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NOMINATIONS

See also "Executive Business and Executive Sessions," pp. 832–842.

Constitution, Article II, Section 2

[Nominations by the President]

. . . and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Rule XXXI

[Procedure for Considering and Confirming Nominations]

1. When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered, be referred to appropriate committees; and the final question on every nomination shall be, "Will the Senate advise and consent to this nomination?" which question shall not be put on the same day on which the nomination is received, nor on the day on which it may be reported by a committee, unless by unanimous consent.

2. All business in the Senate shall be transacted in open session, unless the Senate as provided in rule XXI by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: *Provided*, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session: *Provided further*, That any Senator may make public his vote in closed executive session.

3. When a nomination is confirmed or rejected, any Senator voting in the majority may move for a reconsideration on the same day on which the vote was taken, or on either of the next two days of actual executive session of the Senate; but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider

may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate. Any motion to reconsider the vote on a nomination may be laid on the table without prejudice to the nomination, and shall be a final disposition of such motion.

4. Nominations confirmed or rejected by the Senate shall not be returned by the Secretary to the President until the expiration of the time limited for making a motion to reconsider the same, or while a motion to reconsider is pending unless otherwise ordered by the Senate.

5. When the Senate shall adjourn or take a recess for more than thirty days, all motions to reconsider a vote upon a nomination which has been confirmed or rejected by the Senate, which shall be pending at the time of taking such adjournment or recess, shall fall; and the Secretary shall return all such nominations to the President as confirmed or rejected by the Senate, as the case may be.

6. Nominations neither confirmed nor rejected during the session at which they are made shall not be acted upon at any succeeding session without being again made to the Senate by the President; and if the Senate shall adjourn or take a recess for more than thirty days, all nominations pending and not finally acted upon at the time of taking such adjournment or recess shall be returned by the Secretary to the President, and shall not again be considered unless they shall again be made to the Senate by the President.

7. (a) The Official Reporters shall be furnished with a list of nominations to office after the proceedings of the day on which they are received, and a like list, of all confirmations and rejections.

(b) All nominations to office shall be prepared for the printer by the Official Reporter, and printed in the Congressional Record, after the proceedings of the day in which they are received, also nominations recalled, and confirmed.

(c) The Secretary shall furnish to the press, and to the public upon request, the names of nominees confirmed or rejected on the day on which a final vote shall be had, except when otherwise ordered by the Senate.

Law on Salaries to Certain Recess Appointees

(5 U.S.C., Sec. 5503)

[Conditions for Payments of Recess Appointees]

(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appointee has been confirmed by the Senate. This subsection does not apply—

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

(b) A nomination to fill a vacancy referred to by paragraph (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate.

Adverse Reports:

The following four nominations were adversely reported by the Committee on the Judiciary, and while the question of senatorial courtesy was not directly raised, the Senators from the respective States fought them on the floor as being incompetent or not as able as others for the particular offices, and the nominations were rejected in each instance: Frank E. Hook, of Michigan, to be a member of Motor Carrier Claims Commission; Martin A. Hutchison, of Virginia, to be member of Federal Trade Commission; M. Neil Andrews, of Georgia, to be a U.S. Judge in Northern District of Georgia; and Carroll O. Switzer, of Iowa, to be a U.S. Judge for Southern District of Iowa.[1]

Calendar of Nominations:

See "Consideration, Question of," pp. 655-682.

Closed Sessions To Consider Nominations:

See "Open Session," p. 945.

Confirmation—Not on Conditions:

A nomination may not be confirmed with any conditions attached.[2]

When a nomination is before the Senate for action, the pending question is: Will the Senate confirm the nomination? [3]

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[1] Aug. 9, 1950, 81-2, *Record*, pp. 12097-106.
[2] Dec. 19, 1969, 91-1, *Record*, p. 40118.
[3] *Ibid.*

Considered When Reached on Call of Executive Calendar:

A vote on the question of advising and consenting to a nomination cannot, upon objection being raised, be taken on the same day on which it is submitted to the Senate by the President of the United States.[4] Only by unanimous consent can consideration be given on day it is reported.[5]

