



Cloture Attempts on Nominations: Data and Historical Development

name redacted

Specialist on Congress and the Legislative Process

June 26, 2013

Congressional Research Service

7-....

www.crs.gov

RL32878

Summary

The motion for cloture is available in the Senate to limit debate on nominations, as on other matters. Cloture can, accordingly, be used to overcome a filibuster against a nomination. **Table 6** lists all nominations against which cloture has been moved, showing the outcome of the cloture attempt and the final disposition of the nomination. It would be erroneous, however, to treat this table as a list of filibusters on nominations. Filibusters can occur without cloture being attempted, and cloture can be attempted when no filibuster is evident. Often today, moreover, it appears that Senate leaders generally avoid bringing to the floor nominations on which a filibuster seems likely. In such cases there are no means by which to identify the merely threatened filibuster.

Until 1949, cloture could not be invoked on nominations. From then through 2012, cloture was sought on 122 nominations. On 46 of these nominations cloture was invoked, and on 49 others no cloture motion received a vote. All but one of these 95 nominations was confirmed. Only on the remaining 27 nominations did the Senate ultimately reject cloture; of these, 21 were not confirmed.

Until 1968, cloture was moved on no nominations, and from then through 1978, it was moved on only two. Even thereafter, in no single Congress from the 96th through the 102nd (1979 through 1992) was cloture sought on more than three nominations, and in no Congress from the 104th through the 107th (1995 through 2002) was it sought on more than five. Between these last two periods, however, the 103rd Congress (1993-1994) foreshadowed a more recent pattern, with cloture action on 12 nominations. Most recently, in every Congress of the past decade (2003 through 2012) except the 110th, cloture has been attempted on at least 14 nominations. The same five Congresses that saw cloture action on 12 or more nominations are those in which the Senate minority was of the party opposite that of the President.

In all the Congresses or periods identified, no more than a quarter of nominations with cloture attempts failed of confirmation, except in the 108th Congress (2003-2004), when almost 80% of such nominations (mostly to judicial positions) were not confirmed. Prominent in this Congress were discussions of making cloture easier to get on nominations by changing Senate Rules through procedures not requiring a super-majority vote on cloture. In the 112th Congress, by contrast, cloture was moved on a record 33 nominations (again mostly to judicial positions), but on 23 of these nominations, no cloture vote ultimately occurred.

Overall, cloture has been sought on nominations to 67 executive and 55 judicial positions. Judicial nominations, however, predominated in the two Congresses just noted and before 2003, except in the 103rd Congress (1993-1994). In that Congress and the 111th (2009-2010), both at the beginning of a new presidential Administration, as well as in the 109th Congress (2005-2006), executive branch nominations predominated.

Few of the nominations on which cloture has been sought have been to positions at the highest levels of the government. These have included four nominations to the Supreme Court and seven to positions in the President's Cabinet (or ones often considered to be at the Cabinet level).

Contents

Cloture and the Consideration of Nominations	1
Cloture Motions Do Not Correspond With Filibusters.....	2
Frequency of Cloture Attempts on Nominations	3
Historical Development of Cloture Attempts on Nominations.....	5
Positions in Relation to Which Cloture Was Sought	9

Tables

Table 1. Cloture Attempts and Action on Nominations, 1949-2012	4
Table 2. Nominations on Which Cloture Was Moved and Rejected, by Time Period, 1949-2012	6
Table 3. Cloture Action on Judicial and Executive Nominations, by Time Period, 1967-2012	8
Table 4. Supreme Court Nominations with Cloture Attempts	10
Table 5. “Cabinet Rank” Nominations with Cloture Attempts	10
Table 6. Nominations with Cloture Attempts	11

Contacts

Author Contact Information.....	1
Acknowledgments	1
Key Policy Staff.....	1

In recent years it has become increasingly common for Senators to seek cloture in order to limit chamber consideration of presidential nominations to positions in the executive and judicial branches of government. Cloture, which requires a super-majority vote, places time limits on consideration of a matter, and so may be employed as a means of overcoming filibusters. This report presents data on all nominations on which cloture motions have been offered (see **Table 6**). It also presents data on the outcomes of these attempts, the development over time of Senate practice in seeking cloture on nominations, and the positions in relation to which cloture has been offered. Before entering into these discussions, the report sketches some general features of cloture and considerations pertinent to interpreting its meaning.

Cloture and the Consideration of Nominations

Senate Rules place no general limits on how long consideration of a nomination (or most other matters) may last. Owing to this lack of general time limits, opponents of a nomination may be able to use extended debate or other delaying actions to prevent a final vote from occurring. Although a voting majority of Senators may be prepared to vote for a nominee, the nomination cannot be confirmed as long as other Senators, presumably a voting minority, are able to prevent the vote from occurring. The use of debate and procedural actions for the purpose of preventing or delaying a vote is termed a filibuster.¹

The only procedure by which the Senate can vote to place time limits on its consideration of a matter is the motion for cloture provided for in paragraph 2 of Senate Rule XXII. This motion, therefore, is the Senate's most usual means of attempting to overcome a filibuster. When the Senate adopts a motion for cloture on a matter, known as "invoking cloture," further consideration of the matter becomes subject to a time limit, and upon the expiration of that time a vote will occur.² For most matters, the time limit prescribed by the cloture rule is 30 hours, but under a standing order effective only for the 113th Congress (2013-2014), this 30-hour limit applies to post-cloture consideration of nominations only for the Supreme Court, Circuit Courts of Appeals, heads of Cabinet departments, and a small group of other positions often considered to be of "Cabinet rank." For most other nominations, the standing order limits consideration under cloture to eight hours, and for nominations to U.S. District Courts the post-cloture limit is two hours.³

By invoking cloture, the Senate may be able to ensure that a question will ultimately come to a vote, and can be decided by a voting majority. The Senate, however, can impose the constraints of

¹ Filibusters and cloture are discussed more generally in CRS Report RL30360, *Filibusters and Cloture in the Senate*, by (name redacted) and (name redacted). The process by which the Senate considers nominations is discussed more generally in CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by (name redacted), and CRS Report RL31948, *Evolution of the Senate's Role in the Nomination and Confirmation Process: A Brief History*, by (name redacted).

