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THE WHITE HOUSE
WASHINGTON
January 10, 1975

Congressional

MEMORANDUM FOR THE PRESIDENT

THROUGH: MAX L. FRIEDERSDORF

FROM: WILLIAM T. KENDALL *WTK*

SUBJECT: The Rule XXII Resolution

SUMMARY: An attempt will be made at the opening of the 94th Congress to amend Rule XXII of the Standing Rules of the Senate. The Resolution will provide that three-fifths, rather than the current two-thirds, of those Senators present and voting may invoke cloture and limit debate on a pending matter.

First, this group may attempt to get the necessary two-thirds under old Rule XXII to stop a filibuster which will surely develop. Second, they will attempt to combine a favorable Vice Presidential ruling on the question with a Senate vote favoring that ruling in order to get a vote on the resolution.

The scenario will probably be as follows for the second option:

Senator Mondale will seek recognition following the opening formalities, having submitted written notice (under Rule XL) of his intention to amend a Senate rule. He will then seek to obtain assurances that transaction of business will not prejudice his right to consider a rules change; that by operating under the rules he is not acquiescing to those rules - particularly Rule XXII; and try to obtain assurances that Senate will adjourn, rather than recess, so that a legislative day will pass. (Rule XIV)

On the second legislative day, Senator Mondale will request the presiding officer to lay the resolution before the Senate during the morning hour and at the conclusion of morning hour, the resolution will be placed on the calendar. Mondale will then ask for its immediate consideration.

The opponents will have these options:

1. Move to table motion to proceed. Majority needed.
2. Seek to defeat motion to take up resolution. Again a majority.



3. Raise a point of order against motion to consider.
4. Filibuster the motion to consider and/or the resolution itself.

Senator Mondale can respond in two ways to option 4. He can attempt to invoke cloture under the old rules (XXII). OR, he can attempt to combine a favorable Vice Presidential ruling with a Senate vote supporting that ruling.

The Vice President can rule favorably or unfavorably.

If he rules favorably, Senate will proceed with cloture vote and when a majority (but less than two-thirds) votes to invoke cloture, the Vice President will rule debate ended. This ruling will be appealed by the opponents. Mondale will move to table the appeal. If the tabling is upheld, cloture is invoked and Mondale gets a vote on his original resolution (to change Rule XXII). If the Vice President rules unfavorably, the cloture vote proceeds. When a majority (but less than two-thirds) votes for cloture, Mondale will appeal the Vice President's contention that debate is not ended. The key here is that Mondale's appeal is subject to unlimited debate. Mondale needs a "friendly" tabling motion to end debate on the appeal and needs a favorable vote on this to end debate. The only hope for Mondale under this option is for the Vice President, on appeal, to put the question to the Senate without debate (as Humphrey did in 1969).

The Vice President may decide not to express an opinion (as in the case of Johnson in 1963, Humphrey in 1967 and Agnew in 1971). He may rule that it is a constitutional question to be ruled on by the Senate rather than by him and subject to appeal by the Senate. Mondale will hope that the Vice President will put the constitutional question to the Senate without debate - otherwise the question is subject to unlimited debate, and probable failure.

bcc: Vice President Rockefeller
Donald Rumsfeld
John O. Marsh, Jr.
Ronald H. Nessen
James Cannon



CLOTURE IS SOUGHT UNDER PRESENT RULE XXII REQUIRING TWO-THIRDS VOTE

IF TWO-THIRDS OBTAINED - VOTE THEN TAKEN ON RESOLUTION - SIMPLE MAJORITY

CLOTURE IS SOUGHT BUT WHILE A MAJORITY IS OBTAINED, TWO-THIRDS IS NOT GAINED. THE VICE PRESIDENT NOW HAS THREE OPTIONS...

