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Germaneness of Debate in the Senate: The Pastore Rule

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Summary

Paragraph 1(b) of Senate Rule XIX—commonly known as the Pastore rule, after its author, former Rhode Island Senator John Pastore—requires Senate floor debate to be germane during specific periods of a Senate work day. The rule has been enforced sporadically since its adoption in 1964. In current practice, the germaneness requirements of the Pastore rule are rarely formally invoked on the Senate floor.

Pursuant to the rule, all floor debate must be germane and confined to the specific question then pending before the Senate for the first three hours after (1) the conclusion of the Morning Hour occurring at the beginning of a new legislative day (in the rare event the Senate should hold a Morning Hour) or (2) after the unfinished business or any pending business has been laid before the Senate on any calendar day. The Pastore rule's germaneness requirement can be waived by unanimous consent or by nondebatable motion.

A Senator may be called to order during the three-hour window described in the Pastore rule by the presiding officer or by another Senator if his or her remarks are not germane to the specific question then before the Senate. If a Senator calls another Senator to order under the rule, enforcement first results in a reminder from the presiding officer that debate must be germane to the question then pending before the Senate. The raising of a point of order does not remove speaking privileges from the offending Senator. Depending on the ruling of the presiding officer on such a point of order, a Senator may either continue speaking (if ruled germane), pivot to a germane topic (if ruled not germane), or yield the floor (if ruled not germane).

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The Pastore Rule

Under the rules and precedents of the Senate, debate on the Senate floor is largely unrestricted. In most cases, once recognized, a Senator may speak without time limit and on almost any subject of his or her choosing. Paragraph 1(b) of Senate Rule XIX, however—commonly known as the Pastore rule, after its author, former Rhode Island Senator John Pastore—requires Senate floor debate to be germane during specific periods of a Senate work day.¹ The rule states

(b) At the conclusion of the morning hour at the beginning of a new legislative day or after the unfinished business or any pending business has first been laid before the Senate on any calendar day, and until after the duration of three hours of actual session after such business is laid down except as determined to the contrary by unanimous consent or on motion without debate, all debate shall be germane and confined to the specific question then pending before the Senate.²

In practice, the Pastore rule rarely affects what Senators speak about on the floor. The presiding officer typically will not on his or her own initiative instruct a speaking Senator to keep remarks germane. Instead, another Senator would have to raise a point of order against the speech. For reasons discussed below, these points of order are infrequent in modern practice. The rule, nevertheless, remains in force, and this report discusses related precedents and past instances of enforcement on the floor.

Pursuant to the Pastore rule, all floor debate must be germane³ and confined to the specific question then pending before the Senate for the first three hours after (1) the conclusion of the Morning Hour⁴ occurring at the beginning of a new legislative day (in the rare event the Senate should hold a Morning Hour) or (2) after the unfinished business or any pending business has been laid before the Senate on any calendar day.⁵ The practical effect of the rule is to require Senators to remain on topic in debate for the first three hours after the Senate begins considering its daily business.

Three hours of actual Senate session must occur to fulfill the requirements of the Pastore rule. Recess periods taken prior to three hours of session elapsing are not counted toward the three-hour total.⁶ Once three hours of actual session have passed, Senators are no longer bound by the germaneness requirement.

¹ Senator Pastore represented Rhode Island in the U.S. Senate between 1950 and 1976.

² *Senate Manual*, 113th Cong., 1st sess., S.Doc. 113-1 (Washington, DC: GPO, 2014), p. 18.

³ In the context of the Pastore rule, the term *germane* means related to the subject of the underlying business.

⁴ Paragraphs 1 and 2 of Senate Rule VII contemplate that, when the Senate convenes after an adjournment, thus beginning a new legislative day, it is to engage in a two-hour period known as the “Morning Hour,” during which it will undertake a list of routine business specified in the rule, such as the presentation of petitions and memorials and the filing of committee reports. It has been many years since the Senate has regularly followed the procedures as laid out in these paragraphs. In current practice, the Senate does not hold a Morning Hour at the beginning of each new legislative day but instead routinely deems by unanimous consent that the Morning Hour has expired.