² Senate Rule XXII, paragraph 2, in U.S. Senate, Committee on Rules and Administration, *Senate Manual, Containing the Standing Rules, Orders, Laws, and Resolutions Affecting the Business of the United States Senate*, S.Doc. 112-1, 112th Cong., 2nd sess., prepared by Matthew McGowan under the direction of Jean Parvin Bordewich, staff director (Washington: GPO, 2011), sec. 22.2. During the 30 hours, no single Senator, other than the party floor leaders, the managers of the debate, or Senators to whom any of these may yield time, may occupy more than one hour in debate.

³ This standing order was established by sec. 2 of S.Res. 15 of the 113th Congress, adopted January 25, 2013. For more detailed information on this standing order, see CRS Report R42996, *Changes to Senate Procedures in the 113th Congress Affecting the Operation of Cloture (S.Res. 15 and S.Res. 16)*, by (name redacted).

cloture only by a super-majority vote. For most matters, including nominations, three-fifths of the full Senate (60 votes, if there is no more than one vacancy) is required to invoke cloture. As a result, even if a majority of Senators support a nomination, opponents may still be able to prevent a vote on it by defeating any attempt to invoke cloture, and continuing to extend consideration. The cloture rule permits supporters of a matter to move for cloture repeatedly, but any such motion still can be adopted only with a 60-vote majority. As a result, although any nomination can, itself, always be approved by a simple majority of Senators present and voting, the support of a super-majority may be required to limit consideration and enable the Senate to reach a vote.

Cloture Motions Do Not Correspond With Filibusters

Although cloture affords the Senate a means for overcoming a filibuster, it is erroneous to assume that cases in which cloture is sought are always the same as those in which a filibuster occurs. Filibusters may occur without cloture being sought, and cloture may be sought when no filibuster is taking place. The reason is that cloture is sought by supporters of a matter, whereas filibusters are conducted by its opponents.

It is possible, as a result, that opponents of a matter may use debate and other procedural actions to delay a vote without supporters deciding to move for cloture. This situation appears not to be common today, but does seem to have occurred in relation to nominations in earlier times. Supporters may refrain from seeking cloture either because they think they lack the votes to obtain it, because they believe they can overcome any delaying actions and reach a vote without resorting to cloture, or because they hope to resolve the matter in dispute by some negotiated accommodation.

On the other hand, leaders of the majority party, or other supporters of a matter, may move for cloture even when opponents deny that they are conducting a filibuster, or at a point when no extended debate or delaying actions have actually occurred. They may do so in response to a threat or perceived threat of a filibuster, or simply in an effort to speed action. Under contemporary conditions, in particular, it has often appeared that Senate leaders attempt to avoid bringing to the floor matters, including legislation as well as nominations, on which they foresee a likelihood that filibusters will occur. These agenda choices may be motivated in part by a desire to avoid expending scarce floor time on matters that cannot be brought to a successful conclusion.

Compounding the potential for misunderstanding, in recent times observers have increasingly extended the use of the term “filibuster” to apply to situations in which opponents of a matter attempt in advance to discourage its consideration on the Senate floor. These situations are also sometimes described as “silent filibusters.” They may arise, for example, when Senators inform their respective party floor leaders that they prefer the nomination (or other matter) not to receive floor consideration, an action that has become known as placing a “hold” on a matter. Although a “hold” has no formal procedural force under Senate Rules, it may represent an implicit threat to filibuster that may discourage the majority leader from bringing the matter to the floor.⁴

This newer sense of the term “filibuster” is sharply distinct from the historically better established usage described above, which refers to actions actually taken during floor consideration. Cloture motions cannot be used to identify “filibusters” in the sense of matters withheld from floor

⁴ For further information on holds, see CRS Report 98-712, “*Holds*” in the Senate, and CRS Report RL31685, *Proposals to Reform “Holds” in the Senate*, both by (name redacted).

consideration, because action under the cloture rule is, itself, something that occurs only in the course of floor proceedings. Except by unanimous consent, indeed, cloture cannot even be moved except on a question already pending on the floor. On matters on which a filibuster is in prospect, as a result, the possibility of cloture can arise only if the leadership determines to bring the matter to the floor despite the possibility of filibuster, and at that point the previously “silent filibuster” either becomes an overt filibuster or fails to materialize.

In recent years, as well, when the possibility of a filibuster is foreseen, the Senate sometimes agrees by unanimous consent to consider a matter under time limits, but require 60 votes for its approval. Under this arrangement, which is occasionally used for nominations, the so-called “60-vote hurdle” or “60-vote threshold” preserves the possibility for a minority (if sufficiently large) to prevent approval, yet the time limit makes it unnecessary to offer any cloture motion. As a result, these cases of potential filibuster also are not identifiable from the presence of cloture motions.

If cloture cannot serve directly as a measure of filibusters, however, neither can any other specific procedural action. A filibuster is a matter of intent; any proceedings on the floor might constitute part of a filibuster if they are undertaken with the purpose of blocking or delaying a vote. Yet any of the procedural actions that might be used to delay or block a vote might also be used as part of a normal course of consideration leading without difficulty to a final decision. As a result, filibusters cannot simply be identified by explicit or uniform criteria, and there is no commonly accepted set of criteria for doing so. Instead, determining whether a filibuster is occurring in any specific case typically requires a degree of subjective judgment.

For all these reasons, it would be a misuse of the following data, which identify nominations on which cloture was sought, to treat them as identifying nominations subjected to filibuster. It would equally be a misinterpretation to assume that all nominations on which cloture was not sought were not filibustered (especially for periods before 1949, when, as discussed later, it first became possible to move cloture on nominations). This report provides data only on nominations on which cloture motions were offered. It is not to be taken as providing systematic data on nominations that were or were not filibustered. It would not be feasible to develop a list of measures filibustered unless a commonly accepted single standard for identifying what constitutes filibustering could first be established.⁵ At most, the data presented here may be regarded as identifying some potentially likely cases in which a filibuster (by some appropriate definition) may have occurred.

