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# Voting and Quorum Procedures in the Senate

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## Summary

The Constitution states that “a Majority of each [House] shall constitute a quorum to do business....” The Senate presumes that it is complying with this requirement and that a quorum always is present unless and until the absence of a quorum is suggested or demonstrated. This presumption allows the Senate to conduct its business on the floor with fewer than 51 Senators present until a Senator “suggests the absence of a quorum.”

Except when the Senate has invoked cloture, the presiding officer may not count to determine if a quorum is present. When the absence of a quorum is suggested, therefore, the presiding officer directs the clerk to call the roll. The Senate cannot resume its business until a majority of Senators respond to the quorum call or unless, by unanimous consent, “further proceedings under the quorum call are dispensed with” before the last Senator’s name has been called. If a quorum fails to respond, the Senate may adjourn or take steps necessary to secure the attendance of enough Senators to constitute a quorum. It usually takes the latter course by agreeing to a motion that instructs the sergeant at arms to request the attendance of absent Senators.

More often than not, however, quorum calls are unrelated to attendance on the floor. Senators “suggest the absence of a quorum” to suspend the Senate’s formal floor proceedings temporarily. There are many purposes for such quorum calls. For example, they can be used to permit informal discussions that are intended to resolve a policy disagreement or procedural problem, or to allow a Senator to reach the floor in order to make a speech or begin consideration of a bill. When a quorum call is provoked for such a purpose, it usually is ended by unanimous consent before the call of the roll has been completed.

The Constitution also provides that “the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.” Any Senator who has been recognized may “ask for the yeas and nays” on whatever question the Senate is considering. If the yeas and nays are ordered at the request of at least 11 Senators (one-fifth of the minimum quorum of 51), that determines the manner in which the vote will be conducted (if it is conducted). The timing of the vote is not determined by this request. A Senator may offer an amendment and immediately ask for the yeas and nays, even if the vote is not expected to take place until hours or days later.

If the yeas and nays are not ordered, the Senate votes on questions by voice vote. Alternatively, if the presiding officer believes that the outcome is not in doubt, he or she may say that, “without objection, the amendment (or motion, etc.) is agreed to.” If any Senator does object, a formal vote ensues.

## **Contents**

Introduction .....	1
The Quorum Requirement and Quorum Calls.....	1
Routine Quorum Calls.....	2
Live Quorum Calls, Failed Quorums .....	3
Securing and Conducting Rollcall Votes .....	4
Voice and Division Votes .....	5
Ordering the Yeas and Nays .....	5
Conducting Rollcall Votes.....	6
Simple and Extraordinary Majorities .....	8
Quorum Requirements, Rollcall Votes, and the Prospect of a Filibuster .....	8

## **Contacts**

Author Information.....	10
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## Introduction

The rules and practices of the Senate governing quorums and voting are grounded in Article I of the Constitution. Regarding quorums, clause 1 of Section 5 states in part that “a Majority of each [House] shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.” Regarding voting, clause 3 of the same section provides in part that “the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.”

This report discusses how the Senate now interprets and implements these two constitutional provisions.<sup>1</sup> What follows focuses on the most important rules and the most common practices; it does not attempt to cover all the precedents the Senate has established or all the procedures that may be invoked.<sup>2</sup> This report also assumes a familiarity with some other aspects of the Senate’s floor procedures.

## The Quorum Requirement and Quorum Calls

A straightforward reading of the Constitution’s quorum requirement would seem to require a simple majority of Senators, or a minimum of 51 if there are no vacancies in the body, to be present on the floor whenever the Senate conducts business. As any observer of the Senate soon notices, typically only a handful of Senators are present during floor debates. It is unusual for as many as 51 Senators to be present on the floor at the same time unless a rollcall vote is in progress.

