

STATE FILIBUSTERS



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KEY FINDINGS

- **Among the nation's upper legislative chambers, the U.S. Senate has both outlier rules and an unusually dysfunctional history.**
 - An evaluation of state senate rules reveals that the U.S. Senate cloture rule is an outlier. It is harder to end debate on the average piece of legislation in the U.S. Senate than in the average state senate, and, as a result, the U.S. Senate has an unusually dysfunctional history that has led to almost insurmountable gridlock. We found no evidence that state senates have dual track systems for bills comparable to the U.S. Senate's, which promotes silent filibusters.
- **46** state senates have rules to limit or close debate, **4** do not.
- **43** state senates have rules that, through either pre-set time limits or low vote thresholds to limit or close debate, make filibustering much harder to execute.
- **7** state senates have rules most comparable to the U.S. Senate's cloture rule, both lacking pre-set time limits and requiring a high percentage of Senators to approve of limits or closure of debate.
 - None of these state senates have significant filibuster traditions.

WHAT IS A FILIBUSTER?

Broadly speaking, a filibuster is any legislative tactic meant to prolong debate and delay or block a vote on a bill. Virtually any legislator who wants to filibuster can find a way to block a piece of legislation if they're willing to put in the effort. Proposing a barrage of useless amendments to stall for time, raising a series of unnecessary motions, and holding the Senate floor for hours of speeches all qualify as filibusters.

When talking about filibusters, however, Americans tend to discuss *the* filibuster, specifically the requirement in the U.S. Senate that 2/3 elected senators approve of a cloture motion, which limits debate and moves the Senate to a final vote. In practice, this procedure creates a supermajority standard for almost any bill to move forward. And while Americans generally imagine filibustering senators giving impassioned speeches for hours on end, long gone are the days of *Mr. Smith Goes to Washington*.

Senators were no longer required to hold the floor with a speech to block legislation. In order to execute a filibuster in the U.S. Senate, all a senator must do is threaten to force a cloture vote. This threat moves the bill to the side, and since the creation of this dual-track system, which allows one bill to be considered while another is filibustered, the number of cloture votes has increased exponentially. Legislation is easier to stall than ever.

How much of an oddity is the U.S. Senate filibuster? And how can learning about filibuster traditions in state senates inform a less dysfunctional path forward? Through a review of state senate rules and filibuster histories, this report aims to give insight into how we might answer these questions.

METHODOLOGY

State senate rules and filibusters are sorely under-researched. Most comprehensive reviews of state filibusters are over a [decade old](#), and in the time since, some states, including South Carolina and Idaho, have modified their rules.

In order to update research on the viability of state senate filibusters, we examined the 2020 rules of legislative procedure of 49 senates and the Nebraska Unicameral Legislature,¹ particularly honing in on their mechanisms for cutting off debate and moving to a final vote on the average piece of proposed legislation.² As necessary, we followed up with several senate offices for clarifications on unclear guidelines.

For the purposes of this document, motions to end a filibuster consist of motions for the previous question (or motions to vote immediately), motions to close debate (at a specified time or otherwise), motions for cloture, motions to resolve debate, motions for the pending question, and motions to limit debate. Motions for the previous question and motions to limit debate were the most commonly used procedures. A motion for the previous question, sometimes known as “calling the question,” is typically a vote to end debate, potentially resolve outstanding amendments, and move to a final vote on the proposed legislation.

Generally, the higher the threshold, the harder it tends to be to pass legislation. However, it is worth noting that small differences in thresholds have a large impact. In the U.S. Senate, for example, the cloture rule previously required $\frac{2}{3}$ majority of Senators *present* to close debate. In some circumstances, that meant that the threshold to close debate could be even lower than today’s standard, which requires a set number of $\frac{3}{5}$ *elected* Senators.

Requiring a set percentage of Senators to be present for a vote itself might also encourage a legislative walkout to prevent quorum, like those made in [Texas](#) and [Wisconsin](#). Without quorum, the minimum number of legislators necessary to be present for a meeting to take place, no votes may take place.

