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"Holds" in the Senate

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Summary

The Senate "hold" is an informal practice whereby Senators communicate to Senate leaders, often in the form of a letter, their policy views and scheduling preferences regarding measures and matters available for floor consideration. Unique to the upper chamber, holds can be understood as information-sharing devices predicated on the unanimous consent nature of Senate decision-making. Senators place holds to accomplish a variety of purposes—to receive notification of upcoming legislative proceedings, for instance, or to express objections to a particular proposal or executive nomination—but ultimately the decision to honor a hold request, and for how long, rests with the majority leader. Scheduling Senate business is the fundamental prerogative of the majority leader, and this responsibility is typically carried out in consultation with the minority leader.

The influence that holds exert in chamber deliberations is based primarily upon the significant parliamentary prerogatives individual Senators are afforded in the rules, procedures, and precedents of the chamber. More often than not, Senate leaders honor a hold request because not doing so could trigger a range of parliamentary responses from the holding Senator(s), such as a filibuster, that could expend significant amounts of scarce floor time. As such, efforts to regulate holds are inextricably linked with the chamber's use of unanimous consent agreements to structure the process of calling up measures and matters for floor debate and amendment.

In recent years the Senate has considered a variety of proposals that address the Senate hold, two of which the chamber adopted. Both sought to eliminate the secrecy of holds. Prior to these rules changes, hold letters were written with the expectation that their source and contents would remain private, even to other Senators.

In 2007, the Senate adopted new procedures to make hold requests public in certain circumstances. Under Section 512 of the Honest Leadership and Open Government Act (P.L. 110-81), if objection was raised to a unanimous consent request to proceed to or pass a measure or matter on behalf of another Senator, then the Senator who originated the hold was expected to deliver for publication in the *Congressional Record*, within six session days of the objection, a "notice of intent to object" identifying the Senator as the source of the hold and the measure or matter to which it pertained. A process for removing a hold was also created, and a new "Notice of Intent to Object" section was added to both Senate calendars to take account of objection notices that remained outstanding.

An examination of objection notices published since 2007 suggests that many hold requests are likely to have fallen outside the scope of Section 512 regulation. In an effort to make public a greater share of hold requests, the Senate adjusted its notification requirements by way of a standing order (S.Res. 28) adopted at the outset of the 112th Congress (2011-2012). Instead of the six session day reporting window specified in Section 512, S.Res. 28 provides two days of session during which Senators are expected to deliver their objection notices for publication. The action that triggers the reporting requirement also shifted: from an objection on the basis of a colleague's hold request (under Section 512) to the initial transmission of a written objection notice to the party leader (under S.Res. 28). In the event that a Senator neglects to deliver an objection notice for publication and a party leader nevertheless raises objection on the basis of that hold, S.Res. 28 requires that the name of the objecting party leader be identified as the source of the hold in the "Notice of Intent to Object" section of the appropriate Senate calendar.

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Background

Senate rules, procedures, and precedents give significant parliamentary power to individual Senators during the course of chamber deliberations. Many decisions the Senate makes—from routine requests for additional debate time, to determinations of how legislation will be considered on the floor—are arrived at by unanimous consent. When a unanimous consent request is proposed on the floor, any Senator may object to it. If objection is heard, the consent request does not take effect. Efforts to modify the original request may be undertaken—a process that can require extensive negotiations between and among Senate leaders and their colleagues—but there is no guarantee that a particular objection can be addressed to the satisfaction of all Senators.[1]

The Senate hold emerges from within this context of unanimous-consent decision-making as a method of transmitting policy or scheduling preferences to Senate leaders regarding matters available for floor consideration.[2] Many hold requests take the form of a letter addressed to the majority or minority leader (depending on the party affiliation of the Senator placing the hold) expressing reservations about the merits or timing of a particular policy proposal or nomination. An example of a hold letter is displayed in **Appendix A**.

