

Exercising Rights To Delay Senate Action Generally

Speaking at Length — In the absence of a unanimous consent agreement governing time to debate or cloture, a Senator who gets recognized to speak can speak at length.

Objecting to Routine Consent Agreements — Any Senator may object to routine unanimous consent agreements, such as those to adjourn, to recess, to approve the Journal, or to dispense with the Morning Hour. Forcing roll-call votes on routine motions to adjourn or recess would require Senators to come to the Capitol and also prevent the Senate from taking other action during the time that it would take for Senators to come to vote.

New Legislative Day — If the Senate adjourns without a unanimous consent agreement providing for the handling of routine business at the beginning of a new legislative day, a new legislative day starts with the morning hour, a 2-hour period with a number of required procedures. As part of the morning hour, any Senator could make a non-debatable motion to proceed to an item on the Senate calendar.

Objecting to Lifting Quorum Calls — Any Senator can object to unanimous consent to lifting a quorum call, forcing a recorded vote that would require Senators to come to the Capitol and also prevent the Senate from taking other action during the time it takes for Senators to come to vote.

Motions to Adjourn and Recess — Any Senator can move to adjourn, to adjourn to a day certain, or to take a recess. All of these motions take precedence over a motion to proceed to the consideration of a nomination. Senators could make a series of motions of this sort to force roll-call votes.

Layover Requirements — Senators can raise points of order if measures have not lain over sufficiently under Rule XIV or XVII.

Raising Points of Order — Any Senator who gets recognized by the Presiding Officer can raise a point of order making a procedural objection. Once the Presiding Officer rules, a Senator can appeal the ruling of the Chair, and Senators can demand a roll-call vote. One could imagine an extremely large number of procedural questions on which to vote.

Filing Cloture — If the Senate is not governed by a unanimous consent agreement or post cloture, a Senator who got recognized could move to proceed to a measure or series of measures and file cloture on the motion(s) to proceed. Two days later, the Senate would be required to vote on the cloture motion(s). The number of these motions is limited only by the number of items on the calendar.

Fast-Track Vehicles — Several fast-track statutes, including the Congressional Budget Act, the Congressional Review Act, the War Powers Act, and the Arms Export Control Act, give any Senator the right to move to proceed to a vehicle and force a roll-call vote and sometimes a period of debate. For example, any Senator could submit a concurrent resolution on the budget, and by precedent, if action has not yet been taken on a budget resolution for the coming fiscal year, then the resolution would be immediately placed on the calendar. Once on the calendar, any Senator could move to proceed to the resolution, forcing a roll-call vote on the motion to proceed. Meanwhile, resolutions of disapproval under the CRA can be petitioned out of committee with 30 signatures after 20 calendar days. Such measures could be filed en masse now.

Utilizing Rule XIV — Any Senator can have any legislative measure placed on the calendar in two legislative days under Rule XIV. Leader Schumer could ask every Democratic Senator to introduce bills on their favorite subjects en masse and seek to put them on the calendar via rule XIV. Once they were on the calendar two legislative days later, if Schumer could get the floor, he could move to proceed to each in turn, file cloture, withdraw his motion to proceed, move to another, file cloture, withdraw his motion to proceed, and continue to repeat, stacking up an almost endless series of votes on motions to invoke cloture on motions to proceed to Democratic priorities, until the Majority Leader shut the Senate down.

To prevent this strategy, the Majority Leader would have to keep the Senate locked down post cloture at all times and prevent the Democratic Leader from getting recognition, or continue to recess the Senate to prevent there ever being another legislative day. If the Majority Leader did the latter, the Democratic leader could still file serial motions to proceed to bills already on the calendar, so long as he could gain recognition to make the motions. This strategy requires there being an opportunity for motions to be made.

Exercising Rights in the Judiciary Committee

Time for Review and Hearing — The Judiciary Committee customarily takes time to review the record of Supreme Court nominees. Democrats should demand that the Committee take this time before a hearing commences.

Objecting to Committees Meeting — Any Senator can object to unanimous consent for committees to meet more than two hours after the Senate convenes on a day in which the Senate is in session.

Full Hearings — Democratic Members of the Judiciary Committee could try to continue the proceedings of any hearing that the Chairman calls.

Hold Over Committee Action — Under Judiciary Committee rule I, paragraph 3, "At the request of any member . . . a . . . nomination on the agenda of the Committee may be held over until the next

meeting of the Committee or for one week, whichever occurs later.” A Democratic Senator on the Judiciary Committee should demand that the nomination be held over for the week.

Denying a Quorum — Republicans need to produce the presence of a quorum of Judiciary Committee Senators to report out the nomination. Democrats might choose not to help produce the necessary Senators.