Frequency of Cloture Attempts on Nominations

The Senate first adopted a cloture rule (paragraph 2 of Rule XXII) in 1917. Until 1949, cloture could be moved only on legislative measures; nominations could not be subjected to cloture attempts.⁶ From 1949 through 2012 (81st through 112th Congresses), cloture was sought on 122

⁵ These questions of method are discussed in more detail in (name redacted), “What We Don’t Know About Filibusters,” paper presented at the annual meeting of the Western Political Science Association, Portland, Ore., March 1995 (available from the author).

⁶ U.S. Congress, Senate, Committee on Rules and Administration, *Senate Cloture Rule: Limitation of Debate in the Congress of the United States and Legislative History of Paragraph 2 of Rule XXII of the Standing Rules of the United States Senate (Cloture Rule)*, S.Prt. 112-31, prepared by the Congressional Research Service, Library of Congress, 112th Cong., 1st sess. (Washington: GPO, 2011), pp. 17, 20-21, 185-192.

nominations.⁷ **Table 4**, following the text of this report, identifies the 122 nominations, the number of separate cloture motions filed on each, the ultimate outcome of the cloture attempt in each case, and the disposition of each nomination. As shown by the summary in **Table 1**, the Senate invoked cloture on 46 of the 122 nominations on which cloture was moved from 1949 through 2012. On another 48 nominations, cloture motions were offered, but never came to a vote, because the motions were withdrawn or vitiated by unanimous consent, or because they fell (that is, became moot before the cloture vote occurred). On the remaining 27 of the 122 nominations, the Senate voted against imposing cloture.⁸

Of the 122 nominations on which cloture was sought, 100 ultimately won confirmation. The 100 nominations confirmed include all 46 on which the Senate invoked cloture and all but one of the 49 on which no cloture vote occurred.⁹ Even among the 27 nominations on which the Senate voted only against cloture, six were nevertheless able to achieve confirmation (completing the total of 100 nominations confirmed). The remaining 21 nominations on which the Senate ultimately rejected cloture failed of confirmation, in each case because, at some point after the final vote to reject cloture, the nomination was withdrawn from consideration, so that no final vote occurred.

Table 1. Cloture Attempts and Action on Nominations, 1949-2012

Cloture Action	Action on Nomination		Total
	Confirmed	Not confirmed	
Invoked	46	0	46
Withdrawn, Vitiating, or Fell ^a	48	1	49
Rejected	6	21	27
Total	100	22	122

Source: Compiled from data in **Table 6**.

- a. This group includes only nominations on which no cloture motion received a vote. “Withdrawn” and “vitiating” mean that the Senate disregarded the cloture motion, and took no further action on it. “Fell” means that the cloture motion received no vote because it became moot.

Overall, none of the 22 nominations that failed of confirmation following a cloture motion was rejected by the Senate on an “up-or-down” vote. This pattern is consistent with Senate action on nominations generally; in contemporary practice, nominations that reach a final vote are very seldom rejected.

⁷ For purposes of this report, five State Department nominations considered concurrently by unanimous consent are counted as one, and each instance in which a single individual was concurrently nominated to two positions is counted as one.

⁸ The data include all cloture action in relation to a nomination, whether the motion was offered to close debate on the nomination itself or on a debatable motion to proceed to its consideration (which did not occur in practice after 1980).

⁹ In the final case, on the nomination of Richard Stickler to be an Assistant Secretary of Labor in the 109th Congress (2006-2007), the cloture motion was withdrawn and the nomination was not confirmed.

Historical Development of Cloture Attempts on Nominations

The assertion is sometimes made that filibusters against nominations were infrequent until recent years. Little comprehensive knowledge, however, exists about such filibusters in earlier times. One reason is that until 1929, the Senate normally considered nominations in closed session. Until 1917, moreover, the Senate had no rule for bringing debate on any matter to a close, and even thereafter, the cloture rule did not apply to nominations until 1949. For any earlier years, accordingly, it would not be even possible to try to use cloture as a measure of filibustering on nominations.

Certainly, some historical accounts reference instances of lame duck sessions preceding a change in party control of the presidency in which the Senate generally declined to confirm nominations by the outgoing President. Even in these cases, however, it is not clear that the nominations often failed as a result of filibusters on the floor.

There is, nevertheless, some reason to think that in earlier periods, filibustering on nominations was, indeed, infrequent. It is not clear, however, that this condition prevailed chiefly because Senate practice discouraged filibustering in such cases. Instead, it appears that Presidents often may have submitted nominations only after prior consultation with Senators. There also seems reason to suppose that often, when any Senators strongly objected to a nomination, the Senate might decline to bring the matter to the floor in the first place. The custom of “*Senatorial courtesy*,” under which the Senate would decline to consider a nomination to a position in the home state of a Senator who declared the nomination “*personally obnoxious*” to him, represented an instance of such practices.¹⁰

To the extent that these suppositions are well founded, it might be said, in effect, that during these earlier periods, obstacles to the confirmation of nominations manifested themselves more often in the form of what today might be called “*silent filibusters*” than through overt opposition during floor consideration. The prevalence of such situations, of course, could not be ascertained from the examination of floor proceedings.

Even after Senate rules began to permit the use of cloture on nominations in 1949, cloture was sought on none until 1968 (90th Congress), when a motion to proceed to consider the nomination of Supreme Court Associate Justice Abe Fortas to be Chief Justice was debated at length. After the Senate rejected cloture on the motion to proceed, 45-43, President Lyndon B. Johnson withdrew the nomination. In 1969 and 1970, the nominations of Clement F. Haynsworth and G. Harrold Carswell to the Supreme Court were defeated after lengthy debate, but no cloture motion was filed on either. When the Senate considered the nomination to the Supreme Court of William H. Rehnquist late in the 1971 session, however, cloture was quickly sought. Though the Senate did not invoke cloture (52-42), the nomination was subsequently confirmed.

