WASHINGTON – Senator Chuck Grassley, along with Senator Ron Wyden, this week filed an amendment to the banking reform bill that would make it even harder for individual senators to secretly obstruct the legislative process. Grassley and Wyden have led the fight to eliminate secret holds, and in 2007, a modified version of their proposal was included in the Honest Leadership and Open Government Act. The amendment offered to the banking reform bill is the same as legislation the Senators introduced on April 27.

“Secret holds have been a staple of the Senate for years, and there’s no question that both Democrats and Republicans are responsible for the current abuses,” said Grassley. “The previous version of our legislation was so watered down in the final version that I stated at the time it was bound to be abused and ignored. Many of our colleagues have finally taken notice, and have been sharing their thoughts on the Senate floor. I welcome their involvement and I hope they’ll work with us to get this real reform done and make holds transparent and accountable.”

The amendment, and legislation, would eliminate a Senator’s ability to indefinitely hold legislation in secret by requiring Senators to submit their holds to leadership in writing and to publically disclose all holds within two days whether or not the bill or nomination has been brought to the floor for consideration. Leadership will only honor holds that they have in writing and that comply with the two day rule.

The current provision requires Senators to disclose their holds after six days, but the holding period has proven too long to be effective. This requirement is triggered only when the bill is brought to the floor for consideration, so it’s possible for Senators to indefinitely block legislation from reaching the floor without ever disclosing their actions.

Grassley has a long-standing practice of making all his holds public by placing a formal statement announcing and explaining the rationale for the hold in the Congressional Record.

Here is a copy of the prepared text of Grassley's floor statement after the ethics bill was signed into law, containing the requirements for disclosing holds.

Prepared Floor Statement of Senator Chuck Grassley

Secret Holds

Wednesday, September 19, 2007

Mr. President,

The Ethics Bill has now been signed into law and, as my colleagues are aware, it contains new requirements for "holds." Senators may be wondering what exactly is required and how it will all work. Well, as a co-author of the original measure, I have to tell you that I don't know. The provisions have been rewritten. I'm not even sure by whom because it was a closed process and Republicans were not invited to participate. Now I'm trying to understand how these provisions will work. Let me give a little background.

I have been working for some time, along with Senator Wyden, to end the practice of secret holds though a rules change or standing order. I don't believe there is any legitimate reason why a single senator should be able to anonymously block a bill or nomination. If a senator has the guts to place a hold, they ought to have the guts to say who they are and why they have a hold. If there is a legitimate reason for a hold, then senators should have no fear of it being

public. I'm not talking hypothetically either. I'm speaking from experience. I have voluntarily practiced public holds for a decade or more and have had absolutely no cause to regret it.

Through the years, there have been several times where the leaders of the two parties have agreed to work with Senator Wyden and myself to address this issue, albeit in a way different than we proposed. I have approached these opportunities with optimism only to be disappointed. In 1999, at the start of the 106th Congress, Majority Leader Lott and Minority Leader Daschle sent a Dear Colleague to all senators outlining a new policy that any senators placing a hold must notify the sponsor of the legislation and the committee of jurisdiction. It went on to state that written notification of holds should be provided to the respective Leader, and staff holds would not be honored unless accompanied by a written notification. This policy was quickly forgotten or ignored by senators.

Then, recognizing that the previous Dear Colleague letter was not effective, Leaders Frist and Daschle sent another Dear Colleague in 2003 that purported to have an enforcement mechanism. The new policy required notification of the legislation's sponsor, IF, and only if, a member of their party, as well as notification of the senior party member on the committee of jurisdiction. In other words, this new policy required less disclosure than the previous policy since it only affected holds by members of the same party. Nevertheless, the Leaders promised that if the disclosure was not made, they would disclose the hold. It also reiterated that staff holds would not be honored unless accompanied by written notification. That policy had more holes in it than Swiss cheese. I'm not sure anyone understood the policy, and it had no effect that I can tell on improving transparency.

