

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap, and the bottom bulb has a light blue cap.

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Super-Majority Votes in the Senate

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May 19, 2008

Abstract. The Senate has long been known for its emphasis on minority rights, for it provides extensive procedural protections to individuals and minority coalitions. Yet most questions are decided by vote of a simple majority. Some super-majority votes, however, are explicitly specified in the Constitution; implicitly, they also inhere in authority granted in Article I, section 5, which says, "Each chamber may determine the Rules of Its Proceedings."

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Super-Majority Votes in the Senate

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The Senate has long been known for its emphasis on minority rights, for it provides extensive procedural protections to individuals and minority coalitions. Yet most issues in the Senate are decided by a simple majority vote: one-half-plus-one of the Members voting, assuming the presence of a quorum. For instance, if all 100 Senators vote, the winning margin is at least 51—one more than half the membership of the Senate. Under Senate precedents, “[a] tie vote on a question defeats it.”

Some super-majority votes, however, are explicitly specified in the Constitution; implicitly, they also inhere in authority granted in Article I, Section 5, which says, “Each chamber may determine the Rules of Its Proceedings.” Under this affirmative constitutional power, the Senate has imposed on itself a number of additional super-majority (sometimes called “extraordinary majority”) requirements. Worth review, then, are the constitutional and Senate procedural-based exceptions to the general principle that Senators commonly decide issues by simple majority vote.

Constitutional Super-Majority Requirements

In the judgment of several of our Founding Fathers, among the infirmities of the Articles of Confederation was a super-majority requirement for deciding such questions as coining money, appropriating funds, and determining the size of the army and navy. As Alexander Hamilton declaimed in *Federalist* No. 22, “To give a minority a negative upon the majority (which is always the case where more than a majority is requisite to a decision), is, in its tendency, to subject the sense of the greater number to that of the lesser.” Overall, the Framers generally favored decision-making by simple majority vote. This view is buttressed by the grant of a vote to the Vice President (Article I, section 3) in those cases where the Senators are “equally divided.”

On the other hand, the Framers also recognized the virtue of super-majority votes in certain circumstances. In *Federalist* No. 58, James Madison (like Hamilton a proponent of majority voting for most things) noted that super-majority votes could serve as a “shield to some particular interests, and another obstacle generally to hasty and partial measures.” Hamilton, too, in *Federalist* No. 73 highlighted the benefits of requiring an extraordinary majority of each chamber to overturn a president’s veto. “It establishes a salutary check upon the legislative body,” he said, “calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.”

The original Constitution requires a two-thirds vote of either the House, the Senate, or both in five situations. They include (1) overriding presidential vetoes, Article I, Section 7, clause 2; (2) removing Federal officers through impeachment proceedings with conviction by two-thirds vote of the Senate, Article I, Section 3, clause 6; (3) ratifying treaties by two-thirds vote of the Senate, Article II, Section 2, clause 2; (4) expelling members from the House or Senate, Article I, Section 5, clause 2; and (5) proposing constitutional amendments, Article V. In addition, the Fourteenth Amendment to the Constitution, ratified in 1868, disallowed anyone who engaged in “insurrection or rebellion” from holding any civil or military office unless each house removed this disability by a two-thirds vote. The 25th Amendment, ratified in 1967, addresses the issues of presidential succession and inability. In the case of an Acting President, the House and Senate, by a two-thirds vote of each chamber, may determine that “the President is unable to discharge the powers and duties of his office.”

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Super-Majority Requirements Specified in Senate Rules and Precedents

The Senate has a number of rules or precedents that require either a two-thirds or a three-fifths vote. The super-majority requirements include the following.

Invoke Cloture

Under Senate Rule XXII, a three-fifths vote of all Senators (60 of 100) is required to invoke cloture (the closure of debate) on most questions. However, a two-thirds vote of the Senators present and voting is required to invoke cloture on measures or motions to amend Senate rules. Once cloture has been invoked, the 30 hours of debate available during post-cloture consideration may be extended by a three-fifths vote of all Senators duly chosen and sworn.

Suspend the Rules

Senate precedents stipulate a two-thirds vote of the Senators present, a quorum being present, is required to suspend the standing rules of the Senate.

Postpone Treaty Consideration Indefinitely

Senate Rule XXX states that a motion to postpone treaty consideration indefinitely “shall be decided by a vote of two-thirds.”

Make A Bill A Special Order

The Senate has an antiquated precedent (still listed in the modern compilation of precedents) which states that “a two-thirds vote is required to make a bill a special order.” On April 1, 1884, the chair noted that a Senator moved that further consideration of S. 1448 be postponed until a specific date and time, “and that it be made the special order for that time. The question is on agreeing to the motion ... , which requires a two-thirds vote.”

Waive the Congressional Budget Act of 1974

The 1974 Budget Act, as amended, contains provisions which operate as rules of the Senate. To set aside budget process procedures if a valid point of order is raised under the Budget Act, a three-fifths vote of all Senators may be necessary. Similarly, if a Budget Act provision establishes a three-fifths waiver requirement, then any appeal to overturn the chair’s ruling regarding that provision also requires a three-fifths vote of all Senators. See CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

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