



Proposals to Reform “Holds” in the Senate

Walter J. Oleszek
Senior Specialist in American National Government

August 31, 2011

Congressional Research Service

7-5700

www.crs.gov

RL31685

Summary

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

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

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

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

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

This report will be revised and expanded as events warrant.

Contents

Background.....	1
Reform Proposals.....	3
I. Impose Time Limits on Holds.....	3
1. A Three-Day Limit	3
2. A Two- or Three-Week Limit	3
3. A 45- or 60-Day Limitation on Executive Nominations	4
4. 24-Hour Holds.....	4
5. 14 Days Total on Executive Nominations	4
6. No More Than 30 Days on Executive Nominations	4
II. Abolish Holds	5
III. Uniform Procedure for Holds	5
IV. No Indefinite, or Permanent, Holds	6
V. Prohibit Blanket Holds.....	6
VI. End Secret Holds.....	7
1. The 1985 Initiative	7
2. The 1997 and 1999 Initiatives	7
3. A 2002 Recommendation	8
4. 2003 Proposals	9
5. 2006 Initiative	9
6. 2007: The Senate Adopts a New Holds Policy.....	10
7. 2010: Another Effort To End Secret Holds	11
8. 2011: The 112 th Senate's Initiative to End Secret Holds	15
VII. Require More than One Senator to Place a Hold	17
VIII. Permit a Privileged Resolution to Terminate Holds	18
IX. Restrict Filibuster Opportunities	18
X. Determination by Majority Leader to Proceed	19
Summary Observations.....	19

Contacts

Author Contact Information.....	20
---------------------------------	----

Background

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

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

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

Holds appeared to become widespread during and after the 1970s as the Senate changed from the “communitarian” institution of the 1950s and 1960s—in which Senators were expected to serve an apprenticeship, defer to an “inner club” of seniority leaders, and exercise restraint in using rules to gain procedural advantage—to today’s individualistic and more partisan Senate where independent-minded Members are not reluctant to exploit rules, precedents, and customs for their

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

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

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

parliamentary benefit.⁴ As a congressional scholar noted, "By the late 1970s, holds became a serious impediment to moving measures to the floor."⁵

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

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

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

⁴ Two studies that highlight different Senate eras are Donald Matthews, *U.S. Senators And Their World* (Chapel Hill, NC: University of North Carolina Press, 1960) and Barbara Sinclair, *The Transformation of the U.S. Senate* (Baltimore, MD: The Johns Hopkins University Press, 1989). For a review of the Senate in the 2000s, see Steven S. Smith, *The Senate Syndrome*, Issues in Governance Studies, Number 35, The Brookings Institution, June 2010 (online version).

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

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

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

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

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

Reform Proposals

Since the 1970s, Democratic and Republican leaders, as well as individual Members, have proposed various reforms of the hold system. Scholars and think tanks, too, have joined in encouraging some alteration of holds. They argue, for example, that holds unduly delay the confirmation of executive and judicial branch nominations.¹⁰

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

I. Impose Time Limits on Holds

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

1. A Three-Day Limit

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

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

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

2. A Two- or Three-Week Limit

Former Senator Howard Metzenbaum often served informally as a legislative guardian on the floor. He would place holds on scores of bills so he could learn what was in them. Senator Carl Levin noted that his office had forms to keep track of bills that were stalled: “a box for Republican holds, one for Democrats, and one for Senator Metzenbaum.”¹² Nonetheless, Senator

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

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

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

Metzenbaum believed that the tradition of holds required modification. He said: "I believe a 'hold' should automatically expire in perhaps two or three weeks unless special circumstances exist."¹³ Senator Metzenbaum did not elaborate on what he meant by "special circumstances."

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

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

4. 24-Hour Holds

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

5. 14 Days Total on Executive Nominations

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

6. No More Than 30 Days on Executive Nominations

Senator Michael Bennet introduced a resolution (S.Res. 440) to add a new Rule XLV ("Process for Holds") to the Senate's rulebook.¹⁸ A key feature of the proposed rule is that holds on executive nominations will not be recognized for more than 30 days, with this exception. A second objection (a hold) to floor consideration of the nominee could trigger an additional 30-day extension but only if the new objection was supported by (1) at least two Senators, each a member of either the Democratic or Republican Conference and (2) neither had placed the previous hold. Senator Bennet's resolution also outlined a procedure to end secret holds (see "VI. End Secret Holds," below).

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

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

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

¹⁶ *Ibid.*, p. 5.

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

¹⁸ *Congressional Record*, daily edition, vol. 156 (March 3, 2010), pp. S979-S980, and (March 4, 2010), pp. S1184-S1185.

II. Abolish Holds

On May 11, 1982, the Senate adopted a resolution (S.Res. 392) establishing a Study Group on Senate Practices and Procedures. The study group's mission was to review the practices and procedures of the Senate and to make recommendations for improvements to the Committee on Rules and Administration no later than June 1, 1983. Upon recommendation of the majority and minority leaders, the president of the Senate named former Senators James Pearson and Abraham Ribicoff as members of the study group. They were assisted in their work by the parliamentarian emeritus, Dr. Floyd M. Riddick, and staff of the Committee on Rules and Administration. Among the study group's many recommendations was the following: "Abolish the practice of individual holds on the consideration of matters before the Senate."¹⁹

III. Uniform Procedure for Holds

In 1989, Majority Leader George Mitchell and Minority Leader Robert Dole discussed the need for a uniform policy regarding how Senators notify the leaders of potential problems with bills or nominations. The policy was presented to both party conferences in June 1989. Four years later, because of "some confusion over the definition and use of holds in the Senate," Majority Leader Mitchell restated the 1989 policy and read into the *Congressional Record* a document entitled "Leadership Policy on Schedule Notifications." The leadership policy stated:

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

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

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

1. It is the responsibility of every Senator to notify his or her respective leader, in writing, about any need to consult with that Senator on a bill or nomination. This notification should be made in a timely fashion. Each leader will develop his own notification system.
2. The leaders will respect the [confidentiality] of communications from Senators. However, in order to facilitate the scheduling of legislation, Senators, who ask to be consulted prior to the scheduling of a bill or nomination should be prepared to discuss the issue with the relevant committee chairman and/or ranking Member or sponsor of the measure. The leaders will encourage this type of consultation between Senators prior to floor consideration.
3. The leaders will give as much advance notification as possible to any Senator who has asked to be consulted prior to the scheduling of legislation and nominations. Whenever possible, the leaders will announce a specific time for a unanimous consent request to go to a

¹⁹ *Report of the Study Group on Senate Practices and Procedures to the Committee on Rules and Administration*, S. Prt. 98-242, 98th Cong., 2nd sess. (Washington: GPO, 1984), p. 2.

matter. Any Senator wishing to object to a unanimous consent request to go to legislation or to be involved in the arrangements under which a measure will be considered should be on the floor at the announced time.²⁰

Senator Mitchell emphasized that every Senator is entitled to a reasonable time to prepare for legislation or to consult with a nominee, but "a Senator cannot reasonably expect that a hold can be used as a way of indefinitely postponing or killing outright a bill or a nomination, simply because the Administration does not agree with the Senator's position on a particular policy or a project."²¹

IV. No Indefinite, or Permanent, Holds

Various Senate leaders, such as Senator Mitchell, have stated they will not honor indefinite holds. Senator Byrd said that he would recognize a hold only for a reasonable time period. "But as to holds, I do not recognize those as being legitimate reasons to delay indefinitely, ad infinitum, the action on a bill."²² As majority leader, Senator Lott explained that he would not honor holds indefinitely. "At some point," he said, "we will move [the matter] to the floor and [the opponents] will have to come forward, say what they're going to say, and filibuster if they're going to filibuster."²³ Senate Democratic Leader Daschle concurred with Lott's position. "I don't support permanent holds," he said. "I would suggest that at some point we take it to the floor and that person filibuster if that's his or her choice."²⁴

V. Prohibit Blanket Holds

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

²⁰ *Congressional Record*, daily edition, vol. 139 (May 18, 1993), p. S5983.

²¹ *Ibid.*

²² *Congressional Record*, daily edition, vol. 133 (September 10, 1987), p. S11953.

²³ Matthew Tully, "Lott Won't Allow 'Holds' To Block Action Indefinitely," *CQ Daily Monitor*, February 27, 2001, p. 5.

²⁴ *Ibid.*

been honored.”²⁵ Part of the apparent reason for these changes was Senator Lott’s desire to infuse greater certainty and predictability into the daily Senate schedule.

VI. End Secret Holds

For more than at least a quarter century, various Senators have urged an end to secret holds. In 1984, for example, Senator James Exon lamented that “this Senator cannot even find out which Senator or the staff of which Senator has placed a hold on that bill (S. 1407).”²⁶ Several initiatives to revise, or end, the practice of secret holds have been taken since Senator Exon’s statement.

1. The 1985 Initiative

On December 5, 1985, in a highly unusual session, all Senators were invited to attend a meeting in the Mansfield Room to discuss their frustrations with the “quality of life” in the Senate. Sixty Senators attended with no staff present in the room.²⁷ Senators accepted four changes that were to take effect immediately. One of the changes addressed anonymous holds.

The practice by which a Senator privately can place a “hold” on a bill to keep it from the floor will be changed so that other Senators can learn who is blocking the bill’s consideration. Currently, only party leaders are aware who places the hold. [Senator David] Pryor [D-Ark.] said this change would make it easier for a bill’s sponsor to negotiate with the measure’s opponents. Assistant Majority Leader Alan K. Simpson, R-Wyo., said the change would prevent a hold from being used, in effect, as a veto by one Senator.²⁸

2. The 1997 and 1999 Initiatives

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

It is a standing order of the Senate that a Senator who provides notice to leadership of his or her intention to object to proceeding to a motion or matter shall disclose the objection (hold) in the Congressional Record not later than 2 session days after the date of said notice.²⁹

²⁵ Information on this recommendation is derived from Senator Lott’s January 27, 1997, “Dear Colleague” letter and “Lott Sets New Limits On Use of ‘Holds’ to Delay Senate Action,” *CQ Daily Monitor*, February 3, 1997, p. 5.

²⁶ *Congressional Record*, daily edition, vol. 130 (October 5, 1984), p. S13779.

²⁷ See *Congressional Record*, daily edition, vol. 131 (December 5, 1985), pp. S16915-S16916.

²⁸ Diane Granat, “Senators Seeking to Improve ‘Quality of Life,’” *Congressional Quarterly Weekly Report*, December 7, 1985, p. 2569.

²⁹ *Congressional Record*, daily edition, vol. 143 (September 24, 1997), p. S9872. On June 25, 1998, the Senate adopted a substantially identical standing order to eliminate secret holds offered by Senators Grassley and Wyden. Their amendment was added to the Senate’s version of the National Defense Authorization Act (S. 2057). See *Congressional Record*, daily edition, vol. 144 (June 25, 1998), pp. S7142-S7144, S7150. The two Senators apparently opted to establish a standing order rather than amend Senate rules because Rule XXII requires a two-thirds vote of the Members present and voting to end a filibuster on a motion to amend Senate rules. To end extended debate on other measures or matters, Rule XXII specifies a three-fifths vote of the Senators duly chosen and sworn.

