

## Learning About Legislation #58 - A Motion to Discharge and the nomination of Vanita Gupta

The Senate took an unusual step this week to move forward the stalled nomination of Vanita Gupta, President Biden's pick for the Associate Attorney General at the U.S. Department of Justice, the third ranking official for that department. Republicans were holding her nomination hostage in committee, so the full Senate was called upon to vote to remove the nomination from the committee via a motion to discharge.

The *Congressional Research Service* white paper titled "[Senate Consideration of Presidential Nominations: Committee and Floor Procedure](#)" is the source for this excerpt on discharge motions:

It is unusual for Senators to attempt to discharge a committee by motion or resolution, instead of by unanimous consent, and only a few attempts have ever been successful. Senate Rule XVII does permit any Senator to submit a motion or resolution that a committee be discharged from the consideration of a subject referred to it. 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, most notably, a motion or resolution to discharge is debatable.

Elizabeth Rybicki, a specialist on Congress and the legislative process, concurs in her *Congressional Research Service* essay, "[Discharging a Senate Committee from Consideration of a Nomination](#)." She observed that "while it is common for committees to be discharged by unanimous consent, doing so by motion or resolution is rare." Her writing goes on to explain in detail the complicated calendaring procedure needed, involving moving the chamber into executive session or potentially leaving the motion on the calendar, to succeed in discharging the nomination from the committee by vote instead of by consent.

In the case of Ms. Gupta, [the Senate voted to discharge her nomination](#) from the Senate Judiciary Committee on Thursday, April 15, 2021. The final vote was 49-34, with 17 lawmakers not voting. All of the Democrats and Independents present voted YES, with John Tester of Montana not voting. On the Republican side, 34 Senators voted NO, and 16 opted to not vote. Senator Toomey was one of those who did not vote.

In the aftermath of the vote on the discharge motion, [Senator Dick Durbin \(D-IL took to the pages of Roll Call\)](#) to urge his colleagues to vote for her when her nomination comes before the full Senate for her confirmation next week. The Senator wrote, in part:

One would think, given Gupta's extraordinary credentials and consensus building approach, that she would enjoy broad, bipartisan support in the Senate. Unfortunately, her nomination has been met with extreme and vitriolic opposition from Senate Republicans, much of it in the form of falsehoods. Sadly, we saw this from Senate Judiciary Republicans when her nomination was up for a vote in committee on March 25.

I will not give any more airtime to these unfounded attacks. Instead, I would urge my fellow senators and the public at large to take a look at Gupta's actual record.

In doing so, they will see a nominee who has committed her entire life to making this nation more just. A nominee who is guided by a belief that we can and must do better in protecting voting rights, combating hate crimes, protecting the rights of religious minorities and building a more equitable criminal justice system. A nominee who truly believes in the principle of equal justice under law.

And a nominee who deserves to be confirmed.