



Opinion

For Democracy to Stay, the Filibuster Must Go

What happens when the biggest election reform bill in half a century runs into one of the most formidable barriers to American governance?

The Editorial Board

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It is hard to imagine a more fitting job for Congress than for members to join together to pass a broadly popular law that makes democracy safer, stronger and more accessible to all Americans.

Last week, the House of Representatives [passed H.R. 1](#). The bill, a similar version of which the House passed in 2019, is a comprehensive and desperately needed set of reforms that would strengthen voting rights and election security, ban partisan gerrymandering, reduce big money in politics and establish ethics codes for Supreme Court justices, the president and other executive branch officials.

The legislation has the support of at least 50 senators, plus the tiebreaking vote of Vice President Kamala Harris. President Biden is on board and ready to sign it. So what's the problem? Majority support in the Senate isn't enough. In the upper chamber, a supermajority of 60 votes is required to pass even the most middling piece of legislation. That requirement is not found in the Constitution; it's because of the [filibuster](#), a centuries-old parliamentary tool that has been transformed into a weapon for strangling functional government.

This is a singular moment for American democracy, if Democrats are willing to seize it. Whatever grand principles have been used to sustain the filibuster over the years, it is clear as a matter of history, theory and practice that it vindicates none of them. If America is to be governed competently and fairly — if it is to be governed at all — the filibuster must go.

The most compelling reason to keep the filibuster is its proponents' argument that the rule prevents a tyranny of the majority in the Senate. That's the rationale of the two Democrats currently standing in the way of ending it, Senators Joe Manchin of West Virginia and Kyrsten Sinema of Arizona. They have been steadfast in defending the modern filibuster as part of what they assert is a longstanding Senate custom.

"It's meant to protect what the Senate was designed to be," Ms. Sinema [said](#). "Debate on bills should be a bipartisan process that takes into account the views of all Americans, not just those of one political party."

(It's unlikely that any Republican senator will support getting rid of the filibuster today, even knowing that it would make legislating easier for them in the future, but because the filibuster is a Senate-created rule, that can be accomplished by a simple majority vote.)

Bipartisan cooperation and debate should be at the heart of the legislative process, but there is little evidence that the filibuster facilitates either. The filibuster doesn't require interparty compromise; it requires 60 votes. It says nothing about the diversity of the coalition required to pass legislation. It just substitutes 60 percent of the Senate for 51 percent as the threshold to pass most legislation. If the Senate was designed to be a place where both parties come together to deliberate and pass laws in the interest of the American people, the filibuster has turned it into the place where good legislation goes to die.

That's one reason the framers of the Constitution didn't include a supermajority requirement for the Senate to pass legislation. They had watched how such a requirement under the Articles of Confederation had prevented the government from doing almost anything

The filibuster arose only decades later. John C. Calhoun, a senator from South Carolina, [used it](#) as a means to protect the interests of slavers like himself from a majority. From its beginnings through the middle of the 20th century, when segregationists like Senator Strom Thurmond, also of South Carolina, used the filibuster to try to kill multiple civil rights bills, the pattern has been clear: It has been used regularly by those who reject inclusive democracy.

The relevance of the history is that the pattern continues.

Finally, the filibuster is a redundancy in a system that already includes multiple veto points and countermajoritarian tools, including a bicameral legislature, a Supreme Court and a presidential veto. The Senate itself protects minorities in its very design, which gives small states the same representation as large ones.

Another common defense of the filibuster, as Ms. Sinema said, is that the filibuster is crucial for permitting full debate on a bill. Again, reality shows otherwise. The filibuster doesn't only fail to ensure extended debate on a bill; today it curtails the opportunity for any debate at all. A single

senator can signal he or she intends to filibuster by typing an email and hitting send. No need to stand on the Senate floor to make your impassioned case.

Reformers have suggested many ways to chip away at the filibuster without destroying it completely. One proposal would bar its use for legislation involving voting rights or other democratic expansions. Another would [require](#) the old-fashioned “talking” filibuster. A third would entail holding a [series of cloture votes](#) spaced three days apart, lowering the number of senators needed to end the filibuster each time. These are clever solutions, and Mr. Manchin has [said he is open](#) to at least one of them.

Even if there were a real debate on a bill, however, it should end at some point. That was clear more than a century ago, when the Senate had not yet established a rule to shut down a filibuster. As Henry Cabot Lodge, a Massachusetts senator, [wrote](#), “If the courtesy of unlimited debate is granted it must carry with it the reciprocal courtesy of permitting a vote after due discussion. If this is not the case the system is impossible.”

If the political reforms in H.R. 1 are not undertaken at the federal level, Republican leaders will continue to entrench minority rule. That’s happening already in states like Wisconsin and North Carolina, where Republican-drawn maps give them large legislative majorities despite winning fewer votes statewide than Democrats. It’s happening in dozens of other states that have passed hundreds of voting restrictions and are pushing [hundreds more](#), under the guise of protecting election security.