Nominations on the Calendar should be proceeded with in their order, and a motion to consider a nomination when reached on the Calendar is not necessary; [6] the regular order, when reached, is its consideration.[7]

When the Senate goes into executive session to consider nominations, the first nomination on the Calendar is automatically before the Senate.[8] A motion to go into executive session to consider the first nomination on the Executive Calendar is in order.[9] At a later date (June 19, 1980) the majority leader announced his intention of moving to a particular nomination on motion when going into executive session. The following colloquy and parliamentary inquiry occurred on that occasion:

Mr. McCLURE. Mr President, reserving the right to object, it is not my intention to complicate this, but I am a little concerned about and I do not want anyone to be misled as to where we might stand with respect to moving to the Executive Calendar for the David Jones' nomination.

My understanding of the precedents is it has been established now that we can go to the Executive Calendar without going through the treaties before we get to the nominations. But we have not yet established the precedent here that we can pick out a particular nomination. We take them in the order in which they appear.

Mr. ROBERT C. BYRD. No. I think the Senator is incorrect, if I may say respectfully. We have established the precedent that the Senate may move to take up a particular nomination.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

Mr. ROBERT C. BYRD. The Senator addresses the Chair.

Mr. McCLURE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. I might be very willing to go to the Jones nomination, but my understanding has been we have done that by unanimous consent in the past.

The PRESIDING OFFICER. The precedent has been established and used on two separate occasions that the Senate can move to go into

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[4] Jan. 20, 1953, 83-1, *Record*, pp. 453-454.
[5] Feb. 19, 1947, 80-1, *Record*, p. 1176.
[6] Dec. 15, 1944, 78-2, *Record*, pp. 9519-21.
[7] Sept. 18, 1950, 81-2, *Record*, pp. 14997-98.
[8] Oct. 13, 1978, 95-2, *Record*, pp. 36820-21.
[9] Mar. 5, 1980, 96-2, *Record*, pp. S 2214-17.

executive session to take up a particular nomination without it being a debatable motion.

Mr. BAKER. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Is it not so in both of those precedents that the nomination which was the subject of that precedent was indeed the No. 1 name on that list?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, then a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BAKER. Is it not true, then, that we have not established a precedent that we can go beyond that point?

The PRESIDING OFFICER. It is the Chair's understanding of the precedent that it was by happenstance in each case that it was the first on the list.

Mr. BAKER. Mr. President, I do not think we need to get bogged down now into the effect of that happenstance. I rather suspect we are going to do a good day's work if we get out of this quagmire we are already in, but I must say, in further reference to the statement just made by the Chair, that I simply cannot reconcile that position, as a precedent of the Senate when never in the history of the Senate of which I am aware have we gone to the Executive Calendar and proceeded beyond the first name on the Executive Calendar.

I do not want to prolong the issue any further here except to record in this colloquy that I do not agree with that interpretation of that precedent at that time.

Mr. ROBERT C. BYRD. Mr. President, inasmuch as we are recording our positions in this colloquy, I agree with the Chair, and I am not interested in carrying on the debate further at this time. But I feel that the precedent has been adequately established that the Senate can move to go to a precise nomination on the Executive Calendar without having first to go to the treaties, if there be such on the calendar, or any other nominees that precede the nominee to which the motion attaches.[10]

Later that year, the Chair ruled a motion to go into executive session to consider any nomination is "in order and not debatable under recent precedents." [11]

Another motion that the Senate proceed to executive session to consider a particular nomination was held in order and not a debatable question.[12]

By unanimous consent the Senate could go into executive session for the consideration of a specific nomination regardless of its location on the Calendar.[13] Also, after the Senate goes into executive session, a motion is then in order to proceed to any specific nomination on the Calendar but the motion is debatable.[14]

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[10] June 19, 1980, 96-2, *Record*, pp. S 7465-66.
[11] Oct. 1, 1980, 96-2, *Record*, p. 28770.
[12] Nov. 25, 1980, 96-2, *Record*, pp. 31037-39.
[13] Oct. 13, 1978, 95-2, *Record*, pp. 36820-21.
[14] Sept. 30, 1976, 94-2, *Record*, p. 33887.