⁵ The unfinished business of the Senate is the measure that was under consideration at the time the Senate previously adjourned. Each new legislative day after the close of the Morning Hour (if there is one), the unfinished business is automatically laid before the Senate for further consideration unless the Senate provides otherwise by unanimous consent. The term *pending business*, as used in the rule, has been interpreted by the chair to mean any business the Senate has proceeded to consider either by motion or by unanimous consent, exclusive of the Morning Hour business under Rule VII described above.

⁶ Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices*, 101st Cong., 1st sess., S.Doc. 101-28 (Washington, DC: GPO, 1992), pp. 862-863. (Hereinafter *Riddick’s Senate Procedure*.)

The Pastore rule's germaneness requirement can be waived by unanimous consent (UC) or by nondebatable motion. Any Senator may request unanimous consent to speak out of order on a nongermane subject while the Pastore rule is in effect.⁷ A Senator might also request UC to waive the rule on behalf of another Senator⁸ or request a blanket waiver to allow all Senators to speak on nongermane topics.⁹ The Senate also frequently by UC establishes periods for "morning business," when Senators can speak on topics of their choice for a period of time set by the UC agreement (typically 10 minutes).

UC agreements can also structure the extent to which the Pastore rule will apply at any given time. For example, in one instance, by UC, the period during which the rule's germaneness of debate requirement applied was expanded from three hours to five hours.¹⁰

Enforcing Germaneness in Debate

A Senator may be called to order during the three-hour window described in the Pastore rule if his or her remarks are not germane to the specific question then pending before the Senate. Chamber precedents permit the presiding officer to call a Senator to order under the rule on his or her own initiative. The precedents point out, however, that the rule is "not necessarily self-enforcing," and as such, the rule is customarily enforced only by a call to order from the floor.¹¹ In current practice, the germaneness requirements of the Pastore rule are rarely formally invoked on the Senate floor.

If a Senator calls another Senator to order under the rule, enforcement first results in a reminder from the presiding officer that debate must be germane to the question then pending before the Senate. A Senator does not need to be recognized by the chair in order to call another Senator to order under the rule.¹² The raising of this point of order does not remove speaking privileges from the offending Senator, although the Senator must suspend his or her remarks until the chair rules on the question. Depending on the ruling of the presiding officer on such a point of order, a Senator may either continue speaking (if his or her debate is ruled germane), pivot to a germane topic (if ruled not germane), or yield the floor (if ruled not germane).¹³

History of the Pastore Rule

Before paragraph 1(b) of Rule XIX was adopted in 1964, there was no rule or precedent requiring the germaneness of debate during regular Senate proceedings.¹⁴

What would become the present-day Pastore rule first appeared with the introduction of S.Res. 89 on February 19, 1963, by Senator Pastore for himself and 30 bipartisan cosponsors. The resolution, as submitted, included two key differences from what would ultimately be adopted: It

⁷ *Congressional Record*, vol. 149 (November 7, 2003), p. 28121.

⁸ *Congressional Record*, vol. 135 (June 1, 1989), p. 10526.

⁹ *Congressional Record*, vol. 117 (June 8, 1971), p. 18744.

¹⁰ E.g., *Congressional Record*, vol. 117 (May 24, 1971), p. 16607.

¹¹ *Riddick's Senate Procedure*, p. 862.

¹² *Ibid.*, p. 744.

¹³ See, for example, *Congressional Record*, vol. 147 (January 17, 2003), p. 1353.

¹⁴ Under Senate Rule XXII, paragraph 2, germaneness of debate is required after the Senate has voted to invoke cloture on a measure or matter. A Senator who has been recognized on a question of personal privilege must also confine his or her remarks to the question of privilege.

called for four hours of germane debate (as opposed to three) and placed a germaneness requirement not just on debate but also on motions (except “amendments offered to the bill or resolution under consideration when reasonably related thereto”).¹⁵

During hearings held on S. Res. 89 by the Senate Rules Committee’s Subcommittee on Standing Rules of the Senate, Senator Pastore expressed his view that the Senate was unable to sufficiently focus on debating important legislation

