

The Parliamentarian and his staff conducted extensive research on rule XV and the precedents governing the reading and withdrawal of amendments prior to what happened during Wednesday's session. While the Riddick's text the Republican leader cited seems plain enough, it is trumped by section 2 of rule XV itself, which clearly and succinctly states:

Any motion, amendment, or resolution may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave.

Prior to the time Senator SANDERS withdrew his amendment, no action had been taken on it that would have prevented such a move without consent for a very simple reason: the amendment wasn't officially pending while it was being read into the RECORD. So Senator SANDERS had an unfettered right to withdraw it under such conditions.

The precedent for a Senator's ability to withdraw an amendment while it is being read without gaining consent first, either to dispense with the reading or to withdraw it, was firmly established in 1950 and reiterated in 1992. On April 14, 1950, Senator Forrest C. Donnell insisted that an amendment being offered by Senator William Benton be read in its entirety. Afterwards, Senator Benton sought unanimous consent to withdraw his amendment. Senator Donnell made a parliamentary inquiry of the Chair, asking the Presiding Officer whether a Senator may withdraw an amendment while it is being read. He further stated that if consent were necessary he would object. The Presiding Officer replied that an amendment may indeed be withdrawn while it is being read, citing the language in rule XV I just mentioned. And Senator Benton withdrew his amendment.

On September 24, 1992, Senator Brock Adams offered an amendment to a tax bill and sought consent twice to dispense with reading it. In both instances, Senator Bob Packwood objected so the clerk proceeded to read the amendment aloud. Later, Senator Adams asked for "permission" to withdraw the amendment and the Chair replied affirmatively that he had the right to do so.

The 1950 precedent is cited on page 119 of Riddick's for the proposition that an amendment may be withdrawn "even as soon as it has been read" but it is, in fact, the same ruling as the 1992 precedent, that a Senator may withdraw his amendment while it is being read.

The Republican leader did not refer to the 1950 precedent in his comments on Wednesday but spoke disparagingly of what happened in 1992, saying, "the Chair made a mistake and allowed something similar (to Senator SANDERS' move) to happen. But one mistake does not a precedent make."

The Parliamentarian doesn't share the Republican leader's contention

that the 1992 action was a "mistake," not a precedent. The Parliamentarian's view is echoed by Walter Oleszek, the noted senior specialist in American National Government at the Congressional Research Service, CRS, who wrote last year, "Senators are free to modify or withdraw their amendments until the Senate takes "action" on them." This is from Senate Amendment Process: General Conditions and Principles, CRS Report 98-707, May 19, 2008. Martin Gold's book, "Senate Procedure and Practice," states:

When a senator sends an amendment to the desk, he continues to "own" that amendment in the sense that he can modify or withdraw it *at will* (my emphasis) . . . Once "action" has been taken on the amendment, that situation changes, and the senator can modify or withdraw his amendment only by unanimous consent. This is from page 102.

The minority has tried to argue that there was Senate action on the Sanders amendment because the Senate previously had agreed to a unanimous consent request defining the amendment and the Hutchison motion to recommit as the only propositions in order at that stage and prohibiting amendments to them. It is true that if an amendment is on a defined list of the only amendments made in order, that amendment when pending cannot be withdrawn except by unanimous consent. But that order is irrelevant in this case because, as I mentioned before, the Sanders amendment was not pending and could not be until it was read in full or unless the reading was dispensed with by unanimous consent. Another way to put it is that the reading of the amendment was not "interrupted" by Senator SANDERS; in withdrawing it he obviated the reason for a reading. The order allowed but did not require, as it could not, that Senator SANDERS offer the amendment and take steps to make it pending.

So, to summarize, rule XV of the Standing Rules of the Senate and the 1950 and 1992 precedents are clear that Senator SANDERS was well within his rights to withdraw the amendment, the reading of it notwithstanding. The Parliamentarian advised me accordingly and I followed his advice. I would add that Senator COBURN never explicitly objected to Senator SANDERS withdrawing the amendment. He called for regular order. While regular order was indeed the reading of the amendment, that status couldn't prevent Senator SANDERS from exercising his right to withdraw it.

Finally, I regret that several of my colleagues on the other side of the aisle made comments that were critical of the Parliamentarian and his staff following this incident. The current Parliamentarian helped to write, edit, and revise Riddick's Senate Procedure and he has served in his current capacity as Chief Parliamentarian for 17 years and counting, and as a Senate Parliamentarian for 33 years. He and his staff have a combined total of 84 years of experience. They are professionals who

serve this institution and the American people with distinction.

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#### ORDERS FOR MONDAY, DECEMBER 21, 2009

Mr. KAUFMAN. Madam President, I ask unanimous consent that the Senate now stand in recess until 12 noon today, that immediately upon reconvening at noon and after any leader time, the Senate then resume consideration of H.R. 3590, with the time until 12:30 p.m. equally divided and controlled between the two leaders or their designees; that from 12:30 p.m. to 6:30 p.m., there be 1-hour alternating blocks of time, with the majority controlling the first block; that all postcloture time continue to run during any recess, adjournment, or period of morning business until 6:30 p.m. Monday.

The PRESIDING OFFICER. Without objection, the request is agreed to.

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#### RECESS UNTIL 12 P.M. TODAY

The PRESIDING OFFICER. The Senate stands in recess until 12 p.m. today.

Thereupon, the Senate, at 1:33 a.m., recessed until 12 p.m. and reassembled when called to order by the Presiding Officer (Mr. ROCKEFELLER).

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#### SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will now report.

The bill clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Reid amendment No. 3276 (to amendment No. 2786), of a perfecting nature.

Reid amendment No. 3277 (to amendment No. 3276), to change the enactment date.

Reid amendment No. 3278 (to the language proposed to be stricken by amendment No. 2786), to change the enactment date.

Reid amendment No. 3279 (to amendment No. 3278), to change the enactment date.

The PRESIDING OFFICER. Under the previous order, the time until 12:30 shall be equally divided and controlled between the two leaders or their designees.

The assistant Democratic leader is recognized.

Mr. DURBIN. Mr. President, this morning we are continuing to run time postcloture on the managers' amendment. Following any leader remarks, the time until 12:30 p.m. is equally divided between the two leaders or their designees. Senator REID has asked me to serve as his designee on the Democratic side. At 12:30 p.m., we will begin alternating 1-hour blocks of time until 6:30 p.m., with the majority controlling