



Memorandum

November 23, 2021

Vice President Harris Can Easily Disregard the Parliamentarian's Advice; History Proves It

Senate Parliamentarian Elizabeth McDonough has three times attempted to [block](#) immigration from being included in the budget reconciliation process. Her advice regarding a pathway to citizenship in the Build Back Better package is [riddled with flaws](#) and has disastrous implications for millions. Fortunately, the Parliamentarian's advice can be ignored by the sitting Vice President. Should Vice President Harris exercise this right, she will revive an important prerogative of her office; a right invoked by multiple predecessors.

This prerogative is attested to by the late [Robert Dove](#), who worked under two Senate parliamentarians and served as Parliamentarian from 1981 to 1987. He pointed out that Vice President Hubert Humphrey of the Johnson administration *twice* exercised his power to ignore the then-parliamentarian's advisory opinions. "The year after I came [to the Senate] the Vice President of the United States, Hubert Humphrey, and the Senator from South Dakota at that time, George McGovern, came up with a strategy to change the filibuster rule," [Dove testified](#), "...The parliamentarian was not [in favor of the Vice President's strategy], and the Vice President was not ruling based on the advice of the parliamentarian."

[According to statute](#), a 3/5 Senate vote is required to overturn a vice president's ruling or waive the Byrd Rule. Despite this, Vice President Humphrey yielded to his opponents after losing only [a majority vote](#) in 1967. Two years later, Vice President Humphrey again ignored the Senate Parliamentarian for filibuster reform. This effort also [came to naught](#) thanks to "Southern

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Democrats and conservative Republicans.” Despite these set-backs, Humphrey’s efforts firmly established the right of a sitting vice president to ignore a parliamentarian’s advice.

The most recent instance of a vice president invoking this authority is 1975, when Vice President Nelson Rockefeller of the Ford administration ignored the parliamentarian and this time, [successfully enacted](#) the filibuster reform attempted by Humphrey six years earlier. Robert Dove’s testimony provides insight into why so much time has passed since a sitting vice president has exercised this right.

“It was Jimmy Carter who gave the first West Wing office to a vice president, Walter Mondale. That has continued to this day, and basically vice presidents have left the Senate. You just don’t see them. So it has not been my experience to have much of a relationship with a vice president over the years, because they’ve simply been gone,” [remembered Dove](#).

This history demonstrates that the Vice President is wholly and undoubtedly empowered to make a decision contrary to the advice of the parliamentarian. While clear that vice presidents who exercise this prerogative face opposition, the threat of reprobation from a faction of the Senate should not deter Vice President Harris from fulfilling her responsibilities. In demonstrating political strength and ignoring the parliamentarian’s advisory opinion, Vice President Harris will arguably reaffirm and strengthen the role of the Vice President as Presiding Officer of the Senate.

Should Vice President Harris wield her power, dissenting Senators would need to muster 60 votes to overturn her decision. If there has ever been a time for a vice president to assert their prerogative as Presiding Officer of the Senate, that time is now. Democrats have the rare opportunity of controlling the presidency and both chambers of Congress -- a privilege that they [may only enjoy for a few more months](#).

Given the [total appropriateness](#) of a pathway to citizenship in budget reconciliation, the popularity of citizenship across party lines, and the immediate need for the Biden-Harris administration to repair their legacy on immigration, there is a strong strategic and moral imperative for Vice President Harris to exercise the power of her office. Vice President Harris has proudly described herself as “the daughter of a mother who came to the United States when she was 19 years old.” Through her constitutional roles as Vice President and Presiding Officer of the Senate, Vice President Harris has the power to clear the path for legislation that will positively transform the lives of millions of individuals, families, communities -- and the entire country.

All she has to do now is act.

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