Record*, p. 4985.
[283] Sept. 8, 1964, 88–2, *Record*, p. 21663.
[284] *See* June 8, 1964, 88–2, *Record*, p. 12922.
[285] Sept. 8, 1964, 88–2, *Record*, p. 21663; May 21, 1965, 89–1, *Record*, p. 11188; *see also* Senate proceedings for October 5, 10, 11, 12 and September 14 and 27, 1972.
[286] Sept. 29, 1972, 92–2, *Record*, p. 32887; Dec. 1, 1973, 93–1, *Record*, p. 39166; Dec. 11, 1973, 93–1, *Record*, p. 40708.
[287] Aug. 21, 1980, 96–2, *Record*, p. 22471.

assumed to be the majority manager as the presumed designee of that Leader.[288]

Motion To Invoke Cloture Pending:

While a debatable motion to proceed to the consideration of a measure (on which a cloture motion had been filed) is pending, it is in order to move to postpone that motion to a date certain.[289]

A motion to table may be made against a matter on which cloture has been invoked as well as against a matter on which a cloture motion is pending.[290]

On one occasion, a pending committee substitute upon which a cloture motion was filed and was to mature on the next calendar day was modified.[291]

Motions—Signing and Presentation of:

See also "Applicability of Filing a Cloture Motion—Pending Business," pp. 301-304.

A cloture motion, when properly signed, may be presented at any time, and a Senator who has the floor may be interrupted for such purpose,[292] and it is not necessary for a Senator having the floor to yield for that purpose.[293] The rights of the Senator who has the floor are not otherwise affected by the filing of the motion.[294]

Although Rule XXII, Paragraph 2, states that a cloture motion may be presented at any time, the Chair has held that it may not be presented pending the reading of an amendment.[295]

A Senator may file a cloture motion pending the outcome of a unanimous consent request.[296]

Unanimous consent is required to give a Senator permission to have his name affixed to a cloture motion after it has been filed in the Senate.[297]

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[288] *See* Oct. 4, 1988, 100-2, *Record*, p. S 14433.
[289] Dec. 10, 1982, 97-2, *Record*, p. 29938.
[290] Aug. 20, 1982, 97-2, *Record*, p. 22567; *see also* Apr. 18, 1983, 98-1, *Record*, p. 8801.
[291] Mar. 23, 1988, 100-2, *Record*, p. S 2939.
[292] *See* Feb. 29, 1960, 86-2, *Record*, p. 3747.
[293] Dec. 10, 1982, 97-2, *Record*, pp. 29910-11.
[294] Apr. 18, 1983, 98-1, *Record*, p. 8785.
[295] Mar. 14, 1983, 98-1, *Record*, p. 5121.
[296] Nov. 23, 1985, 99-1, *Record*, p. 33370.
[297] Dec. 10, 1982, 97-2, *Record*, pp. 29911, 29938; June 8, 1964, 88-2, *Record*, p. 12922; May 21, 1965, 89-1, *Record*, p. 11188; *see* Jan. 26, 1938, 75-3, *Record*, p. 1098.

On June 18, 1974, a Senator by unanimous consent was given permission to become a co-signer of two cloture motions already filed.[298]

A motion may be filed on a pending question, bill or treaty, immediately after it has been taken up for consideration by the Senate,[299] and the presentation or filing is a privileged matter over the objection of a Senator who has the floor,[300] his right being temporarily suspended,[301] without losing the floor.[302]

It takes unanimous consent to file a cloture motion on a matter that is not pending before the Senate.[303]

Two cloture motions have been filed on the same amendment on the same day.[304]

Under the rule, the Presiding Officer or Clerk at the direction of the Presiding Officer "shall at once state the motion" when it is presented.[305]

On February 4, 1946, the President pro tempore ruled that while a motion to amend the *Journal* was pending, it was not in order to present a cloture motion on a bill.[306]

Points of Order:

Points of order in connection with cloture proceedings are not debatable.[307] A point of order regarding the appropriate time for a cloture vote to occur when the Senate remained in continuous session beyond midnight, was made after the cloture motion was read and a quorum established under Rule XXII. The Chair submitted the point of order to the Senate, and in response to an inquiry indicated that the point or order was not debatable.[308] However, on one occasion, the Chair inadvertently enter-

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[298] June 18, 1974, 93-2, *Record*, p. 19659.

