

114TH CONGRESS  
1ST SESSION

# H. RES. 545

Calling for an end to the abuse of the Standing Rules of the Senate and to improve the debate and consideration of legislative matters.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 2, 2015

Mr. FRANKS of Arizona (for himself, Mr. ADERHOLT, Mr. CULBERSON, Mr. WILSON of South Carolina, Mr. GIBBS, Mr. WALBERG, Mr. POSEY, Mr. MULVANEY, Mr. GOSAR, Mr. SALMON, Mr. PITTS, Mrs. BLACKBURN, Mr. CRAMER, and Mr. SMITH of Texas) submitted the following resolution; which was referred to the Committee on Rules

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## RESOLUTION

Calling for an end to the abuse of the Standing Rules of the Senate and to improve the debate and consideration of legislative matters.

Whereas the failure to pass critical, overwhelmingly popular legislation in the United States Senate has resulted from the current Senate cloture rule and the practices of the Senate related to debate;

Whereas supermajority provisions of the Senate cloture rule (paragraphs 2 and 3 of rule XXII), commonly known as the Senate filibuster rule, are not contemplated by the United States Constitution;

Whereas the Senate cloture rule and the practices of the Senate related to starting and ending debate have evolved

over time, and resulted in the Senate routinely being unable to reach a fair, up or down vote on important matters, even when a majority of the body wishes to do so;

Whereas in the present day, the Senate has become debilitated by its rules, practices, and the operation of cloture;

Whereas nearly all legislation today that cannot obtain unanimous consent faces a multistep procedural process gauntlet, before ever having a chance for a “real” up or down vote;

Whereas most significant legislation in the Senate is called up and made pending before the Senate only after cloture is invoked on a “motion to proceed to consider” it, and subsequently, another cloture motion must be filed to end debate on the legislation itself, which means most legislation in the Senate is subject to not one, but at least two, filibusters;

Whereas the Senate no longer only filibusters publicly (by “holding the floor” in a traditional filibuster), but it also does so, privately, by Senators noticing with their leadership threats to filibuster, which in effect invokes a secret or “anonymous hold” out of sight of the American people;

Whereas it has become an increasingly common practice for Senators to place “anonymous holds” on important business and threaten to filibuster without being required to physically and openly do so on the Senate floor;

Whereas even if a secret hold is resolved, Senate business can still be further delayed by a single Senator openly objecting to a request to consider business on the Senate floor in addition to other dilatory tactics or subsequent filibuster;

Whereas in the early years of the Senate there was no cloture rule or the concept of an “anonymous hold”, as it conducted legislative business through serious consideration and accommodation for all Senators, before putting any matter to a vote;

Whereas delaying legislative matters by use of the traditional “hold the floor”—standing Senate filibuster—and other dilatory tactics—were not routinely used during the early years, but eventually became common features used by Senators to delay or prevent a vote on consequential legislation;

Whereas in 1917, after a long series of deliberations in the Senate by a group of Senators that killed a bill that would have allowed President Woodrow Wilson to defend against German submarine warfare, in the period leading up to United States involvement in World War I, the Democrat-controlled Senate adopted the “Martin Resolution”, the original cloture rule (paragraph 2 of rule XXII), permitting two-thirds of Senators voting (with a quorum present) to bring debate to a close and proceed to a vote;

Whereas in the lead-up to the establishment of the rule in 1917, President Woodrow Wilson responded and in his statement said, “. . . The Senate of the United States is the only legislative body in the world which cannot act when its majority is ready for action. A little group of willful men, representing no opinion but their own, have rendered the great Government of the United States helpless and contemptible. The remedy? There is but one remedy. The only remedy is that the rules of the Senate shall be so altered that it can act. The country can be relied upon to draw the moral. I believe that the Senate

can be relied on to supply the means of action and save the country from disaster.” (55 Congressional Record 20);

