

Discharging a Senate Committee from Consideration of a Nomination

April 5, 2016 (IN10468)

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Some press reports have suggested that the full Senate could vote in relation to the nomination of Merrick B. Garland to be an Associate Justice of the Supreme Court, even if the Senate Judiciary Committee does not act on the nomination. (See, for example, the *Roll Call* [article of March 28, 2016](#).) This CRS Insight addresses questions concerning the exact nature of such a vote; it also explains the procedural steps that could be necessary to bring the nomination to a direct vote on the floor. Not all procedural options are discussed in this product; additional resources and relevant CRS experts 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.

Very few nominations proceed without the support of the committee of jurisdiction, but chamber rules do make it possible for the full Senate to consider a nomination the committee does not report. Senate Rule XVII permits any Senator to submit a motion or resolution that a committee be discharged from the consideration of a subject referred to it. While it is common for committees to be discharged by unanimous consent, doing so by motion or resolution is rare.

A motion or resolution to discharge a committee from the consideration of a nomination is in order only after the Senate has agreed to enter "executive session," a parliamentary form of the Senate that has its own Journal and Calendar and, to some extent, its own rules of procedure. All business concerning nominations and treaties is considered in executive session.

Typically, the Senate begins each day in legislative session, where bills and resolutions are considered, and enters executive session by unanimous consent request or 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 majority leader (or a designee) generally makes the motions that affect the Senate's agenda, and under long-standing practice, the

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majority leader is recognized by the presiding officer to speak or act on the floor over any other Senator seeking recognition. Any Senator who is recognized, however, could 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.

At any time the Senate is in executive session, a Senator might 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)). The resolution would then 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*, any Senator could make a single motion 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 or tabled it, then the Senate would remain in legislative session. The motion to enter executive session to take up the resolution could be made more than once, even after a motion to do so had failed, because the resolution would remain on the calendar. (Alternatively, if the Senate was already in executive session, then a Senator could move that the Senate proceed to a discharge resolution. This motion, however, is debatable.)

Up to this point in the process of taking up a nomination not reported by committee, proponents would need to garner only simple majority support. This is true not only because the motions discussed so far need only majority support for approval, but also because these specific motions that involve entering executive session are not debatable. The *discharge resolution itself*, however, is debatable (and is also subject to amendment). As a result, a cloture process—requiring the support of three-fifths of the Senate—could be necessary to bring the Senate to a final vote on the discharge proposal. (For a brief description of the cloture process, see CRS Report 98-425, [Invoking Cloture in the Senate](#), by Christopher M. Davis.)

If the Senate ultimately agreed to the discharge resolution, then the nomination would be placed on the *Executive Calendar*. After the nomination had been on the *Calendar* for one day, a simple majority could agree to take up the nomination. The motion to enter executive session to consider the nomination is not debatable, and therefore the support of a larger coalition to invoke cloture is not necessary. The nomination itself, however, is debatable, and to invoke cloture on a Supreme Court nomination would require the support of three-fifths of the Senate. (Cloture can be invoked on all other nominations with the support of a majority of those voting, a quorum being present.)

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 Report R44236, [Supreme Court Appointment Process: Consideration by the Senate Judiciary Committee](#), by Barry J. McMillion

CRS Report R44234, [Supreme Court Appointment Process: Senate Debate and Confirmation Vote](#), by Barry J. McMillion

CRS Report RL33247, [Supreme Court Nominations: Senate Floor Procedure and Practice, 1789-2011](#), by Richard S. Beth