The consideration of a reported nomination on the Calendar, when it is reached on a call of the Executive Calendar, is not required to go over another day upon objection.[15] Nominations reported on 1 day may be considered on the following day [16] and an objection to their consideration will not put them over under the rule for a day,[17] or put another way: It is in order to consider a nomination on the next calendar day after it has been reported although it is the same legislative day.[18] It is in order to consider a nomination reported to the Senate on the preceding calendar day.[19] The consideration of a nomination which has gone over 1 day under the rule, cannot be postponed, as a matter of right by an objection when reached on the Calendar,[20] and a motion to proceed to its consideration is not necessary, even if objection is made to its consideration.[21]

A motion to consider nominations on the Calendar en bloc is not in order; upon objection, the names must be considered separately.[22]

A motion to consider a nomination is not in order while the Senate is considering a treaty by unanimous consent.[23]

If objection is heard to a request in legislative session to act on nominations as in executive session, the only way to reach consideration of them would be to go into executive session by the adoption of a motion to that effect.[24]

The Senate has gone into executive session with a view to considering certain nominations only by unanimous consent instead of considering nominations as in executive session.[25]

Discharge of Committee Before Consideration of:

See also "Discharge of Committees," pp. 802–806.

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[15] June 9, 1933, 73-1, *Record*, p. 5427; July 26, 1947, 80-1, *Record*, p. 10418; *see also* Mar. 10, 1952, 82-2, *Record*, p. 2053.
[16] Jan. 16, 1939, 78-1, *Record*, p. 351.
[17] *See* Dec. 2, 1954, 83-2, *Record*, p. 16396.
[18] June 16, 1938, 75-3, *Record*, pp. 9514-45.
[19] Aug. 21, 1937, 75-1, *Record*, pp. 9602-03.
[20] *See* Mar. 12, 1947, 80-1, *Record*, pp. 1973-74; Aug. 17, 1962, 87-2, *Record*, p. 16934.
[21] Sept. 18, 1950, 81-2, *Record*, pp. 14997-98.
[22] Feb. 5, 1945, 79-1, *Record*, pp. 801-03.
[23] June 4, 1947, 80-1, *Record*, p. 6307.
[24] June 5, 1947, 80-1, *Record*, pp. 6434-35.
[25] June 10, 1947, 80-1, *Record*, pp. 6683-85.

Committees may be discharged from further consideration of a nomination,[26] but a motion to that effect, on objection, must lie over for a day.[27]

Such a motion must be filed in executive session and go over a day under the rule upon objection to its consideration.[28]

A motion to consider a nomination previously referred to a committee, but which has not been reported, is not in order unless the committee is discharged from its further consideration.[29]

When such a motion is brought up for consideration it may be referred to the committee with instructions to report the nomination not later than a specified time.[30]

District of Columbia Commissioner Submitted Nominations:

The nominations of members of the District of Columbia Redevelopment Land Agency, beginning in 1947, are submitted for confirmation to the Senate, by the District of Columbia Commissioner, pursuant to law.[31]

Division of Question:

Where an order is made to proceed to the consideration at a certain time of two nominations, a Senator has a right to demand that they be considered separately.[32]

Executive Session:

See "Executive Business and Executive Sessions," pp. 832–842.

Legislative as in Executive Session:

See "Legislative as in Executive Session," p. 837; "Legislative Business Out of Order in Executive Session," p. 838; "Legislative Sessions," pp. 838, 907–908.

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[26] June 7, 1934, 73–2, *Executive Journal*, p. 730; June 8, 1934, 73–2, *Executive Journal*, pp. 737–38; June 13 and 14, 1934, 73–2, *Executive Journal*, p. 783; *see also* May 14, 1947, 80–1, *Record*, p. 5270.

[27] June 7, 1934, 73–2, *Record*, p. 10706.

[28] *See* Sept. 7, 1962, 87–2, *Record*, p. 18826.

[29] May 16, 1935, 74–1, *Record*, pp. 7684–85.