The Supreme Court should be blocking these measures and protecting the right to vote, but far too often under Chief Justice John Roberts, it’s done the opposite. In 2019 it refused to stop even the worst partisan gerrymanders, and in 2013 it struck down the heart of the Voting Rights Act, opening the door to a wave of Republican voter-suppression laws that continues to crash. That’s why federal law is the only solution.

There have also already been many revisions to the filibuster. In the 1970s, Congress created a loophole for spending and revenue bills to avoid the filibuster, allowing such legislation to pass with a simple majority — a process known as reconciliation. More recently, in 2013, Democrats eliminated the filibuster for nominations of lower-court federal judges and executive-branch officials. Four years later, Republicans eliminated it for Supreme Court justices, which allowed President Donald Trump to fill one-third of the high court’s bench with his picks.

The perverse result of all this is that it is now easier to block a piece of legislation, which could be repealed in the next Congress, than it is to block a federal judge seeking a lifetime appointment. Any intellectual justification for the filibuster has been gutted by the fact that it doesn’t apply anymore to many important issues before the Senate.

The point of H.R. 1 is not to help Democrats. It is to rebuild and reinforce the crumbling foundations of American self-government and abolish voter restrictions erected for explicitly partisan gain — a federal law that would protect all voters. If the choice is between saving the filibuster and saving democracy, it should be an easy call.

Opinion: Filibuster or bust: Maintaining the minority's power in the Senate is critical



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Mitt Romney

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For several years, many of us have recoiled as foundational American institutions have repeatedly been demeaned: The judiciary has been accused of racial bias; the media maligned as the enemy of the people; justice and intelligence agencies belittled; public health agencies dismissed; even our election system has been accused of being rigged.

America works. America has worked for more than 200 years. The character of the American people deserves most of the credit. But close behind are our vital institutions.

The United States Senate is one of our vital democratic institutions. Since shortly after our nation's founding, a single senator has been permitted to speak indefinitely, delaying and possibly impairing legislation favored by the majority, even if that senator were in the minority. When rules were eventually developed to cut off debate, the Senate required that decision to be made by a supermajority of senators, first 67 and now 60.

The power given to the minority and the resulting requirement for political consensus are among the Senate's defining features.

Note that in our federal government, empowerment of the minority is established in just one institution: the Senate. The majority decides in the House; the majority decides in the Supreme Court; and the president is a majority of one. Only in the Senate does the minority restrain the power of the majority.

That a minority should be afforded such political power is a critical element of the institution. For a law to pass in the Senate, it must appeal to senators in both parties. This virtually ensures that a bill did not originate from the extreme wing of either party and will thus best represent the interests of a broad swath of Americans. The Senate's minority empowerment has meant that our nation's policies inevitably tack toward the center. As then-Sen. Joe Biden [said in 2005](#): "At its core, the filibuster is not about stopping a nominee or a bill, it's all about compromise and moderation."

Consider how different the Senate would be without the filibuster. Whenever one party replaced the other as the majority, tax and spending priorities, safety net programs, national security policy and cultural interests would careen from one extreme to the other, creating uncertainty and unpredictability for families, employers and our partners around the world.

The need to marshal 60 votes to end a filibuster requires compromise and middle ground. It not only empowers the minority but also has helped to keep us centered, fostering the stability and predictability essential to investment in people, in capital and in the future.

Abandoning the principle of minority empowerment would fundamentally change the distinct and defining role of the U.S. Senate.

Today's Democrats, now with the barest of majorities in a 50-50 Senate, conveniently ignore their own impassioned defense of the filibuster when they were in the minority. Then, they vigorously spoke of its vital role; 30 Senate Democrats signed a [letter](#) in 2017 imploring Senate leaders to "preserve existing rules, practices, and traditions as they pertain to the right of Members to engage in extended debate on legislation." Sen. Charles E. Schumer (D-N.Y.), now the majority leader, had previously described attempts to do away with the filibuster as a "[temper tantrum](#)" and stressed in 2017 that "[no senator would like to see that happen](#)."

Let us also be clear that those who claim the filibuster is racist know better. For former [president Barack Obama to make](#) this absurd charge after he himself vigorously [defended](#) the filibuster just a few years ago is both jarring and deeply disappointing. I don't recall a single claim from Democrats that employing the filibuster was racist when they were in the minority.

The Democrats' latest justification for eliminating the filibuster is Republicans' unwillingness to pass partisan election-reform [legislation](#). Democrats have filed these bills numerous times over numerous years, almost always without seeking Republican involvement in drafting them. Anytime legislation is crafted and sponsored exclusively by one party, it is obviously an

unserious partisan effort aimed at messaging and energizing that party's base. Any serious legislative effort is negotiated and sponsored by both parties.

Finally, consider a more immediate implication of eliminating the filibuster. There is a reasonable chance that Republicans could win both houses of Congress in the next election cycle and, further, that Donald Trump could be elected president once again in 2024. Have Democrats thought through what it would mean for them for Trump to be entirely unrestrained, with the Democratic minority having no power whatsoever? If Democrats eliminate the filibuster now, they — and the country — may soon regret it very much.