THE V.P. RULES IN FAVOR OF PROPONENTS - DECLARES DEBATE ENDED

OPPONENTS APPEAL RULING

PROPONENTS MOVE TO TABLE APPEAL

IF TABLED - VOTE ON RESOLUTION IS TAKEN

2. THE VICE PRESIDENT RULES AGAINST PROPONENTS - DECLARES DEBATE NOT ENDED BECAUSE NO TWO-THIRDS.

PROPONENTS APPEAL RULING - (SUBJECT TO UNLIMITED DEBATE)

a. PROPONENTS NEED "FRIENDLY" MOTION TO TABLE IN FACE OF DEBATE

IF TABBING FAILS - DEBATE CONTINUES

b. PROPONENTS NEED MOVE BY V.P. TO MOTION TO A VOTE WITHOUT DEBATE

IF NO DEBATE - Res COMES TO IMMEDIATE VOTE.

3. THE VICE PRESIDENT CAN EXPRESS NO OPINION: RULES IT A CONSTITUTIONAL QUESTION ONLY SENATE CAN DECIDE.

a. V.P. PUTS QUESTION TO SENATE WITHOUT DEBATE

RULE (Resolution) IS AMENDED

b. V.P. PUTS QUESTION TO SENATE AND ALLOWS DEBATE

ANOTHER FILIBUSTER BEGINS



from WJ Kennedy 1-17-75

RESOLUTION TO AMEND RULE XXII

WRITTEN NOTICE MUST HAVE BEEN
GIVEN UNDER RULE XL

ONE LEGISLATIVE DAY MUST PASS
RULE XIV

PROponents MOVE TO
CONSIDER

1.
OPponents MOVE TO
TABLE MOTION TO
CONSIDER - SIMPLE
MAJORITY NEEDED

2.
OPponent MAY ALSO SEEK
TO DEFEAT MOTION TO
CONSIDER - SIMPLE MAJORITY

3.
OPponents MAY RAISE
POINT OF ORDER

4.
A FILIBUSTER DEVELOPS



Monday 1/13/75

1:10 Mr. Lazarus would like to see you when convenient
concerning the Rule XXII and Sen. Mondale.



THE WHITE HOUSE

WASHINGTON

January 13, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: PHILIP BUCHEN

FROM: KENNETH LAZARUS *KL*

SUBJECT: The Rule XXII Resolution

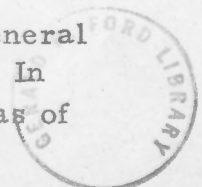
I have reviewed William Kendall's memo of January 10 and submit the following:

It is anticipated that Senator Mondale will introduce a resolution providing that three-fifths, rather than the current two-thirds, of those Senators present and voting may invoke cloture and thus limit debate on a pending matter. Two issues are raised by the resolution.

First, should the use of the filibuster be further diminished? Although the filibuster is an anti-majoritarian concept, it is firmly rooted in Anglo-American systems of government and is consistent with the need for stability in government which is met in part by the Senate. On a more practical level, it provides a viable alternative to the veto in Presidential decision-making. Thus, I believe that it would be unwise to support any effort to reduce its utility. In this regard, it should be noted that many recent votes on cloture have been extremely close. Moreover, the current resolution is part of a continuing effort to completely eliminate the filibuster.

Assuming that you will not support the Mondale resolution, the second issue is which parliamentary option would best serve your goal? This, in turn, involves the question of whether the Senate is a continuing body, the rules of which continue from one Congress to another. If the answer is affirmative, the rules on cloture can only be changed by a two-thirds vote. If the answer is negative, the rules can be changed by a simple majority.

Since 1789, there has been only one notable exception to the general rule that Senate rules continue from one Congress to another. In 1969, then Vice President Humphrey ruled that the question was of



Constitutional dimension and put the question to the Senate as a whole without provision for further debate. A similar ruling by Vice President Rockefeller would, of course, pave the way for adoption of the Mondale resolution since it would require a simple majority vote to pass the measure.

I would recommend that the Vice President put the question to the Senate as a whole but with provision for further debate, in effect requiring a two-thirds vote for passage. This would recognize that the Rules of the Senate have continuing vitality and would likely lead to the defeat of the Mondale resolution. At the same time, however, it would minimize the role of the Vice President in the eventual outcome.