More often than not, Senate leaders—as agents of their party responsible for defending the political, policy, and procedural interests of their colleagues—honor a hold request because not doing so could trigger a range of parliamentary responses from the holding Senator(s), such as a filibuster, that could expend significant amounts of scarce floor time.[3] Unless the target of a hold is of considerable importance to the majority leader and a supermajority of his colleagues—60 of whom might be required to invoke cloture on legislation under Senate Rule XXII—the most practical course of action is often to lay the matter aside and attempt to promote negotiations that could alleviate the concerns that gave rise to the hold.[4] With hold-inspired negotiations underway, the Senate can turn its attention to more broadly-supported matters.[5]

Types of Holds

Holds can be used to accomplish a variety of purposes. Although the Senate itself makes no official distinctions among holds, scholars have classified holds based on the objective of the communication.[6] *Informational* holds, for instance, request that the Senator be notified or

[1] For information on unanimous consent agreements, see CRS Report RL33939, *The Rise of Senate Unanimous Consent Agreements*, by Walter J. Oleszek.

[2] Senate leaders play an organizational role in the chamber by representing the interests and views of party colleagues during negotiations with one another over scheduling legislation and nominations for floor consideration.

[3] The linkages that exist among holds, filibusters, and the cloture process are described in CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitshusen.

[4] Senate leaders can act as intermediaries between Senators who place holds and bill sponsors who want to move legislation forward. Leaders may also negotiate directly with holding Senators for potential future consideration.

[5] As the Senate's chief scheduler, if unanimous consent to proceed to or pass a measure or matter cannot be obtained, the majority leader maintains the right to offer a motion to proceed to consider. This alternative method of bringing measures and matters to the floor can require the use of cloture, especially on items subjected to a hold. For information on the motion to proceed, see CRS Report RS21255, *Motions to Proceed to Consider Measures in the Senate: Who Offers Them?*, by Richard S. Beth and Mark J. Oleszek.

[6] See C. Lawrence Evans and Daniel Lipinski, "Holds, Legislation, and the Senate Parties," (prepared for delivery at the Conference on Senate Parties, University of Oxford, April 1-3, 2005) for an analysis of holds placed during the tenure of Republican Leader Howard Baker. For an account of hold operations during the period when Robert Dole (continued...)

consulted in advance of any floor action to be taken on a particular measure or matter, perhaps to allow the Senator to plan for floor debate or the offering of amendments. *Choke* holds contain an explicit filibuster threat and are intended to kill or delay action on the target of the hold. *Blanket* holds are leveled against an entire category of business, such as all nominations to a particular agency or department. *Mae West* holds intend to foster negotiation and bargaining between proponents and opponents.[7] *Retaliatory* holds are placed as political payback against a colleague or administration, while *rolling* (or *rotating*) holds are defined by coordinated action involving two or more Senators who place holds on a measure or matter on an alternating basis. Until recently, many holds were considered *anonymous* (or *secret*) because the source and contents of the request were not made available to the public, or even to other Senators.

Recent Efforts to Regulate Holds

Written hold requests emerged as an informal practice in the late 1950s under the majority leadership of Lyndon B. Johnson as a way for Senators to make routine requests of their leaders regarding the Senate's schedule.[8] Early usage was largely consistent with prevailing expectations of Senate behavior at that time, such as reciprocity, deference, and accommodation of one's Senate colleagues.[9] Over time, holds have evolved to become a potent extra-parliamentary practice, sometimes likened to a "silent filibuster" in the press. "The hold started out as a courtesy for senators who wanted to participate in open debate," two Senators wrote in 1997. Since then, "it has become a shield for senators who wish to avoid it."[10] These and other Senators were concerned that keeping holds confidential tended to enable Senators who placed holds to block measures or nominations while leaving no avenue of recourse open to their supporters. Accordingly, rather than restricting the process itself, recent attempts to alter the operation of holds have focused on making the secrecy of holds less absolute.

The Senate has considered a variety of proposals targeting the Senate hold in recent years, two of which the chamber adopted. Both sought to eliminate the secrecy of holds by creating a process through which holds—formally referred to in the new rules as "notices of intent to object to proceeding"—would be made public within some period of time if certain criteria were met. Prior to these rules changes, hold letters were written with the expectation that they would be treated as private correspondences between a Senator and his or her party leader.

(...continued)

served as Republican Leader, see Nicholas Howard and Jason Roberts, "The Politics of Obstruction: Republican Holds in the U.S. Senate," *Legislative Studies Quarterly*, vol. 40, no. 2 (May 2015), pp. 273-294. Both studies draw upon archival research conducted by the authors using the personal papers of former Republican Leaders Howard Baker and Robert Dole (respectively) and are available online at: http://wmpeople.wm.edu/asset/index/clevan/oxford and http://onlinelibrary.wiley.com/doi/10.1111/lsq.12076/epdf.