Whereas from 1917–1963, totaling a span of 46 years, the Senate managed to invoke cloture on only five occasions, consequently during such time the Senate filibuster and cloture rules were used to prevent the Senate from passing critical bills that pertained to civil rights, such as prohibiting lynching and poll taxes;

Whereas in 1946, the Senate failed to invoke cloture to abolish the poll tax—which maliciously required a tax to be paid in order to vote—when a large group of Senate Democrats (26), joined by 7 Senate Republicans, opposed ending debate;

Whereas if the cloture rule had a threshold of simple majority for those Senators voting and present, the 1946 bill to end the poll tax would have been considered for a vote;

Whereas in 1922, 1935, and 1938, the Senate filibuster was used by a group of Southern Senators to defeat anti-lynching bills that centered on stopping horrific extrajudicial executions;

Whereas in 1949, the Democrat-controlled Senate revised the cloture rule, allowing the Senate to invoke cloture on any measure or motion only if two-thirds of Senators chosen and sworn voted in favor;

Whereas the 1949 amendment meant that  $\frac{2}{3}$  or 64 Senators affirming would be required to invoke cloture, since there were a total of 96 Senators;

Whereas while filibustering to deny rights to minority groups, Southern Democrat Senators used the Senate filibuster, arguing that it was a tool to protect minority rights;

Whereas in 1959, the Democrat Majority Leader, Senator Lyndon B. Johnson of Texas, sponsored an amendment to paragraphs 2 and 3 of rule XXII that reimplemented the requirement for two-thirds of Senators voting (with a quorum present) to close debate;

Whereas in 1975, the Democrat-controlled Senate adopted the current cloture threshold, lowering the  $\frac{2}{3}$  vote to a  $\frac{3}{5}$  vote of the full Senate, normally 60, to end debate;

Whereas in 1976, the Democrat-controlled Senate amended the second sentence of the final paragraph of section 2 of rule XXII that regulated post-cloture consideration of amendments;

Whereas in 1979, the Democrat Majority Leader, Robert C. Byrd, secured adoption of an amendment to paragraph 2 of Senate rule XXII that further regulated post-cloture consideration of matters;

Whereas in 1986, for the first time, the Republican-controlled Senate adopted a resolution to govern the public broadcast of the chamber floor proceedings that reduced the time permitted for post cloture consideration of a measure or matter from 100 hours to 30 hours;

Whereas in the 113th Congress, the Democratic-controlled Senate used the so-called “nuclear option”, voting 52–48, with all Republicans and 3 Democrats voting against, to reinterpret Senate rule XXII to provide for majority cloture on executive branch and judicial nominees other than to the Supreme Court;

Whereas the 1917 cloture rule adoption, its amendments in 1949, 1959, 1975, and the new precedent, “the nuclear option” in 2013, were engineered by Senate Democrats when they held the Senate majority;

Whereas in the 114th Congress, the failure to invoke cloture and the Senate's informal practice related to debate have stalemated the legislative process, tabling the consideration of critical issues affecting the constitutional and national security of the Nation;

Whereas this year the failure to invoke cloture has delayed measures in the Senate from reaching a fair, up or down vote on matters of economic development and job growth, securing the United States border, protecting innocent life, national security bills, and the most important national security issue of our time, the Iranian Nuclear Deal;

Whereas if the cloture rule had a threshold of a simple majority to start or end debate—51 votes of the total Senate—for those Senators duly sworn and chosen, legislation of the 114th Congress that passed the House of Representatives, which is supported by a majority of Congress and an overwhelming majority of the American people, would have reached a final vote in the Senate;

Whereas the American people are largely unaware of the esoteric practice of requiring the supermajority to allow a vote and therefore are unable to ascertain which parties or individuals are responsible for the actions or inactions of the Senate and consequently accountability becomes dramatically reduced;

Whereas the Senate's cloture rule and practices related to debate have been the culpable restraints on any significant actions by this Congress even when the majority wishes to act;