Vote thresholds on motions to limit or close debate tell an important part of the story, but not the entirety. Evaluating whether a filibuster is easier or harder to execute also requires analyzing other metrics, like limitations on speaking time that place a greater burden on filibusterers to be more creative in their efforts. Accordingly, our categorizations take these

¹ Neither Maryland nor Arkansas’ 2020 rules are available online, so their standards were clarified over email. Our rules tracking spreadsheet is available [here](#).

² Some states have more complex rules for appropriations proceedings or other specific kinds of bills. Although some examples of this may be noted in our research, this document should not be treated as a comprehensive study of those specific rules.

factors into account. In the cases of states with multiple rules to limit or close debate, we favored the rule with the lower vote threshold in establishing the difficulty of executing a filibuster. Even if this rule may be less interruptive than higher threshold rules (Louisiana) or may only be an option in some scenarios (Oklahoma), it offers another dimension of difficulty for filibusterers to deal with.

FINDINGS: SENATE RULES

Ultimately, we find that although it is easier to filibuster in some states compared to others, **all states make the process harder to execute than the U.S. Senate does.** We found no evidence that states have dual-track systems comparable to that of the U.S. Senate filibuster, which promotes silent filibusters. This makes the U.S. Senate an outlier.³

Within this dynamic, **7** states have rules most similar to the U.S. Senate's, and **43** have rules that are comparatively harder to filibuster.⁴

Despite some mechanical similarity, **none of the states with rules most similar to the U.S. Senate's have had significant recent filibuster histories or traditions.**

STATES WITH RULES THAT MAKE FILIBUSTERS RELATIVELY HARD TO EXECUTE -- **43 STATES**

- **Alabama** -- $\frac{2}{3}$ **senators elected** to limit debate. The Rules Committee or 21/35 senators may petition for this vote. The vote threshold to pass this for redistricting or appropriation measures is only 18 votes (majority elected).
 - Although Alabama has a vote threshold equivalent to that of the U.S. Senate's, which would qualify it as an easier filibuster, it also sets stricter speaking limits. Similar to the U.S. Senate, each senator only has the opportunity to speak twice on a question. Unlike the Senate, speaking times are limited. Senators speaking

³ Missouri has had a [silent filibuster](#) before, where a senator pantomimed his frustrations, but this kind of silent filibuster is quite different from the U.S. Senate's.

⁴ Some states have multiple rules that qualify them in both the extreme and less extreme categories.

on certain matters, including the bill itself, a motion to amend, or a motion to substitute, are capped at one hour for each speech. Debate on certain other debatable motions and resolutions are capped at fifteen minutes.

- **Alaska -- Multiple rules.**
 - **Majority senators voting.** A motion to limit debate is in order, but the vote threshold is unspecified. Alaska's rules reference [Mason's Manual](#), a parliamentary procedure guide, as governing the legislature in all cases of parliamentary practice unspecified in the rules, which would set limits at a majority vote.
 - **2/3 senators present.** Previous question. Vote threshold specified in the rules.
- **Arkansas -- 24/35 senators.** Previous question.⁵
 - Although Arkansas has a high vote threshold to end the filibuster, it also sets time limits for speaking. Generally, each senator may not speak longer than an hour on any question, meaning that senators wishing to execute a filibuster would either need to collaborate or get creative in a way that the U.S. Senate's rules do not require.
- **Arizona -- Majority senators voting.** A motion to limit debate is in order, but the vote threshold is unspecified. Arizona's rules reference Mason's Manual as helping to resolve procedures unspecified in the rules, which would set limits at a simple majority.
- **California -- Majority senators present.** Previous question.
- **Colorado -- Majority senators elected.** Previous question. A motion to limit debate is also in order.
- **Connecticut -- Majority senators voting.** Previous question and motion to close debate at a specified time. The vote threshold is unspecified, but Connecticut's rules reference Mason's Manual, which applies when not inconsistent with the rules. It would set limits at a simple majority.

