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What is the “60 Vote Rule” in the Senate?

In the early years of Congress, members of the House as well as the Senate could filibuster – a term that stems from a Dutch word meaning “pirate” and a Spanish word meaning “freebooting.” But as the House grew in number, House rules limited debate. Unlimited debate continued in the Senate.

It’s a myth that the filibuster was part of the “original design” of the Senate by our nation’s Founders.¹ The first filibuster in U.S. Senate history didn’t happen until March 5, 1841.² And there were very few before the Civil War because it was generally assumed that matters would be brought for an up-or-down vote. Interestingly, no Supreme Court nominee with majority support in the U.S. Senate has ever been filibustered.

In 1917, Senators adopted Rule 22 (from the urging of President Wilson) that allowed the Senate to end debate with a two-thirds majority vote, a device known as “cloture.” Filibusters were used against the Treaty of Versailles at the end of World War I and against civil-rights legislation such as anti-lynching legislation and the Civil Rights Act of 1964. During this time period, invoking cloture required 67 votes if all 100 Senators were voting.

Between 1919 and 1960, only four out of 23 cloture movements successfully reached the two-thirds threshold.

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¹ Sarah Binder, *The History of the Filibuster*, Brookings (April 22, 2010), <https://www.brookings.edu/testimonies/the-history-of-the-filibuster>

² Kristi Oloffson, *A Brief History of Filibusters*, Time (November 2, 2009),

<http://www.time.com/time/interactive/0,9171,1933802,00.html>

³ *Filibuster and Cloture*, United States Senate, http://www.senate.gov/legislative/record/filibuster_and_cloture.htm

It wasn't until 1975 when the Senate reduced the number of votes required for cloture from two-thirds to three-fifths, which is what now gives us the 60 vote rule.³

In 2013, Democrats opened the door for abandoning the 60-vote threshold for lower federal court appointments. Led by then-Senate Majority Leader Harry Reid, Democrats used a rare parliamentary move known as the “nuclear option” to change the rules so that federal judicial nominees and Executive-office appointments can advance to confirmation votes by a simple majority of Senators, rather than the 60-vote supermajority that was standard for nearly four decades.⁴

³ *Filibuster and Cloture*, United States Senate, https://www.senate.gov/artandhistory/history/common/briefing/Filibuster_Clature.htm (last visited April 5, 2017).

⁴ Paul Kane, *Reid, Democrats Trigger Nuclear Option*, The Washington Post (November 21, 2013), https://www.washingtonpost.com/politics/senate-poised-to-limit-filibusters-in-party-line-vote-that-would-alter-centuries-of-precedent/2013/11/21/d065cfe8-52b6-11e3-9fe0-fd2ca728e67c_story.html