As a regular practice, however, the Senate presumes that it is complying with the Constitution. Therefore, it presumes that a quorum always is present unless and until the absence of a quorum is suggested or demonstrated:

The Senate operates on the presumption that a quorum is present at all times, under all circumstances, unless the question to the contrary is raised, or the absence of a quorum is officially shown, or until a point of no quorum is made even though a voice vote is taken and announced in the meantime.<sup>3</sup>

Under the Senate’s standing rules, if no other Senator has the floor,<sup>4</sup> any Senator (including a Senator who is presiding) may “suggest the absence of a quorum.”<sup>5</sup> The presiding officer may not respond to this statement by counting the number of Senators actually present, unless the Senate is operating under cloture.<sup>6</sup> At all other times, when a Senator suggests the absence of a quorum,

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<sup>1</sup> The corresponding House rules, precedents, and practices are discussed in CRS Report 98-988, *Voting and Quorum Procedures in the House of Representatives*, by Stanley Bach and in CRS Report 98-870, *Quorum Requirements in the House: Committee and Chamber*, by Christopher M. Davis.

<sup>2</sup> On quorums and quorum calls generally, see Rule VI and U.S. Congress, Senate, *Riddick’s Senate Procedure*, 101<sup>st</sup> Cong., 2d sess., Doc. 101-28, pp. 1038-1078. On voting procedures generally, see Rule XII and *Riddick’s Senate Procedure*, pp. 1397-1436.

<sup>3</sup> *Riddick’s Senate Procedure*, pp. 1041-1042.

<sup>4</sup> “One Senator cannot take another off the floor to suggest the absence of a quorum, nor can a Senator who has the floor be interrupted by another against his consent for a quorum call. A quorum call is not in order when the Senator holding the floor declines to yield for that purpose.” *Riddick’s Senate Procedure*, p. 1055.

<sup>5</sup> For more on when a Senator may suggest the absence of a quorum, see *Riddick’s Senate Procedure*, pp. 1062-1065.

<sup>6</sup> “Cloture is the means by which the Senate limits debate on a measure or matter,” *Riddick’s Senate Procedure*, pp. 282-334.

the presiding officer responds by directing the clerk to call the roll. Paragraph 3 of Rule VI requires that

If, at any time during the daily sessions of the Senate, a question shall be raised by any Senator as to the presence of a quorum, the presiding officer shall forthwith direct the Secretary to call the roll and shall announce the result, and these proceedings shall be without debate.

A quorum call formally begins when the clerk calls the first name. Once the quorum call has begun, the Senate may not resume the conduct of business until a majority of Senators respond to this call, or unless the Senate agrees by unanimous consent to “dispense with further proceedings under the quorum call.” While the quorum call is in progress, no debate or motion is in order, nor may the Senate act on any unanimous consent request except a request to dispense with the call.

## **Routine Quorum Calls**

Quorum calls in the Senate usually are not intended to secure the presence of Senators on the floor. Instead, they are a useful and essential device by which the Senate can suspend its formal proceedings temporarily. During the course of any session, Senators often “suggest the absence of a quorum.” Later, but before the clerk has completed the alphabetical call of the roll, the Senate agrees to a unanimous consent request to rescind the quorum call. A quorum call of this kind may last for only moments or it may continue for an hour or more; the clerk calls the names of Senators very slowly because it would not serve the Senate’s purposes for the call of the roll to be completed.

Because most quorum calls are intended to suspend the Senate’s floor proceedings, Senators feel under no obligation to come to the floor to record their presence. So long as the Senate agrees by unanimous consent to dispense with the quorum call before the last Senator’s name is called, the Senate can resume its business, because the absence of a quorum has not actually been demonstrated. The presumption that a majority of Senators is present remains in force unless and until the call of the roll is completed and less than a majority of Senators have responded. Only then would it be demonstrated that the Senator was correct when he or she “suggested” the absence of a quorum.