[299] July 29, 1946, 79-2, *Record*, pp. 10384-85.

[300] Feb. 24, 1927, 69-2, *Journal*, p. 215, *Record*, p. 4655; Mar. 12, 1925, 69-Special Session, *Record*, pp. 154-55; Feb. 4, 7, and 9, 1946, 79-2, *Record*, pp. 801-04, 1063, 1219; Feb. 24, 1927, 69-2, *Journal*, p. 216, *Record*, p. 4657; *see also* June 27, 1946, 79-2, *Record*, p. 7672; May 23, 1946, 79-2, *Record*, p. 5499.

[301] Mar. 12, 1925, 69-Special Session, *Record*, pp. 154-55; Feb. 24, 1927, 69-2, *Journal*, pp. 215, 216, *Record*, pp. 4655-57; Feb. 4, 7, and 9, 1946, 79-2, *Record*, pp. 801-04, 1063, 1219.

[302] Feb. 24, 1927, 69-2, *Journal*, p. 215, *Record*, p. 4655; Feb. 24, 1927, 69-2, *Journal*, p. 216, *Record*, p. 4657.

[303] Aug. 2, 1983, 98-1, *Record*, p. 22143.

[304] Sept. 28, 1984, 98-2, *Record*, pp. 27665-66.

[305] Rule XXII; Nov. 20, 1942, 77-2, *Record*, p. 9033; Mar. 8, 1960, 86-2, *Record*, pp. 4575-76; Mar. 10, 1960, 86-2, *Record*, p. 5117.

[306] Feb. 4 and 7, 1946, 79-2, *Record*, pp. 801-04, 1063.

[307] Mar. 1, 1927, 69-2, *Journal*, p. 253.

[308] *See* Dec. 13, 1979, 91-1, *Record*, p. 35699.

tained debate on a Constitutional point of order under cloture.[309]

When the time arrives for a cloture vote, the Chair will direct the clerk to ascertain the presence of a quorum even if a quorum has just voted, and once the clerk begins the quorum call no point of order is in order.[310]

During the consideration of a bill under the cloture rule, the Presiding Officer has a right to submit to the Senate for its decision a point of order that repeated quorum calls were dilatory and in violation of the rule.[311]

A point of order may be made against a cloture motion at any time up until a vote is taken on the motion.[312]

Quorum:

See also "Quorum," pp. 1038–1078.

The time for a quorum call under cloture is not charged to a Senator's time for debate.[313]

The time consumed in a quorum call while the Senate is on a clotured item counts against the total time for consideration allowed on that item under Rule XXII.[314]

When the Senate is considering a matter under cloture and a unanimous consent agreement for the consideration of a matter under a sublimit of controlled time has been entered into, a Senator who controls time under that agreement may suggest the absence of a quorum, and the time consumed counts against that Senator's share of the sublimit of time but not against that Senator's hour under cloture.[315]

The time for a quorum call under cloture is charged against the overall time cap but not against any individual Senator's time.[316]

Reading of Amendments—Requirement of:

See also "Reading of Amendments," pp. 296–297; "Amendments After Cloture," pp. 284–299.

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[309] Sept. 7, 1988, 100–2, *Record*, p. S 11794.
[310] Apr. 19, 1983, 98–1, *Record*, p. 8969.
[311] Aug. 15, 1962, 87–2, *Record*, p. 16635.
[312] *See* Aug. 20, 1980, 96–2, *Record*, p. 22096.
[313] Sept. 14, 1972, 92–2, *Record*, pp. 30628–30.
[314] *See* Oct. 1, 1984, 98–2, *Record*, p. 27937.
[315] Oct. 1, 1984, 98–2, *Record*, p. 27928.
[316] Dec. 13, 1982, 97–2, *Record*, p. 30129.

