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Filibuster: Political parties take turns supporting it **(revision of earlier article)**

By Steve Bakke  November 12, 2021



Jimmy Stewart in "Mr. Smith Goes to Washington" (1939). Idealistic U.S. Senator wins a debate featuring a bedraggled Stewart pleading his case during a lengthy filibuster.

It's time to review the Senate filibuster rule because it's prominently in the news. Both parties support the filibuster rule.....except when they don't. And they take turns. Right now, republicans support it, while it's less popular with democrats than anything except a worldwide pandemic, or a favorable Donald Trump comment.

With his party in the minority, Senator Schumer declared this in 2017: *"The legislative filibuster is the most important distinction between the Senate and the House. Without the 60-vote threshold for legislation, the Senate becomes a majoritarian institution, just like the House. So, let's find a way to further protect the 60-vote rule....."*

Democrat Senator Durbin commented in 2018: *"I can tell you that [eliminating the filibuster] would be the end of the Senate as it was originally devised and created, going back to our founding fathers. We have to acknowledge our respect for the minority....."*

Attitudes change quickly and dramatically regarding the filibuster issue. Here's a 2021 comment by Senator Durbin with the Senate split 50/50, and the democrat Vice-President able to cast the deciding vote: *"Today's filibuster throws a system out of balance.....it promotes gridlock not good governance.....it's become the death grip of democracy."*

And on November 3rd, 2021, Senator Schumer declared: *"This is a low, low point in the history of this body.....to debate and never vote is imbecile....."* He's frustrated by being unable to force through controversial legislation. He's threatening to revoke the filibuster rule.

The history of the filibuster rule clearly discloses that inadvertent changes and attempts at refining Senate rules brought us to where we now are. While the filibuster rule happened almost accidentally, plausibly valid arguments are made that this random rule upholds the Founders' intentions. For example, giving voice to the minority to prevent a "tyranny of the

majority,” and to create a highly deliberative Senate. Correspondence among the Founders, quotes from their many debates, and the Federalist Papers describe and clarify their vision.

Using the “filibuster” rule, any senator can force “debate” on any legislation on the floor. The Senate has taken a practical approach by establishing “debate-less” filibuster and introducing “cloture” rules so that other legislation can be addressed while gridlocked on the legislation being filibustered. Under cloture rules, the majority has to muster 60 votes supporting “cloture,” after which it’s brought to the Senate floor for vote.

As the filibuster controversy now heats up, Democrats want to pass several controversial laws that would have trouble gaining Senate approval. For example, federal election reform, and “packing” the supreme court. These “party-line” issues reflect vastly different worldviews about our form of government and the Founders’ original intent. And republicans are ready to filibuster.

But “all’s fair.” Recall that democrats very recently filibustered republican legislation. In 2020, Senator Tim Scott proposed criminal justice reform legislation that had bipartisan support. Elizabeth Warren successfully denied a vote using the filibuster rule. Democrats also filibustered a large republican COVID relief bill. Both were obvious political strategies to deny Trump bipartisan victories, and they were successful.

I stand with originalism. If realities change, the Constitution should be adjusted by amendment. Thomas Jefferson offered advice on Constitutional originalism and transformational legislation: “.....*instead of trying [to understand] what meaning may be squeezed out of the text or invented against it, conform to the probable one in which it was passed,*” and “*Great innovations should not be forced on slender majorities.*”

Jefferson reflects the Founders’ intentions that passing transformational legislation be difficult, even messy. The Senate is to be a deliberative body with sometimes excruciating effort necessary to debate and pass legislation. The filibuster is one tool to accomplish that, but it’s fair to question whether it’s the best one.

Perhaps there are improvements worthy of consideration, e.g., to ensure sincerity, revert to a talking filibuster, or require 41 votes to force a filibuster. Whatever method is chosen, it should encourage compromise while resisting transformational legislation, but that balance is difficult to achieve.

Democrats and republicans favor the filibuster as representing common sense, but never at the same time. It’s now the republicans’ turn. Disagreement about the filibuster will not die until the Senate majority sincerely wants the minority to have its rightful say, and that’ll never happen.