

already delivered two speeches on the same subject. A third speech would be out of order.

Mr. HOLLINGS. As you were. I respectfully—I disrespectfully, I should say—object to that ruling, Madam President. That is babble from the Parliamentarian. You cannot rule in the U.S. Senate that when I made a request for a quorum, that is a speech. The only other thing I made was an appeal from the ruling of the Chair. If that is a case of being recognized, he has already been recognized, made six talks this morning. I make the point of order that he is out of order, has been recognized because he made two speeches so you could not recognize him. That is utter nonsense. I never heard of such a thing in my life—there is no precedent. The Parliamentarian referred to page 625. I have read it. I say he is wrong. I respect you, Madam President. I know you take that nonsense from him. I am going to appeal it, if you please.

If a motion in the U.S. Senate is a speech, if an absence of a quorum is a speech, if an appeal is a speech, we are in sad shape if we are going to take the majority or minority leader and rule him out of order because that is two speeches. He knows that. He has been recognized for three unanimous-consent requests and four others so on a point of order, he was not in order to be recognized. Therefore, he could not call for regular order under that nonsensical ruling.

I still have the floor. I thank the distinguished chairman.

The PRESIDING OFFICER. The Senator from South Carolina knows a ruling of the Chair is not debatable. An appeal of the ruling is not debatable.

Mr. METZENBAUM. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

	[Quorum No. 12]	
Evans	Kassebaum	Simpson
Exon	Kasten	Stennis
Goldwater	McConnell	Symms
Harkin	Metzenbaum	Thurmond
Hollings	Pressler	

Mr. KASTEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HOLLINGS. I object.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

□ 1250

Mr. KASTEN. Madam President, I move that the Sergeant at Arms call for the return of the absent Senators.

Mr. HOLLINGS. Madam President, I object. A rollcall is in progress and he has not taken off the quorum.

Mr. METZENBAUM. Madam President, I invoke the two-speech rule. I invoke the two-speech rule.

Mr. HOLLINGS. That is right. He is out of order.

Mr. METZENBAUM. For that and seven other reasons why I object.

Mr. KASTEN. Madam President, I ask for the yeas and nays.

Mr. HOLLINGS. We are still in a quorum call.

The PRESIDING OFFICER. The quorum has been completed. The clerk just announced a quorum is not present.

Mr. METZENBAUM. I invoke the two-speech rule.

Mr. KASTEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. METZENBAUM. May we have a ruling on the two-speech rule?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HOLLINGS. I raise a point of order that he not be recognized because this is his seventh speech.

The PRESIDING OFFICER. A point of order cannot be the absence of a quorum and there is not a sufficient second. The question is, Shall the Sergeant at Arms call for the return of the absent Senators? All those in favor say "aye."

All those opposed.

The ayes appear to have it.

Mr. METZENBAUM. The what?

The PRESIDING OFFICER. The ayes appear to have it.

Mr. METZENBAUM. Madam President, there was 1 yea and 1 nay.

Mr. KASTEN. I ask for a division.

The PRESIDING OFFICER. Those in favor stand and be counted.

Mr. METZENBAUM. Madam President, I ask for a rollcall. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Maryland [Mr. MATHIAS], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The result was announced—yeas 87, nays 6, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—87

Abdnor	Ford	Matsunaga
Andrews	Glenn	Mathlingly
Armstrong	Gore	McClure
Baucus	Gorton	McConnell
Bentsen	Gramm	Melcher
Biden	Grassley	Metzenbaum
Bingaman	Harkin	Mitchell
Boren	Hart	Murkowski
Boschwitz	Hatch	Nunn
Bradley	Hatfield	Packwood
Broyhill	Hawkins	Pell
Bumpers	Hecht	Pressler
Burdick	Heflin	Riegle
Byrd	Heinz	Rockefeller
Chafee	Helms	Roth
Chiles	Hollings	Rudman
Cochran	Humphrey	Sarbanes
Cohen	Inouye	Sasser
Cranston	Johnston	Simon
Danforth	Kassebaum	Simpson
DeConcini	Kasten	Specter
Dixon	Kennedy	Stennis
Dodd	Kerry	Stevens
Dole	Lautenberg	Symms
Domenici	Laxalt	Thurmond
Durenberger	Leahy	Trible
Eagleton	Levin	Warner
Evans	Long	Wilson
Exon	Lugar	Zorinsky

NAYS—6

D'Amato	Proxmire	Wallop
Nickles	Quayle	Weicker

NOT VOTING—7

Denton	Mathias	Stafford
Garn	Moynihan	
Goldwater	Pryor	

So the motion was agreed to.

□ 1320

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. BYRD. Mr. President, I am allowed 1 hour—or 2 or 3 if yielded to me, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I understand that some problem has risen with respect to the rule XIX, involving two speeches in the same legislative day on the same subject, the contention being that Senator HOLLINGS, on the suggestion of the absence of a quorum, was being charged with one of his two speeches to which he is entitled under the rule.

I was not on the floor at the time. I have asked for a transcript, and it is quite lengthy, as I see here. I would like to have an opportunity to read this transcript, and I shall shortly complete my one speech on the same subject during the same legislative day.

But, before I do so, I shall record the pertinent provisions of rule XIX:

\*\*\* and no Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate.

Mr. President, if I am correct in the understanding that Mr. HOLLINGS got recognition, suggested the absence of a

quorum, and that that action on his part constituted a speech. I would ask the Chair if I am correct in that the Chair has rendered such an opinion.

The PRESIDING OFFICER. It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech and, of course, the reading of the transcript would give full evidence of the exact request of the Senator from South Carolina.

Mr. BYRD. I will read the transcript in a moment to ascertain in facts in that regard.

