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Discharging a Senate Committee from Consideration of a Nomination

A routine part of the confirmation process for most nominations submitted by the President to the Senate involves consideration by committee. Under Senate Rule XXXI, nominations are referred to committee “unless otherwise ordered.” The vast majority of nominations are referred. The Senate does not have a process by which a Senator can make nominations eligible for floor consideration upon receipt, without referral to committee. The Rule XIV process, which allows a Senator to take steps to prevent a bill or joint resolution from being referred to committee, does not apply to nominations.

For the Senate to take up a nomination on the floor, the committee of referral must first report the nomination, or the committee must be discharged by the full Senate from further consideration of the nomination. The Senate routinely discharges committees from consideration of a nomination by unanimous consent. Senators who do not support discharge can communicate to their party leader that they would object to an attempt on the Senate floor to discharge the committee from consideration of the nomination by unanimous consent. An objection by any Senator would prevent discharge by unanimous consent.

From time to time, Senators are interested in discharging a committee from consideration of a nomination when unanimous consent cannot be obtained. Under Senate rules, it is possible for the full chamber to discharge a committee from consideration of a matter, using a motion or resolution, so that the Senate may consider a nomination that the committee did not report.

The discharge process, however, does not allow a simple majority to quickly initiate consideration of a nomination still in committee. It requires several steps, and a motion or resolution to discharge is not subject to a debate limit. Therefore, a cloture process—requiring several days and supermajority support—could be necessary to reach a Senate vote on discharging a committee. (During the 117th Congress, when the Senate was equally divided between the two parties, the power-sharing provisions of S.Res. 27 provided for a debate-limited motion by which a Senate simple majority could discharge a committee of measures or matters in certain circumstances.)

This CRS In Focus outlines the steps of the discharge process for nominations. Not all procedural options are discussed in this product; additional resources on the confirmation process are listed at the end. CRS resources provide background and explanatory information. Only the Office of the Senate Parliamentarian can provide authoritative advice regarding Senate proceedings, and

consultation with that office regarding any specific floor action is advised.

Current Discharge Process for Nominations

Senate Rule XVII permits any Senator to submit a motion or resolution that a committee be discharged from the consideration of a nomination, but the Senate must be in “executive session,” a parliamentary form of the Senate that has its own *Journal* and *Calendar* and, to some extent, its own rules of procedure. Typically, the Senate begins each day in legislative session, where bills and resolutions are considered, and enters executive session by unanimous consent or by agreeing to a motion made by the majority leader. Only if the Senate adjourned or recessed while in executive session would the next meeting automatically open in executive session.

The process of discharging a committee from consideration of a nomination has several steps:

- If the Senate is not already in executive session, a Senator could first move that the Senate enter executive session. That motion is not debatable (under paragraph 1 of Rule XXII), and it would require the support of a majority of those voting, a quorum being present, for approval.
- In executive session, a Senator could be recognized to submit a resolution of discharge and ask unanimous consent for its immediate consideration.
- If there is an objection to this request, the resolution would have to lie over until the next executive session on another calendar day (under Rule XVII, paragraph 4(a)). To indicate this, starting the next day the resolution would be listed on the *Executive Calendar* in the status of “over, under the rule.” (Alternatively, a Senator could *move* that a committee be discharged, and upon objection to immediate consideration of that motion, it would be placed in the status of “over, under the rule” in the form of a resolution.)
- Once the resolution is in that procedural status on the *Executive Calendar*, a Senator could make a motion, while in legislative session, that the Senate enter executive session and take up the discharge resolution.
- Under the interpretation of a precedent established in 1980, the motion to enter executive session to consider a discharge resolution is not debatable. If a majority of those voting agreed to this motion, the resolution would be before the Senate for consideration in executive

session. (If a majority defeated the motion, then the Senate would remain in legislative session.)