There are many reasons why Senators initiate quorum calls of this kind. For example, if a Senator completes a statement and notices that no one else is on the floor and seeking recognition, the Senator typically suggests the absence of a quorum. When another Senator then does appear and wishes to speak, he or she first asks unanimous consent to dispense with the quorum call that is in progress. Alternatively, a quorum call may take place while the Senate awaits the arrival of a Senator who is expected on the floor to manage a bill, offer an amendment, or make a speech. When that Senator arrives, the Senate dispenses with the quorum call by unanimous consent and proceeds with its business as planned.

Quorum calls also create a valuable opportunity for informal discussions and negotiations among Senators. The Senate’s rules, and especially the opportunities they create for filibusters, provide powerful incentives for Senators to seek the widest possible agreement on the Senate’s schedule as well as its policy decisions. Under most circumstances, any Senator can conduct a filibuster against any measure or amendment or even against the motion that the Senate begin floor consideration of a particular bill or resolution.<sup>7</sup> This situation encourages Senators to seek the most generally acceptable solutions to procedural problems and policy disagreements. In seeking

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<sup>7</sup> For more on filibusters and cloture, please see CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Richard S. Beth and Valerie Heitschusen.

these solutions, it often is more convenient for Senators to engage in the necessary discussions and negotiations in an informal manner, rather than under the rules of formal Senate debate. Quorum calls allow for such informal consultations, which may take place either on or off the Senate floor.

When the Senate finds itself confronted with a procedural problem or policy disagreement, a Senator often will respond by suggesting the absence of a quorum in the hope that the matter can be resolved through informal conversations. When the conversations end, the Senate agrees to a unanimous consent request to terminate the quorum call; the Senate's formal proceedings then resume. If the discussions were successful, a Senator may make a motion or unanimous consent request that embodies whatever decision was reached during the quorum call. If the discussions were inconclusive, a Senator may report on the progress that was made and then again suggest the absence of a quorum so that the negotiations can resume.

Because of quorum calls, the Senate's floor proceedings often have an unpredictable, "stop-and-go" character. Its debates frequently are punctuated by quorum calls. On occasion, the Senate even may spend much of the day in quorum calls. This frequent apparent lack of action does not mean that Senators are not considering legislation while the quorum calls are in progress. It is quite likely that many Senators are discussing the bill at issue or the procedures for considering it. However, they are doing so informally (and off the public record), whether on or off the Senate floor. In fact, it sometimes seems that the more contentious the issue the Senate is considering, the more time is consumed by quorum calls.

There are two circumstances under which a Senator may not be able to initiate such a quorum call when no one else has control of the floor. First, when the Senate is operating under cloture, a Senator may suggest the absence of a quorum, but the presiding officer is empowered to respond by counting to determine whether or not a quorum actually is present. Only if he or she finds that a quorum is not present does the presiding officer direct the clerk to call the roll. Also under cloture, the presiding officer may decline to entertain quorum calls on the ground that they are suggested for dilatory purposes, an authority that is likely to be exercised only under unusual circumstances.

Second, when the Senate is operating under a time agreement, only a Senator who controls some of the time for debate may suggest the absence of a quorum. A time agreement is a unanimous consent agreement that limits and allocates control of the time for debating the pending question. The time consumed by the quorum call is charged to the Senator who suggested the absence of a quorum (unless the Senate agrees otherwise by unanimous consent). For this reason, the Senate's precedents indicate that a Senator must control at least 10 minutes of remaining time in order to initiate a quorum call; this requirement evidently is intended to reflect some reckoning of how long a quorum call is expected to last.<sup>8</sup>

## **Live Quorum Calls, Failed Quorums**

The alternative to the kind of routine quorum calls discussed above is a "live" quorum call in which Senators actually are requested to come to the floor and record their presence.

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<sup>8</sup> "But, it has been equally well established by the precedents that any Senator has a right to call for a quorum before a vote begins even if that Senator controlled no time, or even if there was an order that a vote occur at a time certain. However, certain unanimous consent agreements have been interpreted to preclude quorum calls." *Riddick's Senate Procedure*, p. 1038. For more on initiating quorum calls under time agreements and charging the time they consume, see *ibid.*, pp. 1066-1071.