Recess:

In 1972, the Chair ruled that a motion to recess to an hour different from any previous motion to recess, following a series of motions to adjourn or recess, is a different and new motion and is in order under Rule XXII.[317]

When the Senate is considering a matter under cloture, a unanimous consent agreement for the Senate to stand in recess for 30 minutes provided that the time run against the total time for consideration under cloture, would not result in the time being charged against that available to any individual Senator.[318]

Recognition:

Even under cloture, the power of recognition is under the jurisdiction of the Chair.[319]

While under cloture immediately following a roll call vote to table an amendment, the Chair recognized the same Senator who had called up the previous amendment, to call up another amendment while other Senators were attempting to get the floor. The Chair declined to recognize another Senator at that point who sought recognition to take an appeal of the decision of the Chair that a previous amendment was out of order.[320] Under Senate precedents a Senator does not have to yield to another for him to make a point of order but in this instance, the Chair recognized a second Senator for that purpose while the first Senator was holding the floor, even though he later stated the point of order was moot.[321]

Recommitted Bills:

When the Senate is considering a bill under cloture, a motion to recommit that bill with instructions to report the same back to the Senate forthwith, if agreed to, would leave the bill before the Senate and it would be considered under the provisions of the cloture rule until disposed of.[322]

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[317] Mar. 14, 1972, 92-2, *Record*, pp. 8305-07.
[318] *See* Sept. 29, 1984, 98-2, *Record*, p. 27826.
[319] Mar. 7, 1968, 90-2, *Record*, pp. 5654-56.
[320] Sept. 30, 1977, 95-1, *Record*, pp. 31750-51.
[321] Sept. 30, 1977, 95-1, *Record*, pp. 31750-51.
[322] *See* June 17, 1964, 88-2, *Record*, p. 14238.

Reconsideration of Cloture Motion:

In 1980, the Chair ruled that a motion to reconsider a vote by which a cloture motion was defeated was in order by any Senator voting with the prevailing side, and that there was no provision in Rule XXII which precludes two cloture votes on the same motion to invoke cloture.[323]

The Chair in 1971 and in 1986 held that a motion to reconsider the vote by which the Senate invoked cloture would not be in order.[324]

It is the order to reconsider (or enter a motion to reconsider) the vote whereby cloture was not invoked, and when such a motion has been entered the procedure that brings a motion before the Senate is a motion to proceed to its consideration.[325]

A motion to reconsider a question (the rejection of a cloture motion on an amendment) may be entered while a different bill is pending before the Senate; [326] a Senator may enter a motion to reconsider the vote on a question (whereby cloture on a bill was not invoked) after the Senate had proceeded to another measure.[327]

Reconsideration of Proposition Acted on Under Cloture:

It is in order to move to reconsider the vote on a motion on which cloture had been invoked.[328]

If a vote rejecting a resolution of ratification of a treaty, which had been considered under the cloture rule is reconsidered, cloture will still apply unless the treaty is recommitted.[329]

Reoffer Amendment:

See "Reoffering of," pp. 46–48.

Rollcall Votes, Time Consumed by:

Although the time consumed by rollcall votes does not count against the hour available to a given Senator under

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[323] Apr. 30, 1980, 96-2, *Record*, pp. 9384–85.
[324] Sept. 17, 1986, 99-2, *Record*, p. 23739; *See* June 23, 1971, 92-1, *Record*, p. 21585.
[325] Dec. 20, 1982, 97-2, *Record*, pp. 32648–49.
[326] Dec. 18, 1982, 97-2, *Record*, p. 32324.
[327] *See* Dec. 18, 1982, 97-2, *Record*, p. 32289.
[328] Dec. 5, 1980, 96-2, *Record*, p. 32691.
[329] Feb. 9, 1920, 66-2, *Record*, pp. 2627, 2630.

cloture, such time does count against the total time for consideration of a matter under cloture.[330]

Rule Change:

Cloture, by a two-thirds vote, may be invoked on proposed amendments to change the rules.[331]

Senator's Time Exhausted:

A Senator may call up an amendment or make a motion even after his time for debate under cloture has expired.[332]

Suspension of Cloture Procedure:

By unanimous consent the cloture procedure is subject to change, modification, or to be set aside; the rule can be suspended to permit Senators 1 minute each to explain their votes on the motion; [333] a vote on the cloture motion may be postponed to a later hour; [334] or the cloture rule may be set aside,[335] or the procedure thereof may be suspended by unanimous consent.[336]

Suspension of Cloture Rule:

In 1977, a notice was filed to suspend the cloture rule (Rule XXII) so as to call up nongermane amendments.[337] In the same year another such notice was filed to make it in order to call up a modified amendment, the Senate having previously denied a unanimous consent that a Senator be permitted to modify his amendment.[338] No action was taken on those motions; nevertheless, when the Senate is operating under cloture, it is in order to move to suspend the rules, and it requires unanimous consent to offer that motion on the same day on which written notice of intention to offer such a motion was filed.[339]

