



# Summary of the Frist-Miller Filibuster Reform Proposal

Prepared by the Office of Senate Majority Leader Bill Frist, M.D.

S. Res. 138 tracks the normal procedure to cut off a filibuster with several exceptions:

1. Applies only to nominations
2. Cloture cannot be filed until a nomination has been pending for 12 hours
3. Cloture requirements decline on succeeding votes: 60, 57, 54, 51, and finally a simple majority of those present and voting
4. A follow-up cloture motion cannot be filed until disposition of the prior cloture motion

## The Reason for the Reform Proposal

The Democratic Minority in the 108<sup>th</sup> Congress has dramatically changed the norms on confirming judicial nominees brought to the floor. Prior to this year, the record number of cloture votes on a judge was two. On DC Circuit Court nominee Miguel Estrada, the Senate had seven cloture votes.

Prior to this year, no judge brought to the floor failed on a filibuster. There was one failed cloture vote on Abe Fortas for the Supreme Court in 1968 (a vote of 45-43). From statements subsequently put in the Record, it is highly questionable whether Fortas enjoyed majority support. After the one vote, Fortas asked that his name be withdrawn.

This year, four nominees with majority support have thus far failed due to filibusters (Miguel Estrada, Priscilla Owen, William Pryor, and Charles Pickering), and filibusters are threatened on many more.

The declining vote mechanism permits substantial debate, but allows the Senate to come to a decision, and restores the norm of not filibustering judges.

S. Res. 138 was reported from the Rules Committee in June with unanimous Republican support. We are proceeding through the regular order. (This is not the constitutional option.)