⁵ Although the 2017 version of the Senate Rules is the most recent copy available online, the Arkansas Secretary of the Senate confirmed that the rule has not changed since then.

- **Georgia -- Majority senators voting.** Previous question (and motion to resolve debate).
- **Florida -- $\frac{2}{3}$ senators present.** Motion to limit debate.
 - Although it has a high threshold to end debate, the Florida Senate sets a speaking time of 30 minutes before a senator must yield the floor (though there is no opportunity limit). As a result, senators must put in more of a collaborative effort in order to filibuster.
- **Indiana -- Majority senators elected** (confirmed by the President Pro Tempore's Office). Previous question.
- **Illinois -- Majority senators elected.** Previous question.
- **Iowa -- Majority senators present and voting.** Previous question.
- **Kansas -- Majority vote of senators present** (10 must sponsor⁶). Previous question.
- **Kentucky -- Majority senators elected.** Previous question. Motion to limit debate is in order, but no vote threshold is specified.
- **Louisiana -- Multiple rules.**
 - **Majority senators present and voting** to pass a motion for the previous question or non-interruptive motion to limit debate.
 - $\frac{2}{3}$ **Elected senators** (26 senators) are required as signatories for a motion to limit debate while another senator is speaking. The same number must vote in favor for it to pass.
- **Massachusetts⁷ -- Majority senators present (probably).** Motion to close debate at a specified time. Confirmed by the office of the Chair of the Senate Rules Committee.

⁶ The Kansas Senate rules seem to have changed since the release of the Connecticut Office of Legislative Research's 2009 [report](#) tracking motions of this kind. Previously, only 5 senators were needed to sponsor a motion for the previous question.

⁷The Clerk's Office directed inquiries to the office of the Chair of the Senate Rules Committee. A representative from that office clarified that this motion is used rarely and often permitted without a roll call vote. Theoretically, though, the office expected that this motion would likely need a majority of Senators in favor to pass.

- **Michigan⁸ -- Majority senators voting.** Previous question.
- **Minnesota -- Majority senators present.** Previous question.
- **Missouri -- Majority senators elected.** Previous question. Must be submitted through a written demand signed by 5 Senators.
- **Mississippi -- Majority senators present and voting.** Previous question and motion to limit debate. The vote thresholds are unspecified, but a separate rule in the Mississippi Senate rules sets unspecified vote thresholds at a majority present and voting.
- **Montana -- Majority senators present.** A motion for the previous question is in order, but the threshold is unspecified. Montana's rules reference Mason's Manual, which governs the Senate when rules are unspecified. This would set limits at a simple majority.
- **New Hampshire -- Majority senators present** (confirmed by the Clerk's Office). Previous Question.
- **North Carolina -- Majority senators voting** (confirmed by the Senate Pro Tempore's office). Previous question. Only certain senators, including certain leadership, certain committee chairs, and the introducer of the bill, can put forward the motion.
- **North Dakota -- Majority senators present** for the previous question and to close debate. Threshold to limit debate is unclear, but Mason's Manual governs the Senate in all situations unspecified in the rules.
- **Nebraska -- Multiple rules.**
 - **Majority senators elected.** Previous question. Must be put forth in the normal course of speaking or demanded by 5 members.

⁸Although Michigan has a fairly low threshold for the previous question, the state allows for oral dissent, whereby a senator can essentially execute a talking filibuster. Oral dissent is not in order once the previous question has passed.