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[330] *See* May 15, 1980, 96-2, *Record*, pp. 11336-37.
[331] *See* Feb. 2, 1966, 89-2, *Record*, pp. 1935-36.
[332] Feb. 9, 1982, 97-2, *Record*, pp. 1176-77.
[333] July 7, 1922, 67-1, *Journal*, p. 335, *Record*, p. 10038.
[334] May 24, 1946, 79-2, *Record*, p. 5631.
[335] Feb. 9, 1920, 66-2, *Record*, p. 2630.
[336] Feb. 22, 1972, 92-2, *Record*, pp. 4912-13.
[337] Sept. 27, 1977, 95-1, *Record*, pp. 31154-55.
[338] Oct. 3, 1977, 95-1, *Record*, pp. 31942-43.
[339] May 27, 1982, 97-2, *Record*, pp. 12260-61, 12337.

Table, Motion To, Under Cloture Rule:

It is in order to table an amendment on which a cloture motion is pending, and if the motion to table is agreed to the cloture motion is vitiated.[340]

A motion to table may be made against a matter on which cloture has been invoked as well as against a matter on which a cloture motion is pending.[341]

Two Cloture Motions Pending—Order of Consideration:

When two or more cloture motions have been filed, the Senate votes first on the motion which was filed first unless some other order is agreed to.[342]

If two cloture motions are presented on the same day, the vote on the second motion, if the first motion were agreed to, would not occur until after the bill specified in the first motion had been disposed of; [343] if the first one should fail of adoption, the action would then be taken immediately on the second motion,[344] without another quorum call pursuant to Rule XXII, paragraph 2.[345]

When two cloture motions are pending at the same time, the votes thereon will occur in the sequence in which they were filed under the rule unless cloture is invoked on the first vote.[346]

When two motions to invoke cloture are filed on the same day, the vote will first occur on the motion which was filed first, and if the first motion succeeds the second motion will not be voted upon until the matter upon which cloture was invoked had been disposed of. However, if the first motion fails, a vote will occur immediately on the second motion, without another quorum call pursuant to Rule XXII, paragraph 2.[347]

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[340] *See* Sept. 15, 1982, 97-2, *Record*, pp. 23617-18.
[341] Aug. 20, 1982, 97-2, *Record*, p. 22567.
[342] June 18, 1974, 93-2, *Record*, p. 19652.
[343] Dec. 3, 1980, 96-2, *Record*, pp. 31803-04; Feb. 24, 1927, 69-2, *Journal*, p. 216, *Record*, p. 4657; June 4, 1976, 94-2, *Record*, pp. 16720-21.
[344] Feb. 24, 1927, 69-2, *Record*, p. 4657.
[345] Dec. 3, 1980, 96-2, *Record*, pp. 31803-04.
[346] Dec. 1, 1982, 97-2, *Record*, p. 28273.
[347] July 19, 1983, 98-1, *Record*, p. 19760.

Unanimous Consent Agreement—Effect on Cloture:

The Senate has entered into a unanimous consent agreement which provided for the execution of a prior unanimous consent agreement notwithstanding the provisions of the cloture rule.[348]

Vote on Motion:

See also "Adjournment Kills Motion to Consider" p. 657; "Recess—Effect on Motion to Consider," p. 676; "Two Cloture Motions Pending-Order of Consideration," p. 327.

The vote on a cloture motion, under Rule XXII, is required to be by yeas and nays, and is so taken under the rule, and not under and order of the Senate.[349] When the hour for the vote arrives ("one hour after the Senate meets on the following calendar day but one"), the Chair lays before the Senate the motion by directing the Clerk to report the same; immediately after which the Chair directs the Clerk to call the roll to ascertain the presence of a quorum, and after a quorum is established, the Chair directs the Clerk to call the roll on the question: "Is it the sense of the Senate that debate on the pending motion shall be brought to a close?"[350]

"One hour after the Senate meets on the following calendar day but one," the Presiding Officer shall lay the cloture motion before the Senate for action thereon and even though the clotured matter in the meantime had been displaced,[351] the consideration of the matter then pending would be temporarily suspended[352] in order to vote on the cloture motion.[353]

The adoption of a motion to postpone consideration of a measure on which a cloture motion had been filed, does not postpone the vote on cloture.[354] When a matter on which a cloture motion was filed is set aside by unanimous consent, the cloture vote will occur at the time spec-

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[348] Mar. 24, 1986, 99-2, *Record*, p. 5997.