[7] In the Hollywood production *She Done Him Wrong* (1933), actress Mae West asks of her co-star Cary Grant: "Why don't you come up sometime and see me?" A similar motivation—to have a bill sponsor visit the holding Senator's office to negotiate the removal of the hold—defines a *Mae West* hold.

[8] On the evolution of Senate hold practices, see Gregory Koger, *Filibustering* (University of Chicago Press, 2010).

[9] See Donald R. Matthews, *U.S. Senators and Their World* (University of North Carolina Press, 1960) for an account of chamber norms and expectations of behavior during the 1950s.

[10] Senators Charles Grassley and Ron Wyden, "Let's Shed Light on a Senate Secret," *Washington Post*, November 17, 1997, p. A23.

Notification Procedures Established by Section 512 of P.L. 110-81

The first proposal, enacted in 2007 as Section 512 of the Honest Leadership and Open Government Act (P.L. 110-81), established new reporting requirements that were designed to take effect if either the majority or minority leader or their designees, acting on behalf of a party colleague on the basis of a hold letter previously received, objected to a unanimous consent request to advance a measure or matter to the Senate floor for consideration or passage. If objection was raised on the basis of a hold letter, then the Senator who originated the hold was expected to submit a "notice of intent to object" to his or her party leader and, within six days of session thereafter, deliver the objection notice to the Legislative Clerk for publication in both the *Congressional Record* and the Senate's *Calendar of Business* (or, if the hold pertained to a nomination, the *Executive Calendar*).

Under Section 512, objection notices were to take the following form: "I, Senator ___, intend to object to proceeding to ___, dated ___ for the following reasons___." To accommodate the publication of these notices, a new "Notice of Intent to Object to Proceeding" section was added to both Senate calendars as shown in **Appendix B**. Each calendar entry contained four pieces of information: (1) the bill or nomination number to which the hold pertained; (2) the official title of the bill or nomination; (3) the date on which the hold was placed; and (4) the name of the Senator who placed the hold. Publication was not required if a Senator withdrew the hold within six session days of triggering the notification requirement.[11] Once published, an objection notice could be removed from future editions of a calendar by submitting for inclusion in the *Congressional Record* the following statement: "I, Senator ___, do not object to proceed to ___, dated ___."

On October 3, 2007, roughly two weeks after the new disclosure procedures were signed into law, the first notice of an intent to object was published in the *Congressional Record*.[12] A total of 5 such notices appeared during the 110th Congress (2007-2008), and 12 were published during the 111th Congress (2009-2010), but these numbers should not be interpreted to reflect the entirety of hold activity that occurred during those two Congresses.[13] Instead, they represent the subset of holds that activated the notification requirements established in Section 512 of P.L. 110-81. Recall that notification is required when three conditions are met: (1) the majority or minority leader (or their designee) asks unanimous consent to proceed to or pass a measure or matter; (2) objection is raised on the basis of a colleague's hold letter; and (3) six days of session have elapsed since the objection was made.

Many holds lodged during the 110th and 111th Congresses (2007-2010) are likely to have fallen outside the purview of Section 512 regulation. At least two reasons account for this. First, the new notification requirements would not apply to holds placed on measures or matters the Senate did not attempt to proceed to or pass (perhaps on account of an implicit filibuster threat contained in a hold letter). When scheduling business for floor consideration, the content and quantity of hold

[11] Some Senators announce their holds on the Senate floor at the time they are placed. If a hold is made public in this way, then the Senator is exempt from the formal procedures described in this report.

[12] The inaugural notice came in connection to S. 233, a bill that would have required Senate candidates to file election-related statements and reports in electronic form.

[13] This number is likely to understate the total number of holds placed during the 110th and 111th Congresses by at least one order of magnitude in comparison to historical rates of hold activity. For instance, between 1985 and 1996, Nicholas Howard and Jason Roberts identify 2655 unique hold requests made of Republican Leader Robert Dole, an average of about 220 per year. Evans and Lipinski find similar rates of hold activity during the tenure of Republican Leader Howard Baker.

letters received on a particular measure or matter are likely to factor into the negotiations and considerations Senate leaders make. Rather than take action that could have the effect of vitiating the confidentiality of a holding Senator, Senate leaders might simply decide to advance other matters to the floor instead (or at least try to).