[30] June 8, 1934, 73–2, *Record*, p. 10836.

[31] Feb. 7, 1947, 80–1, *Record*, p. 896.

[32] Mar. 4, 1935, 74–1, *Record*, p. 2872.

Legislative Session—Executive Business Out of Order:

See also "Executive Business and Executive Sessions," pp. 832–842; "Executive Business in Legislative Session Out of Order," pp. 907–908.

A nomination cannot be considered while the Senate is in legislative session, except by unanimous consent.[33]

A memorial of the legislature of a State protesting against the confirmation of the nomination of a Federal judge for that State is an executive matter, and should be presented in executive session.[34]

A motion to reconsider a nomination, which would be in order in executive session,[35] is not in order over an objection in legislative session,[36] but under unanimous consent as in executive session a motion to reconsider is in order.[37]

Motions To Go Into Executive Session To Consider Nominations:

See "Considered When Reached on Call of Calendar," pp. 941–943.

Open Session:

The rule relating to proceedings on nominations was amended in 1929, so as to provide for the transaction of all business of the Senate in open session unless otherwise ordered.[38]

Personal Objections:

See "Senatorial Courtesy and Personal Objections to a Nomination," pp. 951–952.

Petitions and Memorials Laid Down in Executive Session:

See "Legislative Session—Executive Business Out of Order," p. 945; "Petitions," p. 839.

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[33] Aug. 12, 1937, 75-1, *Record*, p. 8732.
[34] Apr. 4, 1912, 62-2, *Record*, p. 4273; Apr. 8, 1912, 62-2, *Record*, p. 4391.
[35] Mar. 28, 1932, 72-1, *Record*, p. 6930.
[36] Mar. 28, 1932, 72-1, *Journal*, p. 356.
[37] May 9, 1950, 81-2, *Record*, pp. 6698–99.
[38] June 18, 1929, 71-1, *Journal*, p. 121, *Record*, p. 3055; *see also* for old procedure, July 15, 1914, 63-2, *Journal*, p. 403, *Record*, pp. 12139–40.

Points of Order:

A nomination reported by a committee when it did not have authority to meet is subject to a point of order, either pending a decision by the Senate to take it up [39] or while the nomination is pending.[40]

Postpone:

A motion to postpone the consideration of a nomination to a day certain is amendable.[41]

President Submits Nominations Anew Each Session:

Nominations submitted by the President which are not confirmed during the session (before sine die adjournment), lapse with adjournment or with a recess or adjournment of the Senate lasting for more than 30 days, and must be resubmitted by the President if they are to be considered further [42] but the rule providing that nominations made during one session or prior to a 30 day recess of the Senate shall not be acted upon at a succeeding session or after a recess or adjournment lasting for more than 30 days unless resubmitted by the President may be suspended or waived by a unanimous consent agreement to hold the nominations in status quo until the Senate next reconvenes or the next or second session; [43] a motion to that effect would not be in order.[44]

Recess—Business Following a Recess:

See "Recess—Business Following a Recess of Senate," p. 840.

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[39] Aug. 3, 1987, 100-1, *Record*, p. S 11112; and Nov. 25, 1980, 96-2, *Record*, pp. 31037-39.

[40] Oct. 28, 1987, 100-1, p. S 15337.

[41] Dec. 10, 1971, 92-1, *Record*, p. 46120.

[42] Oct. 19, 1949, 81-1, *Record*, pp. 15012-13; *see also* June 30, 1960, 86-2, *Record*, p. 15049.

[43] Aug. 24, 1935, 74-1, *Record*, p. 14468; *see also* proceedings on the following dates, for instance, the rule was suspended: Nov. 20, 1929, 71-1, *Record*, p. 5848; Aug. 21, 1937, Dec. 13, 1937, Dec. 30, 1941, Dec. 21, 1943; *see also* the following for suspensions for particular nominations: June 30, 1960, 86-2, *Record*, p. 15049; July 25, 1947, 80-1, *Record*, p. 10176; Dec. 16, 1947, 80-1, *Record*, p. 11459; Dec. 17, 1947, 80-1, *Record*, p. 11526; Dec. 18, 1947, 80-1, *Record*, p. 11612; Dec. 19, 1947, 80-1, *Record*, p. 11708; Aug. 21, 1937, 75-1, *Record*, p. 9595; Aug. 2, 1939, 76-1, *Record*, p. 10809; Dec. 20, 1979, 96-1, *Record*, pp. 37385, 37601.