[349] Rule XXII, para. 2. *See* May 14, 1962, 87-2, *Record*, pp. 8285, 8289; May 9, 1962, 87-2, *Record*, p. 8057; Sept. 8, 1964, 88-2, *Record*, p. 21663.

[350] Sept. 15, 1970, 91-2, *Record*, pp. 3175-970, 32357; Sept. 25 and 29, 1970, 91-2, *Record*, pp. 33811, 33990, 34033, 34034; *see also* Sept. 8, 1964, 88-2, *Record*, p. 21663; June 8, 1964, 86-2, *Record*, p. 12922; June 9, 1964, 88-2, *Record*, pp. 13098-100.

[351] July 29, 1946, 79-2, *Record*, pp. 10385-86.

[352] May 18, 1950, 81-2, *Record*, p. 7226.

[353] Feb. 24, 1927, 69-2, *Record*, p. 4661.

[354] *See* Sept. 30, 1988, 100-2, *Record*, p. S 13814.

ified under Rule XXII (or otherwise ordered), but the matter itself is not back before the Senate by virtue of the cloture vote unless cloture is invoked.[355]

A bill upon which a cloture motion had that day been presented will be displaced by agreement of the Senate to a motion to proceed to the consideration of another bill,[356] but the cloture motion will be laid before the Senate for action thereon at the time prescribed by the rule, and the vote at such hour would not be to close debate on the then pending business, but upon the bill which had been displaced and upon which the cloture motion was presented,[357] A point of order does not lie against a cloture motion on the grounds that the measure it addresses is no longer before the Senate, as long as that measure was pending when the motion was filed.[358]

Although a motion to consider a measure if not agreed to dies with an adjournment of the Senate (as opposed to a recess), such motion would be revived by a successful cloture vote despite the adjournment of the Senate.[359]

When the time arrives for a cloture vote, a Senator who has the floor will lose the floor and that Senator is not entitled to the floor after the cloture vote.[360]

A cloture motion, duly signed by at least 16 Senators, when filed, shall be laid before the Senate for a vote thereon 1 hour after the Senate meets on the following calendar day, but one.[361] By unanimous consent, the Senate on many occasions has voted on a cloture motion at an hour different from "one hour after the Senate convenes on the following day but one," as provided for in the rule. Under any such agreement the time for the vote will occur at the agreed upon time.[362]

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[355] Sept. 27, 1984, 98-2, *Record*, p. 27452.

[356] *See* Feb. 26, 1927, 69-2, *Record*, p. 4901.

[357] *See* Feb. 24, 1927, 69-2, *Record*, pp. 4661-62.

[358] Feb. 26, 1927, 69-2, *Journal*, pp. 237-238, *Record*, p. 4900; Feb. 28, 1927, 69-2, *Journal*, p. 247, *Record*, p. 4985.

[359] *See* July 28, 1975, 91-1, *Record*, pp. 25363, 25368, 25463; July 30, 1975, 94-1, *Record*, p. 26004.

[360] Oct. 17, 1986, 99-2, *Record*, p. 33181.

[361] Rule XXII, para. 2. Mar. 8, 1960, 86-2, *Record*, pp. 4575-76; Mar. 10, 1960, 86-2, *Record*, 5117.

[362] For examples, *see* Dec. 17, 1974, 93-2, *Record*, pp. 40330-31, 40358; Dec. 16, 1974, 93-2, *Record*, pp. 40057-58; Sept. 19, 1974, 93-2, *Record*, p. 31904; Aug. 20, 1974, 93-2, *Record*, pp. 29162-63; Aug. 1, 1974, 93-2, *Record*, p. 26327; July 30, 1974, 93-2, *Record*, pp. 25876-77; June 26, 1974, 93-2, *Record*, p. 21195; June 19, 1974, 93-2, *Record*, p. 20105; June 18, 1974, 93-2, *Record*, pp. 19652, 19659; April 9, 1974, 93-2, *Record*, pp. 10353-54; Jan. 28, 1974, 93-2, *Record*, pp. 961, 1382; Feb. 22, 1972, 92-2, *Record*, p. 4912; Feb. 1, 1972, 92-2, *Record*, p. 1972; Dec. 10, 1971, 92-1, *Record*, p. 46117; June 23, 1971, 92-1, *Record*, p. 21584.