There are three circumstances under which live quorum calls are most likely to occur. First, the majority leader occasionally suggests the absence of a quorum and announces that the quorum call is to be live because he wishes to bring Senators to the floor for some reason. Second, the Senate's rules provide for a live quorum call immediately preceding any cloture vote, and before the Senate acts on a unanimous consent request to set a date for voting on whether to pass a bill or joint resolution. Third, should the clerk complete calling the roll for a routine quorum call without a majority of Senators having responded to their names, the quorum call may become a live one.

In the case of a live quorum call, the clerk calls Senators' names more quickly. At the end of the call, the Senate resumes its business if a majority of Senators have responded. However, if the clerk finishes calling the roll and the presiding officer announces that a majority of Senators have failed to respond, the Senate cannot resume its business, including debate, nor can it dispense with the quorum call by unanimous consent, because the absence of a quorum has been established.

In that event, the Senate usually has only two options: to adjourn or to take steps necessary to establish a quorum.<sup>9</sup> The usual recourse is for the majority leader to make a motion directing the sergeant at arms to request the attendance of absent Senators.<sup>10</sup> A rollcall vote is ordered on this motion and, almost invariably, a majority of Senators do come to the floor to vote on the motion; in the process, they demonstrate the presence of a quorum. "Then no further action on the quorum call is necessary, a quorum having been established."<sup>11</sup>

If a quorum fails to vote, the Senate can, by motion, direct its sergeant at arms to compel the attendance of absent Senators or even to arrest absentees in order to establish a quorum.<sup>12</sup> The Senate rarely finds it necessary to take this step.

Generally, once a quorum is established as a result of a rollcall vote or a live quorum call, the Senate must transact some business before another quorum call is in order.<sup>13</sup> However, if the Senate dispenses with a quorum call by unanimous consent before it is completed, a Senator again may suggest the absence of a quorum without business having intervened.

## Securing and Conducting Rollcall Votes

There are three ways in which the Senate can conduct votes on the floor: by voice vote, by division vote, or by rollcall vote. In practice, contested questions usually are decided by rollcall votes; many uncontested questions are decided "without objection" and without the formality of even a voice vote.

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<sup>9</sup> Under paragraph 4 of Rule VI, the Senate also may consider and agree to a motion "to recess pursuant to a previous order entered by unanimous consent."

<sup>10</sup> "[I]t is the practice in the Senate for the presiding officer to direct the clerk to call the names of the absent Senators prior to the adoption of an order directing the sergeant at arms to request, and, when necessary, to compel their attendance, but such practice is based on custom, and not on the requirement of any rule." *Riddick's Senate Procedure*, p. 216.

<sup>11</sup> *Riddick's Senate Procedure*, p. 223.

<sup>12</sup> Under the constitutional authority quoted at the beginning of this report, a quorum need not vote on any motion to secure the attendance of absent Senators. For more on securing the attendance of absent Senators, see *Riddick's Senate Procedure*, pp. 214-224.

<sup>13</sup> For a discussion of what does and does not constitute business for this purpose, see *Riddick's Senate Procedure*, pp. 1042-1046.

## Voice and Division Votes

Unless a rollcall vote has been ordered in advance, any question first is to be put to a voice vote. The presiding officer asks those in favor to respond “Aye,” and then those opposed to respond “No,” and then announces the result. At that time, any Senator may request either a division vote or a rollcall vote. In the case of a division vote, those in favor stand and are counted, followed by those opposed. The presiding officer then announces which side has prevailed but does not announce the number of Senators voting for or against. Division votes are relatively unusual in current Senate practice and are not formally authorized by the Senate’s rules.<sup>14</sup>

A voice or division vote is considered valid, no matter how many or how few Senators participated, unless a Senator takes the initiative to challenge the vote, before the result is announced, for violating the constitutional requirement that a quorum must be present for the Senate to do business:

Until a point of no quorum has been raised, the Senate operates on the assumption that a quorum is present, and even if only a few Senators are present, a measure may be passed or a nomination agreed to ... Voice votes may be taken on the passage of a bill and if no question of a quorum is raised, that action is final, even though a majority of the Senators did not participate; the Senate operates on the absolute assumption that a quorum is always present until a point of no quorum is made.<sup>15</sup>

## Ordering the Yeas and Nays

Although a Senator may ask for a rollcall vote on a question after a voice or division vote has been conducted (but before the final result has been announced), rollcall votes usually are ordered in advance. At any time that a bill, amendment, motion, or other matter actually is the pending question before the Senate, a Senator who has the floor may “ask for the yeas and nays” on it.<sup>16</sup> As noted at the beginning of this report, the Constitution provides for the yeas and nays (a rollcall vote) to be ordered at the request of one-fifth of those present. Because of the other constitutional requirement—that a quorum must be present to conduct business—the Senate assumes that those present constitute a quorum, and so requires that the request for a rollcall vote must be supported by at least one-fifth of the smallest possible quorum.<sup>17</sup>

Consequently, at least 11 Senators—one-fifth of the minimal quorum of 51 Senators—must raise their hands to support a request for a rollcall vote.<sup>18</sup> If there is sufficient support, the Senate thereby determines that the question then pending before the Senate will be decided by a rollcall vote whenever the time for voting arrives.

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<sup>14</sup> “There is no authority in the rules of the Senate for the method of voting by a division; the method is intended to advise the presiding officer whether or not the majority of the Senators present favor or oppose a given question; and the judgment of the Chair may be questioned by a resort to a rollcall,” *Riddick’s Senate Procedure*, p. 1404.

<sup>15</sup> *Riddick’s Senate Procedure*, p. 1038.

<sup>16</sup> *Riddick’s Senate Procedure*, p. 1419. A Senator loses the floor when he or she asks for the yeas and nays.

<sup>17</sup> In the absence of a quorum, however, one-fifth of the Senators present may demand the yeas and nays on any of the few motions that are in order, such as the motion to adjourn.

<sup>18</sup> It is within the discretion of the chair to decide whether there is a sufficient second to order a rollcall vote, and, in practice, votes are frequently ordered when there do not appear to be 11 Senators on the floor to support such a request. But it is up to the chair to make that decision, and “It is not customary for the Chair to announce the number of Senators who held up their hands to order the yeas and nays,” *Riddick’s Senate Procedure*, p. 1418.



Ordering the yeas and nays on a question does not bring about an immediate vote, nor does it have any effect at all on when the vote will occur; the motion only controls how the vote will be conducted when it does occur.<sup>19</sup> It is not at all unusual, for example, for a Senator to offer an amendment and then immediately ask for the yeas and nays on that amendment even before the debate on it has commenced.<sup>20</sup> The actual vote may not take place until hours or even days later, or it may not take place at all if, for example, the Senate votes instead to lay the amendment on the table (and thereby kill it).

In principle, the support of more than 11 Senators sometimes may be required to order a roll call. If a previous rollcall vote had taken place “recently,”<sup>21</sup> there is precedent for assuming that all the Senators who participated in that vote remained on the floor, so one-fifth of that number may be required to order the subsequent roll call. This precedent is rarely invoked.

If the required number of Senators fail to support a request for a rollcall vote, any Senator may renew the request (as often as necessary) at any time before the question is put to a vote. When a Senator is insistent on having a rollcall vote on some motion, amendment, or measure, the Senate usually will support his or her request.

## Conducting Rollcall Votes

If a roll call has been ordered, when the time to vote arrives, the presiding officer states that “the yeas and nays have been ordered and the clerk will call the roll.” The clerk proceeds to do so and the vote is deemed to have begun only after a Senator actually votes when his or her name is called. At that time, a system of bells and lights is activated throughout the Senate wing of the Capitol building and the Senate office buildings to inform Senators that they have 15 minutes in which to come to the floor and vote. The bells ring again as a reminder when half of this time has expired. The 15-minute period for voting is set by a unanimous consent agreement, normally on the first day each Congress meets.