Cloture was sought on no other nomination until 1980. That occurrence was the first in which cloture was sought on a nomination to an executive branch position, that of William G. Lubbers to

¹⁰ See G. Calvin Mackenzie, “*Senatorial Courtesy*,” in Donald C. Bacon, Roger H. Davidson, and Morton Keller, eds., *The Encyclopedia of the United States Congress*, vol. 4 (New York: Simon & Schuster, (c)1995), pp. 1794-1795.

be General Counsel of the National Labor Relations Board. Cloture was invoked, and the nomination was confirmed.

In the meantime, the majority required for invoking cloture on most matters, including nominations, had been changed in 1975 from two-thirds of Senators present and voting to three-fifths of the full membership of the Senate (60 votes, assuming no more than one vacancy).¹¹ This change in the rules generally meant that the threshold for invoking cloture was lowered: if all 100 Senators participated in the vote, the previous rule required the votes of 67 to invoke cloture; the new rule normally required 60 votes, regardless of how many Senators participated.

Table 2. Nominations on Which Cloture Was Moved and Rejected, by Time Period, 1949-2012

Congress(es) (years)	Nominations on Which Cloture Was:			
	Moved		Rejected	
	Number	Average per Congress	Number	Percentage of Moved
81 st -89 th (1949-1966)	0	0.0	0	—
90 th -102 nd (1967-1992)	12	0.9	2	17%
103 rd (1993-1994)	12	12	3	25%
104 th -107 th (1995-2002)	11	2.8	2	18%
108 th (2003-2004)	14	14	11	79%
109 th (2005-2006)	18	18	2	11%
110 th (2007-2008)	1	1	0	0%
111 th (2009-2010)	21	21	2	10%
112 th (2011-2012)	33	33	5	15%

Source: Compiled from data in **Table 6**.

Since 1980, as **Table 2** illustrates, the frequency with which nominations have been subjected to cloture attempts has continually tended to increase (a development that parallels a trend in the frequency of cloture motions overall). In this table (and **Table 3** below), data on each Congress in which cloture was moved on more than 10 nominations are set forth separately, but data for suitable groups of consecutive Congresses with less frequent cloture action on nominations are consolidated in a single row.

Not only do the data in **Table 2** manifest a generally rising trend, but the pattern displayed in Congresses beginning with the 108th (2003-2004) is sharply distinct from that of earlier ones. From the 90th through the 107th Congress (1967-2002), cloture was only once (103rd Congress, 1993-1994) sought on more than five nominations. In the five Congresses from the 108th through the 112th (2003-2012), by contrast, cloture has only once (110th Congress, 2007-2008) been sought on fewer than 14 nominations.

The 103rd, 107th, and 111th Congresses were each the first of a new presidential Administration, so that the number of nominations to be considered was presumably large. Nevertheless, the new

¹¹ Committee on Rules and Administration, *Senate Cloture Rule*, pp. 29-31, 60, 199-208.

level of nominations with cloture attempts that was reached in the 103rd Congress remained exceptional until the 108th Congress, but the pattern of activity from then on has increasingly come to make the 103rd Congress look like a forerunner of practices that have now become typical. It may also be pertinent, however, that the same five Congresses in which cloture has been sought on 12 or more nominations have also been the only five Congresses since 1987 in which the same political party both occupied the presidency and commanded a Senate majority.¹² This pattern suggests that highly controversial nominations may now be more likely to be brought to the Senate floor if it is the President's party that can set the agenda.

In the 108th Congress (2003-2004), the pattern of Senate action on nominations on which cloture was sought displayed several distinctive features. This was the Congress during which extensive contestation occurred over attempts to secure confirmation for a series of judicial nominations by President George W. Bush, and the prospect arose that an attempt would be made to change Senate rules for considering nominations through proceedings (known as the "nuclear" or "constitutional option") that would not require super-majority support.¹³

First, the maximum number of cloture motions offered on any single nomination was markedly higher in the 108th Congress than in any other. Only three times previously had as many as three cloture motions been offered on a single nomination,¹⁴ and only twice subsequently have as many as two cloture motions been offered on the same nomination.¹⁵ In the 108th Congress, by contrast, one nomination was subjected to seven cloture motions and another to four.¹⁶ These events suggest the intensity with which supporters of these nominations were attempting to secure Senate votes thereon. The more recent pattern, by contrast, suggests that Senate leaders have become less willing to invest extensive floor time on attempts to secure confirmation for nominations that command insufficient support for cloture.

¹² The five Congresses in question are the 103rd, 108th, 109th, 111th, and 112th. The Republican Party lost control of the Senate during the 1st session of the 107th Congress in 2001, at the beginning of the first term of President George W. Bush.

¹³ For discussions of the possibilities for such proceedings, see CRS Report R42929, *Procedures for Considering Changes in Senate Rules*, and CRS Report RL32843, *"Entrenchment" of Senate Procedure and the "Nuclear Option" for Change: Possible Proceedings and Their Implications*, both by (name redacted).

¹⁴ The three nominations were those of Don Zimmerman to be member of the National Labor Relations Board in 1980; William A. Lubbers to be its General Counsel in the same year; and Sam Brown, the former antiwar activist, to be Ambassador during his tenure as Head of Delegation to the Conference on Security and Cooperation in Europe in 1994. Only in the third case was cloture ultimately rejected and the nomination not confirmed.

¹⁵ The two nominations were those of John R. Bolton to be U.S. Representative to the United Nations in 2005 and Mari Carmen Aponte to be Ambassador to El Salvador in 2011. Only in the first case was cloture ultimately rejected and the nomination not confirmed.

¹⁶ The two nominations were, respectively, those of Miguel A. Estrada and Pricilla Richman Owen to be Circuit Court Judges. In both cases, cloture was ultimately rejected and the nomination not confirmed.