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

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

[A]t the beginning of the first session of the 106th Congress, all Members wishing to place a hold on any legislation or executive calendar business shall notify the sponsor of the legislation and the committee of jurisdiction of their concerns. Further, written notification should be provided to the respective leader stating their intentions regarding the bill or nomination. Holds placed on items by a Member of a personal or committee staff will not be honored unless accompanied by a written notification from the objecting Senator by the end of the following business day.

However, there was no enforcement mechanism associated with this policy and secret holds continued in the 106th Congress. "Unfortunately, an anonymous 'hold' ... prevented enactment [of the bill] before the Senate recessed in July [2000]," noted Senator Patrick Leahy.³⁰ On another occasion, Senator John McCain said: "I hope those Senators who have a hold on this bill will step forward and identify themselves."³¹ On occasion, Senators placed anonymous "rolling" or "revolving" holds on measures or matters. A Senator, for instance, imposes a hold for a day "while a like-minded colleague imposed a new hold for the next day. The hold would then be traded back and forth indefinitely."³²

3. A 2002 Recommendation

Secret holds continued in the 107th Congress. For instance, according to one account, "We know, for example, that John Negroponte, the Bush nominee for U.S. ambassador to the United Nations, is being blocked by a hold, as is the President's nominee for drug czar, John Walters—but we don't know who the perpetrators are."³³ Thus, Senators Grassley and Wyden introduced S.Res. 244 to eliminate secret holds. Their proposed amendment to Senate Rule VII, on which no action was taken, stated:

A Senator who provides notice to party leadership of his or her intention to object to proceeding to a motion or matter shall disclose the notice of objection (or hold) in the Congressional Record in a section reserved for such notices not later than 2 session days after the date of the notice.³⁴

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

³⁰ *Congressional Record*, daily edition, vol. 146 (October 5, 2000), p. S9879.

³¹ *Congressional Record*, daily edition, vol. 146 (October 6, 2000), p. S10040. Also see Helen Dewar, "Senate Has A 'Hold' on Holbrooke, Policy Fails to Curtail Secret Delay Tactic," *The Washington Post*, July 3, 1999, p. A5.

³² Matthew Tully, "Wyden Launches New Effort To Curb 'Holds' in Senate," *CQ Daily Monitor*, April 6, 2001, p. 5.

³³ Ornstein, "Senators Are Putting Chokehold on Bush Administration Picks," p. 7.

³⁴ *Congressional Record*, daily edition, vol. 148 (April 17, 2002), p. S2850.

4. 2003 Proposals

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

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

Almost six months later, on November 7, 2003, the majority and minority leaders sent a "Dear Colleague" letter to all Senators. They noted that the leadership letter of 1999 contained "no specific mechanisms" for enforcing the disclosure of holds. As a result, they outlined a procedure to ensure the limited disclosure of holds. The two party leaders stated that all Senators who place a hold on measures or nominations shall, within 72 hours of placing the hold, notify the bill's sponsor and notify the senior party member on the jurisdictional committee. "If this policy is not observed," they wrote, "then we will disclose the hold to the senior committee member of our respective party and to the legislation's sponsor, if a member of our respective party, upon inquiry from such individuals." The two party leaders added that the "purpose of these limited-disclosure notifications is to encourage communications that may resolve 'holds' and ease the Senate's way to addressing its business."

5. 2006 Initiative

In 2006, the two principal proponents of ending secret holds succeeded in winning adoption of an amendment to an ethics, lobbying, and rules reform package (S. 2349) that would end the practice by establishing a new standing order of the Senate. Their amendment required the majority and minority leaders to recognize a hold—called a "notice of intent to object to proceeding"—only if it was provided in writing by a Member of their caucus. Moreover, noted a former party leader, "for the hold to be honored, the Senator objecting would have to publish his objection in the *Congressional Record* 3 days after the notice is provided to a leader."³⁵ One of the principal authors of the amendment provided this explanation of their proposal:

Our proposed standing order would provide that a simple form be filled out, much like we do when we add co-sponsors to a bill. Senators would have a full 3 session days from placing the hold to submit the form [to their respective party leader]. The hold would then be

³⁵ *Congressional Record*, daily edition, vol. 152 (March 28, 2006), p. S2458.

published in the CONGRESSIONAL RECORD and the Senate Calendar. It is just as simple as that.³⁶

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

6. 2007: The Senate Adopts a New Holds Policy

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

Section 512 specifies the exact steps for making an anonymous hold public.³⁷ They are as follows:

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

³⁶ Ibid., March 8, 2006, p. S1874.

³⁷ For a more extensive discussion of the Senate's policy, see CRS Report RL34255, *Senate Policy on "Holds": Action in the 110th Congress*, by Walter J. Oleszek.

- To remove their hold from the appropriate Senate calendar, a Senator submits a notice for inclusion in the *Congressional Record* stating that he or she no longer objects to proceeding to a measure or matter.

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

7. 2010: Another Effort To End Secret Holds

Since enactment of the statutory policy in 2007 to end anonymous holds, many Senators recognize that the Section 512 procedure has not been effective in ending secret holds. Press reports indicate that numerous secret holds continue to be placed on nominations and measures, stalling their prospects for consideration by the full Senate.³⁸ Several explanations are commonly offered to explain why the statutory policy has not worked.

