Senate Procedures for Consideration of the Budget Resolution/Reconciliation
"Vote-A-Rama"

Testimony before the Committee on the Budget, U.S. Senate
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Mr. Chairman, Senator Gregg and members of the Committee, it is a pleasure to appear before you this morning on this side of the dais. I am honored to be joined by Bob Dove, former Senate parliamentarian, one who understands Senate procedures much better than I could ever hope.

I understand you want to focus on the practice that has become unflatteringly known by the term "vote-a-rama." In preparing this statement I consulted with two previous Budget Committee staff directors that served in the majority and during a time when vote-a-rama seemed to have expanded.[2]

Three themes emerged from our discussions. First we all agreed that yes -- vote-a-rama created much angst, frustration, and exhaustion for both Committee and floor staff in the mechanics of processing and disposing of amendments. Nonetheless this relatively minor inconvenience visited upon staff was acceptable as it was our responsibility to you as Senators to help you manage the completion of the measure. Further we noted that despite the growing practice, budget resolutions were brought to completion, in large part because of the cooperation between the Chairman and Ranking Member.

Maybe more interesting was the second and infinitely more important theme. The former staff directors' greater concern, including myself, was the feeling that this procedure denigrated, diminished, and embarrassed, the institution we love. Further, the spectacle of vote-a-rama we believe played to the opponents of the congressional budget process -- a process we collectively think must be strengthened and preserved particularly in these difficult fiscal and economic times.

Finally, we all agreed that the rights of the minority had to be protected in this process. Rightly or wrongly, vote-a-rama does ensure that the minority can offer amendments. Otherwise, it would be possible for the majority to continuously yield time off the resolution to prolong debate on only a handful of amendments until time had expired, fill the tree and lock out amendments until time had expired, or yield back time to consume portions of the hour limit so that amendments could not be offered under the cap. All three practices – yielding time to limit amendments, filling the tree, and yielding the majority's share of time – have been used to varying degrees over the years to weaken minority rights.

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[2] Hazen Marshall, 2003-2004; Scott B. Gudes, 2005-2007.

We concluded that there must be a better, more orderly, and fairer way to complete action on budget resolutions and reconciliation bills while still protecting the rights of the minority to offer amendments.

How did this come about?

In theory, of course, once all debate time has been used or yielded back on a budget resolution or reconciliation bill, a vote should occur on adoption of the measure. But as the Committee knows, the Budget Act's time restrictions represent a limit on debate only and not on overall consideration of the measure. Contrast this with Senate Rule XXII governing cloture which provides for limitation on overall consideration including time in debate, quorum calls and roll call votes.

I was curious as to whether the Senators directly involved in the drafting of the Budget Act had purposefully not considered Senate cloture procedures in crafting time limitations within the Act. I found few clear answers to the question. The legislative history of the Budget Act informs that the original bill to reform the budget process (S.1541: The Congressional Budget Procedures Reform Act of 1973) introduced by Senators Ervin, Metcalf, Percy, Nunn, Brock, and Cranston in October1973 included language on procedures for consideration of the "budget limitation bill" that is almost identical to the language found today in Section 305 (b)(1) of the final Act, except that the introduced bill called for 60 hours of debate not 50.

When S.1541 was later reported from the Senate Committee on Government Operations in November 1973, the 60 hours had been increased to 100 hours with debate on amendments limited to 4 hours.

The Senate Report 93-579 accompanying the reported bill is instructive:

"Establishing such a concurrent resolution on the budget would mark the first time in the history of this country that Congress will have the opportunity to debate and adopt a plan selecting and relating spending priorities to the economy, to revenues and to the level of deficit or surplus in one *logical* (emphasis added) consistent package. It allows Congress to make *informed* (emphasis added) decisions on priorities…"[3]

The Senate drafters were clear and explicit that the budget resolution was to be treated as a highly privileged matter and those 100 hours, "the equivalent of nearly 17 six-hour days" was to give assurances that both Houses of the Congress had adequate time for the full consideration of the budget. I should also note that the original legislation contemplated that in the House there would be a 10 day lay over after the resolution was reported before it was considered in that Chamber under a 10 hour limit. Today of course the House and Senate can be considered of the resolution any day after it has been reported.

[3] Congressional Budget and Impoundment Control Act of 1974; Legislative History S.1541—H.R. 7130, Committee on Government Operations, December 1974. p. 508.

I can only conclude from my reading of the legislative history that "vote-a-rama" was never envisioned simply because it was assumed that there would be sufficient and adequate time available for the full consideration of the resolution both before the resolution was presented to the Chamber and within the established statutory time constraints. Further that the strict requirement that amendments offered to the resolution must be germane[4] would also be a limiting factor.

But as I need not tell the Committee this was not to be the case particularly beginning toward the latter part of the 1990's when the number of amendments to resolutions exploded. For the first 20 years of the Budget Act the average number of amendments offered yearly to a resolution was 21. The next 12 years the number averaged nearly 80, reaching a peak of 106 with S.Con.Res.86 in 1998.

Thinking only the best motives of Senators, it seems one could argue that vote-a-rama is not meant to be a delaying tactic, for after all a final vote will happen if for no other reason than out of exhaustion. Rather, I would argue that Senators must feel that the full consideration of such an important blue-print to guide fiscal policy has not been achieved within the time available. I recognize that arguing for additional time on a resolution or reconciliation bill runs counter to the current demands placed on any Majority Leader to consider other legislation. Further, expanding time would place tremendous pressure on the managers of the resolution to secure Senators' participation throughout the period and not, as the members are wont to today, wait until the end of the time period to offer amendments.