I am very much disturbed by such a situation as where a member is charged with the responsibility of managing a bill on the floor. He must be there prepared to assume his responsibilities and present the matter to the Senate. But time and time again what has been our experience?... You sit there as the manager of the bill, and someone comes down on the floor with an extraneous speech, which he has a perfect right to deliver, because he must meet a press deadline. All I am saying here is that a period of 4 hours from the time we conclude the morning hour, for those 4 hours we devote ourselves to the business at hand.¹⁶

Senator Pastore argued that his proposed rule would increase attendance and allow the Senate to proceed in a more orderly fashion

First of all, [the proposed rule] would accomplish this: The Members of the Senate, knowing that the business at hand will be discussed, will be more readily available on a quorum call. It will not have to take 20 minutes or a half hour, and then probably get into live quorums. Members would know that for 4 hours, if they arrange their program, they would sit on the floor, that they could discuss the business at hand and conclude it, without interruption. I think it would help immensely.¹⁷

The Senate Committee on Rules and Administration adopted three amendments to S.Res. 89 before reporting the resolution, as amended, favorably to the Senate on September 19, 1963. The first amendment inserted language clarifying that the germaneness period in the rule would occur just once each calendar day. By its second amendment, the committee struck language from the resolution that allowed only the introduction of amendments “reasonably related” to the pending business. This second amendment was adopted for the express purpose of continuing “the present practice of permitting legislative riders.”¹⁸ The third and final amendment reported by the committee changed the germaneness period from four hours to three hours, as found in the current rule. Regarding this final change, the committee report accompanying S.Res. 89 noted

In the opinion of the committee, it is important that there be flexibility of debate in the Senate, but the committee believes it equally important that there be some reasonable limitation on that flexibility. The adjustment in Senate procedure involved in Senate Resolution 89 would probably result in a larger participation in meaningful and coordinated debate on vital and major bills on the floor of the Senate. At the same time adoption of the measure reserves ample opportunity for the discussion of general topics.¹⁹

¹⁵ S.Res. 89, 88th Congress (1963-1964).

¹⁶ U.S. Congress, Senate Committee on Rules and Administration, Subcommittee on Standing Rules of the Senate, *Senate Rules and Procedures*, hearing on S.Res. 89, 88th Cong., 1st sess., June 27, 1963 (Washington, DC: GPO, 1963), p. 4.

¹⁷ *Ibid.*

¹⁸ U.S. Congress, Senate Committee on Rules and Administration, *Providing for Germaneness of Debate Under Certain Conditions*, report to accompany S.Res. 89, 88th Cong., 1st sess., S. Rept. 88-507 (Washington, DC: GPO, 1963), p. 2.

¹⁹ *Ibid.*, p. 3.

S.Res.89 was considered on the Senate floor over parts of eight days in January 1964.²⁰ As noted above, at the time, no Senate rule or precedent existed that required a germaneness of debate during regular Senate session. As such, the resolution was viewed by some as proposing a significant change in chamber procedures. Minority Leader Everett Dirksen of Illinois, among others, took to the floor to express strong opposition to the idea of placing any limits on the rights of Senators in debate

Let us make no mistake about it. If I read my history correctly, past and present, whenever the freedom of a parliamentary body is impaired, we go down the road to tyranny. What was the first thing that Hitler did to Germany? He demeaned the Bundestag. He made them, its members, appear to be like a group of urchins who had no sense. What was the first thing Mussolini did to Italy? The Chamber of Deputies was made to appear as if it had no sense, no value, no usefulness. Show me any place in the world where a parliamentary body and its freedoms are impaired and I will show an instance of freedom in retreat.²¹

On January 10, 1964, the Senate adopted a floor amendment to S.Res. 89 proposed by Senator Pastore himself to strike the resolution's germaneness requirement for motions and apply the requirement to debate only, as in the present rule.²² All other floor amendments to the resolution were rejected. Ultimately, S.Res. 89 was agreed to, as amended, in the Senate by a 57-25 vote on January 23, 1964.