One day of session must intervene between the presentation of a cloture motion and a vote thereon.[363] A motion filed on Monday would be laid before the Senate 1 hour after it meets on Wednesday.[364] A cloture motion presented on a Saturday will be taken up on the following Tuesday if the Senate is in session on Monday; [365] when a motion is presented on a Wednesday, the vote will occur on the following Friday, 1 hour after the meeting of the Senate, if the Senate is in session on Thursday.[366] A cloture motion presented on a Friday, when there is a legislative session of the Senate on Saturday and Sunday, will be laid before the Senate 1 hour after the Senate meets on Sunday.[367]

If on the day following the filing of a cloture motion the Senate remains in session beyond midnight, the proceedings under the cloture rule will begin 1 hour after the next scheduled meeting of the Senate, either pursuant to the customary standing order to convene at 12 noon, or pursuant to a unanimous consent order.[368] This issue was decided by a vote of the Senate after the Chair submitted a point of order made when the proceedings under the cloture rule were initiated at 1 o'clock a.m. on December 13, 1979, the Senate having remained in session beyond midnight, December 12.[369] The point of order questioned whether the proceedings should have begun at 1 a.m., and addressed the possibility that the Senate might be unable to recess or adjourn before 10 o'clock a.m., the convening hour for December 13 set by a previous order. The point of order contended that for the purposes of Rule XXII, the proceedings under which were to begin "1 hour after the Senate meets on the following calendar day but one," the word "meets" would become operative "at the hour of daily meeting of the Senate which is 12 o'clock meridian unless otherwise ordered which in this case is 10 o'clock a.m." [370]

Earlier on the night of December 12, the Chair had indicated in response to a parliamentary inquiry that the

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[363] *See* Sept. 8, 1964, 88-2, *Record*, p. 21663.
[364] *See* June 8, 1964, 88-2, *Record*, p. 12922.
[365] Feb. 12, 1927, 69-2, *Journal*, p. 170, *Record*, p. 3573; *see also* Aug. 11, 1962, 87-1, *Record*, pp. 16182-83.
[366] *See* May 9, 1962, 87-2, *Record*, p. 8060.
[367] Mar. 1, 1929, 70-2, *Journal*, p. 254, *Record*, pp. 4851-52.
[368] Dec. 13, 1979, 96-1, *Record*, pp. 35691-701.
[369] Dec. 13, 1979, 96-1, *Record*, p. 35699.
[370] Dec. 13, 1979, 96-1, *Record*, p. 35692.

cloture vote could occur any time after 1 a.m., if the Senate stayed in session after midnight.[371] On two other occasions, the Chair had stated in response to parliamentary inquiries, that a cloture vote would occur at 1 a.m. if the Senate were to remain in session beyond midnight.[372]

A cloture motion filed shortly after midnight will be voted on the second calendar day thereafter that the Senate is in session.[373] When the Senate remains in session after midnight, a cloture motion filed at that time would ripen for a vote on the second calendar day of the session thereafter, because the motion is attributed to the calendar day when filed, and not the day when the session began. Therefore, when a cloture motion was filed early Saturday morning, the vote thereon would occur on Monday only if the Senate were in session on Sunday.[374]

A pro forma session of the Senate would constitute the intervening day contemplated by the rule.[375] Days on which the Senate is not in session are not counted; therefore, as stated by the Vice President it is generally the case that "Sunday is not taken into consideration." [376] This would be true unless the Senate meets on a Sunday to transact legislative business.[377] Therefore, a Sunday session for the sole purpose of delivering eulogies to deceased Senators is regarded as the intervening day in computing the time for a vote on a cloture motion,[378] but a cloture vote would not occur on that day since no business could be transacted.[379]

When a cloture motion is filed on a motion to proceed to the consideration of a bill, and that motion is temporarily laid aside by unanimous consent to consider another measure (a general appropriations bill), the cloture vote

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[371] *See* Dec. 12, 1979, 96-1, *Record*, p. 35673.

[372] *See* June 9, 1964, 88-2, *Record*, pp. 13098-100; and Mar. 1, 1929, 70-2, *Record*, pp. 4851-52, *Journal*, p. 254. On June 9, 1964, unanimous consent was obtained for the cloture proceedings to begin at 11 a.m. On March 1, 1929, the cloture motion was rendered moot, since the Senate passed the bill to which the motion applied on the same day the motion was filed, *Journal*, p. 256.