[44] Oct. 9, 1974, 93-2, *Record*, pp. 34658-59.

Recess Appointments:

A commission issued by the President during a recess of the Senate continues until the end of the next session of the Senate, unless sooner determined by the President, even though the individual commissioned had meanwhile been nominated by the President to the office and the nomination rejected.[45]

In 1905, the Committee on the Judiciary, pursuant to a resolution adopted by the Senate, filed a report with the Senate on what constitutes a "Recess of the Senate, etc." and what are the powers and limitations of the executive in making appointments in such cases.[46]

Recommit:

A unanimous consent agreement to vote on the question of advising and consenting, or to vote on confirmation of a nomination at a specified hour, prohibits or excludes a motion to recommit such a nomination,[47] and in the event such a nomination is not confirmed, a motion to recommit would not be in order without a reconsideration of that vote.[48]

A nomination, the confirmation of which was objected to by a Senator on the ground that the nominee was personally offensive to him, may be recommitted to the committee for further hearings.[49]

In 1978, the nomination of Benjamin R. Civiletti was recommitted to the Committee on the Judiciary with instructions to report it back favorably forthwith, but without any report.[50]

Where a specific nomination is before the Senate for confirmation, a motion to recommit such nomination, together with others in the same group, is not in order.[51] A motion to recommit a group of nominations is not in order.[52] Unanimous consent is required to recommit nominations en bloc.[53]

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[45] Aug. 21, 1916, 64-1, *Journal*, p. 620, *Record*, p. 12921; Aug. 23, 1916, 64-1, *Journal*, p. 624, *Record*, p. 13030.
[46] Mar. 2, 1905, 58-3, *Record*, p. 3823.
[47] *See* Aug. 18, 1949, 81-1, *Record*, p. 11723; Sept. 27, 1949, 81-1, *Record*, pp. 13292-93; July 10, 1950, 81-2, *Record*, pp. 9767-68.
[48] *See* Aug. 18, 1949, 81-1, *Record*, pp. 11723-24.
[49] Mar. 23, 1934, 73-2, *Record*, pp. 5234-52.
[50] May 4, 1978, 95-2, *Record*, pp. 12673-92.
[51] July 18, 1950, 81-2, *Record*, p. 10512.
[52] Dec. 6, 1944, 78-2, *Record*, p. 8905.
[53] July 18, 1950, 81-2, *Record*, p. 10512.

Reconsider:

See also "Reconsideration," pp. 1124-1149.

A motion to reconsider a vote on a nomination, where there was no yea and nay vote, may be made by a Senator who was absent when the vote was had.[54]

Where a nomination has been sent to the President, a motion to reconsider must be accompanied by a motion to request the President to return the resolution of notification,[55] but the President may refuse the request.[56] The Senate has no power to reconsider any nomination, if the President, upon request of the Senate, refuses to return the resolution of notification.[57]

A motion made in legislative session to reconsider the vote on a nomination is not in order upon objection,[58] but would be in order in executive session.[59] Also by unanimous consent as in executive session, a motion to reconsider is in order.[60]

Reference of:

See also "References to Committees," pp. 1150-1169; "Unanimous Consent to Refer," p. 953.

Under Rule XXXI, nominations submitted by the President, unless otherwise ordered, shall be referred to the appropriate committees, but various nominations, from time to time, under unanimous consent procedure, have been confirmed without reference to a committee,[61] particularly in the case of the nominations of Senators to Federal offices,[62] and former Senators.[63]

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[54] *See* May 8, 1950, 81-2, *Record*, pp. 6633-34.

[55] May 9, 1950, 81-2, *Record*, pp. 6698-99; July 21, 1967, 90-1, *Record*, p. 19625.