The resolution, as passed, inserted the new germaneness requirement into Senate Rule VIII, relating to the Order of Business. The language would later be recodified without change as paragraph 1(b) of Rule XIX with the adoption of S.Res. 274 on November 14, 1979, in the 96th Congress (1979-1980).²³

Use of the Pastore Rule

As noted above, the Pastore rule has seen sporadic enforcement since its adoption. In the decade or so after the rule's adoption, Senator Robert Byrd of West Virginia, who served as majority whip and later as both majority and minority leader, was a frequent observer of the rule, often seeking clarification on whether the Senate was operating within the three hours of required germaneness or seeking unanimous consent to waive the rule to allow him or others to speak without restriction.²⁴ On occasion, Senators have taken to the floor to proclaim an expectation of adherence to the Pastore rule for the duration of the consideration of a particular bill.²⁵

Despite, or perhaps because of, the sporadic observance of the Pastore rule, a report issued in 1983 by the Study Group on Senate Practices and Procedures—an entity established to examine

²⁰ January 8, 10, 14-16, 20, and 22-23, 1964.

²¹ *Congressional Record*, vol. 110 (January 23, 1964), p. 1073.

²² *Congressional Record*, vol. 110 (January 10, 1964), pp. 252-263.

²³ According to the report accompanying S.Res. 274, the rules recodification was undertaken in part simply to “get matters relating directly to debate together.” See, U.S. Congress, Senate Committee on Rules and Administration, *Revising and Modernizing the Standing Rules of the Senate without Substantive Change in Senate Procedure and to Incorporate therein other Rules of the Senate*, report to accompany S.Res. 274, 96th Cong., 1st sess., Rept. 96-403 (Washington, DC: GPO, 1979), p. 72.

²⁴ See *Congressional Record*, vol. 116 (June 5, 1970), p. 18609, regarding an inquiry into whether the rule was currently operative. See *Congressional Record*, vol. 117 (June 11, 1971), p. 19462, for an example of unanimous consent to waive the germaneness rule for a particular day.

²⁵ E.g., *Congressional Record*, vol. 125 (January 24, 1979), pp. 922-923.

Senate procedures and recommend improvements to them—recommended that the Senate “require debate to be relevant at all times during the discussion of legislation and executive business.”²⁶ On May 9, 1983, the Senate Committee on Rules and Administration held a hearing on the study group report. The Senate took no further action on the proposal.²⁷

CRS identified several instances between 1964 and 2017 where a point of order or parliamentary inquiry was raised under the Pastore rule in relation to germaneness of debate or when other actions were taken that appeared to be efforts to enforce the rule, such as objections to unanimous consent requests to waive the germaneness requirement. The earliest instance identified occurred in 1968, four years after adoption of the rule; the most recent identified occurred in 2003. These instances are identified in **Table 1** and were identified through full-text electronic searches of the *Congressional Record* in LIS.gov and the HeinOnline database as well as through a review of relevant chapters in Floyd M. Riddick and Alan S. Frumin, *Riddick’s Senate Procedure: Precedents and Practices*, 101st Cong., 1st sess., S.Doc. 101-28 (Washington, DC: GPO, 1992). Not included in the table are simple references to the Pastore rule in debate (e.g., parliamentary inquiries as to whether the Senate was operating under the rule), instances when the requirement for germane debate would expire for the day, or Senators noting that they or others were in violation of the rule without an accompanying point of order made against the Senator holding the floor.

²⁶ U.S. Congress, Senate Committee on Rules and Administration, *Report of the Study Group on Senate Practices and Procedures*, committee print, 98th Cong., 2nd sess., April 8, 1983, S.Prt. 98-242 (Washington, DC: GPO, 1984), p. 3. The study group is often referred to as the “Pearson-Ribicoff Study Group” after the two former Senators that chaired it.

²⁷ For more information on the study group, see CRS Report RL32112, *Reorganization of the Senate: Modern Reform Efforts*, by (name redacted) et al.

Table I. Select Examples of Enforcement of Paragraph I(b) of Senate Rule XIX, the Pastore Rule