Recall that Section 512 allows Senators six session days before their holds must be made public. Various Senators state that lawmakers are “getting around the requirement by placing a secret hold on a nomination or a bill, then withdrawing it before the six days runs out. A colleague then puts a new hold in place, restarting the six-day clock and turning a hold into a series of [‘rotating’] secret delays.”³⁹ Senators, too, might choose not to observe the procedure, perhaps because Section 512 lacks an enforcement mechanism. Section 512 could be viewed as vague in terms of certain requirements. For example, when a lawmaker objects on behalf of a colleague, a hold letter is to be submitted to the appropriate party leader. Section 512, however, does not state precisely when that letter is to be sent: that day or several days, weeks, or months later. Members might also avoid triggering Section 512 because they prefer that the two Senate leaders agree to a process for considering nominations or measures. As a Senate party leader noted: “I am objecting [to these two nominees] to enable the two leaders to clear both of these nominees; that is, to make sure there is no objection on either side, so they can both go forward.”⁴⁰ Even so, given the persistence of secret holds, reform-minded Senators initiated a series of actions in 2010 to try and end anonymous holds once and for all. Three actions merit mention: Wyden-Grassley, junior Members, and hearings before the Senate Rules and Administration Committee.

³⁸ See, for example, Nancy Ognanovich, “Senate Committee Examines Options To Address Growing Use of Secret Holds,” *Daily Report for Executives*, June 24, 2010 (online edition); Alan K. Ota and Niels Lesniewski, “Any End to Secret Holds?” *CW Weekly*, May 17, 2010, p. 1180; and Alexander Bolton, “Democrats Launch Effort to Lift Secret Holds on 69 of Obama’s Stalled Nominees,” *The Hill*, May 7, 2010 (online edition). An outside group—Citizens for Responsibility and Ethics in Washington (CREW)—wrote a letter (December 2, 2009) to the Senate Ethics Committee suggesting that the panel “either enforce the current ban on secret holds or declare that the provision cannot be enforced and its approval was ‘nothing more than a publicity stunt’.” See Kenneth Doyle, “CREW Says Secret Senate ‘Holds’ Continue Despite HLOGA Provision,” *Daily Report for Executives*, December 4, 2009 (online edition). The Senate Ethics Committee replied to CREW’s letter by stating it lacked jurisdiction over that matter. The chief counsel of the Ethics panel stated that investigating a violation of the ban on secret holds would make the panel “a policing agency for alleged departures from Senate parliamentary procedure, a matter which is outside the limited jurisdiction of the Committee.” See Dan Friedman, “Senate Panel Says It Lacks Jurisdiction for Probe of Holds,” *CongressDailyAM*, April 14, 2010, p. 3.

³⁹ Alan K. Ota, “Duo May Revisit Lobby Overhaul to Address Secret Senate Holds,” *CQ Today*, April 20, 2010 (online news).

⁴⁰ *Congressional Record*, daily edition, vol. 156 (April 29, 2010), p. S2789.

Wyden-Grassley. With the support of the Senate majority leader, the bipartisan duo of Senators Wyden and Grassley—who for more than a decade have sought to end secret holds—introduced two proposals to strengthen the requirement that Members are obligated to make their holds public.⁴¹ One of their proposals (S.Res. 502, “Eliminating Secret Senate Holds”) would amend Senate Rule VII by inserting a new provision. The proposed addition to Rule VII contains these key components: (1) the majority and minority leaders will recognize a hold—an objection to proceeding to a measure or matter—from a party member only if they receive permission in writing to object in the Senator’s name; (2) two session days later, the objector would submit for publication in the *Congressional Record* and relevant Senate calendar the following notice: “I, Senator ____, intend to object to proceeding to ____, dated ____;” and (3) a Senator can lift his or her hold by submitting a notice to that effect in the *Congressional Record*. Disclosure within two session days—rather than the six prescribed by Section 512—aims to reduce the likelihood of secret “revolving” holds. Unlike Section 512, which requires disclosure of holds only when they block floor consideration, S.Res. 502’s disclosure requirement applies whether or not measures or matters reach the floor.⁴²

The other Wyden-Grassley proposal was drafted as a new Senate standing order.⁴³ (Both Wyden-Grassley proposals have been offered to various measures in the 111th Congress, although they have not been subject to a vote thus far.) In general, the recommendation for a standing order tracks the procedures outlined in S.Res. 502—a written notice of a hold is submitted by a Member to their respective party leader; and there is the two session day requirement for public disclosure of the hold, along with a process for the removal of a secret hold—but with more detail and a significant difference. As for greater detail, the standing order explains that a notice of intent to object (the hold) applies to unanimous consent requests either to call up or pass measures or matters, including nominations. There is also more specificity involving the form of the hold notice to the appropriate party leader and the process for publicizing and removing a hold. The key difference: failure of a Member to submit his or her hold request to the appropriate party leader within two session days means that the Senator who objected on a lawmaker’s behalf would have his or her name listed as the holder in the pertinent Senate calendar.

Junior Members. A number of junior lawmakers, particularly Senator Claire McCaskill as well as Senators Sheldon Whitehouse, Mark Warner, and other Members, joined the Wyden-Grassley effort to end secret holds. The trio, for example, persuaded more than two-thirds of the Senate to sign a letter addressed to the majority leader and the minority leader pledging not to place secret holds on measures or matters. The April 22, 2010, letter stated:

⁴¹ In May 2010, Senator Wyden tried at least four times to seek a vote banning secret holds by adoption of a new Senate rule or a new Senate standing order. See *Congressional Record*, daily edition, vol. 156, May 13, 2010, pp. S3693-S3694, S3703; May 17, 2010, p. S3811; May 18, 2010, pp. S3895-S3896; and May 25, 2010, pp. S4172-S4176, S4435.

