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THE WHITE HOUSE
WASHINGTON



Nelson) I approve
 of this approach which
 is well thought out.
 Whether I or you
 should be deciding
 vote. This is a
 matter for the Legislative
 Body to decide.
 G.R.F.



THE PRESIDENT HAS SEEN...

THE VICE PRESIDENT
WASHINGTON

January 10, 1975

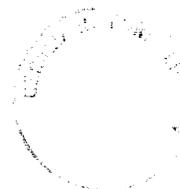
Dear Mr. President:

Attached are some thoughts for your consideration on strategy and procedures relating to my handling of the cloture issue when it arises in the Senate.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Nixon".

The President
The White House



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THE VICE PRESIDENT
WASHINGTON

January 10, 1975

CONFIDENTIAL

MEMORANDUM FOR THE PRESIDENT

FROM THE VICE PRESIDENT

WJR

I am informed that Senators Mondale and Pearson are planning to propose an amendment to Rule 22 calling for a 60% cloture vote as against the present law brought into effect under Lyndon Johnson which calls for two-thirds by those present and voting.

Whatever position I take as President of the Senate is going to be considered as the Administration's position.

As this is a very controversial issue, I would like to raise various questions for consideration.

Question No. 1

Does the President want to be recorded as taking a position on this issue?

Or, does the President want to say publicly that he is not going to take a position should the matter come up and that, in effect, the Vice President as President of the Senate is on his own.

Question No. 2

How does the Vice President handle the situation -- whether ostensibly on behalf of the Administration or on his own?

CONFIDENTIAL

In either case, the following course of action might be considered.

When the motion is made to amend Rule 22, the majority leadership will probably ask for unanimous consent to postpone the issue until the other business permitting the Senate to organize itself has been concluded. This postponement could be a matter of days or weeks.

A. When the motion does come up for decision by the Senate, the Chair could rule that the question of whether the Senate should vote by simple majority on the motion to amend Rule 22 is a matter which should be decided by the Senate itself and not by the Chair.

I would then make a brief explanatory statement of my position along the following lines:

"Off and on for 35 years, it has been my privilege to work with the Congress and the Legislature of the State of New York representing the Executive Branch of government.

"I believe deeply in the separation of powers and the co-equal responsibility of the Legislative and Executive branches of government under our Constitution.

"It has been my practice, and privilege, both in representing various Administrations here in Washington and as Governor of the State of New York for fifteen years, to work closely with the legislative bodies within the framework of the rules and regulations established by them. I feel very deeply about this principle.

"But, I am here as Vice President and so must carry out my duties as President of the Senate. I have reviewed the record on this matter and I find the last recorded precedent was established when Vice President Humphrey's ruling on this issue was overruled by the Senate itself."

"Therefore, the Chair exercises its prerogative

of submitting this question to the full Senate for a vote.

But I would like to state that my action in this matter in no way relates to my feelings on the substance of this issue."

B. The Senate will then have to vote on whether Senator Mondale's and Senator Pearson's motion to change Rule 22 is appropriate for consideration by the Senate by a simple majority vote.

C. If the vote is favorable, it will undoubtedly be challenged as a nullity or violation of the present Cloture Rule. If the challenge seems to have substantial support or a specific Constitutional question is raised, I would then again say that this is a question for the Senate itself to decide. This question is the province of the Senate and I must be bound by its decision.

D. If the motion saying it was a nullity was defeated, the Chair would be ready to entertain Senator Mondale's motion -- unless some other motion is raised from the floor, in which case I would again say that this is a question for the Senate itself to decide.

E. Thus, step by step the Senate would be deciding its course of action for itself, and one door after another would be closed. The Senate would either go to a vote on the Mondale motion, or this other procedure would continue.

F. At some point if the process of objection continued, I would have to say that it is clear that this question is not going to be resolved by the vote of the Senate; and therefore, if the members feel that this process is illegal, the Chair feels that the members who object must find other appropriate procedures for settling this Constitutional question.

G. In the event that any one of these votes should result in a tie, and my vote was required, my position might be to say:

"In my examination of the record of the history of this matter, I find that even the most ardent proponents of Rule 22 have never contended for less

than 51 out of 100 members to close debate and, therefore, I don't feel that I should cast that fifty-first vote.

Therefore I would hope that the leadership will carry the issue forward until it is possible to develop a majority on either side."

NAR/nt

THE WHITE HOUSE

WASHINGTON

January 13, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR THE VICE PRESIDENT

SUBJECT: Cloture Issue

Your memorandum to the President of January 10 on the above subject has been reviewed and the following notation was made:

-- Nelson/I approve of this approach which is well thought out. Neither I nor you should be deciding vote. This is a matter for the Legislative Body to decide.


Jerry H. Jones
Staff Secretary

THE WHITE HOUSE

WASHINGTON

January 10, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: MAX L. FRIEDERSDORF *m. f.*
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.