During a rollcall vote, the clerk calls the names of all Senators in alphabetical order, and then reads the names of those voting in the affirmative followed by those voting in the negative. Thereafter, when another Senator wishes to vote, he or she comes to the well (the open area between the rostrum and Senators’ desks); the clerk calls the Senator’s name and then repeats the Senator’s vote. Senators coming to the well frequently consult tally sheets kept at the tables staffed by Republican and Democratic floor aides in order to observe how their colleagues are voting.<sup>22</sup>

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<sup>19</sup> Ordering the yeas and nays on an amendment does not preclude a Senator from moving to table the amendment. The yeas and nays have to be ordered separately on the tabling motion.

<sup>20</sup> Before the Senate orders the yeas and nays on an amendment, the Senator who offered it may modify or withdraw it as a matter of right. After the yeas and nays have been ordered, the Senator loses the right to modify or withdraw the amendment but gains the right to offer an amendment to his or her own amendment.

<sup>21</sup> “[T]he Chair makes his calculations of one-fifth of those present on the basis of the number who voted at the last rollcall, if that occurred recently.” *Riddick’s Senate Procedure*, p. 1418. For example, “[a] demand for the yeas and nays immediately following a call of the Senate is seconded by one-fifth of those answering such call, or immediately following a yeas and nays vote, seconded by one-fifth of those voting.” *Ibid.*, p. 1417.

<sup>22</sup> Senators are required to vote from their desks, but this requirement rarely is enforced. On occasion, when a vote of special constitutional importance, such as a vote to convict in an impeachment trial, is about to begin, the majority leader will ask all Senators to come to the floor before the vote begins and then to vote from their desks, each Senator rising and responding when his or her name is called. See *Riddick’s Senate Procedure*, pp. 1403-1404.

Every Senator is expected to vote on each roll call unless, under paragraph 3 of Rule XII, “he believes that his voting on such a matter would be a conflict of interest.” If a Senator declines to vote for any other reason, paragraph 2 of the same rule prescribes a procedure for the Senator to explain his or her reason and for the Senate to decide if that reason is sufficient; this procedure is very rarely invoked.

For a rollcall vote to be constitutionally valid, a majority of Senators must vote, answer “Present,” or announce that they have live pairs and refrain from voting for that reason.<sup>23</sup> If less than a majority is present on a rollcall vote, a quorum call usually ensues. Once a quorum is established, a new vote takes place on the question before the Senate (in other words, the question is put *de novo*).<sup>24</sup>

The presiding officer may announce the result of the vote at any time after the 15-minute period and after inquiring whether there are other Senators in the chamber wishing to vote. Alternatively, any Senator may demand the “regular order,” which would be to announce the result of the vote. With the guidance of the majority leader, however, the time for voting often is extended long enough to allow as many Senators as possible to reach the floor and vote. On occasion, votes have been left open well beyond the prescribed 15-minute period in order to accommodate Senators who are hurrying to Capitol Hill from other locations.

A Senator may not have his or her vote recorded after the result of a rollcall vote has been announced. By unanimous consent, however, the Senate may permit a Senator who has voted to change or withdraw that vote. Paragraph 1 of Rule XII states in part that

no Senator shall be permitted to vote after the decision shall have been announced by the presiding officer, but may for sufficient reasons, with unanimous consent, change or withdraw his vote. No motion to suspend this rule shall be in order, nor shall the presiding officer entertain any request to suspend it by unanimous consent.

If the yeas and nays are not ordered on the pending question, that usually indicates that there is no uncertainty among Senators about what the outcome will be. In that case, when the time comes to act, the presiding officer often states that, “without objection, the amendment is agreed to” (or the bill is passed, etc.). “This is merely an abbreviated way of putting the question on a voice vote, and does not imply that the proposition can be defeated by one objection. However, any Senator may object to putting the question in this manner,”<sup>25</sup> in which case the question is decided by voice, division, or rollcall vote.