No longer willing to settle for half-measures that don't end secret holds once and for all, last Congress, Senator Wyden and I offered our standing order to require full public disclosure of all holds as an amendment to the Lobbying Reform Bill. It was a well thought out measure that was drafted with the help and support of Senators Lott and Byrd, using their insights and knowledge of Senate procedure as former Majority Leaders. Our standing order passed the Senate by a vote of 84-13. While that bill did not become law, it became the starting point for the Ethics Bill passed by the Senate this year. I thought that the Leaders had finally accepted that we would have full disclosure of holds. In fact, our secret holds provisions remained intact in the version of the Ethics Bill that originally passed by the Senate earlier this year. Then, even though the secret holds provisions related only to the Senate, and had already passed the Senate, they were rewritten behind closed doors by members of the majority party. Once again, I feel like half-measures have been substituted for real reform.

Under the rewritten provisions, a senator will only have to disclose a hold "following the

objection to a unanimous consent to proceeding to, and, or passage of, a measure or matter on their behalf." Obviously in this case the hold would already have existed well before any objection. In fact, most holds never get to this stage because the threat of the hold prevents a unanimous consent request from being made in the first place. This is particularly true if the senator placing the hold is a member of the majority party. In that case, the Majority Leader would simply not ask unanimous consent knowing that a member of his party has a hold.

For instance, it is not clear to me what would happen if the Minority Leader asked unanimous consent to proceed to a bill and the Majority Leader objected on his own behalf to protect his prerogative to set the agenda, but also having the effect of honoring the hold of another member of the Majority Leader's caucus. Or, what if the Majority Leader asks unanimous consent to proceed to a bill, and the Minority Leader objects, but does not specify on whose behalf, even though a member of the minority party has a hold. Would the minority senator with the hold then be required to disclose the hold?

I asked the office of the Parliamentarian for an opinion about how the new provisions would work in such instances, but with no legislative history for the changes to the Wyden-Grassley measure, the intent of the rewritten provisions was not evident. Therefore, I wrote to the Senate Rules Committee to provide insight into the intent of the rewritten provisions. The response referred me to a Section by Section Analysis of the bill in the Congressional Record that essentially restates the provisions, but sheds no light on my specific questions. Perhaps that's because the answer is a little embarrassing. Depending on how the new provisions are interpreted, in the first instance I mentioned, it is possible that holds by members of the majority party will never be made public. In the second instance, a literal interpretation of the provision might indicate that either Leader could choose to keep a hold by a member of their party secret so long as they do not specify publicly that their objection is on behalf of another senator.

The Rules Committee letter claims that the changes were intended to make the provision "workable." I don't see how the new provisions are any more workable than the original. On the contrary, they are not only unworkable, but undermine transparency.

Under the changes, not only is disclosure of holds only required after a formal objection has been made to a unanimous consent request, but senators have a full six session days to make their disclosure. What's more, a new provision was added specifying that holds lasting up to six days may remain secret forever. What's the justification for that? Six days is more than enough time to kill a bill at the end of the session. And we are saying that it is OK for senators to do that in secret? There are other changes that are puzzling to me. For instance, our original measure required holds to be submitted in writing in order to be honored to prevent staff from placing

holds without the knowledge of the senator. However, in the rewrite, senators now must give written notice to the respective Leader of their “intent to object” only AFTER the Leader has ALREADY objected on the senator’s behalf. That is not only unworkable, it’s absurd.

Mr. President, I have stated repeatedly and emphatically that, as a matter relating to Senate procedure, it would be completely illegitimate to alter in any way the original Senate-passed measure requiring FULL disclosure of holds. The U.S. Constitution makes clear that, “Each House may determine the Rules of its Proceedings...” The hold is a unique feature of the Senate, arising out of its own rules and practices with no equivalent in the House of Representatives. As such, there is no legitimate reason why this provision, having already passed the Senate, should be altered in any way. Nevertheless, it was altered in a very substantial way. In fact, it was altered in a way that I fear will allow secrecy to continue in this institution. Clearly, the so called “Honest Leadership and Open Government Act” was handled by the majority party in a way that is anything but. Mr. President, I have been frustrated so far in my attempts to find answers about how the rewritten provisions will be applied, but we’ll find out soon enough. I can assure you that I will not give up until I am satisfied that the public’s business is being done in public.

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