⁴² *Congressional Record*, daily edition, vol. 156 (April 27, 2010), p. S2711. According to press accounts, the two Senators proceeded to try and strengthen the anonymous hold provision in Section 512 of P.L. 110-81 (the Honest Leadership and Open Government Act) with the “quiet approval” of the majority leader. See Ota, “Duo May Revisit Lobby Overhaul to Address Secret Senate Holds,” April 20, 2010 (online news).

⁴³ A standing order—typically adopted by a resolution or amendment to a law—and a Senate rule are basically alike in a fundamental respect: both are enforceable by the presiding officer when a Member raises a point of order. On the other hand, if a filibuster is launched against a proposal to amend Senate rules, Rule XXII requires a two-thirds threshold (present and voting) to invoke cloture; the threshold to end debate on a standing order or statutory provision is 60 votes.

We the undersigned Senators hereby pledge that we will not place secret holds on legislation or nominations.

We further call upon you to bring an end to the practice of permitting secret 'holds' on legislation and nominations for those Senators who are unprepared to make the same pledge. While we deeply respect and appreciate the importance of tradition in this institution, we believe the practice of secret holds has no rightful place in the Senate or in an open and transparent democracy. When a member of the Senate wishes to hold legislation or a nomination, that Senator owes to this body and, more importantly, to the American public a full explanation. The Senate endorsed this principle in Section 512 of S. 1, passed by a vote of 96-2 on January 18, 2007.

As you know, S. 1 has failed in practice to end the use of secret holds. We, therefore, urge you to promptly consider further changes to Senate rules in order to bring a clear and definitive end to secret holds on legislation or a nomination. We stand ready to work with you on such a rule change, as long advocated by Senators Wyden and Grassley, the leaders of a decade-long effort to eliminate secret holds in the Senate. We applaud their work and believe it must now be pursued to its conclusion.⁴⁴

In addition, Senator McCaskill took the lead in trying to pressure lawmakers to come to the floor and publicly acknowledge that they had secret holds on various nominations.⁴⁵ On April 20, 2010, Senator McCaskill attempted "to begin the running of the [six session day] clock" by asking unanimous consent 74 times to call up nominations from the Senate Executive Calendar.⁴⁶ An objection was heard to each request, made on behalf of a colleague who was not in attendance. Senator McCaskill's expectation was that by triggering Section 512 the real holder then would come forward to provide a written notice to his or her respective party leader, after which their "hold" letter would be printed in the *Congressional Record* and in the appropriate Senate calendar within six session days.

Nine days later Senator McCaskill inserted in the *Congressional Record* a copy of the letter she sent to each party leader noting that April 29 "marks the sixth session day" and asking "if you have been notified by a member that he/she has objections to any of the confirmation requests I made last week." If not, Senator McCaskill requested that these nominees be "immediately

⁴⁴ The letter to Leaders Reid and McConnell is available on Senator Claire McCaskill's office website.

⁴⁵ The Obama Administration was frustrated that many of their pending nominations had not received an up-or-down vote by the Senate in months. President Obama indirectly addressed the issue of secret holds on executive nominations during his January 27, 2010, State of the Union address. As he said: "The confirmation of well-qualified public servants shouldn't be held hostage to the pet projects or grudges of a few individual senators." Also see, for example, Stephen Dinan and Kara Rowland, "Obama Finds Senate 'Holds' A Two-Edged Sword," *The Washington Times*, February 4, 2010; Ed O'Keefe, "Obama Criticizes Holds Placed On His Nominees," *The Washington Post*, February 4, 2010, p. A15; Naftali Bendavid, "Senate's Gridlock Fuels Frustration," *Wall Street Journal*, February 10, 2010, p. A4; and Rebecca Adams, "With Nominees Stalled, Agencies Wait for Change," *CQ Weekly*, February 22, 2010, pp. 428-429. Under the Constitution (Article II, section 2), Presidents can make recess appointments and thus bypass the Senate's "advice and consent" role for positions subject to that requirement. Article II states that "[t]he President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session." During the July 4, 2010, recess of the Senate, President Obama announced that he would bypass the confirmation process and make a recess appointment of a Harvard pediatrician (Dr. Donald Berwick) to head the federal Centers for Medicare and Medicaid Services. See Noam N. Levey, "Obama Plans Recess Appointment of Medicare-Medicaid Chief," *Los Angeles Times*, July 7, 2010, (online edition). Senators often resent presidential use of this option. The majority leader, as a result, might schedule *pro forma* sessions as a way to block these appointments.

⁴⁶ *Congressional Record*, daily edition, vol. 156 (April 20, 2010), p. S2442.

confirmed by unanimous consent of the Senate.⁴⁷ Senator McCaskill then asked unanimous consent to confirm two nominees, but a Senator objected “on behalf of the Republican leadership in order to enable the two [party] leaders to clear both of these nominees.”⁴⁸ Several days later Senator McCaskill publicly praised a Senator who did comply with Section 512.⁴⁹ That Senator also stated: “I publish all of my holds.”⁵⁰

Important to mention is that Senator Michael Bennet’s reform resolution (S.Res. 440) proposing a new Senate rule on holds—mentioned earlier in Section I of this report—outlines a procedure for ending anonymous holds. Senator Bennet’s resolution tracks some ideas contained in the current Wyden-Grassley proposals. For example, it requires a lawmaker who intends to object to proceeding to a motion or matter—after so informing either party leader or publicly announcing that intention in the full Senate—to disclose his or her hold in the *Congressional Record* “not later than 2 session days after the date of such notice.” S.Res. 440 adds, however, that holds will only be recognized by the Senate if placed by at least “one Senator who caucuses with the party of the Majority Leader and by one Senator who caucuses with the party of the Minority Leader.”