- $\frac{2}{3}$ **senators elected** to invoke cloture. On the floor, the principal introducer of the bill or a secondary introducer of their choosing can move for cloture.
- **New Jersey -- Majority senators voting** (once one senator from each side has spoken). Previous question.
- **New Mexico -- Majority senators present.** Previous question. Motion to close debate also in order, same vote threshold.
- **Nevada -- Majority senators present.** Previous question. Must be demanded by 3 senators.
- **New York -- Majority senators elected.** Previous question. Only certain senators can order it.
- **Ohio -- Majority vote of the Senate.** Previous question. Must be demanded by 3 senators.
- **Oregon -- Majority senators present.** Previous question.
- **Oklahoma -- Multiple rules**
 - A motion for the previous question initially requires a majority of senators present and voting to approve. However, if the first vote fails, the second requires $\frac{2}{3}$ majority support to pass.
- **Pennsylvania -- Majority vote.** Previous question. Four senators must second it. Motion to close debate or fix a time to close debate is also in order.
- **Rhode Island -- Majority senators present** for both the previous question and a motion to close debate (or close debate at a fixed time).⁹
- **South Carolina -- 26/46 senators elected** or $\frac{3}{5}$ **senators present**, whichever is lower, to close debate and fix a certain time to vote on third reading (the final vote to pass the bill or resolution). Debate must typically take place for 2 hours beforehand. Reapportionment bills have the same threshold but typically require two days of debate

⁹ The Connecticut OLR report does not record any sort of motion to close or limit debate for Rhode Island.

before the motion to close debate can be put forward. Outside of these exceptions, only a majority of members is generally needed to close a debate after two hours have elapsed.

- **South Dakota -- Majority senators present.** Previous question.
- **Tennessee -- $\frac{2}{3}$ senators present and voting.** Previous question.
 - Senators may speak on a subject 2 opportunities per subject, 20 minutes for the first speech and 10 minutes for the second (per senator)
- **Texas -- Majority senators present and voting.** Previous question. Must be seconded by 5 Senators.
- **Virginia -- Majority senators present.** Motions for the previous question and the pending question.
- **Washington -- Majority senators present.** Previous question. Must be demanded by 3 Senators.
- **Wisconsin -- Majority senators voting** (“if carried by a majority”) to limit debate or vote immediately.
- **West Virginia -- Majority senators present.** Previous question.
- **Wyoming -- Majority senators voting.** A motion for the previous question is in order, but the threshold is unspecified. Wyoming’s rules reference Mason’s Manual, which would set limits at a simple majority. The motion must be seconded by 3 other members.

STATES WITH RULES CLOSEST TO THE U.S. SENATE -- **7 STATES**

- **Delaware -- Neither a motion to close nor one to limit debate are in order** while the question is pending.
 - Maine neither allows motions to limit/close debate nor has pre-set limits on debate. Debate may go on for hours, but a

representative from the Delaware Senate explained that the senate lacks a filibuster history. According to that same representative, a sponsor may call for a roll call after they have introduced the bill and answered all questions.

- **Hawaii** -- $\frac{3}{5}$ **vote** to carry. Previous question.
 - In addition to having a high vote threshold to end debate, Hawaii has no pre-set time limits on debate. We could find no evidence of a dual track system, meaning that any filibusters would typically need to be talking filibusters unless the threat of a filibuster were otherwise enough to effectively execute a silent filibuster.
- **Idaho** -- $\frac{2}{3}$ **senators majority voting** for both the previous question and to limit debate.¹⁰
 - In addition to having a high vote threshold, Idaho has no pre-set time limits on debate.
- **Maine** -- **Neither a motion to close nor one to limit debate are in order** while the question is pending.
 - Maine neither allows motions to limit/close debate nor has pre-set limits on debate. Despite this, we could find no real evidence of a history of filibustering average legislation, though the biennial budget process has caused significant gridlock in the past.
- **Maryland** -- $\frac{3}{5}$ **senators elected** to limit debate. Confirmed by the Maryland General Assembly's Department of Legislative Services.
 - Although Senators can only speak once until everyone who desires to has spoken, there are no pre-set time limits on debate.
- **Utah** -- **Motions for the previous question are explicitly banned**, and motions to limit debate are not listed as in order during debate.
 - Utah neither allows motions to limit/close debate nor has pre-set time limits on debate. We found no evidence of a dual track system, and the Secretary of the Senate confirmed that there is no history of filibusters in the Utah Senate.
- **Vermont** -- **Motions for the previous question are explicitly banned**, and motions to limit debate are not listed as in order when a question is pending.
 - Vermont neither allows motions to limit/close debate nor has pre-set time limits on debate.

