

To: Interested parties  
Fr: Battle Born Collective  
Re: Historical precedent for Presiding Officer ruling on their own judgment  
Dt: March 1, 2021

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In the Senate, the power to issue rulings resides in the Presiding Officer, not the Parliamentarian. Indeed, it is in keeping with the tradition of the Senate for the Presiding Officer to use their judgment on questions of Senate procedure. This used to be the unquestioned norm. Even in modern times, as the Vice President began presiding less frequently and the Senate shifted to a model that was more reliant on staff, there is precedent for the Presiding Officer using their own judgment to issue rulings.

### **Historical precedent**

In 1975, Vice President Rockefeller disregarded the Parliamentarian. According to [Senate.gov](#): “in making his controversial ruling, Rockefeller had notified the Senate parliamentarian that he was making the decision on his own, contrary to the parliamentarian's advice.” The Senate then voted 51 to 42, in effect backing Rockefeller’s decision. While Senate leaders later decided to bend to objections raised by arch segregationist Senator James B. Allen of Alabama, their decision to do so has not aged well. History is certainly kinder to Rockefeller than to the Senate’s deference to Allen.

In 1948, while acting as Presiding Officer, senator and president *pro tempore* Arthur Vandenberg tossed out Rule 22. According to a [report](#) by the Senate Rules Committee, Vandenberg expressed his belief that “in the final analysis, the Senate has no effective cloture rule at all.” Vandenberg’s ruling was a momentous change that triggered several months of debate over the Senate’s rules.

In 1969, Vice President Hubert Humphrey, acting as Presiding Officer, issued a pro-reform ruling. According to [CRS](#), Humphrey “ruled that if a majority, but less than the required two-thirds specified in Rule XXII, voted in favor of cloture, that would constitute invoking cloture on the motion to proceed to the reform resolution.”

In 1957, before he became a champion of white backlash, Richard Nixon was the point man for a major effort by the GOP to court black voters and advance civil rights. In 1956, Eisenhower was endorsed by the NAACP as well as national black leaders like Jackie Robinson and Congressman Adam Clayton Powell. In that election, Eisenhower won 40% of the black vote. Eisenhower proposed a strong civil rights bill, and in 1957, Nixon teamed up with leading Senate liberals like Hubert Humphrey and Paul Douglas to eliminate the filibuster in the name of civil

rights. Acting as Presiding Officer in January of 1957, Nixon issued a ruling that the Senate could change its rules by a majority vote (rejecting the rule Richard Russell established in 1949 that it could only change the cloture rule by a two-thirds vote). Nixon's ruling [stated](#), "The right of a current majority of the Senate at the beginning of a Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress."

## **Conclusion**

Even in modern times when the Senate has become more reliant on staff and the Vice President presides less frequently, there is clear historical precedent for the Presiding Officer to rule based on their own judgment.

It is perhaps unwise to be to the right of Richard Nixon on these questions.