



## Long live the filibuster

January 24, 2013 John Samples

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The U.S. Senate has long promised and tolerated unlimited debate on legislation. It's only with 60 votes that the Senate's "cloture" rule can be invoked to stop debate and require a vote. In practice, that means that 41 senators can block most action by threatening to prolong debate, or filibuster. But now some senators and outside interests want to allow debate to be cut off by a simple majority, eliminating the filibuster.

The desire for change comes from partisan passions and recent frustrations. During President Obama's first term, the Senate's Republican minority used the filibuster to modify laws passed by the Democratic-controlled House. The 2009 "stimulus" bill spent less than it would have under strict majority rule, and the health-care overhaul might well have included a public option if not for the filibuster.

Past partisan frustrations, however, should not determine future legislative rules. Allowing majority rule to always trump minority interests would undercut the intent and structure of the Constitution, with its many protections of minorities from the tyranny of majorities.

In general, the American Constitution does not set up government by majorities. The nine members of the Supreme Court interpret and enforce the Constitution, and they are neither selected by nor responsible to a majority. Simple majority rule does not make laws, either, and not just because of the filibuster. Legislation must be approved by three institutions, each representing different constituencies.

Majority rule is not the norm in American politics, nor should it be. To see why, consider an institution that is ruled by the majority: the House of Representatives. For years, both Republican and Democratic minorities in the House have complained about being shut out of debates and precluded from offering amendments.

As political scientist Gregory Koger has noted, the filibuster has been used to force Senate majorities to consider minority amendments. A majority has every reason to prevent such amendments; they often

force senators in the majority to cast tough votes on controversial issues. By forcing amendments, however, the filibuster enhances accountability while expanding the scope of the debate.

While the House is organized along partisan lines, the Senate is much more individualist, partly because of the filibuster. Getting rid of the filibuster would increase the power of party leaders. Will senators represent their states better if they are more at the mercy of party leaders? In a polarized age, do we really need more partisanship in the Senate?

Polarization has left both parties with fewer members from the political center. Simple majorities in the Senate would be more likely to endorse laws that are far from the center. The current threat of filibusters requires the majority party to move toward the center, satisfying more voters. In a polarized time, the filibuster tends to make Senate actions more representative of the nation as a whole.

Of course, the prospect of filibusters often prevents laws from passing. But it's far from clear that laws reflecting a partisan agenda are preferable to inaction.

It's surprising that some Democrats are now so willing to jettison the filibuster. Did they not use it during George W. Bush's administration? Do they expect to hold the Senate majority forever? The Democrats cannot hope to end the filibuster now and then reinstate it if the Senate goes Republican in 2014 - at which point we might expect the GOP to discover the advantages of unhampered majority rule.

Some have observed that the proponents of ending the filibuster are relatively new to the Senate and may not understand how it benefits both parties and the nation. Since both parties (and their voters) will be in the minority at one time or another, the filibuster serves broad, long-term interests, even if it does not assuage the narrow, partisan frustrations of the moment. Perhaps senators should consider the longer run and broader interests when they make the rules for the coming Congress