Table 3. Cloture Action on Judicial and Executive Nominations, by Time Period, 1967-2012

Congresses and (years)	Judicial				Executive			
	Total	Cloture Invoked	Cloture Withdrawn, Vitiating, or Fell ^a	Cloture Rejected	Total	Cloture Invoked	Cloture Withdrawn, Vitiating, or Fell ^a	Cloture Rejected
90 th -102 nd (1967-1992)	8	5	1	2	4	4	0	0
103 rd (1993-1994)	2	1	1	0	10	3	4	3
104 th -107 th (1995-2002)	7	5	1	1	4	3	0	1
108 th (2003-2004)	12	0	2	10	2	0	1	1
109 th (2005-2006)	6	6	0	0	12	3	7	2
110 th (2007-2008)	1	1	0	0	0	0	0	0
111 th (2009-2010)	5	2	3	0	16	8	6	2
112 th (2011-2012)	26	3	20	3	7	2	3	2
Total	67	23	28	16	55	23	21	11

Source: Compiled from data in **Table 6**.

- a. This column counts only nominations on which no cloture motion received a vote. “Withdrawn” and “vitiating” mean that the Senate disregarded the cloture motion, and took no further action on it. “Fell” means that the cloture motion received no vote because it became moot.

The Senate in the 108th Congress also rejected cloture with much greater frequency on nominations on which it was moved. In this Congress the Senate ultimately voted against cloture on more than three-quarters of such nominations, which suggests that opponents were persisting in contesting these nominations much more intensely than has otherwise been the case. In all other Congresses (or, when cloture was attempted on only a few nominations in each of several consecutive Congresses, as shown in **Table 2**, in the group of consecutive Congresses as a whole), the Senate ultimately voted against cloture on no more than one-quarter of the nominations in question. This finding echoes the observation offered earlier that only a few nominations have been blocked by failure to obtain cloture.

Positions in Relation to Which Cloture Was Sought

Over the full period during which cloture motions have been used on nominations, as shown by **Table 3**, cloture action has occurred on nominations to positions in the judiciary and in the executive branch in roughly comparable numbers. Until the 111th Congress, however, a majority of the nominations on which cloture was sought had been to positions on the federal bench. This circumstance perhaps reflected the Senate's traditional inclination to permit the President generally wide latitude in selecting officials to serve under him in executive branch positions.¹⁷

More generally, however, the relative emphasis on nominations to positions in the two branches has shifted sharply from one Congress to another. In both of the periods identified in **Table 3** that cover several consecutive Congresses, as well as in the 108th Congress (2003-2004) and the 112th Congress (2011-2012), nominations to judicial positions were the main focus of cloture action. In the 103rd (1993-1994), 109th (2005-2006), and 111th (2009-2010) Congresses, cloture motions on executive branch nominations were more prevalent. It is perhaps pertinent that the 103rd and 111th Congresses both included the period immediately following the inauguration of a new President, when presumably there were a large number of nominations to positions in the new Administration. By contrast, Congresses in which a greater number of judicial nominations were subjected to cloture motions all fell after the beginning of a new presidential Administration.

As already observed, the only period during which cloture attempts on either class of nominations were rejected far more often than they were either invoked or abandoned occurred in connection with the broad struggle over President George W. Bush's judicial nominations in the 108th Congress (2003-2004). Either cloture was invoked, or no vote occurred, in especially high proportions on executive branch nominations in the 109th (2005-2006) and 111th (2009-2010) Congresses. On an especially high proportion of judicial nominations on which cloture was attempted in the 112th Congress (2011-2012), no cloture votes ultimately occurred, suggesting that cloture might have been moved on many of these nominations in response to perceived threats of filibuster that did not materialize or, perhaps, that proved susceptible of negotiated resolution.

Few of the nominations on which cloture has been attempted have been to positions of the first rank in the federal government. Only four have been to the Supreme Court, as shown in **Table 4**, and only seven to the heads of Cabinet departments or other positions sometimes accorded

¹⁷ This point is discussed, for example, in Michael J. Gerhardt, *The Federal Appointments Process: A Constitutional and Historical Analysis* (Durham: Duke University Press, 2003), pp. 132-133.

Cabinet rank by the President, as shown in **Table 5**. In relation to offices at lower levels of the executive branch, it can be discerned from **Table 6** that cloture attempts have occurred particularly often on nominations to positions in the Department of State and the Department of Justice.

Table 4. Supreme Court Nominations with Cloture Attempts

Date	Nominee	Position
1968	Abe Fortas	Chief Justice
1971	William H. Rehnquist	Associate Justice
1986	William H. Rehnquist	Chief Justice
2006	Samuel L. Alito	Associate Justice

Source: Compiled from data in **Table 6**.

Table 5. “Cabinet Rank” Nominations with Cloture Attempts

Date	Nominee	Position ^a
1987	C. William Verity	Secretary of Commerce
2003	Michael O. Leavitt	Administrator, Environmental Protection Agency
2005	John R. Bolton	U.S. Representative to the United Nations
2005	Stephen L. Johnson	Administrator, Environmental Protection Agency
2005	Robert J. Portman	U.S. Trade Representative
2006	Dirk Kempthorne	Secretary of the Interior
2009	Hilda Solis	Secretary of Labor

Source: Compiled from data in **Table 6**.

- a. Includes heads of Cabinet departments and other positions that have sometimes been accorded Cabinet rank by the President.