¹⁰ The Idaho Senate rules seem to have changed since the release of the Connecticut Office of Legislative Research's 2009 [report](#) tracking motions of this kind. Previously, no motions for the previous question or to limit were recorded as in order.

FINDINGS: FILIBUSTERS IN PRACTICE

As previously stated, although the **7** states above with rules most similar to the U.S. Senate's seem uniquely primed for filibusters, news analysis and follow-ups with several state senates indicate no real history of them.

Further, our findings indicate that **neither pre-existing debate limits nor low vote thresholds to close or limit debate inherently prevent a filibuster or other dilatory tactics.**

Texas, a state with only a majority present and voting requirement to end debate, is well known for Wendy Davis' 2013 talking filibuster of anti-abortion legislation, which went on for 13 hours. Even though the Senate rules allow an interruptive motion for the previous question, filibusters are still quite common. Furthermore, Texas offers a trove of other delay tactics, including blocker bills and deprivations of quorum. Blocker bills, a time honored tradition in the Texas Senate, are relatively uncontroversial bills placed on the legislative calendar as quickly as possible, depriving more important legislation of debate. Traditionally, the $\frac{2}{3}$ majority rule to suspend the regular order of business must be surpassed in order to consider other legislation. As a result, bills proposed in Texas must often be compelling enough to garner two-thirds support for debate. Deprivation of quorum, the threshold of members required to proceed with legislative business, has been another important tactic used to prevent a vote. Only a [small handful](#) of state legislative bodies, including the Texas House and Senate, require a supermajority of legislators to be in attendance to reach quorum.

Missouri, too, seems to be an unconventional place for filibusters -- only a majority of elected Senators are needed to end a filibuster (though five senators must demand the motion on the previous question). Nevertheless, lawmakers on both sides of the aisle [defend the practice](#), and the Missouri Senate may be one of the only chambers in the nation to have had bipartisan talking filibusters. Filibusters are so commonplace in Missouri that they have been used simply for random personal grudges between legislators and, in one case, as a [birthday present for a journalist's wife](#). Filibusters are used to block bills, to force compromises, to make a statement about special interests, or, apparently, for fun. Most importantly, proponents claim, their filibuster is very different from the U.S. Senate's. Majority Floor Leader Caleb Rowden [R-Columbia]

points out, “I like the process exactly the way it is. I think all the hoopla that happens in D.C. about Senate filibusters, it's so overtly political, it's almost stupid.” Sen. John Rizzo, [D-Kansas City] echoes, “it is part of the process, if you use it properly and correctly, which they clearly don't do in Washington, D.C.”

Although **Nebraska** also has a lower vote threshold for calling the previous question to end debate, the unicameral legislature often relies heavily on its cloture motion of $\frac{2}{3}$ majority instead, meaning that filibusters are relatively common. Neither motion can be raised until the presiding officer deems full and fair debate has taken place, but a motion for cloture is a more “definitive strategy,” according to a correspondence with the Clerk’s Office. Most importantly, an agreement between the speaker and the presiding officer exists: a cloture vote tends to proceed only after the time limit the speaker has set for debate has elapsed. Because the state also has significant limits on speaking times (only 15 minutes of speaking time total per question), senators have had to get creative in their filibustering. In the past, for example, senators have introduced new priority motions, which reset both that 15-minute debate period and the speakers list, or have yielded their time to others committed to filibustering.