Immediately after the presiding officer announces the result of a vote, one Senator often makes a motion to reconsider, another (or even the same Senator) moves to lay that motion on the table, and the presiding officer announces that, without objection, the motion to table is agreed to. The Senate’s rules allow it one opportunity to reconsider most of the votes it takes. A motion to reconsider may be made only by a Senator who voted on the prevailing side or a Senator who did not vote. When such a motion is made and the Senate then agrees to table (or kill) it, that

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<sup>23</sup> Pairing is a voluntary arrangement between individual Senators to offset their votes on a rollcall vote, so that if one of the Senators needs to be absent it is offset by another member who does not cast his vote. “When less than a quorum votes, but the addition of names of Senators present and paired and announcing votes made a quorum, the vote is valid.” *Riddick’s Senate Procedure*, p. 1431.

<sup>24</sup> “A yea and nay vote by less than quorum is not valid unless a sufficient number is present and paired to make a quorum.” *Riddick’s Senate Procedure*, p. 1075. “Where less than a quorum votes, as disclosed by a yea and nay vote, the next business is for the presiding officer to direct a call of the roll to develop a quorum.” *Ibid.*, p. 1064. Alternatively, the Senate may vote to adjourn.

<sup>25</sup> *Riddick’s Senate Procedure*, p. 1397.

consumes the one opportunity to reconsider, and makes the result of the vote final. In most cases, a motion to reconsider is made and tabled routinely; in the case of a very close and seriously contested rollcall vote, however, there may be another roll call in connection with a reconsideration motion.<sup>26</sup>

## Simple and Extraordinary Majorities

All questions are to be decided on the Senate floor by simple majority vote unless a constitutional provision or Senate rule or precedent provides otherwise. A simple majority vote is defined as at least 50% plus one of the Senators voting, provided that a quorum is present.

The Constitution requires a two-thirds vote of the Senate to

- expel a Senator,
- override a presidential veto,
- adopt a proposed constitutional amendment,
- convict upon impeachment,
- give the Senate's advice and consent to ratification of a treaty,
- determine that a president remains disabled, and
- remove political disabilities (now obsolete).

The Senate's precedents require the support of two-thirds of those voting, a quorum being present, to suspend the rules or to postpone indefinitely the consideration of a treaty. To invoke cloture (under Rule XXII), a vote of three-fifths of the Senators duly chosen and sworn usually is required; however, on a measure or motion to amend the Senate rules, cloture requires a vote of two-thirds of the Senators present and voting. Also under cloture, the 30 hours available for post-cloture consideration may be extended by a vote of three-fifths of all Senators duly chosen and sworn.

Finally, the Senate currently requires a vote of three-fifths of all Senators duly chosen and sworn to set aside various procedures and prohibitions of the congressional budget process, either by agreeing to motions waiving them or by overturning rulings of the chair on appeal. These budget process requirements are itemized and discussed in CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno. Some rules restricting the content of conference committee reports can only be waived or overturned on appeal by a vote of three-fifths of the Senate, as discussed in CRS Report RS22733, *Senate Rules Restricting the Content of Conference Reports*, by Elizabeth Rybicki.

## Quorum Requirements, Rollcall Votes, and the Prospect of a Filibuster<sup>27</sup>

Voting and quorum procedures have recently been of interest in the Senate in connection with proposals to change Senate rules. Some Senators have expressed frustration with the fact that, in order to forestall consideration of a measure or matter, Senators often need only to threaten to

<sup>26</sup> See Rule XIII and *Riddick's Senate Procedure*, pp. 1124-1149, for more on reconsideration.

<sup>27</sup> This section was prepared by Elizabeth Rybicki.

filibuster or to withhold their consent from a unanimous consent agreement.<sup>28</sup> This situation is a consequence partially of quorum and voting procedures, in addition to the demanding schedules of Senators and the large policy agenda of the modern Senate.