A second reason the actual number of holds is likely to exceed the number published in the *Record* during these two Congresses has to do with the six session day window between an objection being raised and reporting requirements becoming mandatory. Designed to provide Senators with sufficient time to study an issue before deciding whether or not to maintain a hold beyond the six session day grace period, this provision may have encouraged the use of revolving (or rotating) holds. If one Senator removes his or her hold within six session days of activating the reporting requirement and another Senator puts a new hold in its place, the effect would be to reset the six session day clock each time a new hold was placed on a given measure or matter. In this way, two or more Senators could maintain the secrecy of their holds for an indefinite period without running afoul of the new disclosure procedures.

Notification Procedures Established by S.Res. 28 (2011)

In response to the limited applicability of Section 512, the Senate established—by a 92-4 vote on January 27, 2011—a standing order (S.Res. 28) that extends notification requirements to a larger share of hold activity. Instead of a six day reporting window, S.Res. 28 provides two days of session during which Senators are expected to deliver their objection notices for publication. The action that triggers the reporting requirement also changed: from an objection on the basis of a colleague's hold request (under Section 512) to the initial transmission of a written objection notice to the party leader (under S.Res. 28).

The proper language to communicate a hold remained largely the same as before, except that holding Senators must now include a statement that expressly authorizes their party leader to object to a unanimous consent request in their name.[14] In the event that a Senator neglects to deliver an objection notice for publication within two session days and a party leader nevertheless raises objection on the basis of that hold, S.Res. 28 requires that the name of the objecting party leader be identified as the source of the hold in the "Notice of Intent to Object" section of the appropriate Senate calendar.[15] The process of removing an objection notice from either calendar remains unchanged.

During the 112th Congress (2011-2012), a total of 24 objection notices were published in accordance with the provisions of S.Res. 28. Nine notices were printed during the 113th Congress (2013-2014), and 34 were published in the 114th Congress (2015-2016).[16] See **Appendix C** for an example of how these notices appear in the *Congressional Record*. As before, caution should be exercised when interpreting these numbers. What looks like a drop-off in the use of holds could instead reflect broader challenges inherent in efforts to regulate this kind of communication.

[14] S.Res. 28 specifies the following language hold letters should take: "I, Senator ___, intend to object to ___, dated ___. I will submit a copy of this notice to the Legislative Clerk and the *Congressional Record* within 2 session days and I give my permission to the objecting Senator to object in my name." Notice that the new form no longer requires a Senator to give reason for the hold.

[15] To date, no Senate leader has been identified as the source of a hold on the basis of this provision.

[16] Twenty-nine of the 34 objection notices issued during the 114th Congress (2015-2016) came from one Senator; 21 of the 29 concerned individual promotions within the Foreign Service. Appointments and promotions to the Foreign Service are typically submitted on lists and assigned a single presidential nomination (PN) number. The 21 promotions subjected to a written objection notice during the 114th Congress were presented to the Senate as a single list.

Challenges Inherent in Regulating Hold Activity

Senate holds are predicated on the unanimous consent nature of Senate decision-making. The influence they exert in chamber deliberations is based primarily upon the significant parliamentary prerogatives individual Senators are afforded in the rules, procedures, and precedents of the chamber. As such, efforts to regulate holds are inextricably linked with the chamber's use of unanimous consent agreements to structure the process of calling up measures and matters for floor debate and amendment. While not all holds are intended to prevent the consideration of a particular measure, some do take that form, and Senate leaders justifiably perceive those correspondences as implicit filibuster threats.

As agents of their party, Senate leaders value the information that holds provide regarding the policy and scheduling preferences of their colleagues. For this reason, rules changes that require enforcement on the part of Senate leaders—as both efforts discussed here do—tend to conflict with the managerial role played by contemporary Senate leaders and the expectation on the part of their colleagues that leaders will defend their interests in negotiations over the scheduling of measures and matters for floor consideration.[17]

A second challenge to hold regulation involves the nature of the transmission itself. Both recent proposals address a particular kind of communication: a letter written and delivered to a Senator's party leader that expresses some kind of reservation about the timing or merits of a particular proposal or nomination. Hold requests might be conveyed in less formal ways as well; in a telephone call to the leader's office, for instance, or in a verbal exchange that occurs on or off the Senate floor. An objection to a unanimous consent request transmitted through the "hotline" represents another common method of communicating preferences to Senate leaders.[18] Some Senate offices have circulated "Dear Colleague" letters specifying certain requirements legislation must adhere to in order to avoid a hold being placed. It remains unclear, however, whether or not these alternative forms of communication fall within the purview of recent hold reforms.