In addition to a limit on the amount of opportunities a Senator can weigh in on a particular question, **Alabama** has one-hour limits on speeches discussing both certain motions relating to amendments, substitutes, and concurrence and the bill itself. Nevertheless, the state has one of the [most robust filibuster traditions](#) in the nation. In a call, a member of the Office of the Secretary of the Senate pointed out that, much like we see in Nebraska, established time limits do not inherently prevent a filibuster, and senators may collaborate and raise multiple motions to drag out debate. This practice is quite common; as recently as March of 2021, Alabama’s Senate [wasted hours of time](#) on a multi-senator filibuster. As Senator Figueres (D-33) notes, “We face days like that and you know it’s part of the process... Many senators will go and start a delay in the process because they feel they’re not being treated fairly.”

In some places, a motion on the previous question itself may theoretically be debated due to a lack of specification otherwise in the rules. We have [identified](#) eight states that either allow debate on their motion to limit or close debate or do not specify otherwise.

FIXING DYSFUNCTION

In recent years, some states have reevaluated the dysfunction of their system and changed the rules of debate accordingly, joining the vast majority of states without histories of frequent or dysfunctional filibusters.

Earlier this year, the **South Carolina** Senate [adopted a rules change](#) without objection to make it easier to invoke cloture and end filibusters on the final readings of most bills. Although the rule change itself went smoothly, some lawmakers later [voiced concern](#), arguing that the change may speed up deliberations to the point where the public can't properly weigh in on major decisions. Republicans, however, were clear about their disinterest in replicating the United States Senate. As Senate Majority Leader Shane Massey [remarks](#), "We really have not abused the cloture rule the last several years anyway. I try very hard to use it sparingly... We also can't allow the other side to be Washington and just thwart anything and everything we want to do." In the past, South Carolina had been one of the states [most prone to filibusters](#).

Over the past ten years alone, **Idaho, Kansas, and Rhode Island** have all changed their rules to create smoother processes as well.¹¹

CONCLUSION

Ultimately, filibusters and dilatory tactics are limited only by the creativity and commitment of the minority party. Although the U.S. Senate executes them constantly, dysfunctional filibusters are relatively uncommon on the state level, even in

¹¹Idaho, Rhode Island, and Kansas were all identified as having had rule changes through a comparison of our research to the Connecticut OLR's 2011 [study](#). According to Kyle Grossman, in his article "[The Untold Story of the State Filibuster: The History and Potential of a Neglected Parliamentary Device](#)," Scott Matthew Cody's unpublished Ph.D dissertation for the University of Iowa ("The Causes and Consequences of Restrictive Rules of Debate in State Senates") identifies Colorado, Nebraska, Montana, and Wisconsin as having changed their cloture votes in various ways over time as well.

bodies with comparable rules. Rules of procedure should build a legislative body that is baseline functional; filibusters, where they exist, should be both effortful and productive.

For too long, the U.S. Senate has shielded itself from filibuster reform by hiding behind its identity as the cooling saucer of Congress. In fact, cloture rules have changed numerous times throughout the filibuster's history, often in response to its dysfunction. To act like no precedent exists -- or that passing life and democracy-saving legislation is not worth the change -- is at odds with reality. Rather than opposing filibuster reform entirely, Senators should consider prioritizing deliberative yet effective policy-making.

There are a number of available remedies. The Senate could reinstitute the talking filibuster and put a time limit on the number of days it can be used. The body could create an exception for bills with bipartisan support in committee, or put the pressure on the minority party to maintain 41 votes to block a cloture vote, rather than requiring 60 votes to pass one. The Senate could even take a page out of the book of former Senator Robert Byrd, a fierce defender of the filibuster who reduced the cloture requirement by again reducing the threshold. Finally, the Senate could even consider eliminating the filibuster entirely. Options abound.

In a democracy, voters elect representatives to enact their will through legislation -- and the current filibuster has ground that process to a complete halt. The Senate need not throw away its identity as the more deliberative body of Congress entirely, but it must adapt to necessity. Democracy can't withstand this gridlock.