United States Senate

WASHINGTON, DC 20510

MEMO

TO: Members of the Senate Democratic Caucus
FROM: Senator Alex Padilla
DATE: June 3, 2025
SUBJECT: **Recap and Implications of Senate Republicans Going Nuclear on the *CRA* and the Senate Parliamentarian Regarding California's Clean Air Act Waivers**

Summary

For the first time in Senate history, the Republican majority successfully exercised a nuclear option to eliminate a legislative filibuster and pass bills by a simple majority vote – three joint resolutions regarding EPA waivers issued to California under the *Clean Air Act*. With party-line votes on May 21, 2025, the majority overrode: (1) the procedural limits in the text of the *Congressional Review Act (CRA)* itself; and (2) the Parliamentarian's decision that these waivers were NOT entitled to the expedited consideration of the *CRA*, bypassing cloture and the 60-vote threshold.

Procedural Recap

The majority took two nuclear steps at the end of debate on an actual *CRA* resolution, S.J.Res. 55.

Step One – Nuclear on the CRA: First, they overrode the plain text of the *CRA* in Section 802(d)(1) which states "all points of order against the joint resolution (and against consideration of the joint resolution) are waived." Minority Leader Schumer made a parliamentary inquiry as to whether the Chair was familiar with this section of the *CRA*. The Chair responded in the affirmative.

Notwithstanding that provision of law, Majority Leader Thune raised a point of order that points of order *are* in order under the *CRA*, claiming *without explanation* that two other subsections conflicted with (d)(1).[1] However, a bedrock principle of statutory construction is that a law should be read harmoniously whenever possible, and not so that a provision nullifies another within the same statute. The subsections cited by Leader Thune are properly read to ensure Congress' intent to give expedited procedures to *legitimate CRA* resolutions, not to nullify 802(d)(1) and allow unrelated points of order.

So, despite the law's requirement that "all points of order . . . are waived", the Chair submitted the question, and the majority then voted to create a new precedent to allow points of order during *CRA* debates.[2] In doing so, a majority of the Senate (and only the Senate) has effectively repealed a significant part of 802(d)(1) of the *CRA* as originally enacted and signed into law.

Step Two – Nuclear on the Parliamentarian: The first step allowed the Majority Leader to raise his next point of order to overturn the Parliamentarian's decision that California's *Clean Air Act* waivers were NOT entitled to expedited consideration under the *CRA*. That determination was consistent with EPA precedent and the GAO's legal opinion that the waivers are not "rules" subject to the *CRA*.

To make the proceedings clear, Leader Schumer restated his parliamentary inquiry from the day before: "is it true that the Parliamentarian advised Leadership Offices that the joint resolution of disapproval regarding the California waivers issues do not qualify for expedited consideration under the Congressional Review Act?"

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[1] Sec. 802(d)(2) references "debatable motions and appeals" and (d)(4) states that "[a]ppeals from the decisions of the Chair relating to the application of the rules of the Senate relating to a [*CRA* resolution] shall be decided without debate."

[2] Prior to this vote, Leader Schumer made a motion to table the Chair's question, made his own point of order that points of order are not in order, and several motions to adjourn to a time certain. The Republican majority rejected all these attempts.

The Chair again responded *in the affirmative*, i.e. that California waiver resolutions were NOT entitled to expedited consideration under the *CRA*.

Nevertheless, Leader Thune made a point of order to overturn the Parliamentarian's determination. The Chair then *ignored* the Parliamentarian's advice, claiming that this was a "novel" question and submitted the question to the Senate.[3] The majority then voted to set another new precedent. Going forward, GAO legal opinions may grant privilege to *CRA* resolutions on agency actions that should have been (but were not) submitted to Congress as rules. But *any* agency action that is submitted as a rule, however, will now automatically qualify for expedited Senate consideration without any independent check by the GAO or the Parliamentarian.

Future Senate Implications

The caucus will determine its next steps. For my part, I am holding EPA nominees accountable for their agency's abuse of the *CRA* while we consider additional actions. Going forward, it is important to recognize that the Senate has now changed in some significant ways:

Nuclear Strategy: The Republican majority went to great lengths to avoid a direct vote to overrule the Chair, while still overruling both the text of the *CRA* itself and the Parliamentarian's decision about what qualifies under the *CRA* by submitting the question(s) to the Senate. Historically, ignoring the Parliamentarian had been considered extreme. Now, we may see this tactic again, potentially as soon as budget reconciliation on both budget baseline and Byrd rule questions, or perhaps not until some new priority arises for the majority.

The *Congressional Review Act*: First, Senate Republicans have opened a new loophole in the *CRA*. **With this new precedent, the *CRA's* fast-track procedures now apply to any resolution regarding any action dating back to 1996 that an agency chooses to submit to Congress.** This could lead to more use (and abuse) of the *CRA* on non-rule agency actions, taking up more of the Senate's limited time, and giving federal agencies unilateral power to trigger the *CRA*'s expedited Senate procedures.

Second, the new precedent that allows for nondebatable points of order during *CRA* resolutions provides Senators with a new tool to force votes whenever a *CRA* resolution is pending. These points of order would be decided by a simple majority vote during the expedited consideration of the *CRA*. Notably, the Trump administration has already issued many rules, big and small, which could trigger the *CRA*.

The Legislative Filibuster: During debate, Majority Leader Thune stated: "[w]hile Republicans are in charge, the legislative filibuster will remain in place." He made no such commitment regarding the Budget Act or any other statute that has expedited procedures. And, as we have seen, past commitments not to overrule the Parliamentarian on the Byrd Rule may not extend to submitting the question to the Senate and thus avoiding the formality of "overturning" a ruling of the Chair.

Like most Senate Democrats, I proudly voted to allow voting rights legislation to pass the Senate on a majority vote threshold in 2022. Unfortunately, that effort was not successful. At the time, Republicans were united in support of the legislative filibuster. Despite Republican complaints today, it is our duty to use the existing rules to represent our states and constituents as best we can. What is truly hypocritical is for the Republican majority to defend the filibuster, then go nuclear to eliminate it on legislation it wants to pass while trying to deny the reality that occurred on the Senate floor. We should not forget.

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[3] Majority Leader Thune claimed that this was analogous to the Chair submitting a question to the Senate in the 118th Congress of whether S.J.Res. 89 qualified for expedited procedures under the *War Powers Act*. However, that is not an accurate comparison as there is a crucial distinction. In that case, unlike with California's waivers, the Parliamentarian declined to decide that question because it was a factual question about the nature of "hostilities," and that approach was accepted on a bipartisan basis. With the California waivers, the Parliamentarian made a determination, and it was overruled.