Date	Method Invoked	Outcome	Congressional Record Citation
10/08/68	Parliamentary inquiry was made as to whether the Senate was “proceeding in accordance with the rule of relevancy.”	Speaking Senator acknowledged being in violation of the Pastore rule and was allowed to continue speaking for five additional minutes by unanimous consent.	<i>Congressional Record</i> , vol. 114 (October 8, 1968), p. 30004
09/29/69	Parliamentary inquiry was raised regarding whether the rule of germaneness prevailed at that time.	The presiding officer affirmed that the rule was in force and read the rule in response to a request for a ruling from the chair. The Senator under recognition acknowledged the ruling as proper.	<i>Congressional Record</i> , vol. 115 (September 29, 1969), pp. 27512-27513
02/04/71	Objection was made to a unanimous consent request to waive the Pastore rule. The objecting Senator requested that the speaker wait to proceed in debate until after the required three hours of germaneness had expired.	Speaking Senator agreed to withhold his remarks and yielded the floor.	<i>Congressional Record</i> , vol. 117 (February 4, 1971), p. 1687
02/11/71	Speaking Senator was asked to yield and was notified that the period during which germaneness was required had not yet expired.	Speaking Senator yielded the floor.	<i>Congressional Record</i> , vol. 117 (February 11, 1971), p. 2630
11/24/71	Point of order was raised that remarks were in violation of the Pastore rule.	The presiding officer ruled that debate was not germane to the pending business. The Senator under recognition asked and received unanimous consent to proceed out of order for one minute.	<i>Congressional Record</i> , vol. 117 (November 24, 1971), pp. 43050-43051
02/01/72	Objection was made to a unanimous consent request to proceed for 10 minutes to make a nongermane statement during the period the Pastore rule was in force.	After a quorum call, the speaking Senator made a second unanimous consent to proceed out of order, which was granted without objection.	<i>Congressional Record</i> , vol. 118 (February 1, 1972), p. 1973
06/26/75	A point of order was made that remarks made in debate were not germane at that time.	The presiding officer sustained the point of order. The speaker yielded the floor and, by unanimous consent, his nongermane remarks were printed in a later part of the <i>Congressional Record</i> .	<i>Congressional Record</i> , vol. 121 (June 26, 1975), p. 21050

Date	Method Invoked	Outcome	Congressional Record Citation
09/07/78	A Senator objected to a unanimous consent request that another Senator's nongermane remarks not be charged against time spent on the pending bill. The objecting Senator further requested that the chair not entertain any requests to speak on nongermane topics during the period that Pastore rule was in effect.	The speaking Senator yielded the floor after asking for, and being granted, unanimous consent to have his nongermane remarks printed in a later part of the <i>Congressional Record</i> .	<i>Congressional Record</i> , vol. 124 (September 7, 1978), pp. 28254-28255
10/12/78	After a speaking Senator refused to yield in debate, a point of order was made that the Pastore rule be enforced.	The speaking Senator asked the chair what the pending business was, and when so advised, changed the subject of his remarks to address the topic under consideration.	<i>Congressional Record</i> , vol. 124 (October 12, 1978), pp. 35966-35967
10/24/85	A point of order was made that a Senator's remarks were not germane to the pending business.	The speaking Senator was given a reminder of the rule and advised that the pending business had been under consideration for only 50 minutes. In response, the Senator yielded the floor.	<i>Congressional Record</i> , vol. 131 (October 24, 1985), p. 28901
06/03/97	A point of order was made that a Senator's remarks were not germane to the pending business.	The presiding officer directed the speaker to "confine his debate to the specific question pending before the Senate," and when so advised, the speaking Senator changed the subject of his remarks to address the topic under consideration.	<i>Congressional Record</i> , vol. 143 (June 3, 1997), p. 9740
01/17/03	Two points of order were raised that a Senator's remarks were not germane to the pending business.	The speaking Senator was given a reminder under the rule regarding germaneness. Subsequently, the presiding officer ruled that the remarks in question were germane and the speaker was allowed to continue in order.	<i>Congressional Record</i> , vol. 149 (January 17, 2003), p. 1353
11/07/03	A parliamentary inquiry was made asking whether the Pastore rule would apply to current proceedings. Further along in debate, a point of order was made that the speaking Senator's remarks were not in order under rule.	In both instances, the presiding officer agreed the debate was not germane and the speaking Senator changed the subject of his remarks to a germane topic.	<i>Congressional Record</i> , vol. 149 (November 7, 2003), pp. 28105-28107

Source: Full-text electronic searches of the *Congressional Record* in LIS.gov and the HeinOnline database as well as a review of relevant chapters in Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., 1st sess., S.Doc. 101-28 (Washington, DC: GPO, 1992).

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