

The Senate Filibuster & the Nuclear Option

- *With the current shutdown now officially tied for the second-longest in U.S. history, there are fresh conversations about the Senate invoking what senators call the “nuclear option” to reopen the government without Democratic support, despite hesitation from leaders.*
- *Senate rules mandate that most legislation needs 60 votes to move forward in the process to ultimately passing, a step known as invoking cloture.*
- *Getting rid of this 60-vote threshold in favor of a simple majority is known as the nuclear option.*
- *The 60-vote threshold is how Democrats have been able to keep the Republicans’ funding bill from clearing the chamber as they push for health care changes.*
- *But leaders on both sides have long expressed hesitation about moving to change the rules for other circumstances, noting that doing so could be flipped right back on them whenever control of the Senate changes parties.*

The Senate tradition of unlimited debate has allowed for the use of the filibuster, a loosely defined term for action designed to indefinitely prolong debate and delay or prevent a vote on a bill, resolution, amendment, or other debatable question.

Prior to 1917 the Senate rules did not provide for a way to end debate and force a vote on a measure. That year, the Senate adopted a rule to allow a two-thirds majority to end a filibuster, a procedure known as "cloture."

Whether praised as the protector of political minorities from the tyranny of the majority, or attacked as a tool of partisan obstruction, the right of unlimited debate in the Senate, including the filibuster, has been a key component of the Senate’s unique role in the American political system.

In 1917, at the urging of President Woodrow Wilson, senators adopted a rule (Senate Rule 22) that allowed the Senate to invoke cloture and limit debate with a two-thirds majority vote. Even with the new cloture rule, however, filibusters remained an effective means to block legislation, since a two-thirds vote was difficult to obtain.

In 1975, the Senate reduced the number of votes required for cloture from two-thirds of senators voting to three-fifths of all senators duly chosen and sworn, or 60 of the current 100 senators.¹

That’s why the Senate has been unable to pass the Continuing Resolution to fund and reopen the federal government. The Republicans are the majority party in the Senate but there are only 53 Republican Senators, not enough to pass the legislation; to-date, only 3 Democrats have joined the Republicans.

The Senate adopted new precedents in the 2010s to allow a simple majority to end debate on nominations; however, the filibuster remains intact to advance legislation.

The type of filibuster most familiar to Americans is the marathon speech by a small group of senators, or even a single senator, such as the filibuster staged by fictional senator Jefferson Smith in Frank Capra’s 1939 film *Mr. Smith Goes to Washington*.

¹ About Filibusters and Cloture, <https://www.senate.gov/about/powers-procedures/filibusters-cloture.htm>

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The Nuclear Option²

As the government shutdown drags on, a small group of lawmakers is embracing the controversial legislative maneuver “nuclear option” to help break the deadlock on Capitol Hill. However, congressional leaders remain opposed to the idea.

The so-called nuclear option entails overriding the Senate filibuster – a long-standing procedural tactic – which allows any senator to delay or block a vote by extending the window of debate indefinitely.

If the filibuster were eliminated – which could be done by a simple majority vote – just 51 senators would be sufficient to advance legislation, paving the way for the narrow Republican majority to pass a spending bill.

The nuclear option has already been used several times in the past, allowing a simple majority to advance nominations. But the filibuster remains in place for passing legislation.

- 2013 – Senate Democrats employed the nuclear option to confirm lower court judicial nominees.
- 2017 – Senate Republicans used the option to confirm Supreme Court nominee Neil Gorsuch.
- 2022 – Senate Democrats made a high-profile attempt to override the filibuster to pass voting rights legislation, though it ultimately failed due to opposition from Senators Sinema and Manchin.

Leaders on both sides of the aisle have long expressed hesitation about moving to change the rules for other circumstances, noting that doing so could be flipped right back on them whenever control of the Senate eventually changes parties and thus allowing the opposing side to more easily pass its priorities without input from the minority.³

Asked earlier this month about the possibility of moving forward with the nuclear option to end the shutdown, Senate Majority Leader John Thune – who started his tenure as leader vowing to preserve the filibuster – appeared to dismiss the idea.

“The filibuster, as you know, the supermajority requirement, is something that makes the Senate the Senate,” he responded, adding it has “protected” the country.

Understanding the Clean Continuing Resolution (CR)

A clean CR is a temporary law that funds the federal government at existing levels without any new policy changes or additions. This allows for government operations to continue normally while lawmakers work to pass the full budget, unlike a CR with “poison pills” that is unrelated policy provisions.

A clean CR is used to bypass political gridlock on spending and policy, which would otherwise lead to a government shutdown. It also gives lawmakers more time to negotiate and pass a full budget without disrupting government services.

What does a Clean CR do or does not do?

² Some lawmakers call for ‘nuclear option’ to end government shutdown. What is it? <https://www.miamiherald.com/news/nation-world/national/article312590362.html>

³ Shutdown sparks new chatter on the ‘nuclear option.’ What is it and how could it end funding lapse? <https://spectrumlocalnews.com/us/snplus/news/2025/10/21/what-is-the--nuclear-option--a-couple-of-republicans-say-senate-should-use-to-end-shutdown->

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What a Clean CR Does		What a Clean CR Does Not Do	
Maintains Funding	Provides temporary funding for government agencies to keep operating at their current levels.	Add New Policies	It does not include new legislation or “poison pills” that could be used as political leverage to force unrelated policies into law.
Prevents a Shutdown	Avoids a government shutdown by ensuring a continuous flow of money while negotiations for a full budget take place.	Change Funding Levels	It does not make changes to the previous year’s spending levels
Avoids Policy Riders	Excludes unrelated policy changes or conditions that are often added to spending bills.		

It appears that the sticking point is healthcare, and the fact that health insurance costs will skyrocket if Republicans don’t negotiate with Democrats.

Did you know that the main provisions of the Affordable Care Act (ACA), also known as Obama Care, do not have an end date, but Democrats included a temporary end date of December 31, 2025, for enhanced premium tax credits? These enhanced subsidies were originally passed in the American Rescue Plan Act of 2021 and extended in the Inflation Reduction Act of 2022 to address health insurance affordability. Even with the extension in the Inflation Reduction Act, the premium tax credits would expire after December 31, 2025.

What Can You Do?

Contact your U.S. Senator and ask him or her to vote to pass the Clean CR, and keep the government open and funded until the appropriations process is complete and a full budget passed.

Find your Senator at this link: <https://www.senate.gov/senators/senators-contact.htm>

Enter your state and find your Senators. You’ll find information to contact them via email and/or telephone.

Pennsylvania Voters: Our Senators voted for the Clean CR. Contact them and thank them for their votes!

As always, if you have an election in your state or commonwealth in November, please remember to vote!