[56] May 17, 1950, 81-2, *Record*, p. 7143; July 12 and 13, 1939, 76-1, *Record*, pp. 8919, 8932-33, 9032.

[57] Dec. 20, 1930, 71-3, for proceedings on nomination of George Otis Smith, to be a member of the Federal Power Commission; *see* Supreme Court decision on right of Mr. Smith to his office, even though Senate had voted to reconsider its actions; *see also* case of Elmer D. Davies, to be District Judge for Middle District of Tennessee—proceedings for July 12 and 13, 1939.

[58] Mar. 28, 1932, 72-1, *Journal*, p. 356, *Record*, p. 6930.

[59] Mar. 28, 1932, 72-1, *Record*, p. 6930.

[60] May 9, 1950, 81-2, *Record*, pp. 6698-99.

[61] Dec. 9, 1929, 71-2, *Journal*, p. 31, *Record*, p. 274; Feb. 24, 1923, 67-4, *Journal*, p. 192, *Record*, p. 4475.

[62] Nov. 21, 1929, 71-1, *Journal*, p. 212, *Record*, p. 5859; Jan. 9, 1930, 71-2, *Journal*, p. 70, *Record*, p. 1288; Oct. 1, 1917, 65-1, *Record*, p. 7555; Feb. 27, 1923, 67-4, *Journal*, p. 204, *Record*, p. 4744; Feb. 19, 1923, 67-4, *Journal*, p. 171, *Record*, p. 3969; Sept. 5, 1922, 67-2, *Journal*, p. 427, *Record*, p. 12169; Jan. 31, 1922, 67-2, *Journal*, p. 76, *Record*, p. 1945.

[63] July 2, 1945, 79-1, *Record*, p. 7110; Mar. 13, 1935, 74-1, *Journal*, p. 187, *Record*, p. 3498; Apr. 26, 1916, 64-1, *Record*, p. 6863.

The Senate by order, agreed to by unanimous consent, has given authority to the Secretary to receive and refer nominations after the Senate had concluded its business for the day; [64] to receive and refer nominations during a recess of the Senate; [65] likewise, in recent Congresses the Senate has adopted orders providing for the reference during the session of nominations and treaties received from the President on days when the Senate meets but there is no executive session. The reference of nominations and treaties is executive business and should otherwise be transacted in executive session or "as in executive session." [66]

Nominations for appointment of members of the Atomic Energy Commission in 1947, were referred to the members on the part of the Senate of the Joint Committee on Atomic Energy, while the joint committee was in existence and there was an Atomic Energy Commission.[67]

Reports:

See also "Reports," pp. 1176–1201.

During legislative session, a committee report on a nomination cannot be received as in executive session upon objection being made.[68]

Reports—Adverse:

See also "Reports," pp. 1176–1201.

Where a nomination is reported adversely, the question nevertheless is on advising and consenting to the nomination, and not on the adoption of the report.[69]

Reports—Quorum Required To Act on:

A report on a nomination to the Senate when acted on by less than a quorum of the committee is not validly before the Senate if challenged before the Senate acts thereon on the grounds that a quorum was not present

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[64] June 3, 1933, 73–1, *Journal*, p. 224, *Record*, p. 4930.

[65] Jan. 23, 1936, 74–2, *Record*, p. 938; Jan. 21, 1953, 83–1, *Record*, pp. 492–93; Feb. 6, 1953, 83–1, *Record*, p. 924; Feb. 7, 1953, 83–1, *Record*, p. 976.

[66] Mar. 15, 1933, 73–1, *Journal*, p. 33, *Record*, p. 471; Jan. 4, 1934, 73–2, *Record*, p. 61; Jan. 7, 1935, 74–1, *Record*, p. 143.

[67] Jan. 20, 1947, 80–1, *Record*, p. 435; *see also* Apr. 12, 1948, 80–2, *Record*. p. 4305.

[68] June 18, 1935, 74–1, *Record*, p. 9508.