Table 6. Nominations with Cloture Attempts

Congress and Year	Nominee	Position	Number of Cloture Attempts^a	Final Outcome of Cloture Attempt^b	Disposition of Nomination^c
90 th , 1968	Abe Fortas	Chief Justice	1	rejected, 45-43	withdrawn
92 nd , 1971	William H. Rehnquist	Associate Justice	2	rejected, 52-42	confirmed, 68-26
96 th , 1980	William A. Lubbers	General Counsel, National Labor Relations Board	3	invoked, 62-34	confirmed, 57-39
96 th , 1980	Don Zimmerman	Member, National Labor Relations Board	3	invoked, 63-31	confirmed, 68-27
96 th , 1980	Stephen G. Breyer	Circuit Judge	2	invoked, 68-28	confirmed, 80-11
98 th , 1984	J. Harvie Wilkinson	Circuit Judge	2	invoked, 65-32	confirmed, 58-39
99 th , 1986	Sidney A. Fitzwater	District Judge	1	invoked, 64-33	confirmed, 52-42
99 th , 1986	Daniel A. Manion	Circuit Judge	1	withdrawn	confirmed, 48-46
99 th , 1986	William H. Rehnquist	Chief Justice	1	invoked, 68-31	confirmed, 65-33
100 th , 1987	Melissa Wells	Ambassador	1	invoked, 64-24	confirmed, 64-24
100 th , 1987	C. William Verity	Secretary of Commerce	1	invoked, 85-8	confirmed, 84-11
102 nd , 1992	Edward Earl Carnes, Jr.	Circuit Judge	1	invoked, 66-30	confirmed, 62-36
103 rd , 1993	Walter Dellinger	Assistant Attorney General	2	rejected, 59-39	confirmed, 65-34
103 rd , 1993	Five nominations ^d	State Department	2	rejected, 58-42	confirmed, voice
103 rd , 1993	Janet Napolitano	U.S. Attorney	1	invoked, 72-26	confirmed, voice
103 rd , 1994	M. Larry Lawrence	Ambassador	1	fell	confirmed, 79-16
103 rd , 1994	Rosemary Barkett	Circuit Judge	1	withdrawn	confirmed, 61-37
103 rd , 1994	Sam Brown	Ambassador	3	rejected, 56-42	no final vote
103 rd , 1994	Derek Shearer	Ambassador	2	invoked, 62-36	confirmed, 67-31
103 rd , 1994	Ricki Tigert	Board Member and Chair, Federal Deposit Insurance Corporation ^e	2	invoked, 63-32	confirmed, 90-7
103 rd , 1994	H. Lee Sarokin	Circuit Judge	1	invoked, 85-12	confirmed, 63-35

Congress and Year	Nominee	Position	Number of Cloture Attempts^a	Final Outcome of Cloture Attempt^b	Disposition of Nomination^c
103 rd , 1994	Buster Glosson	Air Force Lieutenant General (retired)	1	withdrawn	confirmed, 59-30
103 rd , 1994	Claude Bolton, Jr.	Air Force Brigadier General	1	vitiated	confirmed, voice
103 rd , 1994	Edward P. Barry, Jr.	Air Force Lieutenant General (retired)	1	vitiated	confirmed, voice
104 th , 1995	Henry Foster	Surgeon General	2	rejected, 57-43	no final vote
105 th , 1997	Joel I. Klein	Assistant Attorney General	1	invoked, 78-11	confirmed, 88-12
105 th , 1998	David Satcher	Surgeon General	1	invoked, 75-23	confirmed, 63-35
106 th , 1999	Brian Theodore Stewart	District Judge	1	rejected, 55-44	confirmed, 93-5
106 th , 2000	Marsha L. Berzon	Circuit Judge	1	invoked, 86-13	confirmed, 64-34
106 th , 2000	Richard A. Paez	Circuit Judge	1	invoked, 85-14	confirmed, 59-39
107 th , 2002	Lavenski R. Smith	Circuit Judge	1	invoked, 94-3	confirmed, voice
107 th , 2002	Richard R. Clifton	Circuit Judge	1	invoked, 97-1	confirmed, 98-0
107 th , 2002	Richard H. Carmona	Surgeon General	1	invoked, 98-0	confirmed, voice
107 th , 2002	Julia Smith Gibbons	Circuit Judge	1	invoked, 89-0	confirmed, 95-0
107 th , 2002	Dennis W. Shedd	Circuit Judge	1	vitiated	confirmed, 55-44
108 th , 2003	Victor J. Wolski	Judge, Court of Claims	1	vitiated	confirmed, 54-43
108 th , 2003	Miguel A. Estrada	Circuit Judge	7	rejected, 55-43	withdrawn
108 th , 2003	Michael O. Leavitt	Administrator, Environmental Protection Agency	1	withdrawn	confirmed, 88-8
108 th , 2003	Charles W. Pickering, Sr.	Circuit Judge	1	rejected, 54-43	no final vote
108 th , 2003	William H. Pryor, Jr.	Circuit Judge	2	rejected, 51-43	no final vote
108 th , 2003	Priscilla Richman Owen	Circuit Judge	4	rejected, 53-42	no final vote
108 th , 2003	Carolyn B. Kuhl	Circuit Judge	2	rejected, 53-43	no final vote
108 th , 2003	Janice R. Brown	Circuit Judge	1	rejected, 53-43	no final vote
108 th , 2003	Thomas C. Dorr	Undersecretary of Agriculture and Board Member, Commodity Credit Corporation ^e	2	rejected, 57-39	no final vote