There is little question that many Senators favor public holds and support the view that transparency in senatorial proceedings fosters public accountability. Conversely, there are other Senators who have a different perspective. “There are a lot of pressing issues we face as a country, but one of them is not secret holds,” said a Senator. Secret holds are not a problem, he said, adding that “I am not aware of one where we don’t know who is holding” the measure or matter. “The main problem is secret bills, not secret holds.”⁵¹

Another Senator noted that placing a public hold can trigger unwarranted criticism of a lawmaker from various quarters. “One of the dangers of coming forward,” he said, “is this: If I want to do further work or study or have a question, the assumption with a hold is that you don’t want [the nominees] to move, and that may not be the case at all. The reason for a hold oftentimes is I want to look at history, I want to look at background, and I want to take the time to meet the individual myself.” Moreover, public holds can open a Senator to ferocious attack by special interests, inhibiting his or her ability to work behind-the-scenes to resolve issues or concerns. “I am willing to take that heat,” remarked the Senator. But “I understand why other Senators will not stand up and say every time why they are holding a bill when we see that kind of attack coming at us.”⁵²

A third Senator added that lawmakers who place secret holds “deserve a medal. The crowd that runs the [legislative] machine, they don’t like holds because it stops the trains from running. But there’s good government on both sides of that issue.”⁵³ Confidential holds provide Senators with the influence and leverage to seek changes in legislative provisions they dislike and to block the confirmation of nominees whom they view as unqualified to serve in executive or judicial positions. In a statement submitted at the June 23, 2010, hearing (see below) before the Senate Committee on Rules and Administration, Senator Robert C. Byrd stated:

⁴⁷ Ibid., April 29, 2010, pp. S2787-S2788.

⁴⁸ Ibid., p. S2789.

⁴⁹ *Congressional Record*, daily edition, vol. 156 (May 7, 2010), p. S3387.

⁵⁰ Ibid., p. S3398.

⁵¹ *Congressional Record*, daily edition, vol. 156 (May 25, 2010), pp. S4174-S4175.

⁵² *Congressional Record*, daily edition, vol. 156 (May 7, 2010), pp. S3388, S3398.

⁵³ Quoted in Alan K. Ota, “Troops Rallied, McCaskill Ready to Move Against Senate’s Secret Hold Rule,” *CQ Today*, June 21, 2010, p. 9.

I declined to sign the pledge that has been circulated by Senator McCaskill, because it does not distinguish between temporary and permanent holds. There are times when Senators put holds on nominations or bills, not to delay action, but to be notified before a matter is coming to the floor so that they can prepare amendments or more easily plan schedules. Certainly, Senators should not have to forswear requesting private consultation and advanced notification on a matter coming to the floor.

Hearings before the Committee on Rules and Administration. On June 23, 2010, the Committee on Rules and Administration held a third in a series of hearings examining the filibuster and its effect on the Senate. This specific hearing was titled: "Examining the Filibuster: Silent Filibusters, Holds and the Senate Confirmation Process." With a backdrop of heightened concern about secret holds, Senators Wyden, Grassley, and McCaskill composed the lead-off panel of witnesses. All three testified that the 2007 law banning secret holds was simply not working; they underscored the Senate's need to consider other options for strengthening the process for banning secret holds. A second panel, composed of two prominent scholars and a former top Senate staff director, underscored how secret holds stall the confirmation process, leaving executive and judicial posts vacant for months and negatively affecting the lives of the nominees. Senator Charles Schumer, the chair of the Rules and Administration Committee, indicated to his three Senate colleagues that he would work with them on a plan to end secret holds. He also said that "the Senate might take other steps to address the backlog of nominees," such as reducing the number of mid-level presidential appointments subject to the Senate's "advice and consent" process.⁵⁴

8. 2011: The 112th Senate's Initiative to End Secret Holds

When the 112th Congress began on January 5, 2011, there was a coordinated effort among reform-minded Senators to improve the operations of the Senate. Many lawmakers suggested that the procedural prerogatives accorded every Senator, such as the ability of even one lawmaker to block or delay chamber action on measures or matters, were being abused and impeded the Senate's ability to function effectively on behalf of the general public. Although the reformers did not win approval of major institutional changes, such as filibuster reform (see S.Res. 8), the Senate did approve a number of procedural changes. One of them, S.Res. 28, adopted by a vote of 92 to 4 on January 27, 2011, established a new Standing Order of the Senate to end the use of secret holds to frustrate action on measures or matters. S.Res. 28 aimed to address weaknesses in the 2007 change—highlighted above in the 2010 discussion—that permitted anonymous holds to continue. Senators Wyden and Grassley, joined by Senator McCaskill, were the principal authors of the 2011 revision. Three provisions of S.Res. 28 are important to note.