[69] *See* July 10, 1950, 81–2, *Record*, p. 9772.

when it was ordered to be reported.[70] In one instance this situation having been admitted, a point of order against the report was sustained by the Presiding Officer, and the nomination was back before the committee;[71] again in 1980 when a nomination was reported out of committee without a physical quorum actually present, the Chair held in response to a point of order that a report thereof was void, and was considered never to have left the committee.[72]

Resubmitted by President To Correct Spelling of Name of Nominee:

In 1945, after a nomination had been confirmed it was resubmitted by the President to the Senate to correct an error in the spelling of the name of the nominee, and confirmed without reference.[73]

Returned to President When Senate Is in Adjournment for More Than 30 Days:

See "President Submits Nominations Anew Each Session," p. 946.

Rule Change Required One-Day Notice:

A resolution, submitted in 1886, providing for the consideration of executive nominations in open session was held to be subject to a point of order, as being a change of paragraph 2 of Rule XXXVI (now Rule XXIX) without proper notice having been given as required by Rule XL (now Rule V).[74]

Secretary Authorized To Receive and Refer During Recess:

See "Reference of," pp. 948–949.

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[70] Oct. 4, 1962, 87-2, *Record*, p. 22210; Oct. 10, 1962, 87-2, *Record*, pp. 22507, 22954-56.
[71] *Ibid.*
[72] Nov. 25, 1980, 96-2, *Record*, pp. 31037-39.
[73] May 21, 1945, 79-1, *Record*, p. 4806.
[74] July 9, 1886, 49-1, *Journal*, p. 1075, *Record*, p. 6676; *see also* Mar. 26, 1886, 49-1, *Journal*, pp. 480-81, *Record*, pp. 2784-2823.

Senatorial Courtesy and Personal Objections to a Nomination:

See also "Adverse Reports," p. 940.

Nominations submitted to the Senate for confirmation are occasionally opposed on the basis of being personally objectionable to a particular Senator, or that senatorial courtesy had not been considered. To come within the purview of this practice or unwritten rule, the nominee must be from the State of the Senator and the appointment must be to a Federal position within that State as distinguished from a national office, as for example, a member of the Cabinet.

The Chair is not called upon to rule on such questions since a point of order would not lie against a nomination on such grounds.

Various nominations have been defeated on the grounds of senatorial courtesy, personal objections, or that they were personally offensive. Some of the outstanding examples follow:

Charles A. Jonas, of North Carolina, to be United States Attorney for the Western District of North Carolina, in 1932.[75] Ernest A. Burguieres, of Louisiana, to be Commissioner of Immigration at the Port of New Orleans, in 1932; [76] Daniel D. Moore, of Louisiana, to be Collector of Internal Revenue for the District of Louisiana, in 1934; [77] Floyd H. Roberts, of Virginia, to be United States District Judge for the Western District of Virginia, in 1939.[78] William S. Boyle, of Nevada, to be United States Attorney for the District of Nevada, in 1939; [79] Joseph Jerome Drucker and Cornelius J. Harrington, both of Illinois, to be United States District Judges for the Northern District of Illinois, in 1951; [80] Margaret E. Smith, of North Carolina, to be Postmaster at Montreat, North Carolina, in 1955.[81]

In certain instances such contentions have been rejected or denied. Some of the outstanding examples include: Hanford Mac Nider, of Iowa, to be Minister to Canada, in

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[75] *See* Mar. 23, 1932, 72-1, *Record*, p. 6729; Apr. 5, 1932, 72-1, *Record*, pp. 7427-37.
[76] June 15, 1932, 72-1, *Record*, pp. 13485-87.
[77] *See* Senate proceedings for Jan. 4 to Apr. 26, 1934.
[78] Feb. 6, 1939, 76-1, *Record*, p. 1156.
[79] June 29, 1939, 76-1, *Record*, pp. 8221-28.
[80] Oct. 9, 1951, 82-1, *Record*, pp. 12838-40.
[81] Aug. 2, 1955, 84-1, *Record*, p. 12825. This position of the Senate was withdrawn on July 21, 1956, and the statement of 1955 was withdrawn from the *Record*; *see also* July 21, 1956, 84-2, *Record*, p. 13800.

