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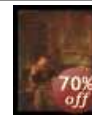
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# UNDERNEWS

*Undernews is the online report of the Progressive Review, edited by Sam Smith, who covered Washington during all or part of one quarter of America's presidencies and edited alternative journals since 1964. The Review has been on the web since 1995. See main page for full contents*

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[SAM SMITH'S BIO](#)

[SAM SMITH'S BOOKS](#)

[SAM SMITH'S MUSIC](#)

AUGUST 17, 2009

## THE BIPARTISAN SENATE SCAM THAT'S KILLING PUBLIC HEALTH CARE

[David Swanson, LA Progressive, December 2008](#) - When the Democrats were in the minority and out of the White House, they told us they wanted to work for us but needed to be in the majority. So, in 2006, we put them there. Then they told us that they really wished they could work for us but they needed bigger majorities and the White House. So, in 2008, we gave them those things, and largely deprived them of two key excuses for inaction. We took away the veto excuse and came very close to taking away the filibuster excuse, and - in fact - the filibuster excuse could be taken away completely if the Democrats didn't want to keep it around. . .

The filibuster excuse works like this. Any 41 senators can vote No on "cloture" - that is on bringing a bill to a vote, and that bill will never come to a vote, and anything the House of Representatives has done won't matter. Any of the other 59 senators, the 435 House members, the president, the vice president, television pundits, and newspaper reporters can blame the threat of filibuster for anything they fail to do. . .

The filibuster is the most anti-democratic tool of the Senate, and can be eliminated without touching the Constitution, which does not mention it. If you take 41 senators from the 21 smallest states, you can block any legislation with a group of multi-millionaires elected by 11.2 percent of the American public. That fact is a national disgrace that should be remedied as quickly as possible. . .

Senate Rule 22. . . reads in part:

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"Is it the sense of the Senate that the debate shall be brought to a close?"

And if that question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn - except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting - then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of." 1 1/2

This would seem to suggest that it takes 60 senators to block a filibuster and 66 senators (if 100 are present, otherwise fewer) to end the power of 60 senators to block filibusters. But that's not the whole story. [William Greider](#) explained:

"In 1975 the filibuster issue was revived by post-Watergate Democrats frustrated in their efforts to enact popular reform legislation like campaign finance laws. Senator James Allen of Alabama, the most conservative Democrat in the Senate and a skillful parliamentary player, blocked them with a series of filibusters. Liberals were fed up with his delaying tactics. Senator Walter Mondale pushed a campaign to reduce the threshold from sixty-seven votes to a simple majority of fifty-one. In a parliamentary sleight of hand, the liberals broke Allen's filibuster by a majority vote, thus evading the sixty-seven-vote rule. (Senate rules say you can't change the rules without a cloture vote, but the Constitution says the Senate sets its own rules. As a practical matter, that means the majority can prevail whenever it decides to force the issue.) In 1975 the presiding officer during the debate, Vice President Rockefeller, first ruled with the liberals on a motion to declare Senator Allen out of order. When Allen appealed the "ruling of the chair" to the full Senate, the majority voted him down. Nervous Senate leaders, aware they were losing the precedent, offered a compromise. Henceforth, the cloture rule would require only sixty votes to stop a filibuster." 1 1/2. . .

If the Democrats choose to keep the filibuster excuse around, our job will be to overwhelm them and the media with our refusal to believe it.

**Ronald D. Rotunda, Cato Institute:** The modern filibuster is much more powerful than its historical predecessor because it is invisible: The Senate rules do not require any senator to actually hold the floor to filibuster. Instead, a minority of 41 senators simply notifies the Senate leadership of its intent to filibuster. Other Senate business goes on, but a vote on a particular issue -- a nomination -- cannot be brought to a vote. . .

The Senate, unlike the House, is often called a continuing body because only one-third of its members are elected every two years. But that does not give the senators of a prior generation (some of whom were defeated in prior elections) the right to prevent the present Senate from choosing, by simple majority, the rules governing its procedure. For purposes of deciding which rules to follow, the Senate starts anew every two years.



Your editor has been a musician for many decades. He started the first band his Quaker school ever had and played drums with bands up until 1980 when he switched to stride piano. He had his own band until the mid-1990s and has played with the New Sunshine Jazz Band, Hill City Jazz Band, Not So Modern Jazz Band and the Phoenix Jazz Band.

### [NOTES ON THE MUSIC](#)

Here are a few tracks:

#### **SAM SMITH'S DECOLAND BAND**

##### [SAM'S BAND](#)

##### [JELLY ROLL](#)

#### **PHOENIX JAZZ BAND**

[APEX BLUES](#) Sam playing with the Phoenix Jazz Band at the Central Ohio Jazz festival in 1990. Joining the band is George James on sax. James, then 84, had been a member of the Louis Armstrong and Fats Waller orchestras and had appeared on some 60 records. [More notes on James](#)

[WISER MAN](#) Sam piano & vocal

[OH MAMA](#) Sam piano & vocal

[David E. RePass, NY Times](#), **March 2009** - Most Americans think of the filibuster (if they think of it at all) through the lens of "Mr. Smith Goes to Washington" - a minority in the Senate deeply disagrees with a measure, takes to the floor and argues passionately round the clock to prevent it from passing. . .

To reduce deadlock, in 1917 the Senate passed Rule 22, which made it possible for a supermajority - two-thirds of the chamber - to end a filibuster by voting for cloture. The two-thirds majority was later changed to three-fifths, or 60 of the current 100 senators.

In recent years, however, the Senate has become so averse to the filibuster that if fewer than 60 senators support a controversial measure, it usually won't come up for discussion at all. The mere threat of a filibuster has become a filibuster, a phantom filibuster. Instead of needing a sufficient number of dedicated senators to hold the floor for many days and nights, all it takes to block movement on a bill is for 41 senators to raise their little fingers in opposition. . .

The phantom filibuster is clearly unconstitutional. The founders required a supermajority in only five situations: veto overrides and votes on treaties, constitutional amendments, convictions of impeached officials and expulsions of members of the House or Senate. The Constitution certainly does not call for a supermajority before debate on any controversial measure can begin.

[Wikipedia](#) - In 2005, a group of Republican senators led by Senate Majority Leader Bill Frist (R-TN), responding to the Democrats' threat to filibuster some judicial nominees of President George W. Bush to prevent a vote on the nominations, floated the idea of making a rules change to eliminate filibusters on judicial nominees with the justification that the current Senate rules can be changed with a simple majority based on the Constitutional stipulation that each Congress can set its own rules. This idea, called the "constitutional option," had been used to defeat filibusters in a few select cases in the history of the Senate, including passing continually filibustered Civil Rights legislation in 1959. Senator Trent Lott, the junior Republican senator from Mississippi, named the plan the "nuclear option." Republican leaders preferred to use the historical term "constitutional option," though opponents and some supporters of the plan continue to use "nuclear option." . .

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