



Explainer: The Talking Filibuster

Synopsis

Currently, there is significant discussion about the possibility of using what is called a *talking filibuster* in the U.S. Senate to pass the Safeguard American Voter Eligibility (SAVE) Act, legislation that would require proof of citizenship to register to vote.¹ Many have inaccurately claimed that employing the talking filibuster would be akin to the “nuclear option” and would eliminate the legislative filibuster. Below, we outline the history of the Senate filibuster and explain how the use of a talking filibuster would not mean the end of the Senate filibuster as we know it but rather a return to how the Senate historically functioned, as in a phrase reportedly first used by President James Buchanan, “the world's greatest deliberative body.”

What Is the Talking Filibuster?

The talking filibuster is the original and historical way of ending debate in the Senate. The Senate operates on the foundation of unlimited debate, meaning there is no way to prevent senators from debating a bill until they are satisfied with it and put it to a vote. Debate only ends when there is unanimous agreement that everyone has had his or her say. *Because of this, a senator (or group of senators) could theoretically hold the floor and talk indefinitely to prevent debate from ending and moving on to a vote.*

From 1806 to 1917, the *only* way to end debate in the Senate was for senators to stop debating. There was no cloture mechanism or vote to end debate.

In 1917, the Senate adopted a new rule (Rule XXII) that added *cloture* at a two-thirds majority.² Cloture is the mechanism to end debate. Between 1917 and 1975, the cloture threshold was 67 votes, which is how Southern Democrats were able to filibuster civil rights legislation for so long despite the existence of cloture. There simply weren't 67 votes to invoke cloture to end debate.

¹ Bovard, R. (2026, February 2). *Senate GOP Can Fix Elections, Boost Trump, and Wreck Dems with the SAVE Act*. The Federalist. <https://thefederalist.com/2026/02/02/senate-gop-can-fix-elections-boost-trump-and-wreck-dems-with-the-save-act/>

² *U.S. Senate: About Filibusters and Cloture | Historical Overview*. (2025, April 8). <https://www.senate.gov/about/powers-procedures/filibusters-cloture/overview.htm>

In 1975, the threshold for cloture was lowered to a three-fifths majority: 60 votes. That is the current rule.³

It is important to note that the addition of cloture *did not* eliminate the traditional and original practice of limitless debate, which could result in a talking filibuster. The ability to filibuster by endlessly talking on the Senate floor is still a part of the Senate rules, but it is currently not used because of the cloture mechanism.

What Is Cloture?

Cloture is the procedure the Senate uses to end debate on a matter and move toward a final vote, most notably to overcome a filibuster. Cloture limits debate and ends a filibuster.

When a bill or other measure is being considered in the Senate, a senator (by tradition and practice, the majority leader or the bill's manager) files a cloture petition that must be signed by at least 16 senators.

Once the petition is filed, the Senate cannot vote on the cloture petition until two calendar days have passed.

For most bills in the Senate, cloture requires 60 votes to be invoked. Exceptions include reconciliation bills, which require only a simple majority.

After cloture is invoked, there are 30 additional hours of debate on the bill, and each senator can speak for up to one hour. During this time, amendments can be offered as well, but they must be germane, or related to the bill.

Once all post-cloture debate time has expired, the final vote on the bill takes place at a simple majority (51 votes).

Note that this is the cloture process as laid out by the rules, but in practice there are usually bipartisan unanimous consent agreements to reduce the 30 hours of debate or other predetermined agreements to allow a certain number of amendments.

Is the Use of the Talking Filibuster the “Nuclear Option” or the Elimination of the Filibuster?

No. The talking filibuster is already allowed under the Senate rules and has been since 1806. The rule that allows cloture was not added to the Senate rules until 1917, and the modern version of

³ Ibid.

cloture wasn't a part of the Senate rules until 1975. From 1806 to 1917, the only way to end debate in the Senate was for senators to just stop talking. The talking filibuster is the original filibuster.

The nuclear option is the Senate deciding to operate in opposition to, or contravention of, the Standing Rules of the Senate. This is done by the Senate agreeing to set a new precedent by which it operates. Because the Constitution allows the Senate to set up its own proceedings, it can operate in opposition to the Senate's Standing Rules if senators agree to do so. The Senate operates based on the 44 Standing Rules of the Senate and additionally on thousands of precedents that may contradict the Standing Rules.

The term *nuclear option* dates back to 2013, when Democrat Majority Leader Harry Reid lowered the cloture threshold to end debate on lower court judicial nominations and executive branch nominations. Reid did not change the Standing Rules of the Senate. Rather, he and the Democrat majority decided to set a new precedent that lower court and executive nominees would be set at 51 votes instead of 60, despite what the Standing Rules say.⁴ This was characterized as the Senate "going nuclear." Republican Majority Leader Mitch McConnell also followed this practice for Supreme Court nominations in 2017.⁵

How the Talking Filibuster Could Be Used to Pass the SAVE Act

Here's how the current Senate majority could pass the SAVE Act without ending the filibuster or "going nuclear."

The Majority Leader would make the SAVE Act the pending business before the Senate. He would *not* file a cloture petition on it.

Once the SAVE Act is the pending business of the Senate, debate can begin indefinitely.

However, per Standing Senate Rule XIX, senators are limited to two speeches per legislative day on the same question during the debate on the bill. A legislative day is *not* a calendar day; it is the period beginning when the Senate convenes and ending when it adjourns. Legislative days do not align with calendar days. A single legislative day can last several days, weeks, or even months. In this scenario, the legislative day would last as long as debate continues on the SAVE Act and through a vote on the bill.

⁴ Everett, B. & Min Kim, S. (2013, November 22). *Senate Goes for "Nuclear Option."* Politico. <https://www.politico.com/story/2013/11/harry-reid-nuclear-option-100199>

⁵ Everett, B, Min Kim, S., and Schor, E. (2017, April 6). *Senate GOP Goes "Nuclear" on Supreme Court Filibuster.* <https://www.politico.com/story/2017/04/senate-neil-gorsuch-nuclear-option-236937>

This means that all 47 Democrat senators in the minority, should they oppose the bill, would have two indefinite times to speak on the SAVE Act. Each time period could last several days, weeks, or months, depending on the senator's stamina. *This approach would mean Democrat senators were engaging in a talking filibuster.* Per the Senate Rules and tradition, when holding the floor and speaking, a senator cannot sit, cannot take bathroom breaks, and cannot consume anything except water or, by existing precedent, milk.

Throughout the filibuster, senators opposed to the bill would try several parliamentary tactics to derail the bill. This includes calling votes on motions to adjourn, requesting votes on amendments, and conducting a quorum call that forces all senators to the Senate floor to be counted as present. In this scenario, Republican senators in the majority must stay at or near the Senate floor to be present for voting on these measures or to be counted during a quorum call.

Ultimately, the talking filibuster on the SAVE Act would end with either all of the opposing Democrat senators using up their two speeches each or one side giving up due to exhaustion.

If the Republican majority can outlast the Democrat minority speeches (which could take weeks) or can exhaust enough Democrat senators to the point of signing a cloture petition to end debate (currently, there must be at least seven Democrat signatures to reach 60 for cloture), then a final vote on the SAVE Act would take place at a simple majority threshold of 51 votes.