

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top and a dark blue base at the bottom. The globe in the top bulb is dark blue, and the globe in the bottom bulb is light blue. The text is centered within the hourglass.

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Senate Committee Hearings: The "Minority Witness Rule"

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April 24, 2007

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When a Senate committee, other than the Appropriations Committee, holds a hearing, the minority party members of the panel have the right to call witnesses of their choosing to testify during at least one day of that hearing. Paragraph 4(d) of Senate Rule XXVI—known as the “minority witness rule”—states:

Whenever any hearing is conducted by a committee (except the Committee on Appropriations) upon any measure or matter, the minority on the committee shall be entitled, upon request made by a majority of the minority members to the chairman before the completion of such hearing, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of hearing thereon.

If the minority’s request to call witnesses comes after a hearing has begun, it will necessitate the continuation of the hearing on an additional day to accommodate minority witnesses. For more information on legislative process, see <http://www.crs.gov/products/guides/guidehome.shtml>.

The minority witness rule was contained in Section 114(a) of the Legislative Reorganization Act of 1970¹ and was subsequently made a part of the standing rules of the Senate. The committee report accompanying the 1970 act said of the creation of a minority witness rule:

By custom, committees ordinarily honor requests from their minority party members to call certain witnesses. [This section] will make this a matter of right. It provides that during any hearing of a committee, those members shall be entitled, during at least one day of the hearing, to call as witnesses persons they select. We don’t look upon this as an authorization for delaying tactics but rather as good legislative practice.²

Rule XXVI is rarely formally invoked, however. In practice, the rule has largely served as a “backstop,” which gives the minority party members of Senate committees procedural recourse should the majority refuse to invite witnesses they request. In the vast majority of hearings, the majority does invite minority witnesses after consultation and negotiation with minority Senators and staff.

In comparison to the House of Representatives—which has a similar minority witness rule—the rules and precedents of the Senate give Senators far more individual influence over the scheduling and consideration of legislation. That, in conjunction with the tradition of comity that generally governs the chamber, means that Senators have rarely found it necessary to invoke Rule XXVI to have their views represented. Occasionally, however, a majority of the minority party members have invoked Rule XXVI to have their witnesses heard from at a hearing.³

Majority Prerogatives and Minority Witnesses

While paragraph 4(d) of Senate Rule XXVI gives the minority the right to witnesses of their choosing during one hearing day, the committee majority maintains control over the scheduling and logistics of that hearing. In addition, ordinary Senate and committee rules governing hearings apply equally to any hearing in which minority witnesses testify.

¹ P.L. 91-510, 84 Stat. 1140.

² U.S. Congress, House Committee on Rules, *Legislative Reorganization Act of 1970*, report to accompany H.R. 17654, 91st Cong., 2nd sess., H.Rept. 91-1215 (Washington: GPO, 1970), p. 6.

³ See, for example: U.S. Congress, Senate, Committee on Labor and Human Resources, *AIDS Education and Care*, hearing, 101st Cong., 1st sess., Feb. 7, 1989 (Washington: GPO, 1987).

It is up to the chairman of the committee to set the day and location of the requested testimony under a reasonable schedule. While the committee majority must invite the witnesses chosen by the minority party, they are not precluded from inviting additional witnesses of their own choosing.

The committee chairman maintains control over the logistics of how the minority witnesses will testify (i.e., individually, in panels, etc.) and also determines whether or not to administer the oath to the witnesses in keeping with its normal practices.

As is the case with other witnesses, a minority witness may decline an invitation to testify before a Senate committee or subcommittee. The committee can elect to issue a subpoena for their testimony under the normal procedures of the Senate and the committee, but is not required to do so.

The scope of testimony under the minority witness rule is generally limited by the subject of the hearing. A committee is not required to permit testimony by minority witnesses or questioning by Senators that strays from the announced subject of the hearing. If the committee chooses, of course, it may broaden the scope of its inquiry or permit non-relevant debate as it sees fit.

Notwithstanding the rights afforded the minority party under the minority witness rule, a committee majority always retains the right, applying a “reasonableness test,” to determine the relevance of testimony and the appropriate length of a Rule XXVI minority day of witnesses.

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