Whereas the overall effect of the required supermajority for cloture is to shield from voter accountability actions or

inactions in both the legislative and executive branches of Government;

Whereas the original intent of the adoption of the cloture rule in 1917 was to prevent unreasonable delay, today it is used to actually create extended or permanent delay; this violates the historical and original intent for the rule and in fact exacerbates the very problem it was originally intended to address; and

Whereas the current cloture rule and the Senate's informal and formal practices related to debate have ultimately subordinated the Constitution of the United States itself: Now, therefore, be it

1       *Resolved*, That—

2               (1) it is the sense of the House of Representa-  
3       tives that the Standing Rules of the Senate and de-  
4       bate practices should not be abused for the purpose  
5       of debilitating the Senate and indefinitely blocking  
6       debate or a fair, up or down vote on legislative mat-  
7       ters;

8               (2) the House of Representatives urges the Sen-  
9       ate to adopt a new precedent that would end the  
10      abuse of the Standing Rules of the Senate and ardu-  
11      ous practices related to debate in order to restore  
12      the daily workings of the Senate, in keeping with ac-  
13      countable debate such as the classic standing and  
14      talking filibuster;

15              (3) it is the sense of the House of Representa-  
16      tives that after the Senate sets a new precedent to

1 restore its workings, the Senate should negotiate  
2 and adopt, under its existing rules of a super-  
3 majority vote to invoke cloture, a parliamentary  
4 procedure to replace the cloture motion to call up  
5 legislation and make it pending before the Senate,  
6 with a “non debatable motion to proceed to con-  
7 sider” that allows for the minority to offer a reason-  
8 able number of germane amendments, subject to de-  
9 bate, once the measure is pending for consideration;

10 (4) the House of Representatives further en-  
11 courages the Senate to forbid threats of a filibuster  
12 derived from an “anonymous hold”, and in its place  
13 reinvigorate the “traditional standing filibuster” or  
14 “hold the floor” mechanism of dissent, with a time  
15 allocation of up to 100 hours and the ability to trun-  
16 cate debate only by a petition of 60 Senators;

17 (5) it is the sense of the House of Representa-  
18 tives that the proposed number of germane amend-  
19 ments and debate hours and mechanism to truncate  
20 debate described in paragraphs (3) and (4), respec-  
21 tively, could be decreased or increased at the time  
22 that the rule change is negotiated and adopted, en-  
23 suring the appropriate center between sufficient ad-  
24 versarial debate and the prevention of chronic stale-



1       mate is both a Senate majority and minority deter-  
2       mination;

3               (6) the House of Representatives believes that  
4       these proposed changes to the Standing Rules of the  
5       Senate and debate practices shall—

6               (A) reestablish deliberation in the world’s  
7       most deliberative body, as intended by the  
8       United States of America’s founding fathers;

9               (B) allow the Senate to meet its constitu-  
10      tional responsibilities in a timely fashion and ef-  
11      fectively respond to national needs;

12              (C) enhance our democratic system and  
13      the attending processes that clearly, specifically  
14      and accurately assign official actions of rep-  
15      resentatives and parties accordingly so that ac-  
16      countability is clearly delineated; and

17              (D) encompasses a strong incentive to  
18      reach consensus in the Senate and still preserve  
19      the minority’s opportunity to have enhanced ob-  
20      jection and reasonable leverage against any  
21      overreach on the part of the majority or if the  
22      minority feels further debate and clarity on a  
23      given agenda item is particularly important to  
24      the country; and

1           (7) it is the sense of the House of Representa-  
2           tives that nothing in this resolution—

3                   (A) shall be construed as the House of  
4           Representatives advocating a wholesale abolish-  
5           ment of a Senate filibuster mechanism or  
6           supermajority cloture requirement; or

7                   (B) shall be construed as the House of  
8           Representatives calling for the classic standing  
9           and talking Senate filibuster to be abolished; on  
10          the contrary, the House believes it should be re-  
11          invigorated.

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