A Senator wishing to prevent a matter from coming to a vote need not engage in extended debate. One reason is that if a quorum—51 Senators, assuming no vacancies—is not present on the floor, the opponent may instead simply take steps to trigger a live quorum call,<sup>29</sup> and if a quorum does not respond, the Senate can only adjourn or take steps to secure the attendance of a quorum. Adjournment serves the purposes of the opponent, who is only trying to delay or prevent a final vote on the matter. As a result, if a numerical majority favoring a legislative proposal wanted an opponent to remain physically present on the Senate floor engaging in a filibuster, that majority, or most of it, would itself have to remain on or near the floor to ensure that a quorum could be established at any point required. Even if a majority of the Senate does so, moreover, opponents need not engage continuously in debate to forestall a vote on passage of a measure; they can also filibuster by offering various motions and, if sufficiently numerous, by forcing multiple rollcall votes.

Given these procedural conditions, a majority of the Senate is unlikely to extend the effort to force an opponent to remain physically present on the floor to filibuster because the cost is so great and the benefit so uncertain. The cost to the majority of requiring so many Senators to remain near the floor, away from their other legislative and representative responsibilities, and the cost of preventing the Senate from conducting any other business while it forces an opponent to conduct an overt filibuster, are very high and are nearly certain to occur. The potential benefit—that the opponents eventually tire, make some mistake, or give up their efforts, and allow a measure to come to a vote—is unlikely if more than a handful of Senators are willing to engage in such tactics. Maintaining the ability to produce a quorum may be a necessary step, but it is not a sufficient step, in an attempt to defeat a filibuster.

In contrast, the costs of conducting a filibuster are more manageable, and the likely benefit is the achievement of the goal: the delay of a vote. Few opponents need be present at any one time: they need not help to make a quorum and they do not need to vote on questions that, by virtue of their numbers, they would lose even if they were all present. In addition, those in the minority party have less influence on the agenda, and thus arguably have less to lose if the Senate engages in extended parliamentary maneuvering and conducts no other business.

Because of these and other considerations, supporters of a matter often respond to a threatened filibuster by attempting to negotiate a compromise off the floor, rather than by attempting to exhaust opponents by keeping a quorum near the floor and potentially participating in multiple rollcall votes.

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<sup>28</sup> For more information on proposals that seek to alter this procedural situation, see CRS Report R41342, *Proposals to Change the Operation of Cloture in the Senate*, by Christopher M. Davis and Valerie Heitschusen.

<sup>29</sup> A Senator engaging in a filibuster could (1) make a nondebatable motion (such as a motion to adjourn or a motion to table) and (2) after the result of a voice vote was announced, make a point of order that a quorum is not present. In response to the point of order, the Presiding Officer would direct the clerk to call the roll. Alternatively, a single Senator could suggest the absence of a quorum and object to any unanimous consent request to end the call; the Senate would be unable to conduct business until the call was completed. The majority leader might, in this situation, turn the call “live” by indicating to the clerk that he or she should read the names more rapidly. Potentially relevant precedents in the case of an overt filibuster are that a Senator loses the floor when he or she suggest the absence of a quorum and that, once a quorum is established, the Senate must transact some business before another quorum call is in order.

## Author Information

Elizabeth Rybicki, Coordinator  
Specialist on Congress and the Legislative Process

## Acknowledgments

This report was written by Stanley Bach, a former senior specialist in the Legislative Process at CRS. The key policy staff identified below are now available to answer questions from congressional clients on the topic.

## Key Policy Staff

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<b>Area of Expertise</b>	<b>Name</b>
Senate floor procedure	Richard S. Beth
Senate floor procedure	Christopher M. Davis
Senate floor procedure	Valerie Heitshusen
Senate floor procedure	Walter Oleszek
Senate floor procedure	Elizabeth Rybicki

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