1930; [82] Edwin R. Holmes, of Mississippi, to be United States Circuit Judge for the Fifth Circuit, in 1936; [83] F. Roy Yoke, of West Virginia, to be Collector of Internal Revenue for the District of West Virginia, in 1938; [84] and Joe B. Dooley, of Texas, to be United States District Judge for the Northern District of Texas, in 1947.[85]

Senator's Confirmation to Federal Office and Resignation:

The confirmation of the nomination of a Senator to be an Ambassador to a foreign country does not vacate his seat in the Senate. Until he takes his oath of office as such Ambassador he remains a Senator, unless he resigns in the meantime.[86]

Suspend Rules on Returning Nominations to President:

See "President Submits Nominations Anew Each Session," p. 946.

Unanimous Consent Agreement for Vote on a Nomination:

See also "Quorum," "Unanimous Consent Agreement To Fix Time for Vote on Bill—When Quorum Call Required," pp. 1071-1074.

A unanimous consent agreement providing for a vote on a nomination at a definite time or fixing such time does not require a quorum call preceding the submission of such an agreement to the Senate; [87] but such an agreement can only be changed by unanimous consent,[88] even if to extend such time before the vote is taken.[89]

A request for unanimous consent that the Senate proceed to consider nominations as in executive session does not require a quorum call preceding the submissions of the agreement to the Senate.[90]

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[82] June 20, 1930, 71-2, *Record*, p. 11313.
[83] Mar. 19, 1936, 74-2, *Record*, pp. 3987-4032.
[84] Jan. 11, 1938, 75-3, *Record*, pp. 319-26.
[85] July 8, 1947, 80-1, *Record*, p. 8421.
[86] *See* Nov. 21, 1929, 71-1, *Record*, p. 5903.
[87] *See* Dec. 20, 1950, 81-2, *Record*, p. 16822.
[88] *See* Aug. 18, 1949, 81-1, *Record*, p. 11728.
[89] *See* Sept. 19, 1949, 81-1, *Record*, p. 13007.
[90] *See* Aug. 18, 1950, 81-2, *Record*, p. 12806.

Unanimous Consent To Refer:

See also "Reference of," pp. 948–949.

On January 19, 1978, an agreement was reached for reference of nominations to the appropriate committee for the remainder of the 95th Congress on the day they are received even though there is no executive session on that day.[91]

Also on January 15, 1979, the following unanimous consent agreement was adopted:

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that for the duration of the 96th Congress it be in order to refer treaties and nominations on the days when they are received from the President, even when the Senate has no executive session that day.

The VICE PRESIDENT. Without objection, it is so ordered.

Vote on Nomination—Motion To Print in Record:

See "Print in *Record*," pp. 647–653.

Withdrawal of Nomination by President:

The President may withdraw nominations submitted by him to the Senate;[92] and even after they have been reported by committees and placed on the Calendar.[93] In 1953, President Eisenhower withdrew a number of nominations submitted to the Senate by President Truman in that session prior to January 20.[94]

In the same year a nomination was withdrawn for the purpose of making a correction in the designation of the nominee's residence.[95]

NONPRIVILEGED BUSINESS

See also "Administration of Oaths of Office Privileged," pp. 702–706; "Privileged Business," pp. 1034–1037.

The following matters when the question was raised were held not to be privileged business:

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[91] Jan. 19, 1978, 95–2, *Record*, p. 20.

[92] Sept 6, 1984, 96–2, *Record*, p. 24409; July 27, 1982, 97–2, *Record*, p. 18057.

[93] July 8, 1932, 72–1, *Journal*, p. 690; Feb. 1, 1943, 78–1, *Record*, p. 468.

[94] *See* Jan. 24, 1953, 83–1, *Record*, p. 532, and the proceedings for the following dates: Feb. 4, 1953, Feb. 6, 1953, Feb. 10, 1953, Mar. 6, 1953, Mar. 20, 1953 Mar. 27, 1953, June 29, 1953, July 2, 1953, July 6, 1953, July 24, 1953.

[95] July 9, 1953, 83–1, *Record*, pp. 8357–58.