But we are told by the Chair, upon the advice of the Parliamentarian, that any recognition for any purpose when the Senate is proceeding under the cloture rule, the Senate having voted cloture, that such recognition constitutes a speech; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. If I might ask the Chair to inquire of the Parliamentarian: What is the basis for the Parliamentarian's recommendation or advice on that point?

The PRESIDING OFFICER. The precedent is set by the debate on June 12, 1935. During consideration of an amendment from the House, the President pro tempore, in reply to a parliamentary inquiry by Mr. Huey P. Long, from Louisiana, held that he would lose the floor if he made a motion for a recess. In reply, then, to a parliamentary inquiry of Mr. Pat McCarran, of Nevada, if any other Member than the Senator who occupied the floor could move a recess without the other Senator losing the floor, the President pro tempore said:

If there is any business intervening, then the Senator is construed as starting another speech. If any business intervenes and the Senator allows it to intervene, having the power to prevent the intervention of any business, then if he is recognized it will be regarded as the beginning of a second speech.

And then, in reply to a parliamentary inquiry by Mr. Alben Barkley, of Kentucky, the President pro tempore held that where a Senator yielded to another Senator to make a motion to recess or adjourn or for any other motion, that constituted business, and if such Senator was again recognized, it would be for a second speech.

□ 1330

There is more to that precedent that I can share with the Democratic leader.

Mr. BYRD. I thank the Chair.

Would the Chair, with the advice of the Parliamentarian, indicate where in the footnotes that such precedent is referred to?

The PRESIDING OFFICER. It is on page 626 of Senate Procedure, footnote No. 487.

Mr. BYRD. I thank the Chair.

Mr. President, if Senators will pay close attention, the Senate will be called upon to make a decision on this point. It is going to be a serious impairment to any leader, whether majority or minority, if this ruling which has been taken as stated by the Chair, with the advice of the Parliamentarian, is allowed to stand.

Let me just say that I have been studying these rules for 20 years and have been a constant companion on the floor pretty much of that time and have probably been instrumental in establishing more precedents than any other Senator before my time or during my time.

Let me hastily say that I can be wrong, and I am the first to recognize that I have been wrong on some occasions, have been shown to be wrong, and have admitted that I have been wrong.

But let us proceed now in connection with this matter.

All Senators have the book titled Senate Procedure. It may be in their desks or may be in their offices.

Let me read to Senators therefrom.

The Chair has cited a so-called precedent on page 626 of the book on Senate Procedure. We find a footnote, 487, "See June 12, 1935," the 74th Congress, 1st Session, RECORD pages 4495, 4496.

If each Senator will also look at the preface in this book, which is on page small Roman numerals xi, I will read this paragraph.

It will be observed that the footnotes divide themselves into two classes: those without, and those with the word "See" and "See also." Those without

Meaning those without the word "See" or "See also,"

are rulings by the Presiding Officer or decisions by the Senate.

Those are precedents. Whether they are "rulings" by the Presiding Officer or "decisions" by the Senate, that is what we mean when we refer to a "precedent." The Senate guards zealously its rules and precedents because, like the common law of England which is based on precedents from time immemorial rules and precedents are what we depend on here in this body, in addition to the unwritten rules of courtesy, comity, and mutual respect.

Reading further:

Those with "See" are responses by the Chair to parliamentary inquiries in cases where the opinions expressed are in keeping with the practices of the Senate, even though in such cases an appeal from an opinion expressed by the Presiding Officer in reply to a parliamentary inquiry is not in order.

Where the Chair, therefore, expresses an opinion in response to a parliamentary inquiry, that opinion is not a precedent and, therefore, not subject to appeal. The Chair expressed opinions in only the footnote cited.

The footnote cited says "See", and "See" is in italics which means that it was a response by the Chair to a parliamentary inquiry.

A response by the Chair to a parliamentary inquiry is not a precedent. I have already indicated that a precedent is a "decision", by the Senate or a "ruling" by the Chair. The Chair rules on a question of order.

If the Chair's ruling is not contested by the Senate, the ruling stands as a precedent of the Senate. If the ruling is appealed, the Senate decides. Whatever the Senate decides, whether it is in support of the Chair or opposes the Chair, that is a precedent of the Senate. A decision by the Senate is the stronger of the two precedents.

A ruling by the Chair, uncontested by the Senate, is a precedent, but not as strong a precedent as a decision by the Senate.

But in this footnote, we are being referred to responses by the Chair in answer to a parliamentary inquiry.

The Presiding Officer has already read the responses. The Chair was not asked to rule. A Senator simply arose and asked a parliamentary inquiry. The Chair responded that it was the Chair's opinion, thus and so. It may be the Chair's opinion based on a past precedent set by the Senate, but if there is such a precedent established by a Senate decision or a ruling by the Chair that would back up the Chair's opinion, it ought to be in the footnote also and we ought to see what it is, but none is indicated.

So the Chair's ruling today is not based on precedent. It is against all commonsense, it seems to me; it is against logic, to maintain that simply because a Senator rises and suggests the absence of a quorum, that that in itself constitutes a speech.

If this is going to be the rule here, then the distinguished majority leader, if he wishes to put in a quorum call, that is going to constitute a speech.

Well, he will be allowed to do that twice. Then, of course, when he has done that twice, the leader is going to be confronted with having spoken twice already on the same legislative day, and without the consent of the Senate, he cannot proceed. We all know that is impractical, it is implausible, it is illogical, it does not make sense. I think it would be a very serious thing if the Senate were to allow this matter to stand that, on the basis of the Senator from South Carolina's having arisen, having addressed the Chair, having gotten recognition, having suggested the absence of a quorum, that constitutes a speech within the two-speech rule.

□ 1340

I hope the Senate will not allow that ruling, if the ruling has indeed been