Alternatively, without increasing the statutory time for consideration, the argument for greater review, study, and transparency of amendments offered within the time constraints must be considered. This has been the direction most reform proposals have taken since vote-a-rama became an issue in the 1990's.

In 1997, with Republicans in the majority, the Senate did adopt by a vote of 92-8 an amendment offered by Senator Byrd that modified debate on a reconciliation bill that did: (1) increase the statutory time on reconciliation to 30 hours (from 25 hours), (2) set a time period for the filing of first degree amendments within the first 15 hours and second degrees within the first 20 hours, but most importantly (3) adding in statute Senate Rule XXII language that brought to a close all action on a reconciliation bill at the end of the 30 hours. I would note that both you, Chairman Conrad and Senator Gregg, voted in support of the Byrd amendment as did former Chairmen Domenici and Nickles. The amendment added to the Revenue Reconciliation Act of 1997 died in conference. As you will recall that bill was a major component of the balanced budget agreement reached that year, and bipartisanship could not be found in conference on the Byrd amendment so it was dropped.

[4] Section 305 ©, (4): Germaneness: prohibits the consideration of non-germane amendments to budget resolution and by cross reference to Section 310 (e), to reconciliation legislation. An amendment is per se germane: (1) changes numbers, (2) motion to strike, (3) changes dates. Other amendments are determined on a case by case basis. .

Following the explosion of amendments offered to the budget resolution in 1998, Senator Domenici directed me to work with Senator Byrd's staff and others to address the issue. S.Res.6 was introduced in January 1999 and among other things limited debate on resolutions and reconciliation bills to 30 hours, specified filing deadlines for amendments and once again proposed a post-cloture rule for budget resolutions and reconciliation bills. No action was taken on S.Res.6.

In 2001 the Senate adopted on a voice vote once again a Byrd amendment to that year's budget resolution. The amendment retained 50 hours of debate on resolutions but increased time on reconciliation bills to the same, and specified filing deadlines within the 50 hours for filing amendments, but dropped the post-cloture rule from previous proposals. The amendment was dropped in conference but had it been adopted it would not have eliminated the possibility of extended voting well beyond the statutory 50 hours; only a post-cloture rule would accomplish that objective.

In 2006, Chairman Gregg introduced reform legislation that maintained the 50 hours but eliminated vote-a-rama by limiting time to "consideration" rather than "debate". This proposal would have brought to a conclusion debate and votes on the resolution after 50 hours.

Senator Specter's proposal last year (S.Res.493) and his current proposal here today in many ways returns to that which the Senate adopted on a voice vote in 2001. A 50 hour time limit, first degree amendments to be filed in the first 10 hours, second degrees in the first 20 hours, and one calendar day time-out for review of all amendments printed in the Congressional Record before voting. It does not eliminate the possibility of extended voting well beyond the statutory 50 hours; only a post-cloture rule would accomplish that objective.

So what should or should not be done? I believe the Senate needs to decide what its goals are in considering a budget resolution. If the Senate wants to limit all time for consideration of a budget resolution or reconciliation bill to a specified time, there is one sure way to accomplish that through the imposition of a post-cloture rule. However, the risks remain high that such an approach could preclude the minority from offering amendments.

Alternatively, if the purpose of the budget resolution is to provide an opportunity for the Senate to engage in a logical, fully informed debate surrounding fiscal policy while protecting the rights of the minority to express their views, then the reform proposals that have been evolving since 2001 -- setting deadlines for submitting amendments early within the time period -- seems appropriate. The risk of this approach, however, means that many amendments could still be filed requiring votes beyond a 50 or 30 hour time limit, and vote-a-rama continues. The benefit, however, the Senate would have a better, informed debate and avoid some of the pandemonium present in the current process.

However the Senate chooses to address this issue, there are a couple of recommendations I would respectfully proffer that might impact the number of amendments considered during budget deliberations:

1. Require at a minimum 1 day lay-over of the reported resolution or reconciliation bill before proceeding to the Senate floor.

2. Require unanimous consent to yield back time on a budget resolution or reconciliation bill.

3. If 50 hours is the statutory time limit, limit to two amendments per Senator and require (as is the practice today) to alternate amendments but begin with the minority having the right of refusal on the first amendment.

4. Adopt in statute a clear definition of germaneness that would prohibit the consideration of Sense of the Senate amendments both during the consideration of budget resolutions and reconciliation bills. I thought this had been resolved, but I understand the practice continues today through revised interpretations from the Senate Parliamentarian's office. This is not a criticism of that office. I simply believe that without statutory guidance the Senate Parliamentarians must use their discretion in interpreting amendments while continuously seeking to balance the rights of the minority. I might expand this prohibition to "deficit neutral reserve funds" but I have not fully thought through the consequences of such a recommendation at this time.

5. Falling in the category of "green-eye shade" issues: either due away with Function 920 (Allowances) in the reported budget resolution, or if technically needed, allow for the reporting of a budget resolution with the function but make it out of order to offer an amendment that touches the function on the Senate floor. Function 920 has become the magic asterisk for offsets to often frivolous spending amendments in other functions.

One last observation I present with trepidation. I believe that while increased vote-a-rama activity in recent years is a function of many variables, one of those variables is whether the resolution is considered in an even versus an odd numbered year. Too many times I was aware of amendments drafted on both sides of the aisle to stoke political press releases, and it was unspoken, but generally understood, that political campaigns considered budget resolutions the mother load of opportunities for political ads. I have no suggestions to how to deal with the "gotcha" amendments; unless it would be to establish a biennial budget and appropriation process, but that would be a subject for later. I only observe that to the extent these amendments continue to proliferate, no reform of the procedures to consider a budget resolution will ultimately prove satisfactory.

Thank you and continue to preserve the congressional budget process.