

Understanding the Senate Filibuster

Rick Barry

www.nolabels.org

Purpose and History of the Filibuster

The filibuster was initially conceived of as **a way to ensure that minority opinions were heard** and understood before the Senate voted on an issue. Senate rules first allowed for filibusters in 1806, though the first filibuster actually occurred more than 30 years later, in 1837. They continued to be rare for more than another century.

The idea behind the filibuster was simple: As long as a senator kept talking on the floor, a bill could not move forward. Throughout the 19th century, the Senate left ending the filibuster up to the filibustering senators. When they felt they had been adequately heard, they could give up the floor and allow debate to move on to a vote.

In 1917, at the behest of President Wilson, the Senate adopted a procedure known as the **cloture vote**, which could end a filibuster. If a cloture vote is called for, a super-majority of senators can force an end to debate and bring the question under consideration to an up-or-down vote. Initially, achieving cloture required a vote from two thirds of all elected senators; the number was later changed to **three fifths** of all elected senators. For the next sixty years, the filibuster continued to be used sparingly.

In 1975, though, the Senate made a change that made it significantly easier to filibuster by adopting rules that allow other business to be conducted while a filibuster is, technically underway. Since 1975, senators have not needed to stand up on the floor and make their case to their colleagues and their constituents in order to halt legislation. Instead, these **“virtual filibusters”** can be conducted in absentia.

Use of the Filibuster

The filibuster has been used 1,300 times since 1917. However, the vast majority of those filibusters have taken place in recent years.

Filibuster use began to increase dramatically in the 1970s. Even so, there still had only been a grand total of 413 Senate filibusters by 1990. Over the last 12 years, however, the filibuster was used nearly 600 times!

These filibusters aren't just being used to extend debates or stall votes—today, **senators filibuster motions to proceed, preventing bills from being debated at all**. A device intended to promote comprehensive discussion has turned into a tool to keep ideas from even being heard.

Effects of the Filibuster

Even with the 1975 rules change allowing the Senate to conduct other business while a filibuster is underway, every filibuster kicks off a complex set of Senate procedures that can **bring the Senate to a halt for up to a week** and prevents other critical issues from being addressed.

Filibusters on motions to proceed **prevent the Senate from even being able to consider ideas** for how to solve our country's big problems. For years now, small numbers of senators representing as little as 11% of the country have kept the Senate from even discussing important legislation that has passed committee review.

Virtual Filibusters allow small numbers of senators to **effortlessly place personal political agendas above the work of government with no consequence**. As a result, even routine Senate functions like approving executive appointees get mired in partisan politics, resulting in **85 vacancies on federal judiciary benches**. Major pieces of legislation, including a bill that would have provided medical care for 9/11 responders, have enjoyed majority support in the Senate yet died in the face of filibusters for lack of cloture.

Legislation that should pass into law has been canceled and courts have been thrown into disarray, but the senators who have helped make that happen have never needed to make a case to their colleagues or their constituents.

Senate Filibuster

-What is the filibuster?

- A filibuster is a prolonged speech given with the intention of preventing a final vote and thereby obstructing passage of legislation.
- The Senate has allowed filibusters since 1806. The original intent was to allow the minority to be heard prior to a vote. Initially, the person filibustering had to be present and speaking.
- In 1917, during debates over World War I, the Senate adopted Rule XXII to enable a 2/3 vote (67 votes) to end debate (voting to end debate is called cloture).
- In 1975, the Senate amended Rule XXII to require only a 3/5 vote (60 votes) to end debate (cloture) and allowed the Senate to conduct other business while a filibuster was taking place (virtual filibuster where the individual does not have to speak).
- Today, senators even filibuster “motions to proceed” which means that they can filibuster the suggestion that an issue be debated!
- The “Standing Rules” of the Senate may be amended by a simple majority vote, but this can be filibustered too (still need 60 votes to change Senate rules).
- The “nuclear option” is a move by the majority to change the rules through a complicated process called “ruling from the chair” that would effectively establish a new precedent for Senate procedures, which would enable the majority to replace the super-majority requirement for cloture to a simple majority requirement (effectively restoring majority rule, but without minority protections).
- In other words, the “nuclear option” refers to any plan to change Senate rules *without a supermajority* and is usually used to refer to changing the rules regarding cloture.
- Why would the majority party want to use the “nuclear option” to end the supermajority requirement for cloture? If the minority party abuses the use or threat of the filibuster to require 60 votes to do anything, then majority rule itself has been undermined.
- If the majority decides that the minority’s obstruction has become a “tyranny of the minority” then they may decide to use the “nuclear option” to move beyond the gridlock.
- In 2013, the Democrats in the Senate voted to remove the filibuster as an option during executive branch and lower federal court confirmations (the filibuster can still be used in Supreme Court confirmations and for proposed bills).

-How and why did this happen?

- In 1953, President Eisenhower began the practice of having the American Bar Association evaluate Supreme Court nominees.
- In 2001, President Bush announced that he would no longer seek the ABA’s evaluations (they have a “liberal bias”).
- In 2005, Democrats in the Senate blocked 10 of Bush’s judicial nominees because they were too “conservative” or “outside the mainstream” (according to the Democrats); they blocked the nominees by using the filibuster (not the first time, but unprecedented in scale).
- The Republicans responded by threatening the “nuclear option”, but a group of Republicans and Democrats called the “Gang of 14” struck a deal to end the conflict and strike a deal.
- During the Obama presidency, the use of the filibuster by Republicans has been unprecedented in Senate history and the Democrats began to consider the “nuclear option”.
- In 2013, the Democrats in the Senate did remove the filibuster in response to 59 executive appointments and 17 judicial nominees waiting indefinitely for a confirmation vote.
- Changing the rules allowed the Democrats to confirm these appointments with simple majority votes.
- It remains to be seen whether a majority will use the “nuclear option” to abolish the filibuster for Supreme Court confirmations and proposed bills.