 **FILIBUSTER:
THE SENATE RULES
DEBATE - A GIFT THAT
KEEPS ON GIVING
("stomach acid" to
the majority)!**
- Part One

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**The filibuster fight came back – and it’ll keep coming back
– until the Senate majority wants the minority to have their say!**

In recent days, the democratic Senate Majority Leader, Harry (the) Reid, has threatened to permanently change the Senate rules regarding the long-standing ability of any single Senator to “filibuster” and effectively extend the debate for the time being, and block a vote on any particular issue. This recent attempt to rescind the filibuster has been commonly referred to as the “nuclear option.” The same struggle happened with ol’ Harry a few years ago on another issue, so I dug out an old report, some old research, and started to develop this report.

This time the filibuster was being threatened in order to block Senate floor votes regarding several controversial Presidential appointments which the Senate was being asked to approve. Ultimately the two sides agreed that no rules changes would be proposed, and that the Republicans agreed to permit an “up or down” vote on these appointments. There were also some concessions made by the administration and the Democrats, but many conservatives consider this compromise to be a “cave” by the Republicans. In this report I want to update the history and nature of the filibuster, and reconsider my previous opinion about the appropriateness of the procedure.

“Filibuster” and “cloture” – sounds like a couple of battlefield medical procedures!

Filibuster is a technique available to any senator to **enforce the right to force debate on any legislation on the floor.** Originally, in order to “retain the floor,” debate had to be maintained continuously, or procedures could bring it to a halt. In recent years (under Senator Byrd’s tutelage) the Senate took a practical approach by establishing “debate-less” filibuster and the “cloture” rules. Under this revision, debate could be “officially” conducted without constant speaking on the floor – and debate could be ended and the legislation brought to the floor for a vote. Ending debate requires 60 senators to vote in favor of cloture. Ending this form of debate-less filibuster originally required 67 votes – so the procedure has already been weakened.

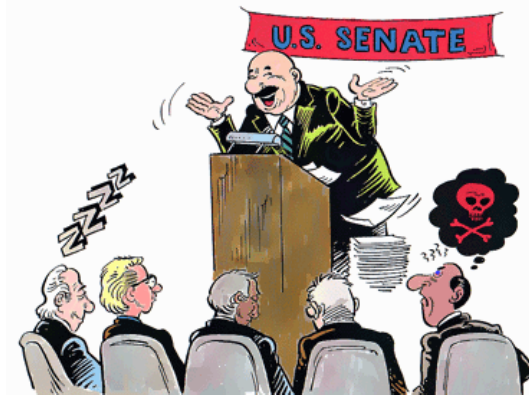
There we have it (or do we?): the Senate minority can block voting on an issue, by continuing the period of debate-less filibuster, unless the majority can muster the 60 required votes to bring it to the floor for a vote.

But wait just a cotton pickin’ minute! As I understand it, the Senate democratic leadership first contended they could change the rules with only 51 votes on “day one” of a session. But that day is long in the past. They now contend they can change the rule with **51 votes – a simple majority – and they can do it at any time.** This contention assumes that the Senate is similar to the house in

that it should be able to easily rewrite the rules. In order to accomplish this, they would have to **completely reject the traditional concept that the Senate is a “continuing body”** and conjure up this new rule that permits easy rules changes and essentially rejects the tradition of extended debate through the filibuster.

Continuing body? Does this describe a really tall, gorgeous woman!

The Senate’s official website disagrees with the Democrats’ apparent argument that the Senate is not a “continuing body.” It states clearly that “the Senate does not have to reorganize itself for each new Congress.” In addition, the “rules” website states “the rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules” – that’s what “continuing body” means. Hence, it seems obvious to me that 67 votes are required to prevail on a rules change.



Since new rules are not required, old ones continue until changed by a vote of 67 senators.

Remember that the House of Representatives must establish the rules at the beginning of each Congress – it has to, because it is not a “continuing body.” The tradition that the Senate is a “continuing body” has its roots in the fact that the Constitution provides a system of staggered six-year terms for senators:

Immediately after they shall be assembled they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year – Article One, Section 3 of the Constitution

At the conclusion of each two-year congress, the terms of only one-third of the 100 senators expire, allowing two-thirds of the senators to continue **servicing without interruption. This is unlike the House, whose members are all elected every two years.**

The Senate majority NEVER has patience with the filibuster rule!

I recall that it was in 2005 when the Republican majority in the Senate was threatening to amend the Senate rules to stifle the Democrat’s attempt to block some of Bush’s appointees through the use of “debate-less” filibuster. **If you want to feel the real effect of philosophical whiplash,** consider some quotes from 2005 and later, coming from current participants in the debate:

The Founders designed this system, as frustrating (as) it is, to make sure that there’s a broad consensus before the country moves forward. – Senator Barack Obama – 2005, on reasons for Senate-style debate when the Democrats were in the minority.

One day Democrats will be in the majority again, and this rule change will be no fairer to a Republican minority than it is to a Democratic minority [We] need to rise

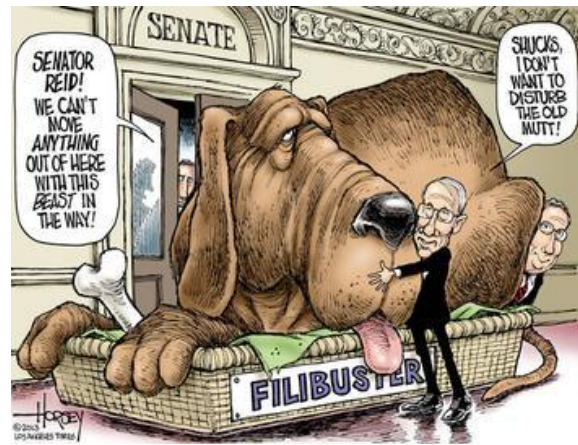
above an “ends justify the means” mentality because we’re here to answer to the people – all of the people – not just the ones wearing our party label. – Barack Obama – 2005.

[T]he American people sent us here to be their voice What they do not expect is for one party to change the rules in the middle of the game so they can make all the decisions while the other party is told to sit down and keep quiet then the fighting, the bitterness, and the gridlock will only get worse. – Barack Obama – 2005.

[The nuclear option for removing the filibuster rule is] a lie about a rule [the ultimate] example of the arrogance of power [and a] fundamental power grab by the majority party. – Senator Joe Biden – 2005.

You’ve got to break out of what I call, sort of, the 50-plus-one pattern of presidential politics. Maybe you eke out a victory of 50-plus-one, then you can’t govern. – Senator Barack Obama – 2007, on the importance of Senate rules of filibuster and cloture.

The filibuster is a critical tool in keeping the majority in check. [Republican threats to change the rules are a] partisan political grab ... un-American. – Harry Reid – 2005.



It doesn't take long for political winds to change does it!!!!

There you have a description of the current debate. We've learned or refreshed our memory about the mechanics of filibuster and cloture. And we've seen graphically how political winds change from administration to administration.

Next time, in **Part Two**, we will look at some more background on this topic and I will give my opinion (not that that's a big deal!).