- The discharge resolution would be debatable under the regular rules of the Senate, meaning there would be no limit on debate. The resolution would also be subject to amendment. Cloture, which asks if the Senate wishes to bring debate to a close, might therefore be necessary to bring the Senate to a final vote on the discharge proposal. A cloture motion could be filed on the resolution once the Senate had agreed to take it up.
- Absent unanimous consent to alter the “ripening period” for the cloture motion, the Senate must wait two session days before voting on cloture, pursuant to Rule XXII. Three-fifths of Senators duly chosen and sworn, or 60 Senators if no more than one vacancy, would be required to invoke cloture on a discharge resolution.
- After a successful cloture vote, the Senate would conduct post-cloture debate on the resolution. Cloture would limit further consideration of the resolution to a maximum of 30 hours. Once cloture is invoked on a matter, the Senate can consider other business during the post-cloture period only by unanimous consent.
- After post-cloture debate expired, or when no Senator sought to discuss the resolution further, the Senate would vote on the discharge resolution. The resolution would require simple majority for approval.
- If the Senate agreed to the discharge resolution, then the nomination would be placed on the *Executive Calendar* and could be taken up the next day by a nondebatable motion to proceed to executive session for its consideration.

The remaining procedural steps to confirm a nomination, including cloture on the nomination, are all subject to a simple majority threshold.

Past Practice

Modern efforts to discharge a committee from consideration of a nomination, absent unanimous consent, have not been successful except when the Senate was equally divided and operating under temporary agreements that limited debate on the motion in certain circumstances (see, for example, S.Res. 27, §3(1)(B), 117th Congress).

Data on attempts to discharge a committee from consideration of a nomination by motion or resolution are available in a CRS congressional distribution memorandum available to congressional offices from the authors listed below, upon request. The memorandum describes in detail the research method used to search for attempts to discharge, as well as the limitations of the research method. To summarize the findings of that memorandum:

- The most recent attempts to discharge a committee from consideration of nominations using the procedure described above occurred in 2003, 1989, and 1981. In all cases, the discharge resolution went over, under the

rule, and the resolution received no further consideration by the Senate.

- Absent unanimous consent and excluding instances that occurred pursuant to alternative, temporary procedures created when the Senate was equally divided between the parties, the last time the Senate successfully discharged a committee from consideration of a nomination was in 1947. In this case, the need to discharge one committee and send the nomination to another committee arose as a result of jurisdictional changes made in the major 1946 reorganization of the congressional committee system.
- CRS identified a total of four instances since 1916 in which a committee was discharged by motion or resolution (excluding those occurring pursuant to temporary procedures created when the Senate was equally divided between the parties in the 107th [2001-2002] and the 117th [2021-2022] Congresses). The instances occurred in 1947, 1932, 1928, and 1917. The 1917 instance affected two nominations. Less information is available for the 1917 and 1928 instances because executive session proceedings were closed to the public at that time.

Additional Resources

The chapter concerning nominations in *Riddick’s Senate Procedure*

The chapter concerning discharge of committees in *Riddick’s Senate Procedure*

CRS Report RL31980, *Senate Consideration of Presidential Nominations: Committee and Floor Procedure*, by Elizabeth Rybicki

CRS congressional distribution memorandum, “Discharging a Committee from Consideration of a Nomination: Current Procedure and Historical Practice,” May 31, 2017, by Michael Greene and Elizabeth Rybicki; available to congressional offices from the authors upon request

CRS Insight IN12200, *Holds on Nominations*, by Elizabeth Rybicki and Michael Greene

CRS Report R46769, *The Senate Powersharing Agreement of the 117th Congress (S.Res. 27)*, by Elizabeth Rybicki

CRS Report R46273, *Consideration of Privileged Nominations in the Senate*, by Michael Greene

CRS Report RL30959, *Presidential Appointee Positions Requiring Senate Confirmation and Committees Handling Nominations*, by Christopher M. Davis and Michael Greene

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