[373] June 29, 1945, 79-1, *Record*, pp. 6927-28.

[374] *See* Nov. 23, 1985, 99-1, *Record*, p. 33365.

[375] *See* Nov. 23, 1985, 99-1, *Record*, p. 33365.

[376] *See* Feb. 12, 1927, 69-2, *Journal*, p. 170, *Record*, p. 3573.

[377] Mar. 1, 1929, 70-2, *Journal*, p. 254, *Record*, pp. 4851-52.

[378] Feb. 26, 1927, 69-2, *Record*, p. 4903; *see* Monday, Feb. 28, 1927, 69-2, *Journal*, p. 247, when the Vice President laid before the Senate the cloture motion filed on Saturday, Feb. 26, the Senate having been in session on Sunday, Feb. 27, for the sole purpose of delivering eulogies.

[379] *See* Feb. 28, 1929, 69-2, *Journal*, p. 246, which displays the laying before the Senate a cloture motion which was filed on Friday, Feb. 25, 1929, *Journal*, p. 232. The Senate had been in session on both Saturday and Sunday, Feb. 26 and 27, but only for eulogies on the latter day.

will occur under the rule, but if it fails the motion to proceed remains laid aside, and the appropriations bill remains the pending business; however, a call for the regular order would bring the motion to consider the first bill back before the Senate.[380] A cloture motion which is filed on a motion to proceed is vitiated by an affirmative vote to agree to the motion before cloture ripens.[381]

If the validity of a cloture motion is challenged and decisions or appeals have not been disposed of, presumptively, a vote on the cloture motion must await disposition of such questions even if debate is continued beyond the second day after presentation of the motion.[382]

Vote Required:

A three-fifths vote of the "Senators duly chosen and sworn—except on a measure or motion to amend the rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting" is required to invoke cloture, and this is true even at the beginning of a new Congress when the Senate is trying to amend its rules. A two-thirds vote was required on all cloture motions until the rule was amended in 1975.[383]

The first cloture rule was adopted in 1917, in the so-called Martin Resolution (named for its sponsor, Majority Leader Thomas S. Martin, of Virginia), and provided for cloture on a vote of "two-thirds of those voting." [384] The number of Senators required to invoke cloture was changed in 1949, to "two-thirds of the Senators duly chosen and sworn." [385] In 1959, this number was changed back to the original number of "two-thirds of the Senators present and voting." [386] As indicated above, the number of votes needed to invoke cloture was again changed in 1975, to a Constitutional three-fifths of the Senators duly chosen and sworn, except on measures or motions to

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[380] July 10, 1950, 81-2, *Record*, pp. 9982, 10003.

[381] Sept. 15, 1987, 100-1, *Record*, p. S 12063.

[382] *See* Mar. 10, 1949, 81-1, *Record*, p. 2172.

[383] Rule XXII was amended on Mar. 7, 1975, by the adoption of S. Res. 4, 94-1, which changed the required vote from two-thirds to three-fifths on all but rules changes, June 25, 1975, 94-1, *Record*, pp. 21433-34; *see* June 25, 1975, 94-1, *Record*, pp. 20720-21; June 26, 1975, 94-1, *Record*, pp. 21044-45; for old precedents; *see* Mar. 9, 1971, 92-1, *Record*, pp. 5485-87; *see also* the proceedings of the Senate for Jan. 3, 1969 through Jan. 29, 1969, 91-1; Jan. 15, 1963, 88-1, *Record*, p. 1972; Feb. 7, 1963, 88-1, *Record*, pp. 2057-58.

[384] S. Res. 5, Mar. 8, 1917, 65-Special Session, *Record*, pp. 19-45.

[385] S. Res. 15, Mar. 15 and 17, 1949, 81-1, *Record*, pp. 2509, 2724.