Congress and Year	Nominee	Position	Number of Cloture Attempts^a	Final Outcome of Cloture Attempt^b	Disposition of Nomination^c
108 th , 2004	Marcia G. Cooke	District Judge	1	withdrawn	confirmed, 96-0
108 th , 2004	William Gerry Myers III	Circuit Judge	1	rejected, 53-44	no final vote
108 th , 2004	David W. McKeague	Circuit Judge	1	rejected, 53-44	no final vote
108 th , 2004	Henry W. Saad	Circuit Judge	1	rejected, 52-46	no final vote
108 th , 2004	Richard A. Griffin	Circuit Judge	1	rejected, 54-44	no final vote
109 th , 2005	Thomas C. Dorr	Undersecretary of Agriculture	1	withdrawn	confirmed, 62-38
109 th , 2005	Priscilla Richman Owen	Circuit Judge	1	invoked, 81-18	confirmed, 55-43
109 th , 2005	William H. Pryor, Jr.	Circuit Judge	1	invoked, 67-32	confirmed, 53-45
109 th , 2005	Janice R. Brown	Circuit Judge	1	invoked, 65-32	confirmed, 56-43
109 th , 2005	John R. Bolton	U.S. Representative to the United Nations	2	rejected, 54-38	no final vote
109 th , 2005	Stephen L. Johnson	Administrator, Environmental Protection Agency	1	invoked, 61-37	confirmed, voice
109 th , 2005	Robert J. Portman	U.S. Trade Representative	1	vitiating	confirmed, voice
109 th , 2006	Peter Cyril Wyche Flory	Assistant Secretary of Defense	1	rejected, 52-41	no final vote
109 th , 2006	Gordon England	Deputy Secretary of Defense	1	withdrawn	confirmed, voice
109 th , 2006	Eric S. Edelman	Under Secretary of Defense	1	withdrawn	confirmed, voice
109 th , 2006	Benjamin A. Powell	General Counsel, Office of the Director of National Intelligence	1	withdrawn	confirmed, voice
109 th , 2006	Richard Stickler	Assistant Secretary of Labor	1	withdrawn	no final vote
109 th , 2006	Dorrance Smith	Assistant Secretary of Defense	1	withdrawn	confirmed, 59-34
109 th , 2006	Samuel A. Alito, Jr.	Associate Justice, Supreme Court	1	invoked, 72-25	confirmed, 58-42
109 th , 2006	Brett M. Kavanaugh	Circuit Judge	1	invoked, 67-30	confirmed, 57-36
109 th , 2006	Andrew von Eschenbach	Commissioner, Food and Drug Administration	1	invoked, 89-6	confirmed, 80-11
109 th , 2006	Dirk Kempthorne	Secretary of the Interior	1	invoked, 85-8	confirmed, voice
109 th , 2006	Kent A. Jordan	Circuit Judge	1	invoked, 93-0	confirmed, 91-0

Congress and Year	Nominee	Position	Number of Cloture Attempts^a	Final Outcome of Cloture Attempt^b	Disposition of Nomination^c
110 th , 2007	Leslie Southwick	Circuit Judge	1	invoked, 62-35	confirmed, 59-38
111 th , 2009	Hilda Solis	Secretary of Labor	1	withdrawn	confirmed, 80-17
111 th , 2009	Austan Dean Goolsbee	Member, Council of Economic Advisers	1	withdrawn	confirmed, UC
111 th , 2009	Cecilia Elena Rouse	Member, Council of Economic Advisers	1	withdrawn	confirmed, UC
111 th , 2009	David W. Ogden	Deputy Attorney General	1	withdrawn	confirmed, 65-28
111 th , 2009	Christopher R. Hill	U.S. Ambassador to Iraq	1	invoked, 73-17	confirmed, 73-23
111 th , 2009	Cass R. Sunstein	Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget	1	invoked, 63-35	confirmed, 57-40
111 th , 2009	David J. Hayes	Deputy Secretary of the Interior	1	rejected, 57-39	confirmed, UC
111 th , 2009	Robert M. Groves	Director of the Census, Department of Commerce	1	invoked, 76-15	confirmed, voice
111 th , 2009	Harold Hongju Koh	Legal Advisor, Department of State	1	invoked, 65-31	confirmed, 62-35
111 th , 2009	William K. Sessions III	Chair, United States Sentencing Commission	1	withdrawn	confirmed, UC
111 th , 2009	David F. Hamilton	Circuit Judge	1	invoked, 70-29	confirmed, 59-39
111 th , 2010	Ben S. Bernanke	Chairman, Board of Governors, Federal Reserve System	1	invoked, 77-23	confirmed, 70-30
111 th , 2010	M. Patricia Smith	Solicitor, Department of Labor	1	invoked, 60-32	confirmed, 60-37
111 th , 2010	Martha N. Johnson	Administrator, General Services Administration	1	invoked, 82-16	confirmed, 96-0
111 th , 2010	Barbara Milano Keenan	Circuit Judge	1	invoked, 99-0	confirmed, 99-0
111 th , 2010	Lael Brainard	Under Secretary, Treasury Department	1	invoked, 84-10	confirmed, 78-19
111 th , 2010	Marisa J. Demeo	Associate Judge, Superior Court, District of Columbia	1	withdrawn	confirmed, 66-32
111 th , 2010	Thomas J. Vanaskie	Circuit Judge	1	withdrawn	confirmed, 77-20
111 th , 2010	Christopher H. Schroeder	Assistant Attorney General	1	withdrawn	confirmed, 72-24
111 th , 2010	Denny Chin	Circuit Judge	1	withdrawn	confirmed, 98-0
111 th , 2010	Craig Becker	Member, National Labor Relations Board	1	rejected, 52-33	no final vote
112 th , 2011	Richard Cordray	Director, Bureau of Consumer Financial Protection	1	rejected, 53-45	no final vote

Congress and Year	Nominee	Position	Number of Cloture Attempts^a	Final Outcome of Cloture Attempt^b	Disposition of Nomination^c
112 th , 2011	Mari Carmen Aponte	Ambassador	2	invoked, 62-37	confirmed, voice
112 th , 2011	Norman L. Eisen	Ambassador	1	invoked, 70-16	confirmed, voice
112 th , 2011	Donald B. Verrilli	Solicitor General	1	withdrawn	confirmed, 72-16
112 th , 2011	James Michael Cole	Deputy Attorney General	1	rejected, 50-40	confirmed, 55-42
112 th , 2011	John J. McConnell, Jr.	District Judge	1	invoked, 63-33	confirmed, 50-44
112 th , 2011	Caitlin Joan Halligan	Circuit Judge	1	rejected, 54-45	no final vote
112 th , 2011	Goodwin Liu	Circuit Judge	1	rejected, 52-43	withdrawn
112 th , 2012	Jesse M. Furman	District Judge	1	withdrawn	confirmed, 62-34
112 th , 2012	Adalberto Jose Jordan	Circuit Judge	1	invoked, 89-5	confirmed, 94-5
112 th , 2012	Jerome H. Powell	Board of Governors, Federal Reserve System	1	withdrawn	confirmed, 74-21
112 th , 2012	Jeremy C. Stein	Board of Governors, Federal Reserve System	1	withdrawn	confirmed, 70-24
112 th , 2012	Michael A. Shipp	District Judge	1	withdrawn	confirmed, 91-1
112 th , 2012	Robert E. Bacharach	Circuit Judge	1	rejected, 56-34	no final vote
112 th , 2012	Timothy S. Hillman	District Judge	1	withdrawn	confirmed, 88-1
112 th , 2012	John J. Tharp, Jr.	District Judge	1	withdrawn	confirmed, 86-1
112 th , 2012	George Levi Russell, III	District Judge	1	withdrawn	confirmed, voice
112 th , 2012	John Z. Lee	District Judge	1	withdrawn	confirmed, voice
112 th , 2012	Kristine Gerhard Baker	District Judge	1	withdrawn	confirmed, voice
112 th , 2012	Andrew David Hurwitz	Circuit Judge	1	invoked, 60-31	confirmed, voice
112 th , 2012	Paul J. Watford	Circuit Judge	1	withdrawn	confirmed, 61-34
112 th , 2012	Brian C. Wimes	District Judge	1	withdrawn	confirmed, 92-1
112 th , 2012	David Campos Guaderrama	District Judge	1	withdrawn	confirmed, voice
112 th , 2012	Gregg Jeffrey Costa	District Judge	1	withdrawn	confirmed, 97-2