First, a key feature of the public hold procedure was underscored by Senator Grassley. It reduced from the previous six to two session days by which Members are to disclose publicly their holds. As Senator Grassley explained:

Our resolution states that the [majority and minority] leaders shall recognize holds placed with them only if two conditions are met: if the Senator first submits a notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name and, secondly, not later than 2 sessions days after submitting the notice of intent to object to the appropriate leader,

⁵⁴ Nancy Ognanovich, "Senate Committee Examines Options To Address Growing Use of Secret Holds," *Daily Report for Executives*, June 24, 2010, (online version).

submits a copy of the notice of intent to object to the *Congressional Record* and to the legislative clerk for inclusion in the applicable calendar section.⁵⁵

Second, S.Res. 28 stipulates that the new standing order applies to unanimous consent requests to proceed to, and to pass or adopt, a bill, joint resolution, concurrent resolution, simple resolution, conference report, or an amendment between the Houses. The standing order also applies to a “unanimous consent request for disposition of a nomination.”

Third, if an objection is made on the floor on behalf of an unnamed Senator, and that Senator does not make his or her objection public within two session days, “the Legislative Clerk shall list the Senator who made the objection” in the appropriate section of the legislative calendar. “Someone will be required to own up to that hold,” said Senator Grassley, either the party leader or another Senator who objected on behalf of a colleague.⁵⁶ The thinking behind this enforcement mechanism, wrote an experienced journalist, “is that senators may be unwilling to accept responsibility for an objection lodged by a colleague, putting pressure on that senator to step forward.”⁵⁷

Shortly after the Senate adopted S.Res. 28, the two long-time advocates of ending secret holds, Senators Grassley and Wyden, sent an undated “Dear Colleague” letter to the chamber’s membership.⁵⁸ Their objective was “to make clear how and when holds should be made public.” As the authors of S.Res. 28, the “Dear Colleague” letter summarized their view of the procedure for ending anonymous holds:

How is a Hold Placed? The resolution states that the leaders shall only recognize holds that meet the following two conditions:

1. The Senator submits the notice of intent to object in writing to the appropriate leader. This notice will grant either the leader or a designee permission to object in the Senator’s name.
2. No later than two session days after submitting the notice of intent to object, a copy of the notice will be submitted to the *Congressional Record* and to the legislative clerk for inclusion in the applicable calendar section.

Senators can no longer place holds by simply calling the cloakroom or by having an informal conversation with the Senator’s leader. For a hold to be honored, a senator must submit a notice of intent to object in writing and publicly disclose the hold in the form specified in the resolution. And, under the resolution, the leader would not be able to object on the floor on behalf of another senator unless the required notice of intent had previously been filed with that leader.

When is a Hold Placed? A hold is placed when a senator submits to the senator’s leader a notice of intent to object to proceeding to any legislation or nomination.

When does a Hold have to be made Public? Under Section 1(a)(2) of Senate Resolution 28, a notice of intent to object will only be honored by a senator’s leader if the senator “not

⁵⁵ *Congressional Record*, vol. 157 (January 27, 2011), p. S309.

⁵⁶ Quoted in Nancy Ognanovich, “Senate Decides to End ‘Secret Holds,’ Reduce White House Nomination Backlog,” *Daily Report for Executives*, January 28, 2011, p. N-1.

⁵⁷ Carl Hulse, “Senate Approves Changes Intended to Ease Gridlock,” *New York Times*, January 28, 2011, p. A16.

⁵⁸ The “Dear Colleague” letter is available from the author of this report.

later than two session days after submitting the notice of intent to object to the appropriate leader submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section.” It is clear from the text of the resolution that the requirement to make a hold public is triggered when a senator submits the notice of intent to the senator’s leader, even if there has not yet been an objection on the Senate floor.

What happens if a Senator does not comply with the disclosure requirements and the leader honors the hold anyway? Once an objection has been made, making it apparent that a hold has existed, the expectation is that the leader (or the leader’s designee) will object in the senator’s name. However, if that doesn’t happen and no senator comes forward within 2 sessions days of the objection, the leader (or designee) who made the objection will be recorded as having the hold.

The effectiveness of the new standing order is unclear. Five months after S.Res. 28’s adoption, Senator Wyden stated he was “encouraged thus far” by the procedure’s effectiveness.⁵⁹ It is not clear if the new rule covers objections to “hotline” requests: telephone and e-mail messages sent by the offices of the Democratic and Republican leaders to their party colleagues requesting unanimous consent to call up (and sometimes pass) measures or matters for floor consideration. For example, it was reported that party officials asked, but did not require, Democratic Senators to publicly disclose their objections to hotline requests. GOP officials indicated that Republican Senators “were not pushed to disclose objections to bills before they reach the floor.”⁶⁰ In the judgment of a congressional journalist, the “secret hold ban has had limited effect. That’s because the practice is informal and hard to regulate, and because enforcing the ban is up to the party leaders, who are not particularly supportive.” He added that, in practice, “the rule has not stopped senators from privately informing their leaders of plans to object to a measure, a more frequent practice. That means senators retain largely the same power to anonymously stall action.”⁶¹

VII. Require More than One Senator to Place a Hold

During his May 25, 1993, testimony before the Joint Committee on the Organization of Congress, Senator Exon declaimed, “I think that we have seen a proliferation of holds, counter-holds, retaliatory holds and so-called rolling holds. I say enough is enough. If the leadership is willing to move ahead with legislation, then one single Senator should not be able to stand in the way indefinitely.”⁶² Accordingly, Senator Exon suggested that the Senate may need a new rule on holds that tracks the Rule XXII requirement that 16 Senators must sign a cloture petition. “I believe that it should also take the same number of Senators to place a hold on a bill,” said Senator Exon.⁶³

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

⁵⁹ Quoted in Dan Friedman, “Looking In, Hold on There,” *National Journal Daily*, April 1, 2011, online edition.

