

Majority rules?



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Majority rule is the essential concept of our democracy. It decides state ballot initiatives, which bills get approved by the U.S. House of Representatives, and the results of Supreme Court decisions. But increasingly, it does not govern in the U.S. Senate. That's because long-standing Senate rules require 60 votes to take just about any action on legislation—to bring a bill up for debate, to amend it, or to hold a vote on it.

This unique supermajority requirement allows minorities in the Senate to block, or “filibuster,” legislative proposals by refusing to consider them or to end debate on them. For much of the past two decades, the power to filibuster has

been outrageously abused to prevent most non-budget legislation from advancing at all. It didn't used to be that way—between 1917 and 2006, the average number of filibusters was eight per year. Since 2006, the average has been 88 per year. Indeed, the Senate filibuster has been used more in the last 20 years than it was in the prior 80 years. The resulting gridlock has thwarted sensible compromise and undermined Americans' faith in our democracy. I cannot help but believe that this loss of faith has helped fuel the poisonous partisanship that now afflicts American politics.

Defenders of the filibuster argue that it is part of our nation's checks and balances that protect minority rights and promote debate and bipartisan compromise.

But the filibuster is not in the U.S. Constitution. Before 1806, a Senate rule permitted a majority vote to end debate on legislation. That rule was inadvertently dropped, and soon senators discovered that they could block bills from becoming law by refusing to end debate. Eventually a new rule required 67 votes to close debate, which is called “cloture.” In the 1970s, the number was reduced to 60 votes, where it remains today.

For most of its history, filibusters were used sparingly, though most often and most shamefully to deny civil rights to African Americans and women. But over the past six or seven Congresses, they have become routine on all kinds of legislation.

And while filibusters may have promoted compromise and debate in the past, when both parties had many more moderates, that is simply not true anymore. In the last Congress, several hundred bills passed the House only to be ignored in the Senate, blocked by the 60-vote threshold in Senate rules. These days, Senate filibusters do not just prevent our Congress from solving our

country's most pressing problems, they increasingly stop the Senate from even debating them.

This is precisely what happened recently with the For the People Act, a bill to prohibit partisan gerrymandering of congressional districts and require equal voting rights across the country. On June 22, a Senate majority supported a debate on the bill. But because of the 60-vote rule, the bill was killed by a filibuster. Sadly, even bills that have majority bipartisan support in the Senate are routinely denied an opportunity to be debated, by what is essentially a minority vote.

Without a reform of the filibuster, the same fate awaits the crucially needed Protect the Right to Organize Act (see the May issue of *The Postal Record*) as well as many other popular bills that have bipartisan support of U.S. voters dealing with improving infrastructure, raising the minimum wage and other matters.

Reforming the filibuster is perhaps the best way forward. We could exclude certain kinds of bills from the filibuster—such as those affecting fundamental citizenship and human rights, including the rights to vote, to unionize and to bargain collectively. There is precedent for such “carve-outs” from the filibuster—“budget reconciliation” bills that determine federal budget policy and federal judicial confirmations are examples. Such reconciliation bills and nominations are not subject to filibuster and can be passed with a simple majority. Alternatively, the filibuster could be reformed to serve the values of its strongest supporters—to encourage debate and to promote bipartisanship. At first, 60 senators might be required to end debate, but that number could be gradually reduced to a majority vote after specified periods of additional debate on specific legislation. Or the Senate rules could be amended to replace the filibuster with a requirement that both parties be given the opportunity to offer a certain number of amendments.

There are no filibusters in the House of Representatives; debate can be ended with a majority vote. This allows for majority rule in the House. But legislation must pass both houses of Congress to reach the president's desk and to become law, so the proliferation of Senate filibusters has facilitated the partisan gridlock and congressional dysfunction that so many Americans detest. As currently constructed and deployed by both parties, the Senate's filibuster rules are doing serious damage to our democracy.

Absent a reform of these rules, the opportunity for bipartisan debate (and enactment) of legislation involving the basic rights and needs of the American people will continue to be denied. The failure of a dysfunctional Senate to address these issues simply widens the partisan divide rather than resolving many of the issues at the root of the deep divisions that exist in our country. A good first step toward bringing our country together would be to take a serious look at filibuster reform to ensure that critical legislation with a simple majority of support is considered by the Senate and not thrown by the wayside.