[386] S. Res. 5, Jan. 12, 1959, 86-1, *Record*, p. 495.

amend the Senate rules, in which case the necessary vote is two-thirds of the Senators present and voting." [387]

The Senate in 1971, by a vote of 55 yeas to 37 nays, under the old rule held that a two-thirds vote was required to invoke cloture, even though the Senate under the Constitution has a right to make its own rules at the beginning of each new Congress, or at any other time by a majority vote.[388]

In response to parliamentary inquiries, on September 18, 1961, the Chair held that he could not rule, if a vote on a cloture motion were less than two-thirds but more than a majority, that the motion had been adopted, but that a ruling by the Chair was subject to appeal if the appeal were taken before the transaction of other business.[389]

Voting—Change of Vote:

A Senator by unanimous consent can change his vote on a cloture motion.[390]

When Not Applicable:

See "Applicability of a Cloture Motion . . . ," pp. 300–304.

Withdrawal of Cloture Motions:

A cloture motion may be withdrawn but it requires unanimous consent to do so.[391]

Cloture motions have been withdrawn or vitiated by unanimous consent,[392] or left unacted upon because a unanimous consent agreement for a vote on final disposition of the proposal was subsequently entered into or the

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[387] S. Res. 4, Mar. 7, 1975, 94-1, *Record*, pp. 5651–52.

[388] Mar. 9, 1971, 92-1, *Record*, pp. 5485–87.

[389] Sept. 18, 1961, 87-1, *Record*, pp. 20018–20.

[390] Aug. 3, 1983, 98-1, *Record*, p. 22441.

[391] Sept. 17, 1982, 97-2, *Record*, p. 24140.

[392] Aug. 30, 1917, 65-1, *Journal*, p. 233, *Record*, pp. 6462–64; Mar. 12, 1925, 69-Special Session, *Record*, p. 185: June 27, 1946, 79-2, *Record*, pp. 7672, 7871; Feb. 15, 1933, 72-2, *Journal*, p. 206; June 25, 1930, 71-2, *Journal*, p. 504, *Record*, p. 11693; July 10, 1917, 65-1, *Journal*, p. 184, *Record*, p. 4899; for later instances *see* July 9, 1979, 96-1, *Record*, pp. 17454–55; Aug. 2, 1977, 95-1, *Record*, p. 26038; Dec. 8, 1975, 94-1, *Record*, p. 39044; July 23, 1975, 94-1, *Record*, 24251; July 21, 1975, 94-1, *Record*. pp. 23744–45; Dec. 16, 1974, 93-2, *Record*, p. 40118; Dec. 14, 1974, 93-2, *Record*, p. 39939; Dec. 13, 1974, 93-2, *Record*, p. 39769; Dec. 10, 1974, 93-2, *Record*, p. 38966; Dec. 4, 1974, 93-2, *Record*, pp. 38070–71; July 11, 1974, 93-2, *Record*, p. 22878; June 26, 1974, 93-2, *Record*, p. 21207; July 17, 1974, 93-2, *Record*, pp. 23853–55; March 6, 1974, 93-2, *Record*, p. 5535: Jan. 29, 1974, 93-2, *Record*, p. 1184; Jan. 30, 1974, 93-2, *Record*, p. 1383; Jan. 24, 1974, 93-2, *Record*, pp. 725, 789; Dec. 3, 1973, 93-1, *Record*, p. 39179.

measure was passed, the cloture motion thereupon becoming nugatory.[393]

Withdrawal of Motion on Which Filed:

It is in order to withdraw a matter on which a cloture motion is pending (if the Senate has taken no action on that matter).[394]

A Senator who offers a motion has the right to withdraw it, even after a cloture motion has been filed thereon, provided the Senate has taken no action on that initial motion. The cloture motion would recur unless the initial motions were disposed of in the interim or unless the cloture motions were vitiated.[395]

Yielding:

See also "Debate," pp. 305–308; "Debate and Yielding," pp. 308–309.

When the Senate is considering a matter under cloture, only the following four Senators have a right to yield time to other Senators—the Majority and Minority Leaders, and the majority and minority floor managers.[396]

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[393] Mar. 1, 1929, 70–2, *Record*, p. 4885; Mar. 1, 1929, 70–2, *Journal*, pp. 254, 256, *Record*, pp. 4851, 4885; June 29, 1945, 79–1, *Journal*, p. 292, *Record*, p. 6927; Mar. 12, 1925, 69–Special Session of the Senate, *Record*, p. 156.

[394] *See* Sept. 10, 1985, 99–1, *Record*, pp. 23226–27.

[395] Oct. 12, 1978, 95–2, *Record*, pp. 37465, 36179–80.

[396] Dec. 5, 1980, 96–2, *Record*, p. 32696.