Congress and Year	Nominee	Position	Number of Cloture Attempts^a	Final Outcome of Cloture Attempt^b	Disposition of Nomination^c
112 th , 2012	<i>Gina Marie Groh</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 95-2</i>
112 th , 2012	<i>David Nuffer</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 96-2</i>
112 th , 2012	<i>Michael Walter Fitzgerald</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 91-6</i>
112 th , 2012	<i>Ronnie Abrams</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 96-2</i>
112 th , 2012	<i>Rudolph Contreras</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, voice</i>
112 th , 2012	<i>Miranda Du</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 59-39</i>
112 th , 2012	<i>Susie Morgan</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 96-1</i>
112 th , 2012	<i>Jeffrey J. Helmick</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 62-36</i>
112 th , 2012	<i>Mary Geiger Lewis</i>	<i>District Judge</i>	1	<i>withdrawn</i>	<i>confirmed, 64-29</i>

Source: Compilations by CRS and Senate Library; Legislative Information System of the U.S. Congress; U.S. Congress, Senate, Committee on Rules and Administration, *Senate Cloture Rule*, committee print 99-95, 99th Congress, 1st session (Washington: GPO, 1985), pp. 44-70, 78-85; *Congressional Record (Daily Digest)*; and *Congressional Quarterly Almanac* for 1986, 1987, 1992, 1995, 1999.

Notes: Executive branch nominations in roman; judicial nominations in *italic*. Final outcome of cloture attempt in **bold** when cloture was rejected. Disposition of nomination is in **bold** when nominee was not confirmed.

- a. Includes both cloture motions filed and votes of the Senate to reconsider a cloture vote.
- b. If more than one cloture vote occurred on a nomination, the tally displayed is that of the last such vote. The final outcome is given as “withdrawn,” “vitiating,” or “fell” only if no cloture vote occurred. “Withdrawn” and “vitiating” mean that the Senate disregarded the cloture motion and took no further action on it. “Fell” means that the cloture motion received no vote because it became moot.
- c. Vote tally, if roll call vote; “voice” if voice vote; “UC” if by unanimous consent.
- d. These five nominations to various positions in the State Department, which received consideration and cloture action concurrently, are counted as one case in this report.
- e. The individual was nominated concurrently for the two positions specified, and cloture action took place on each nomination in turn. For each nominee, the report counts the actions on both nominations as one case.

Author Contact Information

(name redacted)
Specialist on Congress and the Legislative Process
-redacted-@crs.loc.gov, 7-....

Acknowledgments

Earlier versions of this report were co-authored by (name redacted), analyst on Congress and the Legislative Process. Ms. Palmer has retired from CRS. To the analysis presented in the present version, contributions were made by (name redacted), specialist on Congress and the Legislative Process, (name redacted), analyst on Congress and the Legislative Process, and Maeve Carey, analyst in Government Organization and Management, all in the Government and Finance Division of CRS.

Key Policy Staff

Area of Expertise	Name	Phone	E-mail
Congressional Procedure, Senate Floor Procedure, Cloture, Nominations Process	(name redacted)	x78667	-redacted-@crs.loc.gov
Nominations to Executive Branch Positions	Maeve Carey	x77775	-redacted-@crs.loc.gov
Congressional Procedure, Senate Floor Procedure	(name redacted)	x70656	-redacted-@crs.loc.gov
Congressional Procedure, Senate Floor Procedure, Cloture	(name redacted)	x78635	-redacted-@crs.loc.gov
Nominations to Executive Branch Positions	Henry Hogue	x70642	-redacted-@crs.loc.gov
Nominations to Judicial Branch Positions	Barry McMillion	x76025	-redacted-@crs.loc.gov
Congressional Procedure, Senate Floor Procedure, Holds	Walter Oleszek	x77854	-redacted-@crs.loc.gov
Congressional Procedure, Senate Floor Procedure, Cloture, Nominations Process	(name redacted)	x70644	-redacted-@crs.loc.gov

EveryCRSReport.com

The Congressional Research Service (CRS) is a federal legislative branch agency, housed inside the Library of Congress, charged with providing the United States Congress non-partisan advice on issues that may come before Congress.

EveryCRSReport.com republishes CRS reports that are available to all Congressional staff. The reports are not classified, and Members of Congress routinely make individual reports available to the public.

Prior to our republication, we redacted names, phone numbers and email addresses of analysts who produced the reports. We also added this page to the report. We have not intentionally made any other changes to any report published on EveryCRSReport.com.

CRS reports, as a work of the United States government, are not subject to copyright protection in the United States. Any CRS report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS report may include copyrighted images or material from a third party, you may need to obtain permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Information in a CRS report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to members of Congress in connection with CRS' institutional role.

EveryCRSReport.com is not a government website and is not affiliated with CRS. We do not claim copyright on any CRS report we have republished.