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The Filibuster Will Survive Because a Few Democrats Are Smart Enough Not To Kill It

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The Senate could vote later today on a sweeping overhaul of federal election rules that has been a priority for Democrats since they took control of Congress and the White House in November.

Could is the keyword, of course. Republicans are threatening to filibuster the bill—[read Walter Olson](#) for a primer on the legislation's shortcomings—and it seems unlikely that the tenuous 50-seat Democratic majority will be able to muster the necessary 60 votes to break that filibuster if it happens. That's why the For The People Act has become the latest high-stakes focal point in Washington's most beloved insider political drama, "Who Wants To Kill The Filibuster?"

This is a recurring dilemma because of a funny little detail in the Senate's rules. Even though it requires 60 votes to invoke what's called "cloture" and thereby end a filibuster, the rules also require only a simple majority to change the Senate's rules—including the rules about how many votes are necessary to invoke cloture. The filibuster persists not because it is impossible or even difficult to abolish it, in other words, but merely because each subsequent Senate majority recognizes that it won't retain control forever and will someday want to make use of the filibuster to stop the other team's agenda.

Politics seem to be becoming more short-sighted, however, and the temptation to abolish the filibuster has been growing. It has already been abolished in the name of speeding along Supreme Court nominees and other judicial appointments. The so-called "legislative filibuster" is now [a target of some on the political left](#), who see it (not entirely incorrectly) as an anti-democratic tool that exists only to slow the passage of big legislation, like the voting rights bill the Senate might consider later today.

Democrats had not even retaken control of the federal government yet when some leading liberal voices began clamoring for the death of the filibuster. Writing at *Vox* last October, Ezra Klein [laid out the argument](#) for why the filibuster must go. Notably, the voting rights bill that Democrats are now using to push this debate forward was only one of several excuses (or opportunities) Klein identified for abolishing the filibuster. He wasn't arguing that the filibuster

should be abolished to accomplish any specific policy goal; rather, he was arguing that it should be abolished so Democrats can accomplish all of their policy goals at once.

Democrats should be thankful that not all of their senators are willing to be so myopic.

"I do not accept a new standard by which important legislation can only pass on party-line votes—and when my party is again in the Senate minority, I will work just as hard to preserve the right to shape legislation," writes Sen. Kyrsten Sinema (D–Ariz.) in an op-ed published this week by *The Washington Post*. "Instability, partisanship, and tribalism continue to infect our politics. The solution, however, is not to continue weakening our democracy's guardrails. If we eliminate the Senate's 60-vote threshold, we will lose much more than we gain."

Elsewhere in the piece, Sinema correctly points out that the filibuster has been used in the past by both parties to achieve their respective goals—a silent rejoinder to the historically nonsensical argument that the filibuster is nothing more than a relic of Jim Crow-era politics. Just last year, she notes, a Democratic minority in the Senate used the threat of a filibuster to block the passage of police reform bills and a Republican-backed COVID-19 relief package.

Sinema also reminds Democrats of what could happen once the filibuster is gone. Is passing this voting rights bill worth opening the door to a future 50-seat Republican majority implementing mandatory Voter ID laws or a national ban on voting by mail with a simple party-line vote, she asks? "This question is less about the immediate results from any of these Democratic or Republican goals—it is the likelihood of repeated radical reversals in federal policy, cementing uncertainty, deepening divisions and further eroding Americans' confidence in our government," Sinema writes.

It's true that the filibuster doesn't do much to encourage bipartisan cooperation—as its defenders sometimes claim—but Sinema is right that it does help prevent the sort of wild policy swings that would otherwise occur after every federal election.

Sinema isn't the only Democrat to hold this view, though she is one of the few willing to come right out and say it. Sen. Joe Manchin (D–W.Va.), who has the political protection of representing a deep red state, is another. NBC News reports that several Senate Democrats are on the fence about the filibuster's future while still others are simply refusing to tell reporters where they stand. It hardly seems like a group ready to hold hands and jump together off the ledge.

Perhaps that's because some members of the Senate remember what happened the last time they eroded the filibuster. In 2013, then-Senate Majority Leader Harry Reid (D–Nev.) abolished the filibuster for lower-court judicial nominees, ostensibly to allow Democrats to confirm more of then-President Barack Obama's picks for the federal bench.

How did that work out in the long run? President Donald Trump and a Republican-controlled Senate installed nearly as many federal judges in four years as Trump's predecessor did in eight—causing liberals to howl about a conservative overhaul of the federal courts.

If only someone would have warned them that no one wins when you abolish the filibuster. President Joe Biden, who now tepidly supports ending the filibuster, once said that "folks who want to [abolish the filibuster] want to eliminate one of the procedural mechanisms designed for the express purpose of guaranteeing individual rights and they also, as a consequence, would undermine the protections of the minority point of view in the heat of majority excess."

Sinema will take plenty of grief for her *Post* op-ed, but NBC's reporting suggests that she's hardly single-handedly saving the filibuster. If the Senate's super-majority rules survive Tuesday (and the next year-and-a-half), it will be because just enough Democrats are smart enough to realize there's no such thing as a permanent majority.