⁶⁰ Ibid.

⁶¹ Quoted in Dan Friedman, “Fixing the Filibuster,” *National Journal Daily*, June 24, 2011, p. 6.

⁶² U.S. Congress, Joint Committee on the Organization of Congress, *Floor Deliberations and Scheduling*, hearings, 103rd Cong., 1st sess., May 18, 20, and 25, 1993 (Washington: GPO, 1993), p. 122.

⁶³ Ibid., p. 121.

The Senate should reduce the bite of holds by making it more difficult for a single Senator to object to a floor leader's request to call up a measure, limit debate, or limit amendments. The objections of at least five Senators should be required in order to block such a request. If this were done, along with curbs on obstructionist quorum calls, the disruption caused by petty, personalistic use of holds would be reduced.⁶⁴

A 1996 Twentieth Century Fund task force, which included as members former Senators John Culver and Charles Mathias proposed that 10% of the Senate would need "to request a hold before one takes effect."⁶⁵

VIII. Permit a Privileged Resolution to Terminate Holds

A 1996 report of the Twentieth Century Fund, which dealt with delays in the nominations process, recommended that any Senator be allowed "to offer a privileged resolution on the Senate floor that could end another Senator's hold by a simple majority of those present and voting."⁶⁶

IX. Restrict Filibuster Opportunities

Senator Pete Domenici who served as co-vice chairman of the 1993 Joint Committee on the Organization the Congress, suggested an indirect way to address holds during Senator Exon's testimony before the panel. He proposed elimination of debate on the motion to call up legislation. "If we abolish that, we have gone a long way to diffusing the validity of holds, because a hold is predicated on the fact that you can't get [a bill] up without a filibuster, and if you take that away from the inception and then establish some kind of guidelines [for holds], I think that we will be moving in the right direction."⁶⁷ The Senate members of the Joint Committee did recommend that debate "on the motion to proceed should be limited to 2 hours when made by the Majority Leader or his designee."⁶⁸ More recently, Senator Bennet's reform resolution (S.Res. 440) would amend paragraph 2 of Senate Rule VII to read as follows: "All motions to proceed to the consideration of any matter shall be determined without debate, except motions to proceed to a proposal to change the Standing Rules which shall be debatable."⁶⁹ Over the years various recommendations have been offered to limit or end debate on the motion to call up measures or matters.

Another indirect way to soften the delaying potential of holds was proposed in 1965 by Senator Joseph S. Clark. He recommended that the Senate adopt a three-hour rule: "Whenever a Senator has held the floor for more than three consecutive hours, an objection to his continued possession of the floor, if made by any Senator, would compel him to yield the floor."⁷⁰

⁶⁴ Ibid., May 20, 1993, pp. 234-235.

⁶⁵ See Ed Henry, "Wyden Holds Up 'Holds' as Prime Candidates for Senate Rules Reform," *Roll Call*, December 2, 1996, p. 16.

⁶⁶ Ibid.

⁶⁷ *Floor Deliberation and Scheduling*, Hearings Before the Joint Committee on the Organization of Congress, p. 124.

⁶⁸ *Organization of the Congress*, Final Report of the Senate Members of the Joint Committee on the Organization of Congress, S.Rept. 103-215, (Washington, DC: GPO, 1993), p. 18.

⁶⁹ *Congressional Record*, daily edition, vol. 156 (March 4, 2010), p. S1184.

⁷⁰ *Congressional Record*, April 29, 1965, p. 8663. At that time, two-thirds of the Senators present and voting were required to invoke cloture, instead of the present three-fifths of the full Senate.

X. Determination by Majority Leader to Proceed

Senators sometimes suggest that no formal change is required to deal with any abuses associated with holds. "[R]ather, what is necessary is the determination to proceed, and the majority leader should proceed with calling up items for consideration."⁷¹ There are, of course, parliamentary risks associated with this course of action. For example, when Robert Dole became the new majority leader in 1985, he wanted to rein in the use of holds at the outset of his tenure. His plan was to "roll" Senators who had holds and call up those measures or matters for floor action. "[He] soon found it easier said than done."

The risk of telling Senators with "holds" that the leader was going forward with the bill in question was to invite a double-barreled filibuster—on the "motion to proceed" and the "bill" itself. Once a session gets beyond the summer recess, the remaining time is extremely valuable, and is more likely to be the target of filibusterers. With the diminishing time for the majority leader to meet his agenda and establish his party's record, he must think twice about trying to "roll" anybody....⁷²

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

Summary Observations

Many observations can be made about holds, but six may be especially pertinent. First, holds are an increasingly important feature of the contemporary Senate. Although little known outside the Senate, they have attracted wider attention from scholars, journalists, and pundits. Second, repeated efforts to reform the system of holds demonstrate that such initiatives are neither easy to accomplish nor easy to enforce. Third, Senators recognize that holds provide them with leverage to influence the Senate's agenda. They may be reluctant to change many practices associated with holds because unexpected consequences might reduce their overall personal influence in the Senate.

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

⁷¹ U.S. Congress, Joint Committee on the Organization of Congress, *Organization of the Congress*, final report, 103rd Cong., 1st sess., S.Rept. 103-215, Vol. II (Washington: GPO, 1993) p. 52.

⁷² Lawrence DeNardis, "The New Senate Filibuster: An Analysis of Filibustering and Gridlock in the U.S. Senate, 1977-1986" (Ph.D. diss., New York University, 1989), p. 247.

Author Contact Information

Walter J. Oleszek
Senior Specialist in American National Government
woleszek@crs.loc.gov, 7-7854