[17] See §512(a) of P.L. 110-81 and §1(a)(2) of S.Res. 28 (2011). Both sections include language specifying that Senate leaders only recognize hold requests that comport with the new disclosure requirements.

[18] The "hotline" is a special telephone and email system that connects Senate offices to the majority and minority cloakrooms. Senate leaders use the hotline to transmit notifications and unanimous consent requests regarding the Senate's legislative agenda and schedule.

Appendix A. A Hold Letter[19]

JOHN ASHCROFT
MISSOURI

United States Senate
WASHINGTON, DC 20510–2504

September 27,1995

The Honorable Bob Dole
Majority Leader
United States Senate
S-230 The Capitol
Washington, D.C. 20510

Dear Bob:

I will object to any time agreement or unanimous consent request with respect to consideration of H.R. 2127, Calendar Order Number 189, an act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

Many thanks and kindest personal regards.

Sincerely,

John Ashcroft

[19] This hold letter is drawn from archival research conducted by scholars Nicholas Howard and Jason Roberts. Additional examples of hold letters can be found in their conference paper entitled "Holding Up the Senate: Bob Dole and the Politics of Holds in the U.S. Senate," *op. cit.*

Appendix B. The "Notice of Intent to Object" section of the *Calendar of Business*[20]

NOTICE OF INTENT TO OBJECT

When a notice of intent to object is given to the appropriate leader, or their designee, and such notice is submitted for inclusion in the Congressional Record and the Senate Calendar of Business, or following the objection to a unanimous consent to proceeding to, and, or disposition of, a measure or matter on their behalf, it shall be placed in the section of the Calendar entitled "Notice of Intent to Object". (S. Res. 28, 112th Congress)

Number	Title	Date and Senator
H.R. 359	An act to reduce Federal spending and the deficit by terminating taxpayer financing of presidential election campaigns and party conventions.	Feb. 14, 2011.—Mr. Kyl.
H.R. 359	An act to reduce Federal spending and the deficit by terminating taxpayer financing of presidential election campaigns and party conventions.	Feb. 14, 2011.—Mr. DeMint.
H.R. 359	An act to reduce Federal spending and the deficit by terminating taxpayer financing of presidential election campaigns and party conventions.	Feb. 14, 2011.—Mr. Paul.
S. 520	A bill to repeal the Volumetric Ethanol Excise Tax Credit.	June 7, 2011.—Mr. Grassley.
S. 530	A bill to modify certain subsidies for ethanol production, and for other purposes.	June 7, 2011.—Mr. Grassley.
S. 871	A bill to repeal the Volumetric Ethanol Excise Tax Credit.	June 7, 2011.—Mr. Grassley.
S. 1057	A bill to repeal the Volumetric Ethanol Excise Tax Credit.	June 7, 2011.—Mr. Grassley.
S. 1145	A bill to amend title 18, United States Code, to clarify and expand Federal criminal jurisdiction over Federal contractors and employees outside the United States, and for other purposes.	June 28, 2011.—Mr. Grassley.
S. 618	A bill to promote the strengthening of the private sector in Egypt and Tunisia.	June 29, 2011.—Mr. Coburn.
S. 1385	A bill to terminate the $1 presidential coin program.	Oct. 17, 2011.—Mr. Grassley.
S. 1014	A bill to provide for additional Federal district judgeships.	Nov. 2, 2011.—Mr. Grassley.
S. 1793	A bill to amend title 28, United States Code, to clarify the statutory authority for the longstanding practice of the Department of Justice of providing investigatory assistance on request of State and local authorities with respect to certain serious violent crimes, and for other purposes.	Nov. 17, 2011.—Mr. Grassley.

[20] *Calendar of Business*, December 27, 2012, p. 82.

Appendix C. A Notice of Intent to Object[21]

isting cooperative procedures (including memoranda of understanding)—

NOTICE OF INTENT TO OBJECT TO PROCEEDING

I, Senator CHARLES E. GRASSLEY, intend to object to proceeding to S. 2415, a bill to implement integrity measures to strengthen the EB–5 Regional Center Program in order to promote and reform foreign capital investment and job creation in American communities; dated January 28, 2016.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that the Com-

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[21] *Congressional Record*, daily edition, vol. 162 (January 28, 2016), p. S398.